

*Report of the Special Rapporteur on  
Prisons and Conditions of Detention in Africa*

*Mission to the Republic of South Africa*

*14 – 30 June 2004*

## Preface

Winston Churchill, the former British Prime Minister once remarked that “the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any country. A calm, dispassionate recognition of the rights of the accused and even of the convicted criminal... and the treatment of crime and the criminal mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue within it”. And the former President of South Africa, Nelson Mandela, also echoed these sentiments when he noted that “one cannot judge a nation by how it treats its most illustrious citizens, but by the treatment it metes out to its most marginalized - its prisoners”.

The criminal justice system is an integral and essential facet of society and reflects those accepted values that are intrinsic to every community. Those values include the need to maintain the delicate balance between individual freedom and social control. How to effectively balance these values has been a controversy for centuries and more recently with the emergence of human rights advocacy groups. In fact, the issue of prisons, and in particular, of prison overcrowding, the treatment of prisoners and the conditions of detention in general, as well as the resulting inherent human rights problems, remain of great concern to prison authorities as well as to human rights organizations.

Few jurisdictions are immune from the phenomenon of growing prison populations which, according to the *World Population List* and *World Population Brief* has recently seen the number of individuals deprived of their liberty surpass 8½ million worldwide.<sup>1</sup> With a world population of about 6.1 billion this represents an average incarceration rate of 140 prisoners per 100,000 population.

This increase in prison population cannot alone be attributed to higher rates in crime. Simply, around the world there is the belief that prison is preferable to any alternative; thus, the punitive element that characterizes this sanction remains the cornerstone of modern day correctional and penal systems. In spite of the proven efficiency and effectiveness of non-custodial alternatives, harsher penalties in the form of longer prison sentences continue to be imposed.<sup>2</sup>

Fairness in the courts and decency in the treatment of prisoners have become casualties of the war on crime. This war, being waged against the poorest and most powerless people in society, is destroying people, families and communities. Many politicians always assure their constituents that the answers to crime are greater use of the death penalty, longer prison terms, harsher conditions of imprisonment, less due process and less judicial review.

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<sup>1</sup> See International Prison Policy Development Instrument 1<sup>st</sup> Edition, July 2001. The World Population List was first published in 1999, the Second Edition appearing in 2000 - Roy Walmsley, Research Findings Nos. 88 and 116. Home Office Research, Development and Statistics Directorate, London UK.

<sup>2</sup> Ibid.

Physical abuse of prisoners by guards remains another chronic problem. Some countries continue to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. The heavy bar fetters turn simple movements such as walking into painful ordeals. In many prison systems, unwarranted beatings are so common as to be an integral part of prison life. While violence is a factor in some penal facilities, diseases, often the predictable result of overcrowding, malnutrition, unhygienic conditions, and lack of medical care, remain the most common cause of death in prisons. Food shortages in some prisons, combined with extreme overcrowding, create ideal conditions for the spread of communicable diseases.

In Africa where the penal systems were largely inherited from the colonial powers, the institutional and legislative framework, as well as the infrastructure, remains largely unaltered. Although attempts have been made in some countries to improve conditions of prisons and other places of detention, in most cases they are still inadequate.

Prisons and conditions of detention of offenders represent one of the most challenging areas in the field of human rights protection in Africa. The continent has not been able to come up with a blueprint on how to tackle the ever-growing problem of prison overcrowding, inmate abuse, poor sanitation, prison deaths, hunger strikes, etc. The first ever *Pan-African Seminar on Prison Conditions in Africa* was held in Kampala, Uganda as recently as 1996. The Conference was possibly the first occasion for Non-Governmental Organisations (NGOs) and government representatives from different countries in Africa to come together to discuss penal issues on the continent. The more than 140 participants who attended the Conference unanimously adopted the *Kampala Declaration on Prison Conditions in Africa*. Seven years since the adoption of the Declaration, the continent is yet to see an improvement in the treatment of offenders.

In many countries, the high levels of official secrecy that made prisoner numbers impossible to determine are equally effective in cutting off information about even the most egregious prison abuses. By barring human rights groups, journalists, and other outside observers access to their penal facilities, prison officials seek to shield substandard conditions from critical scrutiny. Places of detention or incarceration remain largely impermeable to the outside world. Inaccessibility and lack of accountability, coupled with indifference of the public towards prisoners lead to gross violation of prisoners' human rights.

In most cases, human rights organisations pay too much attention to the rights of prisoners and conditions of detention and pay no heed to the situation of the people who deal with detained persons - from the arresting officer through the magistrate to the prison authorities. The lack of human rights understanding by all the law enforcement officers have a lot to do with the treatment of prisoners and other detainees. Prison authorities who spend most of the time with prisoners must be acquainted with the human rights instruments on the treatment of persons deprived of their liberty. Perhaps, until this is done, the conditions of prisoners and other detainees in Africa will remain dreadful.

After visiting twelve countries on the continent, two interrelated problems feature prominently in most African prisons – overcrowding and large number of un-sentenced prisoners. Efforts must now be shifted to determine the causes, manifestations and possible solution to these phenomenons.

The Special Rapporteur’s visits to detention facilities across the continent seek to draw the attention of prison officials to the numerous lapses in the criminal justice system in general and the treatment of persons deprived on their liberty in particular, and to advance appropriate measures for effective redress. South African detention facilities are relatively good and most of them meet the minimum international standards. It is hoped that this report and the recommendations that follow will go a long way to improving the conditions of detention in South Africa and serve as an example to other African countries.

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## **Acknowledgement**

The African Commission on Human and Peoples' Rights (ACHPR) wishes to express its appreciation to the Government of the Republic of South Africa (RSA) for extending an invitation to its Special Rapporteur on Prisons and Conditions of Detention in Africa to visit and inspect prisons and other places of detention in the country.

The Special Rapporteur is grateful to the authorities for their hospitality and support during the period of the mission and is particularly thankful to the authorities for their care and concern when she was taken ill during the mission.

A special note of appreciation is extended to the Ministers, Deputy Ministers and Director Generals who found time to meet with the Special Rapporteur in spite of their tight schedule.

The Special Rapporteur also wishes to thank the staff members who organised the mission and particularly those who accompanied the delegation throughout the mission. The Special Rapporteur is equally grateful to all the NGOs, Independent Human Rights Institutions and other civil society bodies that found time to meet with her.

The Special Rapporteur would also like to recognise the openness and frankness of the prison authorities as well as the detainees. Together, they facilitated our work and we hope such openness will continue so as to enhance the condition of detention of persons deprived of their liberty. It is also important to acknowledge the remarkable services of the drivers and the security personnel assigned to the Special Rapporteur during the period of the mission.

## Abbreviations

|        |  |
|--------|--|
| ACHPR  | African Charter on Human and Peoples' Rights                           |
| ACMHRP | African Commission on Human and Peoples' Rights                        |
| AIDS   | Acquired Immune Deficiency Syndrome                                    |
| APRM   | African Peer Review Mechanism  |
| AU     | African Union  |
| CGE    | Commission for Gender Equality   |
| CRED   | Creative Education for Youth at Risk                                   |
| CSVR   | Center for the Study of Violence and Reconciliation                    |
| DCS    | Department of Correctional Services                                    |
| HIV    | Human Immunodeficiency Virus   |
| ICD    | Independent Complaints Directorate                                     |
| IJ     | Inspecting Judge   |
| IPVs   | Independent Prison Visitors  |
| JIOP   | Judicial Inspectorate of Prisons                                       |
| NEPAD  | New Partnership for Africa's Development                               |
| NGOs   | Non-Governmental Organisations   |
| NICRO  | National Institute for Crime Prevention and Reintegration of Offenders |
| PUPCRO | Police and Prisons Civil Rights Union                                  |
| RSA    | Republic of South Africa   |
| SADC   | Southern African Development Community                                 |
| SAHRC  | South African Human Rights Commission                                  |

|        |   |
|--------|---|
| SAPHOR | South African Prisons and Human Rights Organisation                 |
| SAPS   | South African Police Services                                       |
| SRP    | Special Rapporteur on Prisons and Conditions of Detention in Africa |
| ZAR    | South African Rand (R)  |
| UNO    | United Nations Organisation   |

Map of the Republic of South Africa with provinces



 [www.world-gazetteer.com](http://www.world-gazetteer.com)

## A. Introduction

Since the abolition of Apartheid in 1994, the non-racial Government of the Republic of South Africa has been improving its laws and policies to meet the challenges brought about by the new dispensation of respect for human rights, human dignity, non-racialism, non-sexism and an open and democratic society. The Government has adopted a number of laws and formulated policies to conform to this new dispensation. To this end, the Government has signed and ratified numerous human rights instruments and adhered to several United Nations and Regional Treaties and Declarations relating to the treatment of offenders and detainees.

The policy of the Government in this regard seeks to turn all prisons into correctional centres and all prison officials to rehabilitators. As part of the continuing process of enhancing human rights in the country, the government has adopted an open door policy to international, regional and domestic human rights bodies to visit the country and make concrete proposals where government might be falling short. It is on this basis that the South African Government extended an invitation to the African Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa to visit the country and inspect its detention facilities from 14 – 30 June 2004.

The visit falls within the mandate of the Special Rapporteur to monitor conditions in prisons and other places of detention in Member States of the African Union and make appropriate recommendations on how to enhance the protection of persons deprived of their liberty.

The Special Rapporteur was accompanied to the mission by Mr. Robert Wundeh Eno, Assistant to the Special Rapporteur who is based in Banjul, the Headquarters of the African Commission.

On 14 and 15 June 2004, the Special Rapporteur held meetings with the Minister and Deputy Minister of Safety and Security, the Minister, Deputy Minister of Correctional Services, including the Commissioner and Deputy Commissioners of the Department of Correctional Services, the Minister in the Presidency, the Deputy Minister of Social Development and the Director General in the Department of Home Affairs. The Special Rapporteur was also invited to attend the *Budget Vote* of the Department of Correctional Services submitted to Parliament by the Minister. This Budget Vote outlined the proposed budget for the Financial Year 2004/2005 and the plans to improve the conditions in prisons.

During the visit, meetings were also held with members of civil society and organizations working to protect the rights of persons deprived of their liberty. As the mandate of the Special Rapporteur dictates, a wide range of detention facilities including prisons, police stations, juvenile centers, a repatriation center and a mental health institution were visited.

The following is an account of the activities undertaken during the mission, including facilities visited, observations and findings and/or problems identified, good practices and relevant recommendations on how to enhance the protection of the rights of persons

deprived of their liberty. The report is preceded by a brief overview of prison administration in South Africa.

## **B. Methodology and Procedure of the inspections**

Inspections, interviews, meetings with national and local prison officials, closed door meetings with detainees, and communications from civil society organisations and information from various organisations form the primary tools used as well as the primary source of information in compiling this report. Other reports notably from Penal Reform International, Human Rights Watch, Amnesty International, NICRO, including the 2001/2002 Annual Report of the Department of Correctional Services, reports from NGOs and the media were also used as research and information material.

The African Commission's Special Rapporteur on Prison and Conditions of Detention in Africa informed the Government of the Republic of South Africa of her intention to visit the country in 2003. A formal invitation from the government was received in April 2004 for the Special Rapporteur to visit the country from 15 – 30 June 2004.

Prior to the visit, the Special Rapporteur got in touch with local and international NGOs to provide her with information on the detention facilities in the country. More information was also obtained from the internet and other published works. A pre-mission report was prepared giving a general background information on detention facilities in the country.

The Special Rapporteur then drew up a tentative programme indicating the facilities she would like to visit and the persons and institutions she would like to meet. This was forwarded to the Ministry of Foreign Affairs which then took charge with the arrangements.

At the commencement of the visit a press briefing was held to inform the press and the general public of the purpose of the visit and to solicit persons and institutions who might have information that could assist the Special Rapporteur to come forward. This press conference was held in Cape Town on 15 June 2004.<sup>3</sup>

During the meetings with Ministers and other High ranking officials, the Special Rapporteur introduced the mission, the purpose, procedure and expectations and discussed with them about the general conditions of detention in the country. The Special Rapporteur was then briefed on some of the things to expect during the inspection phase.

After meeting with all the High ranking officials, the Special Rapporteur then moved to the different facilities. At each facility, prior to an inspection, the Special Rapporteur held a short meeting with the prison authorities responsible for that facility to introduce the mission and explained how the inspection would be conducted. The head of the facility also briefed the

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<sup>3</sup> It should be noted that because Parliament was meeting in Cape Town and most of the Ministers the Special Rapporteur was due to meet were to attend Parliament, it was recommended that the mission starts on 14 June 2004. The Special Rapporteur met with Ministers and Deputy Ministers on 14 and 15 June prior to the Press Conference.

Special Rapporteur about the facility. A question and answer session is allowed for clarification.<sup>4</sup>

After this meeting the Special Rapporteur together with the prison authorities visit the facilities. The Special Rapporteur asks questions to the authorities as and when necessary and makes on-the-spot recommendations on matters she deems are not proper and are within the powers of the authority to correct. At the end of the inspection, the Special Rapporteur addresses the inmates in the presence of the authorities, and later asks the authorities to leave the meeting so she can have a private meeting with the inmates.

Because of the large number of inmates in all the facilities, and in some cases for security reasons, it was not possible to address all the inmates. The Special Rapporteur asked the inmates to select from among themselves those they would like to meet with her to discuss their grievances. During this close door meeting, the Special Rapporteur informed the inmates of the necessity to be frank and to speak on their conditions of detention. It was during such meetings that the Special Rapporteur collected information about the general conditions of detention in the facility and compared it with the information that the authorities had provided during her meeting with them.

