Tracking Transformation in South African Prisons

by Amanda Dissel

Introduction

This article provides a brief overview of the recent history of prisons in South Africa and some of the important changes that have occurred in policy and legislation following the country’s change to democracy in 1994. Some of the challenges to the implementation of these policies, attempts by the Department of Correctional Services to overcome them, and some of the issues regarding resistance to change will also be discussed.

The recent history of South African prisons

During the apartheid era criminal behaviour and punishment were defined by the social order constructed by the apartheid government. Many people were sent to prison for apartheid-related offences, such as contravening the Group Areas Act (Act No. 36 of 1966) or the Prohibition of Mixed Marriages Act (Act No. 55 of 1949).¹ Many people were detained without trial, or were charged and sentenced...
for opposing apartheid from the 1960s onwards. The penal system was used to regulate the movement and labour of black people, with many jailed for pass offences. Pass law breakers served to increase the supply of available labour. The penal system facilitated the economic development of the country by supplying convict labour for building roads, harbours and for work on the mines. (For a general history of the penal system in South Africa, see Van Zyl Smit (1992))

Treatment of prisoners also reflected the separatist ideology of the apartheid government, whose main objective was to isolate prisoners from the community. Black prisoners were separated from white prisoners and suffered poor conditions and harsh treatment.

The policy and legal framework in post-apartheid South Africa

Significant shifts began to be made in penal policy during the late 1980s and early 1990s when prisons were desegregated and all reference to race was removed from the law. The Correctional Services Act was amended in 1993 when solitary confinement and punishment on a spare diet were abolished, as was corporal punishment. In the same year the courts accepted the principle that a prisoner retain all his or her personal rights, except those abridged by law.

Prison reform was placed on the agenda during the political transition, and from the very beginning the rights of prisoners were seen as important, with the new Constitution consolidating the concept of prisoner rights. In addition to ensuring the protection of human dignity, liberty and equality of all people, and the general protection against cruel, inhuman and degrading treatment or punishment, the Constitution provides specific protection for detained, accused and arrested persons. Section 35(2), for example, deals with the rights of detained and arrested persons, including 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.” In 1995 the death penalty was repealed.

Taking into account the human rights imperative of the Constitution, a new Correctional Services Act (Act No. 111) was drafted in 1998. This Act seeks to incorporate the values enunciated in the Bill of Rights and prescribes a new approach to imprisonment. It recognises international principles on correctional matters and establishes certain mandatory minimum rights applicable for all prisoners that cannot be withheld for any disciplinary or other purpose. In terms of the new Act, the Department of Correctional Services is committed to a threefold purpose:

- Enforcing the sentences of the court in the manner prescribed by the Correctional Services Act;
- Detaining all people in safe custody whilst ensuring their human dignity; and
- Promoting the social responsibility and human development of all prisoners.

Unfortunately, in the three years following the promulgation of this progressive piece of legislation, only certain sections have been enacted. The major portions relating to the treatment of prisoners, discipline, and release are still just paper provisions. The Department of Correctional Services indicated that the delay is due to the need to rewrite the regulations and accompanying standing orders. In addition, several amendments were made to the Act and, at the time of writing, it is now anticipated that it will be fully passed at the beginning of 2002. Due to these delays, the old Correctional Services Act No. 8 of 1959, as well as part of the new Act are applicable to different aspects, which has led to some confusion about the correct treatment of prisoners.

Prison overcrowding

Despite the scrapping of apartheid related offences such as the pass law, the prison population has continued to rise. To some extent this reflects an increase in reported crime. Delays in processing court cases are partially responsible for the burgeoning awaiting-trial population (see the article by Judge Fagan on pp. 16–19 of this issue).

Legislative changes in bail law and sentencing are contributing factors. In 1996 amendments to bail law shifted the onus on to a person accused of a serious offence to prove why he or she should be released on bail pending the trial, which has made it more difficult for the granting of bail. Another factor is that many accused cannot afford even the small bail amounts for less serious offences and thus spend long periods in prison awaiting trial. In response to public calls for increased punishment, a minimum sentencing for serious offences was introduced in 1997. In general, the length of prison sentences is increasing, with more prisoners now receiving sentences upward of two years (Muntingh 2001, p. 47).

