Introduction — Prison ideals

On 27 April 1994 South Africa held its first free election in which all citizens voted. The new democratic government, under the leadership of President Nelson Mandela, dedicated itself to eliminating racial inequality and promoting human rights in the country. An interim Constitution was approved and on Human Rights Day, 21 March 1997, the final Constitution with a Bill of Rights came into operation. The Bill of Rights sets out the fundamental rights of the people of South Africa.

One of those rights is the right to have one’s inherent dignity respected and protected, a right that is specifically extended to prisoners. A prisoner is entitled “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” (Section 35(2)(e) of the Constitution of South Africa, Act 108 of 1996).

Rights embodied in legislation

Prisoners’ rights entrenched in the Bill of Rights were expanded upon in the Correctional Services Act No. 111 of
The stated object of the Act is “changing the law governing the correctional system and giving effect to the Bill of Rights … and in particular its provisions with regard to prisoners”.

The section “Custody of all prisoners under conditions of human dignity” sets out detailed general requirements under various headings: admission, accommodation, nutrition, hygiene, clothing and bedding, exercise, health care, contact with community, religion, belief and opinion, development and support services, access to legal advice, reading material, children, mothers of young children, and complaints and requests. The emphasis is shifted from punishment to detention under conditions of human dignity in order to better rehabilitate prisoners and prepare them to lead socially responsible and crime-free lives on their release.

The reality — severe overcrowding

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 (see the article by Amanda Dissel on pp. 8–15 of this edition), found that conditions in our prisons fell far short of the stated aims. Some prisoners had to endure awful treatment due to overcrowded and understaffed prisons. On 30 April 2000 the 236 prisons built to accommodate 100 668 prisoners in South Africa were accommodating 172 271 prisoners. That meant that about 72 000 prisoners were kept in prison without the necessary infrastructure such as toilets, beds, showers and other basic amenities being available to them. This situation was worsened by the uneven distribution of prisoners resulting from the need to separate different genders and categories. While a few prisons were underoccupied, many were over two hundred per cent full with one topping almost four hundred per cent.

The gross overcrowding in numerous prisons led to detention under horrendous conditions, especially for awaiting-trial prisoners.

The problem — Awaiting-trial prisoners

The cause of overcrowding was the unprecedented growth in the number of awaiting-trial prisoners. While the sentenced prisoner population slowly increased (from 92 581 in January 1995 to 108 307 on 30 April 2000), the number of awaiting-trial prisoners almost tripled (from 24 265 in January 1995 to 63 964 on 30 April 2000).

The average period that awaiting-trial prisoners remained in prison increased even more dramatically. Over the four years preceding 30 April 2000 the number of awaiting-trial prisoners held for longer than three months increased from 3 957 to 27 357. This meant that almost half of all awaiting-trial prisoners had been held for longer than three months.

The list of infringements of prisoners’ basic human rights caused by overcrowding was endless. Numerous media reports drew attention to the plight of prisoners. The situation had to be addressed without delay.

The solution — Reducing numbers

Considering the enormous cost involved in building new prisons, which amounts to about R200 000 per prisoner, the solution was not merely to build more prisons. The number of awaiting-trial prisoners was totally unacceptable and had to be reduced. If the number could be reduced to 24 000 (the figure for 1995 five years before), there would be almost 40 000 fewer prisoners. The aim would be to reduce the number further to 20 000 awaiting-trial prisoners at most.

Steps taken to reduce the awaiting-trial prisoner population

Since the beginning of 2000 the problem of overcrowding in prisons has been tackled in earnest. The departments of Justice, Correctional Services and Welfare and the South African Police Service working as an integrated justice system, commenced projects to reduce the cycle time of people held in custody awaiting-trial. On 31 January 2000 the National Council for Correctional Services recommended the advancement of the parole date of certain categories of sentenced prisoners and called for urgent attention to be given to the steep increase in the number of awaiting-trial prisoners.

Steps taken by the various departments and non-governmental organisations (NGO’s), such as the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) and Business Against Crime, were having an impact on the number of awaiting-trial prisoners. But their efforts and impact were for the long-term. The total number of prisoners still kept rising (from 166 423 in January 2000 to 170 328 on 31 July 2000).

Mass release of awaiting-trial prisoners

Conditions under which awaiting-trial prisoners were being held remained ghastly. For example, one toilet was shared by more than 60 prisoners; an overwhelming stench of blocked and overflowing sewage pipes; shortages of beds resulting in prisoners sleeping two to a bed while others slept on the concrete floors, sometimes with a blanket only; insufficient hot water, no facilities for washing or drying clothes, broken windows and lights; and insufficient medical treatment for the contagious diseases rife in prison. Immediate action was required; there was no time to wait for long-term solutions.

The Judicial Inspectorate of Prisons proposed the release of some awaiting-trial prisoners. The motivation was that
they were being detained under inhumane conditions; that
the spread of disease must be curtailed; that the enormous
stress prison staff were working under had to be relieved
and that the state could not afford to pay for the
accommodation of so many prisoners.