After this meeting, the Special Rapporteur held further meetings with the authorities to give a “report back” of her meeting with the inmates. During this second meeting with the authorities preliminary recommendations were made to the head of the facility on issues within their capacity to handle. It was also discovered during these meetings that the head of the facilities were unaware of some of the problems raised by the inmates, such as assault, officers smoking in front of juveniles, poor quality of food, etc.

After visiting all the detention facilities and meeting with all the institutions, the Special Rapporteur, usually on the last day of the visit holds another “report back meeting” with the high ranking officials. In this meeting, the Special Rapporteur presented her preliminary findings and observations on the detention facilities in the country and made preliminary recommendations, especially on matters that needed urgent attention. A press conference is usually held to inform the public of these preliminary observations.

The Special Rapporteur then prepares her final report which is submitted to the African Commission on Human and Peoples’ Rights for adoption. The report is sent to the government for its comments. The report is then published together with the government’s comments and distributed widely to NGOs, donors, the AU, UN Agencies and other interested parties.

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<sup>4</sup> The Special Rapporteur is at liberty to change the programme and visit any facility she chooses. For example, following meetings with some NGOs and comments about the Stanger Prison, the Special Rapporteur decided to visit the latter even though it was not in the programme.

### C. Prison administration in South Africa

Prior to 1994, prisons in South Africa were mainly regarded as places of punishment for political dissidents and opponents of the apartheid regime. There was hardly any programme of rehabilitation and reintegration. Following the abolition of apartheid in 1994, the general human rights paradigm was reshaped and the criminal justice system in general and prisons in particular were not left out. The rights of persons deprived of their liberty including prisoners are firmly enshrined in the Constitution of the Republic of South Africa, 1996.<sup>5</sup> The treatment of prisoners and conditions of detention in prisons are spelt out in the 1998 Correctional Services Act<sup>6</sup> and the Government White Paper on Corrections in South Africa of December 2003 elaborates extensive guidelines on improving the condition of detention in prisons.

The government has also established independent bodies such as the Judicial Inspectorate on Prisons mandated to advise the Minister of Correctional Services and the President of the Republic and to inform the general public on the general conditions of detention in South African prisons and the National Council for Correctional Services, a body charged with advising the Minister on policy issues regarding the correctional system and the sentencing process. Parliament has also established a Portfolio Committee on Correctional Services to examine laws and policies dealing with correctional services. All these efforts seek to provide an effective atmosphere for the management of prisons including the treatment of prisoners.

The Republic of South Africa has a total land area of about 1.2 million sq. km and a population of about 45 million inhabitants. The country has an original prison (or approved) capacity of 114,787 prison space, but as at June 2004, the prison population stood at 187,903. This means that one out of every 240 South African is in prison or 0.417% of the population. The prisoners are held in 238 correctional centers (or prisons) across the country – 8 female-only prisons, 72 male/female prisons, 13 Youth Development Centres and 141 male-only prisons. For administrative purposes, the prisons have been grouped into six regions, namely:

- Eastern Cape
- Gauteng
- KwaZulu Natal
- Limpopo, Mpumalanga, North West
- Northern Cape, Free State; and
- Western Cape

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<sup>5</sup> Act 108 of 1996.

<sup>6</sup> No. 111 of 1998 as amended by the Correctional Services Amendment Act 32 of 2001.

The following table illustrates the distribution of prisons and prisoners per region:

| Region                          | No of Prisons          | Capacity       | Sentenced Prisoners | Un-sentenced Prisoners | Total          | % occupancy   |
|---------------------------------|------------------------|----------------|---------------------|------------------------|----------------|---------------|
| Eastern Cape                    | 44                     | 13,358         | 16,569              | 6,793                  | 23,362         | 174.89        |
| Gauteng                         | 26                     | 26,709         | 31,516              | 19,393                 | 50,909         | 190.61        |
| Kwa Zulu Natal                  | 40                     | 20,179         | 20,327              | 10,127                 | 30,454         | 150.92        |
| Limpopo, Mpumalanga, North West | 38                     | 18,420         | 24,172              | 4,448                  | 28,620         | 155.37        |
| Northern Cape, Free State       | 47                     | 16,725         | 18,973              | 5,456                  | 24,429         | 146.06        |
| Western Cape                    | 43                     | 19,396         | 22,466              | 7,663                  | 30,129         | 155.34        |
| <b>Total</b>                    | <b>238<sup>7</sup></b> | <b>114,787</b> | <b>134,023</b>      | <b>53,880</b>          | <b>187,903</b> | <b>163.70</b> |

Source: Office of the Inspecting Judge (June 2004)

The types of offences for which persons are sent to prison are numerous and varied ranging from murder, rape, theft, drug trafficking to economic crimes such as corruption and embezzlement. The crime categories can be illustrated as follows:

| Crime Category | Un-sentenced Prisoners | Sentenced Prisoners | Total          |
|----------------|------------------------|---------------------|----------------|
| Economic       | 16,770                 | 37,562              | 54,332         |
| Aggression     | 24,729                 | 68,005              | 92,734         |
| Sexual         | 8,609                  | 17,606              | 26,215         |
| Narcotics      | 1,159                  | 3,336               | 4,495          |
| Others         | 2,613                  | 7,514               | 10,127         |
| <b>Total</b>   | <b>53,880</b>          | <b>134,023</b>      | <b>187,903</b> |

Source: Office of the Inspecting Judge (June 2004)

The rainbow nature of the South African population is also reflected in the prison population. All the different races, that is, Asians, blacks, coloureds and whites are represented in the prisoner composition. Foreigners of all races are also detained in the different facilities across the country.

<sup>7</sup> This number includes four correctional centres that are temporarily closed for repairs and renovations. They include the Ixopo Correctional Centre in Kwa Zulu Natal Region, Tabankulu and Umzimkulu Correctional Centres in Eastern Cape Region and Wolmaransstad Correctional Centre in Limpopo Region.

The racial composition can be illustrated as follows:

| Races            | Gender             | Un-sentenced Prisoners | Sentenced Prisoners | All sentenced groups |
|------------------|--------------------|------------------------|---------------------|----------------------|
| Asian            | Female             | 10                     | 34                  | 44                   |
|                  | Male               | 143                    | 626                 | 769                  |
|                  | All Genders        | 153                    | 660                 | 813                  |
| Black            | Female             | 976                    | 2,098               | 3,074                |
|                  | Male               | 44,869                 | 100,605             | 145,474              |
|                  | All Genders        | 45,845                 | 102,703             | 148,548              |
| Coloured         | Female             | 187                    | 676                 | 863                  |
|                  | Male               | 6,979                  | 26,920              | 33,899               |
|                  | All Genders        | 7,166                  | 27,596              | 34,762               |
| White            | Female             | 67                     | 290                 | 359                  |
|                  | Male               | 647                    | 2,774               | 3,421                |
|                  | All Genders        | 716                    | 3,064               | 3,780                |
| <b>All races</b> | <b>All Genders</b> | <b>53,880</b>          | <b>134,023</b>      | <b>187,903</b>       |

Source: Office of the Inspecting Judge (June 2004)

The prisons are managed by a personnel force of about 35,000 giving a prisoner/staff ratio of about 6:1. The budget allocation for the 2004/2005 Financial Year stands at about R8 Billion (about 1.4 billion US Dollars). The government spends about R114 (about US \$ 19) per prisoner per day, that is, R41,610 (about US \$ 7,000) per prisoner per year. Thus, for the 187,903 prisoners, the Government will spend about R7,818,643,830 per year for keeping them in prison. It means each South African pays approximately R178 (or US \$ 30) a year for the upkeep of the prisoners.

#### D. Description of detention facilities visited

This section of the report gives a brief description of the detention facilities visited by the Special Rapporteur. The Special Rapporteur visited detention facilities in five out of the nine provinces and inspected a Mental Health Hospital, a Repatriation Center, 5 Juvenile/Youth Centres, 4 Police Stations and 9 Correctional Centers (prisons) including one Female Correctional Centre. They are listed below and described in the order in which they were visited. The facilities include:

- a. The Drakenstein Management Area (Western Cape);
  - the Drakenstein Maximum Correctional Centre,
  - the Drakenstein Medium B
- b. The St Alban's Prison (Eastern Cape)
  - St Alban's Medium B Correctional Prison
- c. The Durban Management Area (Kwa Zulu Natal)
  - Durban Female Correctional Centre
  - Durban Juvenile Centre
  - Durban Medium C Correctional Centre
- d. The Stanger Prison (Kwa Zulu Natal)
- e. The Manguang Prison (Free State)

- f. The Leeuwkop Management Area (Gauteng)
  - Leeuwkop Juvenile Centre
  - Leeuwkop Maximum Correctional Centre
- g. The Humewood Police Station (Eastern Cape)
- h. Durban Central Police Station (Kwa Zulu Natal)
- i. Moroka Police Station (Gauteng)
- j. Alexandra Police Station (Gauteng)
- k. The Lindela Repatriation Centre (Gauteng)
- l. Lentegour Mental Hospital (Gauteng)
- m. Mangaung One Stop Child Justice Center (Free State)
- n. Dyambu Youth Centre (Gauteng)
- o. The Leseding Youth Center (Gauteng)

**i) Letengeur Mental Hospital**

The Letengeur Mental Hospital is located in the Western Cape Province, some 70 kilometers from the Provincial Capital, Cape Town. The premises are located in a 106-hectare piece of land and comprise 19 big units.

It holds about 940 patients/clients ranging from acute psychotic to forensic patients. The latter category is sent to the Hospital by the courts in terms of Section 28 of the 1973 Mental Health Act. Section 79(2) of the Criminal Procedure Act of 1977 provides for referral of a defendant for a 30-day psychiatric observation at a state psychiatric hospital. The primary enquiry is directed at establishing the presence of mental illness (which they vaguely define in the Mental Health Act of 1973 as a disability or disease of the mind', i.e., the courts entrust its definition to the attending psychiatrists), or mental disability (which practically encompasses mental retardation and dementia).

If a defendant is certified not competent to stand trial and /or lacks criminal responsibility the charges are withdrawn and he/she is referred to a State psychiatric hospital for indefinite hospitalisation under section 28 of the Mental Health Act (whereupon he becomes known as a 'State patient'). Discharge depends on a lengthy process whereby the Attorney-General has to be petitioned to allow his/her discharge to proceed. If the original charge was nonviolent then the Attorney-General generally advises the hospital that the hospital board (which sits quarterly) can effect discharge. If the original charge is deemed to have been violent then reports have to be obtained from a social worker (to investigate the patient's social circumstance and to determine if he/she will be adequately cared for and controlled by family), the attending psychiatrist, a medical officer familiar with the patient and the superintendent of the hospital. These reports are then submitted via the Attorney-General for consideration by a judge in chambers. The Attorney-General retains the discretion not to pass the application onto the judge. On occasion, the documents have been returned to the hospital with a cursory note advising the forensic unit that the Attorney-General does not agree with their opinion that the patient is ready for discharge.

It is often overlooked that none of these defendants have been tried and convicted of the original charge, yet the discharge procedure assumes that he/she is indeed guilty and has to be treated like a dangerous felon. A judge in chambers will generally issue an order for the

conditional discharge (usually for two years) of the State patient. A breach of the discharge conditions can result in readmission and rescinding of the discharge. In practice, hospitals generally readmit relapsed State patients as voluntary patients, and discharge them when they are well.

The Letengeur Hospital holds about 105 patients referred to it by the courts. It has 5 consultants/doctors and 15 medical officers. The hospital has an average occupancy rate of between 85 – 90%.

The patients are given occupational therapy for skills development such as woodwork, basket canning, needle work and sewing. They also grow vegetables in a small garden within the facility. The produce is sold to the local community and they are given a share of the money as incentives. The other part of the money is used to buy more working tools and material.

The hospital holds two categories of patients – minimum secured (less dangerous) and medium secured (dangerous). The hospital does not receive the maximum secured (very dangerous) patients. The latter category is handled by other like institutions with facilities equipped to deal with such category.

Those referred to the hospital by the courts are suspects of various offences including homicide, murder, theft, damage to property, assault etc.

The patients undertake recreational facilities once a week, such as football, volley ball, and football matches are organised with sister institutions once a month.

## **ii) Drakenstein Prison Farm or Management Area**

The Drakenstein Prison Farm or Management Area is located in the Western Cape Province, about 100 kilometers on the outskirts of the provincial capital, Cape Town. It is a famous prison in that it is here that the former South African President, Nelson Mandela spent the last 18 months of his imprisonment.<sup>8</sup>

The Area comprises five different prisons – the Drakenstein Maximum Correctional Centre, the Drakenstein Medium A, Drakenstein Medium B, the Drakenstein Medium C and Stellenbosch Correctional Centre.

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<sup>8</sup> The “Mandela House” has been converted into a tourist site and handed to the Ministry of Arts and Culture.