Public pressure also led to amendments in parole law in 1997, extending the time to be served before a prisoner can become eligible for parole. The abolishment of the death penalty was met with a certain amount of scepticism by some members of the judiciary who believe that imprisonment is not a severe enough punishment. They also lack faith in the parole board or the Department of Correctional Services making correct decisions about
release; as a result some judges have handed down extremely long sentences.

Overpopulation in prisons continues to be an ongoing problem and a serious threat to the recognition of basic rights of prisoners. In 2002 the Judicial Inspectorate reported that:

Conditions in prison, more particularly for unsentenced prisoners, are ghastly and cannot wait for long term solutions; for example, 1 toilet is shared by more than 60 prisoners; [there is a] stench of blocked and overflowing sewage pipes; shortage of beds resulting in prisoners sleeping two on a bed whilst others sleep on the concrete floors, sometimes with a blanket only; inadequate hot water; no facilities for washing clothes; broken windows and lights; insufficient medical treatment for the contagious diseases that are rife. The list of infringements of prisoners’ basic human rights caused by overcrowding is endless (Judicial Inspectorate Report on Prison Overcrowding, 2000).

The Judicial Inspectorate, in charge of independent oversight of prisons, has made a number of recommendations to reduce the prison population over the longer term. In response, the Department of Correctional Services has committed itself to the enhancement of community corrections by diverting low-risk awaiting-trial prisoners to community corrections, and utilizing electronic monitoring on awaiting-trial prisoners and those serving parole. It remains to be seen whether implementation of the recommended measures will reduce overcrowding.

Gangs

Gangs have dominated the South African prison scene for over a hundred years. Despite the full knowledge of the Department of Correctional Services, they continue to recruit new members, organise their activities and conduct a reign of terror in prisons. Gangs dominate every aspect of prison life; in some prisons they control the allocation of cells, distribution of food, a vibrant drug trade, and much of the sexual activity. They also support corruption among prison staff.

Almost half of the deaths by assault in prison are attributed to gangs. Several recommendations by the South African Human Rights Commission to the Department of Correctional Services, following an investigation on prison gang violence, have not been taken up and gang activity continues to flourish (Pete 2000, p. 40).
Independent oversight of prisons

The new Correctional Services Act No. 111 led to the establishment in 1998 of independent oversight of prisons through the Independent Judicial Inspectorate, which is headed by an inspecting judge. This office is mandated to inspect prisons and report on the treatment of prisoners and conditions in prison. Mr. Justice Fagan, the current inspecting judge, has prioritized the reduction of the prison population and instigated early prison releases in 2000. In response, the law has been amended so that a person awaiting-trial who is unable to pay the bail amount can be released if the head of the prison is satisfied that overcrowding threatens the human dignity, physical health or safety of prisoners (Judicial Matters Amendment Act No. 42 of 2001). The new provisions making allowance for plea bargaining also have the potential to reduce the number of awaiting-trial prisoners. (See the article on overcrowding by Judge Fagan on pp. 16–19 of this edition.)

The Judicial Inspectorate is also charged with the appointment of Independent Prison Visitors (IPVs) from the community. One, or more, IPv will be appointed for each prison. They will make regular visits, interview prisoners and deal with their complaints by reporting these to the head of the prison, and monitor how they are dealt with. Thus far, at the time of writing, only 117 IPVs have been appointed in three of the nine provinces (Judicial Inspectorate's Annual Report 2000).

A shortcoming of this initiative is that IPVs are limited to making recommendations to the heads of prisons and cannot actually solve problems themselves. They cannot ensure that their recommendations are actually implemented. Also, many of the complaints relate to conditions in prison, which are systemic and cannot be resolved by the IPVs or even the Judicial Inspectorate. However, it is important for this function to gain credibility if it is going to be accepted by prisoners, and also to ensure its long-term sustainability.