The awaiting-trial prisoners targeted for release were
poor and could not afford to pay their bail amounts of
R1 000 or less. They had all been found by magistrates to
pose no danger to their communities if they paid bail and
were released. The release would not be an amnesty, they
would all still have to appear in court on the days their cases
had been remanded for hearing. Meanwhile, they could be
reunited with their families, return to their employment and
contribute to their families’ upkeep. Juvenile prisoners could
return to school. Almost R1 million in accommodation costs
would be saved daily by this initiative. The Cabinet
approved the proposal and by 27 September 2000, 8 451
awaiting-trial prisoners were released and some humanity
was restored to the overcrowded prisons.

The situation currently

The numerous measures taken by the South African Police
Service, the departments of Justice, Correctional Services
and Welfare, NGO’s and other involved bodies are showing
results. From 30 April 2000 to 31 December 2001 the
number of awaiting-trial prisoners dropped from 63 964 to
55 285. Awareness of the awful conditions in which
awaiting-trial prisoners are held have led the police, magistrates, prosecutors and individual heads of prison,
among others, to take innovative steps to reduce levels of
overcrowding.

But the inhumane conditions under which awaiting-trial
prisoners are still held in many prisons today remain totally
unacceptable. The numbers must be brought down further
by greater use of alternatives for those awaiting-trial and
those being sentenced.

At the time of writing, the aim remains to reduce the
number of awaiting-trial prisoners to a maximum of
20 000. Only then there can be talk of human dignity and
rehabilitation in prisons.

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How reducing numbers can be achieved

Awaiting-trial prisoners
In pursuance of the aim of reducing the number of
awaiting-trial prisoners from the present 55 283 to 20 000,
at most, the following suggestions might be helpful:
1. More pre-trial diversion, especially for juveniles;
2. Increased use by police of their powers to release
arrested persons on bail;

3. Wider use by prosecutors and clerks of the court of the
procedure of admission of guilt and payment of a fine
without a court appearance;
4. More assistance by investigating officers to prosecutors
to enable them to place adequate information before
the courts for determining whether it is necessary for
accused to be detained pending trial;
5. Extensive use of plea bargaining in all types of cases to
expedite matters;
6. Greater use by the courts of alternatives to imprison-
ment for those awaiting-trial, that is, release on warn-
ing, bail in an affordable amount, placement under supervision of
a correctional official, electronic monitoring (when it is intro-
duced), and children (under 18 years) to be placed in the care of
parents or guardians or held in places of safety;
7. Courts on remand dates to consider alternatives to
further imprisonment;
8. Cases of awaiting-trial prisoners to be given preference
over those of accused awaiting-trial outside prison;
9. Consideration to be given to ways of expediting trials of
awaiting-trial prisoners, for example, additional
presiding officers and prosecutors, additional courts and
Saturday courts;
10. Withdrawal by prosecutors of trivial cases, weak cases
and cases where accused had been awaiting-trial for
long periods (a withdrawn case can always be re-
opened);
11. Heads of prison to be encouraged to apply for the
release of awaiting-trial prisoners in terms of Section
63A of the Criminal Procedure Act No. 51 of 1977 when
conditions caused by overcrowding become intolerable.2

Sentenced prisoners
In pursuance of the aim of reducing the total number of
sentenced prisoners from the present 120 005 to 100 00, at
most, the following should be encouraged:
1. Use of diversion, not only for juveniles;
2. Use of non-custodial sentences, that is,
(a) postponed sentences with or without the conditions
set out in Section 297(1)(a)(i) of the Criminal
Procedure Act No. 51 of 1977, for example, compen-
sation to the victim in money or service, community
service and submission to instruction or treatment;
(b) suspended sentences with or without conditions;
(c) discharge with a reprimand (the conviction is
recorded as a previous conviction);
(d) affordable fines;
(e) community-based sentences under correctional
supervision;
(f) for juveniles, placement in the custody of a suitable
person and/or under the supervision of a probation
officer or correctional officials;
(g) periodical imprisonment for a certain number of hours to be served over weekends (Section 287(4)(a) of Act No. 51 of 1977);
(h) in cases of a fine with alternative imprisonment if the fine is not paid, immediate release by the Commissioner under correctional supervision (Section 287(4)(a) of 1977);
(i) applications to court by the Commissioner for conversion of sentences of imprisonment into correctional supervision or another non-custodial sentence (Section 276A(3) of Act No. 51 of 1977);
(j) increased use of parole.
Should the target of 120 000 prisoners (100 000 sentenced and 20 000 awaiting-trial) be reached, we will have 2.66 prisoners per 1 000 South Africans. This ratio will still be very high by world standards, but at least it will be an improvement on our present ratio of 4 prisoners to every 1 000 South Africans.

ENDNOTES

1. During the course of 2001, the numbers of awaiting-trial prisoners decreased for the first time since 1995, according to the Annual Report of the Judicial Inspectorate for 2001. By December 2001, the number of awaiting-trial prisoners was at 55 285, down from 57 695 in January that same year. By May 2002, this total was down further to 54 962.
2. Section 63A of the Act refers to prisoners who have committed certain non-violent offences. It has been successfully applied in Pollsmoor Prison. The Office of the Inspecting Judge is currently training heads of prisons in other severely overcrowded prisons in the country to make applications under Section 63A.