The structure of the prison and composition of prisoners and staff can be illustrated as follows:

| Category                | Maximum | Medium A | Medium B | C-Section | Stellenbosch | Total |
|-------------------------|---------|----------|----------|-----------|--------------|-------|
| Approved accommodation  | 386     | 399      | 474      | 155       | 74           | 1,488 |
| Juveniles               | -       | -        | 682      | -         | -            | 498   |
| Sentenced               | 663     | 372      | 682      | 165       | 81           | 2,023 |
| Un-sentenced            | 1       | -        | -        | -         | 60           | 61    |
| Total                   | 664     | 372      | 682      | 165       | 141          | 2,024 |
| % occupancy             | 172     | 93       | 144      | 106       | 191          |       |
| No. of Staff            | 153     | 165      | 114      | 16        | 43           | 651   |
| Approved Staff position | 165     | 174      | 128      | 16        | 47           | 669   |
| Vacancies <sup>9</sup>  | 12      | 9        | 14       | 0         | 4            | 48    |

The Management Area holds only male offenders. Of the 2,024 prisoners held here, less than 10 are foreigners. The Area is self-sufficient in food as it grows its own food stuff ranging from vegetables to livestock (pigs and cattle). It produces dairy products such as milk, butter, cheese. It also has a big piggery, a poultry farm that produces about 35,000 eggs a month and 64, 000 chickens a day and slaughters 7,000 chickens a day.

Most of the work in the prison farms is done by the prisoners and to encourage them and keep them busy, the authorities pay incentives of R40 – R100 depending on the nature of the work done.

The Area also provides inmates with vocational training in trades such as woodwork, sewing, metal work, upholstery. They produce items such as chairs, tables, kitchen utensils, burglar bars, truck carriages, food tins, iron sheets, stainless steel, etc. Most of the items are sold to government departments and not to the public. The country's Coat of Arms is also produced in this facility. There is also a building construction training center where inmates are taught skills ranging from plastering and tiling, brick laying, painting and decoration, plumbing and carpentry.

Most of the inmates are trained for between two years and four years. Trainers are recruited from amongst qualified persons in the country. The inmates then sit for exams and when they succeed are issued with certificates recognised by the Ministry of National Education. The programmes are accredited to various institutions in the country including the Construction Education and Training Authority (CETA). The inmates are also engaged in recreational activities such as football, rugby, cricket and athletics.

<sup>9</sup> This includes employees at the workshops, logistics, agriculture etc. This category has an approved post establishment of 169 positions but only 160 have been filled. There are 9 vacancies.

The Special Rapporteur visited the Drakenstein Medium B and the Drakenstein Maximum prisons. The Medium B Prison holds only juveniles and has an approved accommodation of 474. At the time of the visit it was holding 682 prisoners, all sentenced. This represents a 144% occupancy rate. It has 128 approved post establishment with 114 filled and 14 vacancies. The Drakenstein Maximum Prison holds prisoners serving long terms of imprisonment (from 10 years and above). It has an approved capacity of 386 but holds about 663 inmates with just 1 un-sentenced. This represents an occupancy rate of 172%. The Prison has an approved post establishment of 165 with 153 positions filled.



The Special Rapporteur admires the way inmates at the Drakenstein Medium B Prison arrange their beds every morning before inspection.

### iii) **St Alban's Prison**

The St Alban's Prison Management Area is located in the Easter Cape province, some 65 kilometers from the Port City of Port Elizabeth. The Area comprises of three prisons – Medium A, Medium B and Maximum prisons. Medium A which holds awaiting trial prisoners has an approved capacity of 1,447 but as at June 2004 held 2,304 prisoners. Medium B for sentenced prisoners with lesser sentences has an approved capacity of 760 but had 1,673 prisoners and the Maximum Section has an approved capacity of 717 but had a total of 1,682 prisoners.

The prison also has juveniles in all the sections. The Juveniles are divided into three categories – 21 – 25, 18 –20 and 17 and under. The 18-20 category lives in threesome in single cells. The 17 years and under are separated from the other categories.

Ordinarily, this Management Area is not supposed to hold juveniles but because the juveniles have further charges against them, they are detained in the prison until such time that they have been tried.

Each section has its own clinic. There is however, one regional hospital within the prison with a ward containing 164 beds. Serious medical problems that cannot be handled by the hospital are referred to a public hospital.

The Area also has developmental programmes. About 170 inmates are involved in vocational skills development, 12 in agricultural training, 47 in occupational skills and 55 in entrepreneurial skills. It has a staff strength of about 1,081 members.

**iv) Humewood Police Station**

The Humewood Police Station is located in the heart of Port Elizabeth in the Eastern Province of the Country. It covers an area of about 80 meters square. It has a staff strength of about 138 members.

The police station has 26 cells and at the time of the visit, there were 28 inmates in six of the cells - 27 males and 1 female. Of these, 10 are foreigners. There are usually not more than 6 inmates in a cell.

**v) Durban Westville Prison or Management Area**

The Westville Prison or Durban Management Area is situated in the Kwa Zulu Natal Province on the outskirts of the provincial capital, Durban. The Area has as its motto “every official becoming a rehabilitator, every prison becoming a correctional center - a place of new beginnings, every offender becoming a nation server through correction”.

The Durban Management Area is made up of six Correctional Centers or prisons and a community corrections component. They include the Durban Medium A, Durban Medium B, Durban Medium C, Durban Youth Center, Durban Female and Umzinto. The approved capacity for the six centers stands at 6,146. As at June 2004, the total offender population in all the centers stood at 12,244 – 5,648 awaiting trial prisoners, 6,596 sentenced and 19 babies. Apart from the 12,244 prisoners, the Area is also involved in community corrections with a total of 984 probationers and 1,233 parolees.

The composition of prisoners in the six centers can be illustrated as follows:

| Category          | Medium A | Medium B | Medium C | Durban Youth Center* | Durban Female Center | Umzinto |
|-------------------|----------|----------|----------|----------------------|----------------------|---------|
| Sentenced         | 93       | 4,157    | 866      | 498                  | 287                  | 661     |
| Awaiting Trial    | 4,906    | -        | -        | 427                  | 162                  | 153     |
| Total             | 4,999    | 4,157    | 866      | 925                  | 449                  | 814     |
| Approved Capacity | 2,308    | 1,766    | 955      | 629                  | 244                  | 400     |
| % Occupancy       | 216.59   | 235.39   | 90.68    | 147.05               | 184.01               | 203.50  |

There are two categories of cells in the six centers. There are the larger cells which measure 5m x 17m which holds between 30 – 48 inmates, and the single cells measuring 3m x 4m which hold one or three inmates. The single cells are used at times to separate violent inmates from the others, but they are also used by those inmates who want quiet to study. All the nursing mothers are in single cells as well.

The Durban Management Area has a total personnel of about 1,344 that can be broken down as follows:

- Functional personnel 1,260
- Health Care 33
- Psychologist 2
- Educationist 22
- Chaplain 1
- Social Workers 26
- Support 4

The Special Rapporteur visited three of the six centers – the Durban Female Center, the Durban Youth Center and the Durban Medium A Center.

#### vi) **Stanger Prison**

The Stanger Prison is located in the Kwa-Zulu Natal Province some 70 Kilometres from the provincial capital, Durban. The approved occupancy rate is 92. The prison has a total of nine cells, holding 185 prisoners (about 220% overcrowded) including 24 juveniles and 4 females. It has a total of 45 staff members.

The prison has no facilities for skills development – whether formal or vocational training. There are no recreational facilities save for some indoor games such as table tennis, snooker, board game and checkers, which the prisoners claim they never use. Inmates therefore stay locked up for about 23 hours and are released only twice during meals for thirty minutes each.

The Prison has a small clinic with one full time nurse. There is no doctor, however, a doctor visits the prison on a weekly basis and inmates with serious medical problems are referred to a nearby public hospital. The most prevalent illness is tuberculosis, and the HIV/AIDS rate is about 4%.

Unlike in other prisons, prisoners in the Stanger prison do not have beds. They sleep on mattresses placed on the floor. They are provided with two blankets and two sheets each. However, there are beds in the female section of the prison. The prisoners are also provided with a bar of soap each for a duration of a month.

### **vii) Durban Central Police Station**

The Durban Central Police Station is located at the heart of the city of Durban, the provincial capital of the Kwa Zulu Natal Province. It is the largest police station in the province and one of the largest in the country. Like most other police stations in South Africa, the Durban Central Police Station deals with all sorts of complaints ranging from theft, murder, economic crimes to assaults and sexual offences.

The Police Station has a total of 52 cells which are usually full especially over the weekends. The cells which measure about 3m x 5m each hold about 6 inmates at a time. Suspects are held for not more than 48 hours without appearing before a magistrate to be charged. Before a suspect is detained, they are issued with a copy of their constitutional rights which spell out among others, their right to legal representation.

At the time of the visit, the cells were being renovated and as such there were more than 6 inmates in a single cell. The cells had no running water and some of the inmates had not bathed since their detention. There were nine other inmates transferred from the Limpopo Province who had been detained for more than five days and had not bathed since their detention. The cramped cell had a very strong odour, probably due to the fact that the inmates had not bathed.

Inmates confirm that they are provided with tea and juice but the authorities do not provide them with cups to drink from. As such, they are forced to use a water container or any other container at their disposal to collect the tea or juice from which they all drink. A cell that does not have a container may not be served with tea or juice.<sup>10</sup>

The inmates are fed three times a day. The preparation of food has been outsourced to a private company called *Sodexho – Natal Food and Management Services*. The kitchen and utensils in the kitchen of this company located some 150m from the police station are quite clean and modern. However, some of the detainees complained that the food is of poor quality – no salt, no oil and no meat. The menu obtained from the kitchen (which appears below) seems to suggest that the inmates are properly fed. (*See Annex I*).

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<sup>10</sup> It should be noted that this concern was raised with the authorities who promised to provide them with disposable plates and cups.

**viii) Mangaung Private Prison**

The Mangaung Private Prison is located in the Free State provincial capital of Bloemfontein. It is one of two private prisons operating in South Africa.

The Mangaung Private Prison also referred to as the Bloemfontein Correctional Center (BCC) is an initiative of the Government of the Republic of South Africa. The government wanted to build a modern prison but at the time did not have the resources. It then tendered the project to the private sector. The tender was won by Global Solutions – an international consortium with subsidiaries operating in different areas including security, health, and the financial sectors.

The prison holds a total of 2,928 prisoners, all male. It consists of six housing units. Each unit consists of 8 streets or sections of 64 prisoner space each. The cells are in two categories: one that holds two inmates and another that holds four inmates.



A partial view of the Mangaung Private Prison



A cell in the Mangaung Prison for two inmates.

The management and treatment of inmates in the prison is specified in a contract signed with the private company. The prison has a total of 495 staff members, 85% of whom are from the historically disadvantaged group. The recruitment and training of staff, including security personnel is the responsibility of the company. The government however, stations a senior official from the Department of Correctional Services (DCS) to ensure that the prison management administers the prison in accordance with the contract.

In terms of the contract, the prison management cannot release a prisoner. The management is not supposed to be engaged in community corrections, must not use force on the prisoners and cannot grant parole. The company is liable to pay a hefty fine in case a prisoner escapes. The management is required to provide the prisoners with skills and education – both formal and vocational. The contract also specifies that every prisoner must be engaged in at least 40 hours of activity a week.

To meet these and other conditions in the contract, the prison provides skills development in woodwork, steel work, shoe making, candle making, garment making, horticulture, gardening, leatherwork, office machine operation and basic skills in business, home care, cleaning, etc. Most of the vocational training last between 4–7 years. There is a well-stocked library with reading space for a handful of prisoners.

Recreational activities are provided and both indoor and outdoor activities are encouraged. The following sporting disciplines are therefore provided: football, rugby, volleyball, table tennis, running, soft ball, cricket etc.

The prison has a modern hospital with three full time doctors, 18 nurses, 4 auxiliary nurses, 1 psychologist and 2 pharmacists. All the prisoners are sent to the prison by the Department of Correctional Services and the prison management does not have a say in the type of prisoners they receive. All the prisoners are serving long sentences from 10 years to life imprisonment. These are the prisoners referred to in the South African penal jargon as

maximums. The prison provides state of the art security. There is a control room fixed with 42 television monitors and 30 cameras which provide 24 hours control monitor within the premises of the prison except in the rooms.

#### **ix) Mangaung One Stop Child Justice Centre**

The Mangaung One Stop Child Justice Centre is located in Bloemfontein, in the Free State Province. It was established in the mid-1990s as a response to the increase in the number of child offenders in the country. There was hardly any proper distinction between the treatment of children in conflict with the law with their adult counterparts.

The One Stop Child Justice Centre was officially opened in June 2002 to among other things, provide a child friendly and rights-based service, avoid unnecessary detention of children, increase early intervention programmes, provide developmental programmes, engaging the community in the treatment of child offenders.

The Center is managed by personnel from the Ministries of Social Development, Justice, Safety and Security (the police) and from NICRO. As the name suggests, it is meant to provide justice at “one stop”. Thus, at the Centre, there is a reception area for Social Development, a reception area for the police and six holding cells for children who have to be detained. Children spend not more than 24 hours in the centre. Each cell is equipped with a mattress, sheets, blankets, pillows, duvets, toilet, basin and a bell to ring for any service. The Centre also has a youth court arranged in a child-friendly manner with only the court officials, together with guardians of the child and court officials to attend.

When the police arrest a child, they communicate the arrest to the child justice worker who will immediately attend to the case. The child justice worker will make an assessment of the child in the presence of the guardian or parent of the child, and decide with the investigating officer to release the child in the parent’s custody until appearance in court the following day if it is a minor offence or detain the child if it is a major offence.

On the first working day, the child justice worker will complete an assessment form and discuss with the prosecutor the possibility of diversion or prosecution after consideration of all relevant facts. If diversion is recommended, the case will be postponed for six weeks. The child will then be involved in developmental interventions and restorative justice initiatives.

The diversion programmes include, pre-trial community service, youth empowerment scheme, family group conference, journey, take a lead in life and sexual information programme.

The child justice worker will then compile a diversion feedback report to the court after the child has undergone the planned programmes successfully. If the child has given his cooperation, the case will be withdrawn. If the child however did not cooperate and/or gained insight through the programme he will go through the normal court procedure.