C-Max and Super-Maximum prisons

In the early stages of its transformation, the Department of Correctional Services was strongly influenced by trends in the United States, one of which was the emphasis on new high-tech maximum security prisons. The first sign of this in South Africa was the C-Max prison, first opened in 1997 in Pretoria Central Prison. The old “death row” was converted to accommodate high-risk prisoners, both sentenced and unsentenced. C-Max prisoners are held in...
isolation 23 hours a day, permitted to exercise in a 4 x 1.5m cage and a ten-minute shower in a cage. Prisoners are shackled to a stun belt whenever they leave the prison and handcuffed each time they leave the cell.

The development of the C-Max prison was sharply criticised by the South African Human Rights Commission and non-governmental organisations (NGOs). It was felt that the concept of isolation of prisoners defeated the stated objectives of rehabilitation and was more likely to lead to further psychological and behavioural problems. Following changes in political leadership and the appointment of a new Commissioner of Correctional Services in 2001, this prison was de-prioritised and the strict regime slightly relaxed.

The new large Super-Maximum prisons are also inspired by trends in the United States. Although less strictly regimented than the C-Max, these prisons nevertheless stress physical security and de-personalisation at the expense of human rights and human development. The first such prison has been completed in Kokstad in the Eastern Cape, but is not yet in operation.

The development of both the C-Max and the Super-Max prisons appear to contradict the stated goal of transformation to a human rights culture in South African prisons. However, it is not clear whether the Department of Correctional Services plans to carry out its earlier intentions of building Super-Max prisons in all provinces in South Africa, or whether it will shift to a more human-oriented approach to corrections.

Rehabilitation of prisoners

Correctional Services Act No. 111 of 1998 recognises the importance of rehabilitative work with prisoners, and commits the Department of Correctional Services to “promoting the social responsibility and human development of all prisoners and persons subject to community corrections” (Muntingh 2001, p. 54). The Act gives guidelines on how to implement this, providing for the assessment of every prisoner, as well as the participation of prisoners in designing programmes for their sentences. The Act also
obliges the Department to provide access to as full a range of programmes and activities as is possible to meet the educational and training needs of a prisoner. A prisoner may also be compelled to participate in programmes.

Recidivism (reverting to crime upon release from prison) in South Africa is estimated to be in the region of 85% to 94%. Consequently, rehabilitation of prisoners cannot be emphasised enough (see the article by Lukas Munthing on pp. 20–24 of this issue). During a special National Cabinet strategy meeting in 1995, the Department of Correctional Services identified rehabilitation as a key objective to reduce recidivism. Its strategy to meet this objective involves strengthening partnerships with civil society organisations (Correctional Services Act No. 111, Section 2). Specific objectives include the development of individualized need-based rehabilitation programmes; marketing programmes for inmates; promoting a restorative justice approach to imprisonment; combating illiteracy; increasing training facilities; and increasing prisoner-made goods and services to enhance their self-sufficiency.

The Correctional Services Act No. 111 places an enormous responsibility on the Department to provide programmes, which is constrained by lack of resources, such as sufficient social workers, teachers, psychologists and other professional staff. Prison staff are expected to play a significant role in the development of prisoners, but overburdened as they are by the sheer numbers of prisoners, they are unlikely to have sufficient time to fulfil this role. Many prisons have severe space constraints and simply do not have rooms in which to run programmes. The conditions in most prisons are also not particularly conducive to a learning environment for prisoners. Even community assistance requires Departmental resources (for example, making space available for a programme), and prisons that are unable to accommodate their services often turn NGOs away. However, the past few years have seen a growth in the number of services offered within prisons by community-based organisations (CBOs) and an increase in partnerships on projects between the Department of Correctional Services and NGOs.