The Centre has a total of 22 policemen, 5 social workers and 8 auxiliary workers, 3 justice officials (magistrates, prosecutors and interpreter) and one staff from NICRO. About 80 – 100 children pass through the Centre every month. About 50% are recommended for

diversion and the other 50% for prosecution. The youngest offender was 10 years accused of rape. Only about 7% of the children who pass through the Centre slip back into criminal activities as re-offenders.

**x) Leeuwkop Prison or Management Area**

The Leeuwkop Management Area is located in the north of Johannesburg on about 879 hectares of land. It is one of the largest management areas in Gauteng Province. The Area comprises four Correctional Centres and a Community Corrections Office based in Randburg. The composition can be illustrated as follows:

| Accommodation | Maximum | Medium A | Medium B (Juveniles) | Medium C | Total |
|---------------|---------|----------|----------------------|----------|-------|
| Approved      | 763     | 751      | 723                  | 692      | 2,929 |
| Actual        | 1,665   | 1,441    | 952                  | 1,099    | 5,157 |
| % occupancy   | 218     | 192      | 131                  | 158      | 176   |

The Area has an approved post establishment of 854 staff. Of these, there are 51 vacancies including nurses and psychologists. The Area is run on a budget of 149, 600,000 for the 2003/2004 Financial Year.

The Area also provides skills development facilities for the prisoners including workshops on woodwork, metal work, painting, building and bricklaying and agricultural activities in pig and cattle rearing. It is self-sufficient in food and produces dairy products such as milk, cheese and butter.

Each Centre has its own in-house clinic and serious medical problems are referred to hospital for treatment. There are 10 social workers, 3 religious care services and 5 psychology services. Most, if not all the staff members live within the management area. The Special Rapporteur visited the Leeuwkop Juvenile Correctional Centre and the Leeuwkop Maximum Centre.

The Leeuwkop Juvenile Correctional Centre was established in 1983 as a temporary structure for sentenced juveniles (under 21 years of age). The Centre was built to accommodate 723 offenders and had at the time of the visit an approved post establishment of 165 officials. The Centre is divided into 4 units – labour unit, observation unit, school Unit and Special Care Unit.

| Posts                | Approved   | Current    | Shortage   |
|----------------------|------------|------------|------------|
| Functional Officials | 140        | 87         | -53        |
| Health Care          | 5          | 1          | -4         |
| Social Workers       | 4          | 3          | -1         |
| Educationists        | 15         | 14         | -1         |
| Psychologists        | 1          | 1          | -          |
| <b>Total</b>         | <b>165</b> | <b>106</b> | <b>-59</b> |

The current prison population in the Centre is represented as shown on the table below:

| Age          | Total      |
|--------------|------------|
| 13 years     | 0          |
| 14 years     | 2          |
| 15 years     | 15         |
| 16 years     | 44         |
| 17 years     | 69         |
| 18 years     | 200        |
| 19 years     | 220        |
| 20 years     | 231        |
| 21 years     | 132        |
| <b>Total</b> | <b>913</b> |

The most common crimes which the inmates commit are theft and robbery.

The Leeuwkop Maximum Prison has a total of 1,665 prisoners for an approved occupancy space of 763. It holds inmates serving long sentences ranging from 10 years and above. The prison is divided into four sections and has two categories of cells - the larger cells measuring 14m x 12m which holds about 49 inmates, while the small cells hold about 28 inmates. Most of the cells are overcrowded and some prisoners are forced to sleep on the floor as there are no spaces for more beds to be put in the cells. The prison has no outdoor activities and prisoners spend most of the time in their cells. Violent prisoners are secluded and sent to isolated cells for a period of time. At the time of the visit, there were no prisoners in the isolation area.

#### xi) Lindela Repatriation Centre

The Lindela Repatriation Centre is located in the Gauteng province, some 80 kilometers from the capital, Pretoria. The word Lindela is a Zulu word meaning *place of waiting*. The Centre was opened by the Department of Home Affairs in 1996 for the apprehension, processing, detention and repatriation of illegal immigrants/undocumented migrants.

It is argued that the Centre was established because of the ever-increasing burden on police cells and the lack of detention capacity in South African prisons. Thus, the illegal immigrants, once apprehended are not taken to court, charged, tried and detained for violating South African immigration laws. They are instead taken directly to Lindela where they are kept for not more than 30 days awaiting repatriation. A detainee can be kept for more than 30 days (up to 90 days) only by a court order.

Lindela is an Accommodation Centre managed by BOSASA (meaning the future), a private company specialising in Full Facilities and Secure Care. Lindela consists of two distinct and independent sections, namely Department of Home Affairs and the Lindela Accommodation (Repatriation) Center, each with its own full time trained staff and officials and its own functions and responsibilities.

The Home Affairs Section of Lindela consists of a permanent office with personnel employed by the Department of Home Affairs. The Department is legally and administratively responsible for all matters pertaining to the apprehension, the detention, the processing, the repatriation and the release of “illegal immigrants” at the Lindela Centre. Persons detained at the Center are apprehended by the Police or Home Affairs officials and all the Centre does is to keep the detainees in accordance with the terms of a contract signed with the Department of Home Affairs. Other issues such as medical care, feeding and recreation are also covered in the contract.

The services provided at Lindela on behalf of the Department of Home Affairs include – accommodation, catering, administration, training and development, recreation, office facilities for consulates/embassies and human rights organisations.

Lindela management has no authority over the apprehension, detention, repatriation or release of any person detained at its facilities. Detainees are repatriated and transported by the Department of Home Affairs almost on a daily basis, to border posts, including the Johannesburg International Airport and Lanseria Airport. Scheduled trains leave weekly to neighbouring countries (Mozambique and Zimbabwe) from the train station next to the Centre.

As at June 2004, the Centre had 1,770 detainees from different countries around the world including the United Kingdom, Pakistan, Bangladesh, Malawi, Mozambique, Zimbabwe, Zambia, Lesotho, and Swaziland. The Centre has 3 sections for accommodation – two for males and one for females. The B Section has larger rooms measuring 10m x 11m. Each room holds up to 56 detainees. The C Section and the female sections have smaller rooms measuring 7m x 10m with 28 inmates per room.

All the rooms are equipped with a bathroom consisting of a shower, toilet and a wash hand basin – all separated from the sleeping area with a wall. The rooms also have double bunk beds, mattresses and blankets and they all have television sets which operate for 24 hours a day. The rooms in the female section have lockers where personal items can be stored.

The detainees are not locked up during the day and can involve themselves in whatever recreational and entertainment activities available to them. These activities include outdoor games such as football and netball, use of the canteen, pool tables, television programmes and a playground for children. There is also a small room with toys for children. The Centre also has a small clinic with one full time doctor. It has a ward with nine beds and a small dispensary. Serious medical problems are referred to the hospital.

For security and administrative purposes, the Centre has a Control Room with 28 television monitors feeding from 42 cameras around the centre. These cameras record all the activities taking place within the facility and is monitored in the control room. For privacy reasons, the cameras do not film activities in the rooms.

This monitoring system does not only provide enough security, it also monitors the behaviour of employees and other security personnel – whether they are doing their routine checks or if they assault inmates. The only limitation is that the assaults and other malpractices take place in the rooms where the cameras are not installed.

The Centre is managed by a staff composed of 98 security officers (who work in three shifts of 8 hours each), 5 nurses, 110 administrative workers and 68 cleaners. The detainees are fed three times a day and as shown in the menu in *Annex II*.

## **xii) Dyambu Youth Centre and the Leseding Youth Centre**

The Dyambu and Leseding Youth Centres are located in Krugersdorp, some 30 kilometers from Johannesburg. They form part of the chain of companies operated by BOSASA and as such are located in the same vicinity as the Lindela Repatriation Centre.

The centres opened in 1995 and currently hold about 500 children between the ages of 14 and 21, all males. All the children in these centres are awaiting trial. The Dyambu Centre holds children of 18 years and above while the Leseding Centre holds children of 14 to 17 years. On average, they spend about 12 to 18 months in these centres

The two centres have a total of 137 staff among them 25 females. These include social workers, educational therapists, trainers, nurses, psychiatrists and psychologists. The centres provide a series of activities including formal and vocational training. Children held in the Centres continue their education within the Centres and upon release are integrated into the mainstream educational system.

There is a small clinic with two nurses and one doctor with a ward of three beds. The two centres share a control room with 48 cameras that record all the activities taking place within the centres.

Vocational training provided includes motor mechanic, painting and carpentry. They also engage in recreational facilities such as football, volleyball and other indoor games. Each cell has about six double bunk beds with a shower and toilet. Each cell is also provided with a television set which automatically goes off at 10 pm.

The children are allowed contact visits everyday: Mondays – Thursdays from 2 pm to 4 pm and Fridays–Sundays from 1pm to 4 pm. Open day activities where families and friends come together and spend the day with the children are also organised on a regular basis.

**xiii) Moroka Police Station**

The Moroka Police Station is located in Soweto, some 25 kilometers from Johannesburg. It has a staff strength of 433. It has a total of 18 cells, among them 2 big cells measuring about 5m x 8m which hold about 20 detainees. The smaller cells measuring 4.5m x 5.5m hold between 10 to 15 detainees.

Juveniles are kept separately from adults. If they are arrested for petty offences, they are immediately released to the custody of their parents until they appear in court. The Station Commissioner visits the cells every morning to get complaints from detainees and the Superintendent visits regularly – every third hour, to ensure there are no problems in the cells.

The detainees are fed three times a day and have limited access to telephone to call family members. They all are allowed visitors on a daily basis between 2-3 pm

**xiv) Alexandra Police Station**

The Alexandra Police Station is located in the Township of Alexandra just a few hundred metres from Sandton – the financial hub of Johannesburg. The police station was opened about 18 months ago. It has a total of six cells – 3 big cells which can hold about 12 inmates and 3 medium cells which can hold about 8 inmates.

The cells are usually half full during weekdays but become overcrowded on weekends. When there is overcrowding, some detainees are transferred to neighbouring stations. Sick inmates are referred to hospital.

The inmates are fed three times a day: breakfast between 6am and 8am, lunch between 12 noon and 2pm and super between 6pm and 8pm. Special diets are prepared for inmates with special dietary requirements, especially the sick. The inmates are allowed visits only from legal representatives and family members.

The police station has a staff strength of 372 police officers (330 males and 42 females) and 76 civilian staff (28 males and 48 females). The Client Service Centre has 109 staff (92 males and 17 females).

## **E. Institutions Consulted**

The Special Rapporteur also had meetings with officials of the following institutions:

- The office of the Inspection Judge – the Judicial Inspectorate of Prisons;
- The South African Human Rights Commission;
- Commission for Gender Equality;
- The Center for the Study of Violence and Reconciliation;
- The Creative Education with Youth at Risk;
- The National Institute for Crime Prevention and Reintegration of Offenders;
- Police and Prisons Civil Rights Union; and
- South African Prison and Human Rights Organisation

### **i) The Judicial Inspectorate of Prisons**

The Judicial Inspectorate of Prison (JIOP) is a domestic prison monitoring mechanism within South Africa established by an Act of Parliament – the Correctional Services Act 111 of 1998. It was established on 1 June 1998 as a watchdog on prison issues and to bring to the attention of the President, the Minister of Correctional Services and the general public any problems in the South African prison regime. The vision of the JIOP is to ensure that all prisoners are detained under humane conditions, treated with human dignity and prepared for reintegration into community.

The head of the JIOP is the Inspecting Judge of Prisons who in accordance with section 86(1) of the Correctional Services Act must be appointed by the President and must be a judge or retired judge of the High Court. To ensure the independence of the Inspecting Judge, the judge must continue to receive a salary, allowances, benefits and privileges attached to the office of a judge. In terms of section 90 (1), the Inspecting Judge is to inspect or arrange for the inspection of prisons in order to report on the treatment of prisoners in prisons and any corrupt or dishonest practices in prisons. The Inspecting Judge is required under the Act to submit an annual report to the President and the Minister of Correctional Services who must table the report in Parliament.

The Judicial Inspectorate of Prisons is further mandated to recruit Independent Prison Visitors (IPVs) who visit and talk to prisoners, and should there be complaints, try to solve them. It is on the IPVs that the JIOP relies for information. The IPVs perform their statutory functions as independent contractors and are appointed on a fixed contract of two years. In terms of section 92 of the Correctional Services Act, public nominations are to be called for the appointment of IPVs. Prior to any nomination, public meetings are held to inform the public about the powers, functions and duties of the IPVs.

In order to assist IPVs and monitor their performance, Regional Coordinators are appointed who among other things, attend the monthly meetings of IPVs (Visitors Committee Meetings (VCM), guide the IPVs, expedite the resolution of prisoners' complaints, conduct Information Technology (IT) and in-service training and prepare monthly reports.

On appointment, all IPVs attend a compulsory three-day training workshop during which they are taught about the powers, functions and duties of IPVs. This training also provides for a basic introduction to the law and regulations governing prisons and the rights of prisoners in South Africa. This induction training is followed up by an on-going process of in-service training provided mainly by Regional Coordinators during the quarterly performance audits of all IPVs. IPVs are paid R38.65 per hour and work, depending on the size of the prison, between 14 and 67 hours per month. The Structure of the Judicial Inspectorate of Prisons appears in *Annex III* of the present report.

## ii) South African Human Rights Commission (SAHRC)

The South African Human Rights Commission is one of several institutions enshrined in the 1996 Constitution of the Republic of South Africa to support democracy. It was established in October 1995. The composition, functions and powers of the Commission are outlined in the Human Rights Commission Act No. 154 of 1994. In terms of Article 184 of the Human Rights Commission Act, the Commission shall...promote respect for human rights and a culture of human rights, promote the protection, development and attainment of human rights and monitor and assess the observance of human rights in the country.

The SAHRC has extensive powers which include the power to investigate and report on the observance of human rights, take steps to secure redress where human rights have been violated.

During its nine years of existence, the SAHRC has received several complaints from prisoners ranging from assaults, racism, corruption, maltreatment and other deplorable conditions of detention. The SAHRC has had several meetings with authorities of the Department of Correctional Services to discuss some of the complaints. In 1997 the Commission undertook a nation wide visit to inspect prisons across the country. The inspections covered all aspects of the prison system including the infrastructure, prison population, overcrowding, educational and skills development, juvenile, women, persons awaiting trial, gangs, personnel management, etc. The SAHRC made a number of pertinent recommendations on how to improve the conditions in prisons. (*See Report of the National Prisons Project of the South African Human Rights Commission – 29 August 1998*)

The establishment of the JIOP in 1998 reduced the SAHRC's focus on prisons and most complaints received by the latter are referred to the JIOP. However, cases that border on human rights generally are still handled by the SAHRC.

The SAHRC has also visited the Lindela Repatriation Centre and undertakes regular visits to the Centre. It partners with other civil society organizations to monitor the situation at Lindela. Together with the NGO - Lawyers for Human Rights, the SAHRC plans to open an office in Lindela with a full time officer to work with the authorities. Although there have been fewer visits to police stations, the SAHRC still receives complaints against the Police.

**iii) Commission for Gender Equality (CGE)**

The Commission on Gender Equality is also enshrined in the South African 1996 Constitution as one of the organs supporting democracy. Established in 1997, the CGE's main mandate is to ensure equal treatment between women and men in all spheres of life. In relation to detentions, the CGE has done very little. It has however, initiated a research project to look at the treatment of female juveniles and children in prison with their mothers.

**iv) National Institute for Crime Prevention and Reintegration of Offenders (NICRO)**

NICRO is the only national NGO that provides comprehensive crime prevention services and works for the reintegration of offenders in South Africa. It is the main provider of diversion services for children in South Africa, and has been providing these services since 1992. NICRO handles more than 10, 000 diversion cases each year in all nine provinces. Prior to admitting children to a NICRO programme, NICRO carries out an internal assessments of the children.<sup>11</sup>

**v) Creative Education for Youth at Risk (CRED)**

The Creative Education of Youth at Risk (CRED) was established in 1996 by a group of young workers and artists who recognised the need to work in prison with youths awaiting trial. It started with a pilot project in youth development using visual arts and dance as a medium. In 1998 a comprehensive needs assessment was conducted with 100 youth at Pollsmoor prison. Based on the needs assessment the project was extended to 200 youths awaiting trial.

During this needs assessment and pilot project, the group realized that youths awaiting trial did not have access to school, proper health care, social services and contact with their families. CRED was therefore established to address these needs.

The organization has a staff strength of 11 – a director, a financial administrator a receptionist and 8 programme-related staff. It also has one volunteer and receives interns from all over the globe. The objectives of the organisation include *inter alia*,

- assisting the reintegration of released youth into society,
- promoting crime prevention and awareness in communities and schools.

The organisation targets youths between the ages of 14 to 25 who have been released from correctional institutions. According to CRED, several post release risk factors have been identified among these youths, namely, inadequate education, homelessness, unemployment,

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<sup>11</sup> For more on the activities of NICRO and their work in prisons across South Africa visit their website on [www.nicro.org.za](http://www.nicro.org.za).

highly impulsive anti-social attitudes and behaviour, strong identification with negative role models, emotional immaturity, drug abuse and dependency.

To address some of these problems, CRED is offering the following programmes in the Pollsmoor Prison, the *Sibuyelekhaya* pre-release programme which targets youth six months prior to their release to prepare them for release. This includes counseling, home visits and assistance in other problems such as drug abuse; the effective behaviour change aimed at changing behaviour of youths awaiting trial, the Motivational Programme aimed at motivating children to attend school in prison.

The organisation has also developed an *AIDS BEHIND BARS* project which will focus on prevention, detection, support and advocacy to reduce the rate of HIV infections in juvenile prisons.

**vi) Police and Prisons Civil Rights Union (POPCRU)**

The Police and Prisons Civil Rights Union is a Union for the Police and prison officials. It obtained recognition on 6 October 1994 after negotiating a recognition agreement with the DCS. It fights for better working conditions for its members.

**vii) South African Prisoners Organisation for Human Rights (SAPOHR)**

The South African Prisoners Organisation for Human Rights was formed in Moderbee Prison in 1988 by political and "common law" prisoners. A National Office was opened in 1992. SAPOHR is a politically and religiously non-aligned organisation concerned with the creation of a non-racial, non-sexist human rights culture in South Africa. The organization has over 10,000 members, most of whom are ex-prisoners. The organization is in dire need of funding for the purchase of furniture and equipment and the recruitment of full time staff.

The organization performs many functions including prison watchdog, public voice and representative of prisoners. The Mission of the organisation is to address the legacy of the apartheid criminal justice and prison systems and contribute to a culture of human rights and social justice in a non-racial, non-sexist democratic South Africa. Its objectives include:

- to reform and democratise the "Correctional Services" and "Criminal Justice System" of South Africa;
- to address human rights abuses in South African prisons that have been brought about by a system of apartheid;
- to promote human and civil rights of suspects, prisoners, ex-prisoners and their next-of-kin;
- to act as a voice for suspects, detainees, prisoners, ex-prisoners and their next-of-kin; and
- to bring attention to their plight and to respond to needs for reform, justice, reintegrative training/education and employment.

### **viii) Centre for the Study of Violence and Reconciliation (CSV)**

The Centre for the Study of Violence and Reconciliation was initially launched in January 1989 under the name of the Project for the Study of Violence. The Centre has since expanded to become a multi-disciplinary unit, engaging the services of sociologists, psychologists, criminologists, social workers, lawyers, educationalists, historians, etc. The Centre currently has a staff of 40 full-time employees, and accommodates a number of additional contract workers, interns and volunteers.

The Centre is dedicated to making a meaningful contribution to peaceful and fundamental transformation in South Africa, and in the Southern African region. The Centre is committed to among others,

- helping South Africans to better understand the effects of the past on the present;
- developing ways to prevent violence and combat its effects, as well as to overcome intolerance;
- building a human rights culture in South Africa;
- facilitating the process of "human development" through re-building the "social fabric" and the organs of civil society;
- the management and facilitation of reconstruction and development initiatives so as to ensure that these do not lead to increased social conflict or violence;
- the transformation and democratisation of State institutions inherited from the past; and
- monitoring government progress in building a human rights culture and in transforming state institutions.

The Centre has a Criminal Justice Policy Unit (CJPU) which aims at assisting in the democratisation of the criminal justice institutions, in order to make them accountable and transparent; assisting in building the capacity of these institutions so that they can deliver an effective service within the boundaries of the constitutionally entrenched Bill of Rights; and improving civil society's understanding of and ability to engage with issues surrounding criminal justice policy. The CJPU focuses on consolidating its work in the policing and corrections sectors. During this year a new project was initiated, and this broadened the focus into the justice sector as well.

## F. Findings and observations

This section of the report provides the general observations and findings of the Special Rapporteur regarding the prison regime in particular and the condition of detention in general. It will include general observations and findings on issues such as prison population, building structures and accommodation, categories of prisoners, sanitation, gangsterism, etc. Under each aspect, the Special Rapporteur will discuss general observation and findings making references to specific detention facilities where necessary.

As could be seen from the diversity of the facilities visited and organizations contacted, the Special Rapporteur tried to cover as much as possible, all aspects of detention and conditions of persons deprived of their liberty. The Special Rapporteur is convinced that this wide coverage provides a representative and broad enough information on the detention facilities in South Africa. With the information gathered, the Special Rapporteur is convinced that she is in a position to make an informed opinion on the prisons and conditions of detention in the country.

Generally, the conditions of detention and treatment of persons deprived of the liberty in South Africa is satisfactory and meets minimum standards set by the international instruments to which South Africa has agreed to adhere. A very important element that needs particular mention is the emerging government policy of “corrections and rehabilitation” to replace the old dictum of “prisons and punishment”. This shift in policy however must not remain on paper. It must be accompanied by a constructive attitudinal shift amongst correctional officials and translated in the treatment of offenders. Such an attitudinal change is *sine qua non* for the realisation of the objectives of the 1998 Correctional Services Act and the Vision and Mission expressed in the Government White Paper on Corrections in South Africa.

There is considerable political will at both national and local level to improve the conditions of persons deprived of their liberty. This is seen through the numerous policies developed and revised by government to enhance the treatment of detainees. It is also illustrated in the establishment of skills development activities and the commitment of officials. Civil society organisations are also fully involved in the criminal justice system in general and the conditions of detention in particular. The high level of involvement by civil society is as a result of the openness and cooperation from government authorities.

These positive pointers notwithstanding, the mission registered numerous concerns during the course of the inspections. The concerns include among others, high prison population, gangsterism, the inadequate provision of skills and recreational activities, etc.

## i) Prison Population

At the time of the visit in June 2004, South Africa had a total prison population of 187,903 in 238 prisons. Of the 238 prisons, 4 had been temporarily closed for renovation and repairs, 29 were not populated beyond their approved capacity, 67 had overcrowded cells of between 101% and 149%, 53 had overcrowded cells between 150% and 174% and 85 had overcrowded cells of between 175% and 370%.

Regionally, Gauteng has the highest percentage of overcrowded prisons. Out of the 26 prisons in the Region, 22 are overcrowded and 14 of these are overcrowded by more than 175%. The Region has an average of 190.61% overcrowding. The least overcrowded Region is the Northern Cape and Free State Region. Of the 47 prisons in this region, only 9 are overcrowded by more than 175%. It has an average overcrowding rate of 146.06%.

The least crowded prison in the country is Vryheid Correctional Centre with an approved capacity of 748 but as at June 2004 had only 189 inmates, 2 un-sentenced and 187 sentenced giving an occupancy rate of 25.27%.

The most crowded prison however, is the Umtata Medium Correctional Centre in the Eastern Cape Region which has an approved prisoner capacity of 580 but as at June 2004 held 2,146 inmates, 974 un-sentenced and 1,172 sentenced making it 370% overcrowded.

Overcrowding can be attributed to many factors including the large number of detainees on awaiting trial. Even though there has been a considerable decline in the number of prisoners awaiting trial from about 64,000 in April 2000 to 53,880 in June 2004, the number still remains high. There are 134,023 sentenced prisoners representing 71% of the prison population. During the same period, 53,880 inmates are un-sentenced, representing 29% of the prison population. At least 25 prisons hold more un-sentenced prisoners than sentenced prisoners. The table below shows a list of some of the prisons with more un-sentenced than sentenced prisoners:

| Correctional Centre | Capacity | Un-sentenced | Sentenced | Total | % occupation |
|---------------------|----------|--------------|-----------|-------|--------------|
| East London Med. B  | 543      | 1,076        | 19        | 1,095 | 201.66       |
| King Williams Town  | 301      | 539          | 322       | 861   | 286.05       |
| Johannesburg Med. A | 2,630    | 7,376        | 155       | 7,531 | 286.35       |
| Pretoria Local      | 2,171    | 3,983        | 887       | 4,870 | 224.32       |
| Durban Medium A     | 2,308    | 3,272        | 57        | 3,329 | 144.24       |
| Durban Medium C     | 671      | 1,822        | 440       | 2,262 | 337.11       |
| Epangeni            | 216      | 476          | 32        | 508   | 235.19       |
| Estcourt            | 203      | 286          | 158       | 444   | 218.72       |
| Thohoyandu Med. B   | 219      | 454          | 25        | 479   | 218.87       |
| Sasolburg           | 309      | 204          | 49        | 253   | 81.88        |
| Vereneging          | 786      | 1,162        | 410       | 1,572 | 200.00       |

The large number of un-sentenced prisoners is not the only cause of overcrowding in South African prisons, as there are many prisons that have no prisoners awaiting trial or un-sentenced but are nonetheless overcrowded. These include the following: –

| Correctional Centre | Capacity | Un-sentenced | Sentenced | Total | % occupation |
|---------------------|----------|--------------|-----------|-------|--------------|
| Middeldrift         | 411      | 0            | 1,331     | 1,331 | 323.84       |
| Stutterheim         | 50       | 0            | 122       | 122   | 244.00       |
| St Alban's Maximum  | 717      | 0            | 1,702     | 1,702 | 237.38       |
| Johannesburg Med. B | 1,300    | 0            | 4,456     | 4,456 | 342.77       |
| Leeuwkop Maximum    | 763      | 0            | 1,671     | 1,671 | 219.00       |
| Christiana          | 107      | 0            | 254       | 254   | 237.38       |

According to the Inspecting Judge, other factors influencing the increase in prison population include unnecessary arrests by the police, unaffordable bail and unnecessary postponements of cases. It may also be as a result of the reluctance by judges and magistrates to use non-custodial sentences, even for petty offences.