Dealing with HIV and AIDS in prison remains one of the key challenges for Correctional Services

Health care

A consequence of overcrowding is that it leads to poor sanitation and hygiene, which adversely affect the health of prisoners. There are limited resources and inadequate provision of basic and more advanced health care. Prisoners have complained to the Judicial Inspectorate more about health care and food than any other aspect of prison life. Contiguous diseases flourish in prison and the Department of Correctional Services lacks the adequate resources and strategy to deal with them. The most prevalent diseases are hepatitis B and C, syphilis, tuberculosis and HIV/AIDS. The number of deaths by “natural causes” has escalated sharply from 186 in 1995 to 1 087 in 2000. Approximately 90% of these deaths were AIDS related (Annual Report of the Judicial Inspectorate, 2000).

The prevalence of HIV and AIDS is increasingly a concern in South Africa. A report released by the Medical Research Council indicates that one in four deaths in South Africa is AIDS related. It is also estimated that AIDS will have killed between 5 and 7 million South Africans by 2010 (Goyer 2001, p. 20). It is not known how many prisoners are infected with HIV, but it is assumed that many inmates enter prison already infected with the virus. Large numbers of prisoners contract HIV while in prison, as the prison environment creates many opportunities for the spread of the virus through high-risk behaviour. Anal sex — coercive, forced and consensual — is widely practised in prisons. (See the article by Emma Harvey on rape in prison on pp. 44–51 of this edition.) Gang violence and the sharing of tattooing needles also contribute to the spread of HIV.

The Department of Correctional Services runs a limited programme on HIV/AIDS awareness and also encourages the assistance of community organisations in this regard. Although it does acknowledge that sexual activity occurs in prison, prison authorities do not actively encourage safe sex practices or awareness of sexually transmitted diseases (STDs) and HIV. Condoms are available from the dispensary in the prison hospital, but prisoners first have to undergo counselling by a social worker to obtain them. This approach fails to recognise the difficulty prisoners generally have in accessing health care. Although the Department of Correctional Services would like to support the release of prisoners who are fatally ill with AIDS, it has indicated that it is often more difficult to release prisoners into the community where the problem of inadequate health care also persists. These prisoners are left to die in prison. Dealing with HIV and AIDS in prison remains one of the key future challenges for the Department.

Institutional transformation

Staff attitudes and discipline are significant indicators of transformation in an institution. Following the demilitarization of the Department of Correctional Services, a civilian code of conduct was adopted. It took time for staff members to become familiar with the changes. Many exploited the gap, which resulted in lax discipline. Various changes in policies affecting staff impacted negatively on morale. Affirmative action policies affected white members of staff and resulted in large numbers of them exiting the Department in recent years. In addition, corruption has had
a major impact on staff morale, the Department’s functioning and the public’s image of it.

Demilitarization

The Department of Correctional Services became a militarized institution in the 1950s. To aid transformation, it was demilitarized in 1996, as a militarized approach was considered counter-productive to the goals of prisoner rehabilitation. Demilitarization involved changing the structure, ranks systems and mode of address and scrapping uniform insignia and daily militarized parades. This move was not received without criticism and a good deal of insecurity on the part of staff members who had grown to appreciate their military-like status. Central to the demilitarization process was the creation of a new civilian structure and mode of discipline. However, demilitarization was unfortunately conceptualized in a narrow and mechanistic manner, and has not resulted in extensive change to the culture of the Department (Mail & Guardian, 5 October 2001). Although prison staff are no longer assigned ranks and wear no visible insignia, hierarchical identities remain. For example, prisoners often still refer to prison staff by their military rank; some prison staff also refer to themselves in this way.