In the course of the visit, the Special Rapporteur came across several cases that supported the above assertions. Probably, as a result of an increase in violent crimes and pressure from the public for a return to capital punishment and harsher penalties, the police, the prosecutor and the judiciary are responding in a manner that would please the public. The result of this response has been an increase in the number of persons arrested by the police even for minor offences such as drunkenness, crossing the railway, shoplifting, etc. The prosecution's goal is focused on detaining the criminal for as long as possible and the judiciary is also determined to fight crime by handing out long term sentences. There is reluctance on the part of the judiciary to embrace alternatives to incarceration, such as community services. It would also seem pro-death penalty judges tend to use long term imprisonment as a means to respond to the public's call for the return to capital punishment.

Another worrying trend is the number of persons who remain in detention because they cannot afford to pay bail fees. As at May 2004, a total of 13,223 persons were in detention for non-payment of bail fees, some fees as low as R50. According to the Office of the Inspecting Judge, in all of these cases, a magistrate had determined that the accused could await his or her trial in the community retaining his or her employment or continuing school. Because the accused could not afford fees for bail, he/she would be held in detention for an average of 143 days before trial. *Annex IV* shows the number of detainees per region who are detained because they cannot afford bail.

It is hard to understand the rationale continuously detaining a person who has been granted bail of only R50 or R100 by the court and cannot afford to pay, and yet the State spends R114 a day on him/her for an average of 143 days (amounting to R16,302) before bringing him/her before the courts. By granting a small bail amount, the court seems to be suggesting that the offence committed is not serious, the offender is likely not harmful and the offender can actually be released on his/her own *recognizance*. It is ironical to hold someone for not paying R50 yet spend R114 on him/her daily. By keeping people in detention their social lives are disrupted - learners stop going to school and employees risk losing their jobs. Family bonds are shaken and risk being disintegrated.

In instances where the bail fees are small, it may be important for the prison authorities to approach the courts to seek the release, on their own *recognizance*, if genuinely they cannot afford to pay. Conditions can be attached to their release – such as reporting to the nearest police station once a week, withholding of their passports, or not to leave the town until they have appeared in court

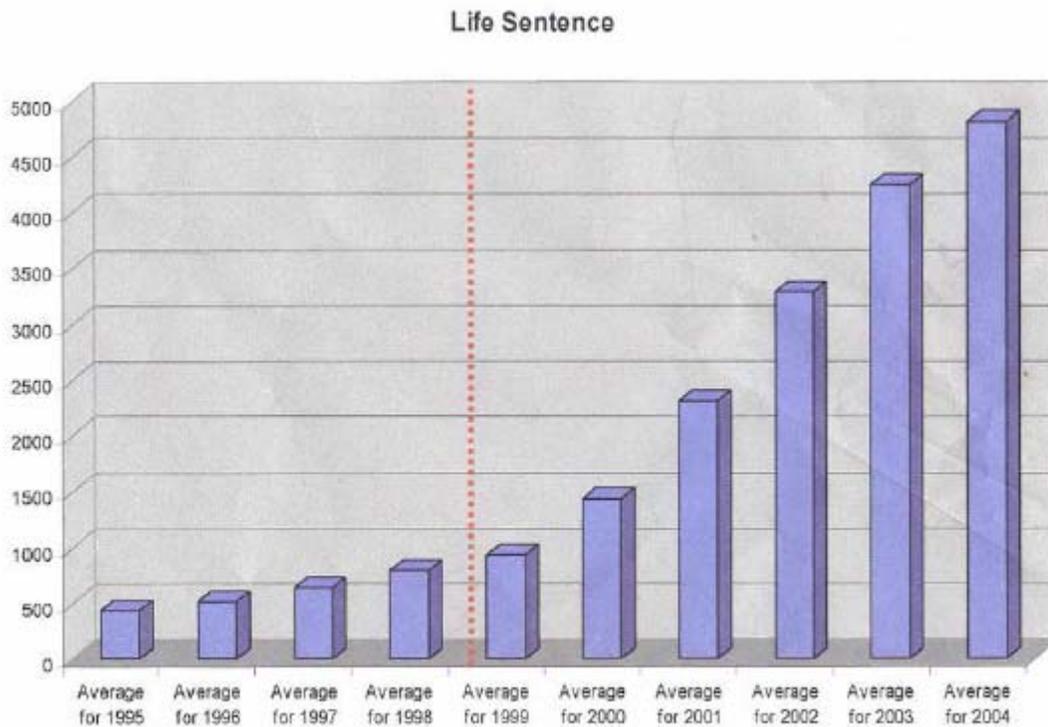
The Special Rapporteur also observed that over the past decade there has been an increase in the use of incarceration in general and long term sentences in particular and little use of non-custodial sentences. In 1995 for example, there were about 10,000 prisoners serving longer than 10 years but in 2004, the number has increased five times to about 50,000 – with 21,745 serving between 10–15 years, 9,855 serving between 15–20 years and 14,040 serving between 20 years to life.

Some of the sentences provide no hope of release, no possibility of rehabilitation, and defeat the whole essence of a prison as a place of correction for reintegration. The Special Rapporteur was informed that some inmates have been sentenced to 96 years, some 150 years and another for 2000 years.

One of the main objectives of the prison service is to carry out rehabilitation of the prisoner, empowering him or her to be able to adapt into society when released. The aim of imprisonment should be to renew the perpetrator and society, to protect its human values and its interests. Punishment which attacks the dignity and the integrity of the human being, such as long-term and life imprisonment, or isolation and deprivation of basic necessities run contrary to the essence of imprisonment.

This sentencing trend seems to negate the whole essence of corrections – rehabilitation and reintegration. It defeats the mission and vision enunciated in the Correctional Services Act and the Government White Paper on Corrections. The Draft White Paper provides in paragraph 21 of the Executive Summary that “... the period of imprisonment should be used to nurture and rebuild the relationships between the offender, the community and society at large...”. But by imposing prison terms that give the offender no real hope of release jeopardizes the whole process of rehabilitation and reintegration. It defeats the whole concept of a prison as a place of correction, of reformation and the idea that people go to prison to be reformed so that they can eventually be reintegrated into society. Such a sentencing trend breaks rather than builds relationships and breeds or encourages violence in prisons. Any sentence imposed on an offender must seek to appeal to the latter’s conscience: first that he/she has wronged the community and secondly that he/she has another chance of making amends to that community. It must conform to the general understanding that

prisons are reformation centres not punishment centres. The motto “*every official becoming a rehabilitator, every prison becoming a correctional centre - a place of new beginnings, every offender becoming a nation server through correction...*” must be true in word and in spirit. As shown by the graph below, life sentences alone have risen from 500 in 1995 to 5,000 in 2004, representing 1,000% increase.



Source: Office of the Inspecting Judge - Graph showing steep increase in the number of life sentences since 1995

Correctional services are an essential part of a coordinated and interdependent criminal justice system, and are provided by various levels of government. The primary purpose of the correctional service must be to contribute to the achievement of a safe and just society and to promote responsible citizenship. This can be done by, *inter alia*, providing the court with the widest possible choice of options in sentencing; carrying out the decisions of the court; providing appropriate measures of security, direction and control for the accused or the convicted offender; encouraging the offender's participation, whether in the community or in a correctional institution, in programs provided and designed to aid his/her successful integration into the community; and co-operating with persons and agencies within and outside the criminal justice system to prevent crime and offer services to all persons involved in the criminal justice process.

In the light of the above purposes, a successful criminal justice system would strive to uphold certain basic principles to guarantee the rights and dignity of all those involved in the correctional process. These principles include the following:

- the offender remains a member of society and forfeits only those rights and privileges which are expressly taken away by statute or as a necessary consequence of the custody and control imposed by the court;
- the loss of liberty, restriction of mobility, or any other disposition of the court constitutes the sanction;
- correctional services must not impose further punishment in relation to the offender's crime and must adopt the least restrictive course of action that is sufficient to meet the legal requirements of the dispositions, in the essential exercise of discretion;
- correctional agencies must adhere to procedural safeguards that are not only fair but are perceived to be fair, and more importantly, *correctional policies and practices must not deny the offender the hope of regaining status as a free citizen*;
- correctional agencies have the responsibility to assist the offender to develop or maintain positive and supportive personal and family relations;
- correctional agencies have a responsibility to present and promote a wide range of programs and services developed to meet the legitimate needs and interests of the offenders and to encourage and facilitate their participation; and
- correctional objectives should be met through shared responsibility and cooperative action by the community, correctional workers, other segments of the criminal justice system and the offenders themselves

## ii) **Category of prisoners**

The prison population in South Africa can be categorized in different ways, including gender, race, age, sentences, crimes etc.

### a) **Female prisoners**

There are 8 female-only prisons, 72 male and female prisons and 141 male-only prisons. The approved capacity for female prisons across the country is 4,374 and as at June 2004 there were only 4,340 female prisoners representing 99.22% occupation. There are 1,242 un-sentenced female prisoners and 3,098 sentenced female prisoners. There is a total of 565 serving sentences of between 10 years and life imprisonment.

#### *The Durban Female Correctional Center*

The Special Rapporteur visited only one facility holding female prisoners, that is, the Durban Female Correctional Centre. The Durban Female Correctional Center has a total of 449 inmates. This number can be broken down into the following categories – adults, nursing mothers, juveniles and children. The Centre has an approved capacity of 244 and at the time of the visit had a total of 474 prisoners – 194 un-sentenced and 240 sentenced, representing 194.26% occupancy rate. The table below shows the composition of prisoners in the Durban Female Correctional Center.

| Category        | Total            |
|-----------------|------------------|
| Single Adults   | 368              |
| Nursing mothers | 19               |
| Babies          | 19 <sup>12</sup> |
| Juveniles       | 62 <sup>13</sup> |
| <b>Total</b>    | <b>449</b>       |

The Centre has a large textile workshop where 69 inmates are trained to produce clothes, including juvenile shirts, orange short sleeve shirts, underpants, duvet covers, and offenders' property bags. They produce prison uniforms for prisons all over the country with a target of about 3,000 a month. The workshop has modern equipment and professional trainers to teach the inmates.

The section has its own clinic with a nurse and a doctor who visits twice a week, a kitchen, a store for food, a religious house, and a gymnasium and aerobics area. They are provided with food three times a day. They are also provided with a bar of soap monthly and sanitary towels – but the latter are provided only after the inmates prove to the authorities concerned that they are menstruating. Sick inmates, especially those suffering from HIV/AIDS are provided with special diets.

The female juvenile inmates occupy a separate section within the Centre. Their ages range from 15 to 21<sup>14</sup>. Of the 62 juveniles, 1 is 15 years, 1 is 16 years, 4 are 17 years and 56 between 18 –21 years.

The female section also has a unit for nursing mothers called the *Mother-Child Unit*. The mother and child unit is in a separate section within the Centre and holds only prisoners with babies. Prisoners in this section are in single cells measuring 3m x 4m. They are not locked into their cells during the day but are restricted within the section. The children have an area of about 50m within the section to play around. At the time of the visit there were 16 children – 10 males and 6 females, in the unit. There was no expectant mother.

The children are provided with special diet – milk and fruits. The mothers are given two soaps a month for themselves and the babies. They however complained that the food given to the children was not enough. The authorities do not allow relatives to bring food and other items for the children – such as juices and extra food. They also need extra nappies for the children.

According to the inmates, the authorities allowed only the following items to be given to the kids – chocolate milk, ordinary milk, noodles, baby juice, cerelac and maltivite. They argue that these items are for children of one year and under but there are children who are more than one year to three years who need more than just the items provided by the authorities. The inmates would like prison authorities to allow their relatives to provide these items.

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<sup>12</sup> Babies in prison are excluded from the total because they are not prisoners. There are 9 boys and 10 girls with ages ranging from 6 months to 3 years.

<sup>13</sup> The juveniles can be further categorised as follows – sentenced (28) and persons awaiting trial (34).

<sup>14</sup> In terms of South African law, a juvenile is anyone below 25 years.

In terms of South African law, children can stay with their mothers in prison for up to 2 years and later can be taken by their families or transferred to foster parents. At the time of the visit, there were about 202 children in prison with their mothers – 88 one year olds, 81 between the ages of 2 and 3, 8 between the ages of 3 and 4 and 5 four year olds.

#### *Lindela Repatriation Centre*

The female section of the Lindela Repatriation Centre was also visited. It is reasonably equipped. Unlike the male section, the female section is less crowded and has additional facilities such as lockers and a play room for children. Females are provided with sanitary towels whenever they need to use them. Soap is provided on request. There is a log book in which all the items and the names of the detainees are registered.

In Lindela, there were no children because children of illegal immigrants and unaccompanied children are referred to the Dyambu or the Leseding Youth Centre. However, there were about 7 young girls who claimed to be below 18 years who had been detained with adults for several days. There were also about 5 pregnant women, some about seven months pregnant.

#### *Police stations*

In the police stations the Special Rapporteur met few female detainees – six in the Durban Central Police Station including five Chinese and one in the Alexandra Police Station. Female detainees are separated from the males.

### **(b) Juveniles**

Under South African law, the juvenile age has been extended to include persons of up to 25 years old. There are 76,954 juveniles – 3,882 aged 18 years, 24,663 between 18 –21 years and 48,409 between 21 – 25 years.

The Special Rapporteur visited juvenile centers in the Drakenstein Management Area, St Alban's Prison, Durban Westville, Stanger Prison, Leeuwkop, the Dyambu and Leseding Youth Centres. The juveniles sections in most of the correctional centers are reasonably equipped. Most of them have formal and vocational education and recreational activities.

#### *Drakenstein Medium B Prison*

In the Drakenstein Medium B, there are 680 juveniles engaged in formal education and other informal education such as HIV/AIDS peer education programme and computer training programmes. They also have recreational activities such as dominoes, cards, pool, rugby, football, cricket and athletics. There is a clinic in the section with a nurse and a doctor who visits once a week. There are minor incidences of gangsterism with pockets of incidences in sections C and D. The juveniles have good relationships with the warders, as the latter give them encouragement and support. There are also religious groups such as Touching Hearts Ministry which visit the prison to minister to the inmates. The juveniles are allowed visits twice a week – on Saturday and Sundays between 9am to 3pm.

### *St Alban's Prison*

In St Alban's Prison, there are 717 juveniles. They are separated from the adults. Those between 18 – 20 years are held in single cells with each cell holding three juveniles. The cells measure about 3m x 7m and were meant to hold only one juvenile. Only two bunk beds can fit into the cell therefore one of the juveniles has to sleep on the floor using mattresses. The toilet is also in the same small room and not separated, which the juveniles have to use in the presence of others. The juveniles are locked up for 23 hours a day and are not involved in sporting activities or formal and vocational training. There is a clinic in this section with about five nurses and a doctor who visits four times a week. According to authorities in the clinic, "male rape" is prevalent in the juvenile section with about 2 to 3 reports a week. The major problem in addressing the problem is that the victims are scared to report the perpetrators. The juveniles also complained about molestation and assaults especially during routine searches. They complain that authorities insert their fingers into their anus to look for drugs and other forbidden substances. There is only one social worker in the prison.

### *The Durban Youth Centre*

The Durban Youth Centre has a total of 925 prisoners with ages ranging from 14 to 21. The majority have been sentenced but a large number still remains un-sentenced. The composition of juveniles in the Centre can be illustrated as follows:

| Age Group        | Total      |
|------------------|------------|
| <b>Sentenced</b> |            |
|                  |            |
| 14 years         | 5          |
| 15 years         | 16         |
| 16 years         | 33         |
| 17 years         | 67         |
| 18 – 21 years    | 377        |
| <b>Total</b>     | <b>498</b> |

| Age Group           | Total      |
|---------------------|------------|
| <b>Un-sentenced</b> |            |
|                     |            |
| 14 years            | 33         |
| 15 years            | 69         |
| 16 years            | 128        |
| 17 years            | 135        |
| 18 – 21 years       | 62         |
| <b>Total</b>        | <b>427</b> |

All the juveniles in this Centre are males. They are provided with formal education from grade 10 to 12. And the teachers are qualified professionals from within the Department of Correctional Services. Where a particular skill cannot be found within the Department,

lecturers are recruited from the public. Vocational training is lacking in the Centre and recreational activities are limited to indoor games such as table tennis. There is no space for out door games such as football and volleyball. There is also a small clinic in the Centre with a full time nurse. The clinic provides only first aid treatment for minor illnesses and major medical problems are referred to hospital.

The cells are seriously overcrowded. The juveniles complained that authorities assault them and beat them on their feet with hose pipes. Some of them claimed they had swollen feet for days.<sup>15</sup> They claim it is difficult to complain to the Head of prison or bring charges because they are not even allowed to meet the Head and the same people through whom they can channel their complaints are the ones abusing them. They also complained that the food is of poor quality – that the kitchen is always dirty and the cooks wear dirty clothes.<sup>16</sup> Another serious complain was that while the authorities have banned smoking for juveniles, they (the authorities) smoke cigarettes in front of the juveniles. Juveniles with contagious diseases such as TB are not separated from others and they use the same utensils with others.

#### *The Stanger prison*

In the Stanger prison, while the entire prison is hard hit with the lack of facilities, the juvenile cell is seriously affected. The cells are overcrowded - the inmates sleep virtually in twos on small mattresses and are locked up for most of the time as there are no in-door or out door activities. The toilet bowls in some of the cells are broken and water was leaking. The prisoners have no beds and have been provided with blankets and very thin mattresses. Only the female section has beds. There is a single television for the entire prison and they are only allowed thirty minutes to watch it. There is no formal or vocational education of any sort. The juveniles also complained about assault and excessive force during searches.

#### *The Leeuwkop Juvenile Centre*

The Leeuwkop Juvenile Centre has a total of 30 cells with an approved capacity of 723 but at the time of the visit had 942 prisoners representing 130.29% occupation. The Centre has a small woodwork shop, a metal workshop, painting and bricklaying and building area. There is also formal education provided for interested inmates. However, there are insufficient venues to conduct programmes. Only one venue is available for conducting programmes and this is usually shared with social workers, psychologists, religious workers and NGOs. There are only five class rooms for over 350 students and this shortage of classrooms restricts the registration of more students. According to the authorities, during winter, the structure is very cold and during summer it becomes very hot.

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<sup>15</sup> We could not confirm this because they claimed the swellings had subsided and we didn't have an independent doctor to ascertain the allegations. We however raised the complaints with the authorities – Head of prison.

<sup>16</sup> At the time of the visit, the kitchen was relatively clean and we did not meet the cooks as they had already finished cooking.

The Centre also lacks recreational facilities. There are no sporting activities, the recreation shop (canteen) opens only once a week and the prisoners claim the prices are too high, there are no television sets in the cells. The juveniles are locked in their cells for almost the whole day and only come out to eat or go to school or the workshops for those who take part in these activities. There was a complaint to the effect that Muslims are not provided with space for religious purposes and their religious leaders such as Imams are not allowed into the premises on suspicion that they will smuggle drugs into the prison.

The juveniles reported that instead it is the warders who smuggle tobacco (commonly known in prison as BB) into the cells. They also complained that officials also smoke cigarettes in front of them even though they (the authorities) have banned juveniles from smoking. It was also observed that authorities adopt a policy of generalise punishment. For instance, when a juvenile in a certain cell does or says something and the others do not want to identify the culprit, the entire cell will be deprived of certain privileges – no contact visit, lesser number of telephone calls, lesser number of visiting hours, etc.

Prisoners in general and juveniles in particular do not seem to know their rights and enough effort does not seem to have been made by the authorities to properly inform them about their rights. They are scared or ignorant of the proper complaints channel and procedure.

There is a large number of young offenders – about 60% of the total prison population is between the ages of 14 and 30. There is also a large number of juveniles both sentenced and those awaiting trial. A major concern here is the delay in disposing with cases involving children. At the Dyambu Youth Center, children stay on awaiting trial for a period of 12 – 18 months on average.

### **(c) Death row**

Following the Constitutional Court decision in *Makwanyane v RSA*,<sup>17</sup> the death penalty was abolished in South Africa. However, there are still a number of persons who had been sentenced to death before the 1995 decision whose sentences have not been commuted or converted. Some have been in this uncertain position for almost a decade and this could be psychologically and mentally disturbing.

### **(d) Foreigners**

There are about 1,300 foreigners in South African prisons, (excluding those detained in the Lindela Repatriation Centre) most of them in three provinces, Gauteng, Kwa Zulu Natal and Western Cape. The prisoners have full access to and receive services from their families. South Africa and Southern African Development Community (SADC) countries are exploring the possibility of repatriating prisoners to serve their sentences in their countries of origin. According to the South African authorities, such exchanges must be voluntary and there must be guarantees that the prisoner shall be in the same or better prison condition as would have otherwise been offered by South Africa. The foreigners are separated from the locals. According to the authorities, this is to prevent them from getting involved in the gangs and also because of the incidences of xenophobia.

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<sup>17</sup> The State v Makwanyane and Another, CCT/3/94; 1995 (3) SA 391 (CC).

They also undergo rehabilitation programmes like all the other prisoners. *The Lindela Repatriation Centre* had 1,770 foreigners at the time of the visit, most of whom were from Zimbabwe and Mozambique. There are however some detainees in the Centre with South African identity documents who had been mistakenly arrested by the police. Home Affairs Officials also informed the Special Rapporteur that they are hesitant in repatriating Nigerian illegal immigrants because on arrival in Nigeria, they are rearrested and detained for “tarnishing the image of the country”.

There are also foreigners at the *Dyambu Youth Centre*, some of them unaccompanied children from neighbouring countries. One of the greatest challenges for authorities in the Centre is what to do with the children as it is difficult to contact their relatives in their countries of origin. Most of them had come into South Africa to look for their parents while others accompanied other adults who later abandoned them.

### iii) Buildings and accommodation

The prisons are made up of very large buildings with high security fences some of them surrounded with barbed wires on the top. The cells are of varying sizes but most of the prisons have two categories of cells – the large cells measuring 5m x 17m and the smaller cells, also called single, cells measuring 3m x 4m. According to the authorities, there are no disciplinary cells. The single cells are reserved for persons who want to study and are also used to isolate persons who are violent and cause disturbances in the larger cells. The single cells were meant to hold only one inmate at a time, but because of lack of space, the single cells now hold up to three inmates. According to the authorities, the rationale for putting three in one cell instead of one or two is to ensure that if two are fighting, the other can alert the authorities or if one is sick, the others can assist and alert the authorities. In *Leemkopp Maximum Prison* however, there is a seclusion area where trouble makers are held for a period of time.

Many of the buildings are in good condition save for the *Stanger Prison* that needs refurbishment. The ceiling and roof are not well constructed and the authorities argue that this is the reason the prisoners are not provided with beds because they can break through the ceiling and escape. Other detention facilities are relatively clean and well maintained. In the *Durban Central Police Station* for instance, there was maintenance work going on to paint and renovate certain parts of the building. The prison walls are clean and well cemented. Most of the prisons are accessible to persons with physical disability such as those on wheel chair or to blind people.

Prisons and other places of detention in South Africa are generally well constructed, the infrastructure is good and modern. Most of the facilities visited have well constructed buildings with modern equipment. The *Mangaung Private Prison* and the *Lindela Repatriation Centre* have state of the art structures with modern facilities ranging from kitchen equipment, toilets and security apparatus. These two institutions have control rooms that monitor the operations in the detention centers.

Other detention facilities such as the Alexandra Police Station, the Moroka Police Station, the Humewood Police Station, and the Durban Central Police Station have very good structures even though the latter had some dilapidated cells with no running water. The station was under renovation at the time of the visit and the Special Rapporteur was assured that running water have been temporarily cut for renovation purposes only.

#### **iv) Kitchen and food**

The kitchens are relatively clean. Most of the prisons prepare their own food but the Durban Central Police station has outsourced the cooking of food for inmates to an outside company that prepares food for the inmates.

All the detention facilities provide three meals a day to the detainees. It is government policy that the time difference between meals should not exceed twelve hours. Most of the institutions provide breakfast and lunch and give the inmates 6 slices of bread during lunch which they eat for dinner. It was explained that this is because supper is usually during lock up time.

Children, nursing mothers and expectant mothers are provided with special diets and sick inmates – those suffering from HIV/AIDS or those for whom doctors have made specific diet requirements are also provided special diets including meat, vegetables, milk, eggs, juice, etc. Some institutions like the Lindela Repatriation Center and the Mangaung Private Prison have dieticians who recommend weekly menus suitable for the inmates.

Foreigners are not given any specific meal except where specified by a doctor or dictated by religious reasons. In most of the institutions, the type of food alternates either daily or weekly. The quantity of food is usually enough but some prisoners complained about the quality, especially the stew.

#### **v) Religious facilities**

Inmates are allowed to practice their religions. In all the prisons visited, there are rooms that depict the practice of Christianity. There is however little evidence of structures for other religious groups. Clergymen come from outside the prison to preach on specific days. On other days, other religious groups visit the prisons to minister to the inmates.

#### **vi) Health, hygiene and sanitation**

The Correctional Services Act provides for the conditions and treatment of prisoners, including issues such as health care and sanitation, and the duty to provide for the health and welfare of prisoners is placed on government. Apart from the Mangaung prison, all the other prisons are not adequately staffed in the health sector.

In all the prisons visited, there is an in-house clinic that provides first aid treatment for minor illnesses. The *St. Alban's Prison* has a regional hospital that serves not only the prison community but also the surrounding community. However, illnesses that cannot be handled by the latter are referred to another hospital.

The in-house clinics however have very few medical facilities and in some cases lack laboratory equipments or have very few medicines in the dispensaries. In the *Stanger Prison*, the head of the dispensary complained about the delays in the acquisition of drugs and the conditions under which they are kept. For instance, the temperature in the drug store is high as a result of poor ventilation. In the Stanger Prison, there is only one resident nurse.

Inmates in most of the prisons were unhappy about the reluctance of the authorities to take them to hospital, as they are only taken to hospital when their health conditions have seriously deteriorated.

Generally, the most common illness in the prisons is HIV/AIDS. Apart from sensitisation, especially on HIV/AIDS, the authorities are taking other measures to limit its spread. Homosexuality and lesbianism is common in most prisons. Most of the prisons distribute condoms for those who want to use them.

In all the prisons, prisoners are provided with mattresses, sheets or blankets. They are also provided with other basic items like soap, and detergents for washing clothes. The detention facilities are generally clean, including the cells and their surroundings

#### **(vii) Clothing**

Prisoners in South Africa wear uniforms at all times, except when doing sports. Most of them are relatively neat. They are also provided with extra clothing such as trousers, track suits and shoes.

#### **(viii) Contact with the outside world**

##### **(a) Visits**

Prison regulations allow for family visits, which are normally contact visits. In most prisons, this is limited to twice a week, usually on Saturdays and Sundays. The duration of each visit depends on the category of the prisoner which is determined by his/her behaviour. Thus, prisoners who behave well are placed in Category A and receive 45 visits a year and one hour per visit. They may also be allowed to receive snacks from their relatives which must be consumed at the visiting area. Prisoners in group B have lesser privileges and have only 40 visits a year of 45 minutes per visit, and prisoners in group C have even lesser and may be deprived of contact visits. Persons awaiting trial may be visited every day and as many times as possible. The visiting regime is not rigid as each prison can arrange its visiting hours to suit its security concerns. In all the prisons, there is a waiting area for visitors.