Corruption

The Department of Correctional Services appears to be plagued by endemic corruption that interferes with its ability to meet its legal objectives. Many senior staff members have been implicated in corruption, which is believed to extend throughout the prison system. Local media reports have alleged that prisoners are obliged to pay prison staff a fee for food, beds, bedding, or for a decent cell (Pete 2000, p. 23). The Judicial Inspectorate of Prisons was initially charged with investigating corruption and dishonest practices in the Department, but has refused to undertake this task (Giffard 1997 and Dissel 1997). It has argued that accomplishing the latter would require far more resources than it presently has at its disposal, that such investigations require an approach different to that used to investigate the treatment of prisoners, and that such an activity would take up too much of its time. There were also concerns about compromising the good relationships with personnel, which the Judicial Inspectorate relies on in order to do its work. The Department of Correctional Services has its own anti-corruption unit within its Department of Good Governance. This responsibility was removed from the Judicial Inspectorate when the Act was amended by Parliament at the end of 2001 (Correctional Services Act No. 111 of 1998, Sections 85(2) and 90(1)). It is problematic that the investigation of corruption is left solely in the hands of the Department of Correctional Services. Despite a few high profile arrests and convictions, the Department has so far been unable to deal with corruption and intimidation, and nepotism clearly affects the ability of it staff members to investigate their own colleagues. It is, however, difficult to separate the treatment of prisoners from corruption because of the integral relationships between staff and prisoners. The two often go hand in hand, and the Judicial Inspectorate of Prisons will most likely find it impossible to completely ignore the issue of corruption.

Conclusion

There have been many positive changes in law and policy with regard to prisons in the past few years in South Africa. The new legal framework outlaws racial discrimination and is orientated towards the rights and duties of prisoners. This provides the basis for a prison system that conforms to standards set by a modern democracy.

Yet it is worrying that many of the changes are not yet being effected. Huge prisoner numbers are overwhelming the capacity of the Department of Correctional Services to ensure that basic rights and needs of prisoners are met. In addition, the implementation of its broader goals of rehabilitation and development of prisoners are being severely stifled. Although the budget for prisons has increased significantly in recent years, this has not yet had a significant impact on improving conditions in prison.

More than a legal enabling environment is required for effective transformation to occur in South African prisons. Van Zyl Smit (2001) argues that in the past recognition of prisoners’ rights to humane treatment in prison occurred gradually and only because political prisoners took legal action against the apartheid state. He suggests that Constitutional ideals might only be fully implemented when prisoners begin to enforce their rights through legal means. One hopes that this will not be necessary, and that changes in prison conditions will occur with sufficient political will and backing from the government.

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1. The Group Areas Act provided for racial segregation by setting aside certain areas for the exclusive residence of one population group. The Prohibition of Mixed Marriages Act prohibited marriages across the colour line.

2. Correctional Services Amendment Act No. 32 of 2001. This was assented to by Parliament on 14 December 2001, but along with the major provisions of Act No. 111 of 1998, it has not yet, at the time of writing, been made enforceable.

3. The Criminal Procedure Act No. 51 of 1977, section 60(11)(a) was amended by Act No. 85 of 1997.


5. Mr. Ben Skosana, Minister of Correctional Services during the National Assembly Budget Vote Speech, 5 June 2001.

6. The extent of sexual activity in prisons is unknown, but some studies indicate that at least 45% of prisoners engage in sexual activity. (See Carelse in Goyer, K. and J. Gow 2000.) Much of the sexual activity in prisons is coercive (see Gear 2001).

7. Department of Correctional Services statistics indicate that there were 112 deaths following assault, of which 46% was reported to involve gangs for the period March 1999 to 2001.

8. Mr. Ben Skosana, Minister of Correctional Services, during the National Assembly Budget Vote, 5 June 2001.

9. The ratio of educators to prisoners is 1:382; social workers 1:300; auxiliary social workers 1:555; and psychologists 1:1 578. These ratios are calculated according to the number of posts available for the particular position. Yet in many cases some of these posts are vacant. For instance, of the 64 posts for psychologists, only 39 were filled early in 2001 (see Muntingh 2001).

10. The Department of Correctional Services hosted a national symposium in 2000 to develop a “collective social responsibility” strategy to correctional services. This was attended by many NGOs and CBOs that are engaged in service provision and programmes in prisons. (See also Muntingh (2001, pp. 55-57) for a discussion of programmes run by eight South African NGOs.)

BIBLIOGRAPHY