##### **(b) Correspondence**

Prisoners are allowed to write and receive mails. They are also allowed to make telephone calls.

In most of the prisons the authorities are required to be within eye sight and ear shot during the visits and during telephone calls.

**(ix) Work, exercise and education**

**(a) Work**

Few of the prisons have agricultural projects and other activities to keep the prisoners busy. The Drakestein and Leeuwkop Management Areas are huge prison farms with diverse agro-pastoral activities. These two Areas are self-sufficient with food and the Leeuwkop Prison even provides vegetables to neighbouring communities as part of a poverty alleviation scheme.

Work in the farms is carried out by prisoners and supervised by qualified agricultural staff. In Drakestein and Leeuwkop some prisoners were unsupervised when using tractors to till the soil. On enquiry, the Special Rapporteur was informed those are prisoners who had served most of their sentences were due for release soon. The Special Rapporteur was also informed that no work is meted out to prisoners as a form of punishment, rather farm work and other manual work are geared towards rehabilitation and eventual reintegration.

The prisoners are given some money in the form of incentives to encourage them to work but are not remunerated for the work done. The incentive depends on the nature of the work and the effort and time put in by the prisoner.

**(b) Formal and vocational education**

Apart from the Drakenstein, St. Alban's, Durban Westville and Mangaung prisons, the other prisons have very few equipment for vocational training. The Drakenstein Management Area has made computer training a compulsory course for all the learners. The prison also has a well equipped woodwork, metal work and steel workshop where inmates are taught different skills. Mangaung also has shoe making and candle making workshops. In all the above prisons formal education is provided. There was little vocational training in the Leeuwkop prison.

The Dyambu and Leseding Youth Centres provide formal education from grade 7 -12 and a wide range of skills development activities including painting, motor mechanic, woodwork, metal work, etc.

In most of the prisons, vocational training for trades such as woodwork, metal work, steel work and building is given only to male inmates. In the Durban Female Correctional Centre, women are engaged in sewing and laundry only and because there are few machines, not all of them participate. The only prison visited with no vocational training programme is the Stanger Prison. The prison has no form of education for prisoners – either formal or vocational.

Except for the Dyambu and Leseding Youth Centre, persons awaiting trial in all the prisons are not involved in any activities – whether formal or vocational.

**(c) Exercise**

Recreational facilities are very inadequate in most of the prisons. Most of the prisons have mostly in-door games and in some cases, such as in Stanger and Durban Youth Centre, the Leeuwkop Juvenile Centre, these games are available to the prisoners.

In the *Stanger prison*, the pool tables had been packed for a very long time without use. The authorities complain that the inmates destroy the property. Because of the lack of out door activities, prisoners are locked up for unnecessarily long periods – 23 hours a day in most cases. In *St Alban's Prison* they have only about 30 minutes a day to exercise outside of their cells. Because of the large number of prisoners and the limited personnel, authorities usually cancel scheduled sporting exercises or in some cases limit the time allocated for the sport. This has been interpreted by some prisoners as discrimination against their own game because in some cases a particular game has been cancelled three times consecutively.

The lack of outdoor activities such as football, volleyball, rugby and cricket in some prisons cannot be attributed to lack of space, because save for the Stanger Prison, most of the other prison facilities are on large areas of land. This could be attributed to the high priority that authorities attach to security and the few personnel at their disposal to ensure that security.

The *Mangaung prison* however offers sporting activities such as football, rugby, cricket and netball. In the *Lindela Repatriation Centre*, the detainees spend the whole day playing different games, football, and volleyball and there is a television set in every room that provides entertainment throughout the day. There is no provision for exercise of any form for detainees in police stations.

**(x) Detainees' rights and discipline**

It was observed that most of the detainees do not know about their rights. Most of the detainees at the police stations didn't seem to understand the rights in the "*notice of rights in terms of the constitution*" (See Annex V) given to them prior to their detention. This is either because they do not bother to know or because the authorities deliberately do not want them to know. Some of the detainees were asking about rights that were already in the document, such as whether they could make calls, that they would need assistance from the Legal Aid Board for bail application. It didn't seem they knew they had the right to remain silent.

The Special Rapporteur noticed that most of the detainees could not read, let alone understand the rights. Most facilities have little or no arrangement for prisoners to channel complaints to the appropriate authority without fear of reprisals. In most cases, it is difficult for a prisoner to meet the head of the institution.

Furthermore, authorities do not explain to detainees what their rights are in a language they would understand. For instance, in the *Moroka Police Station*, the Special Rapporteur found persons who had been detained for drunkenness and others for crossing the railway. Even though they were due to be released on paying the fine. They had also not been informed by the authorities that they could pay a fine of R100 and be released. The Special Rapporteur was informed that they could actually be released by the magistrate on a mere warning or be requested to pay a lesser amount.

It may therefore be necessary for these rights to be read and explained to the detainees before they are detained.

There seemed to be a lack of a human rights culture in some of the facilities. For instance, training in human rights seems to be offered to junior officials and new recruits only. Most of the “*old prison authorities*”<sup>8</sup> seem to have the same old “anti-human rights approach” in dealing with prisoners. Without extending human rights training to include all officials including senior prison authorities, it would be difficult to instill a culture of human rights in the correctional system.

In spite of the policy change, and the seemingly gradual attitudinal change, there are still some officials who are more security conscious at the expense of rehabilitation and reintegration. Officials are quick to indicate that there have been no incidences of violence or escapes in their institutions over a certain period of time. But little is said about the number of ex-offenders successfully reintegrated into their communities or the reduction in recidivism.

Without compromising security, authorities should be made to understand that their success would be measured by the number of people they rehabilitate rather than the number of people they succeed in keeping in their facilities.

## **G. Major challenges**

The prison regime in South Africa is besieged by a number of challenges, chief amongst them are the following: gangsterism, overcrowding, poverty, lack of community involvement and corruption.

### **(i) Gangsterism**

Most, if not all the prisons have gangs. These are criminal groups formed out of prison that continue to operate in prisons. They go by the names the 26s, the 27s, the 28s, Air Force and the Big Fives.

The 26s main characteristic is to rob other inmates of their belongings like money and other property. The 27s are known for stabbing other inmates. For instance, to join the gang one must stab a fellow inmate. The 28s are more interested in having force sexual relationships with other inmates which they refer to as *vypies* (meaning wives). They join by either being sodomised or like the 27s by stabbing. The Air Force is noted for prison escapes and the Big Fives are regarded as informants who spy on other inmates on behalf of the prison authorities. The gangs are structured in a hierarchical manner from the newest recruit to the highest rank being the General and they communicate with members in other prisons.

Given their power and influence, there is little doubt that they exercise control over various aspects of prison such as allocation of jobs, recreation, control of the marijuana (commonly referred to in South Africa as dagga) trade in prison, etc. They enjoy the *de facto* recognition

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<sup>18</sup> By this I mean those managing prisons during the Apartheid days.

of management and form part of the culture of the prison. During times of unrest or violence, management holds talks with the leaders of gangs which only contributes to the recognition and institutionalisation of the gangs. This has only increased the corruption and influence of the gangs as authorities are being used to smuggle illicit substances into prisons.

The authorities seem to have no concrete policy on how to tackle the problem. They seem to have resigned to the fact that it is part of the prison system. Some prisons are moving gang leaders from one prison to another in a bid to minimize their activities – but the institutionalization of the gang network is such that communication between the prisons is very easy and before a gang leader arrives in a certain prison, his followers are aware of his arrival. In terms of the gang hierarchy, a leader retains his position wherever he is transferred. Therefore, a General would remain a General in whichever prison they are sent.

It is almost automatic that each prisoner must belong to a gang. Prisoners who choose not to belong to a gang are abuse at the hands of gang members, including rape and robbery. Prisoners freely admitted to belonging to gangs. They said that the reason that they were gang members was because of the protection offered by the gang system. Other benefits of being a member of a gang includes favours, control and power and the probability of having sex with weaker gang members.

Gangs affect prison management and prisoners alike. It was noted that some of the gangs are so powerful as to influence even the highest authorities in some prisons. Gangs seriously affect the rehabilitation programme and can seriously compromise security in prisons. It is noted that because of the hierarchical nature of the gang system, junior members are not free or allowed to talk or disagree with a senior member on any issue. Thus, gang members of different ranks cannot disagree in class for fear of victimization, junior members would be reluctant to participate in rehabilitation programmes with senior members. Unchecked outbursts of violence occur among the gangs in many prisons, violating prisoners' right to life, liberty and integrity.

The combination of severe overcrowding, shortage of staff, and availability of weapons in prisons makes violence inevitable. Inmates are usually killed by other inmates. Prison homicides are so frequent as to seem routine. But inmate-on-inmate violence is usually the predictable result of official negligence. By neglecting to supervise and control the inmates within their facilities, failing to respond to incidents of violence, corruptly allowing the entry of dangerous weapons into the prisons, and by abetting gangsterism, prison authorities are directly responsible for the violence in their facilities.

Concrete measures must be taken to deal with gangsterism in prison and effective measures taken to deal with officials who cooperate with the gangs. Effective rehabilitation activities should be developed to ensure that when offenders are released they do not have cause to rejoin their gangs that operate outside of prisons. The gang phenomenon cannot be left to continue uncontrolled. The risk of doing so would be catastrophic to penal reform in general and rehabilitation in particular. The prison must develop a coherent strategy of dealing with gangs, other than the temporary isolation of their leaders. The source of power and wealth must be carefully examined and checked in order to remove their power-base.

The authorities have encouraged the established a rival gang, The Big Fives to spy on other gangs and report to them. This can be very dangerous and can create conflicts amongst prisoners. Authorities also use the gangs as a means of controlling trouble in prisons as they can simply deal with the gang leaders. This approach has not yielded the desired result. (Perhaps South African prison authorities should consider studying the Ethiopian system of establishing Prisoners Committee – *see section on Best Practices of other countries*).

**(ii) Overcrowding**

Overcrowding is prevalent in almost every prison visited and is therefore at the root of many of the human rights abuses. It is a recipe for violence and poses a serious challenge to the rehabilitation programmes. It is by itself a human rights violation and occasions further human rights violations. A high prison population is also a drain on scarce national resources. Due to the large number of inmates, the equipment and teachers are not always enough to meet the increasing number. In Leeuwkop Juvenile Centre and Leeukop Maximum Prison, the number of inmates far outweigh the skills development programmes. At the time of the visit just a handful of juveniles were engaged in skills development programmes and the majority were locked up in their cells. The situation was the same in most of the other prisons visited.

**(iii) Poverty**

A study conducted by the Office of the Inspecting Judge reveals that most juveniles, especially in the lower age bracket are more involved in economic crimes than in violent crimes. The seriousness of their crime increases with age.

Any strategy to deal with the high number of prisoners in the country must also take into account the poverty level of the inmates and the crimes for which they are in prison. Most of those in prison have been detained for petty offences and other offences caused by their social conditions. An extensive and integrated research should be undertaken to determine the relationship between the offenders and the crimes they commit.

Proper social programmes must be established to deal with younger children to prevent them from falling prey either through the influence of adults or through the breakdown of family social networks. Young children who are idle are also vulnerable. The table below illustrates the progression of crime with age including violent crimes.

|   |              | Age group  |            |            |             |             |             |  |
|---|--------------|------------|------------|------------|-------------|-------------|-------------|--|
| C<br>h<br>i<br>l<br>d<br>r<br>e<br>n<br>U<br>N<br>D<br>E<br>R<br>1<br>8 | Category     | 7-13 years | 14 years   | 15 years   | 16 years    | 17 years    | Total       |  |
|   | Economic     | 5          | 79         | 242        | 460         | 841         | 1627        |  |
|   | Aggression   | 7          | 40         | 169        | 462         | 919         | 1597        |  |
|   | Sexual       | 2          | 9          | 63         | 151         | 263         | 488         |  |
|   | Narcotics    | 0          | 1          | 4          | 11          | 26          | 42          |  |
|   | Others       | 3          | 5          | 11         | 34          | 75          | 128         |  |
|   | <b>Total</b> | <b>17</b>  | <b>134</b> | <b>489</b> | <b>1118</b> | <b>2124</b> | <b>3882</b> |  |

#### **(iv) Community involvement**

A further challenge in the correctional process is the lack of the required support from the community/public. The public seems to regard prisoners as social outcasts and deserve whatever treatment is given to them. The public is therefore concerned about keeping prisoners locked up rather than about the conditions in which they are confined. As a result, it is reluctant to assist the department in its programme of rehabilitation and reintegration. The old dictum of “once and criminal, always a criminal” still looms. It is therefore difficult for ex-offenders to be employed, to get loans, and to get meaningful support from their families and the community.

The general public has not been adequately sensitized to accept the fact that prisoners can contribute meaningfully to community development and restore the harm they caused to the community. The reaction of the public to criminals has been very hostile and until this is reshaped, it will be difficult to implement alternative sentencing programmes such as community services. The introduction of restorative or relational justice would go a long way to address public perception about prisoners. A lot of public sensitization is however, necessary.

Government policy has also not been helpful. The policy which prohibits the employment of any person with a criminal record by government means that even reformed and rehabilitated offenders cannot be employed by the government. If the government is wary of employing persons it deems it has rehabilitated, private companies will be even more wary. The government should lead by example and demonstrate to the public that ex-offenders can contribute to their community. It should do this by repealing the law forbidding the employment of persons with criminal records.

#### **(v) Corruption**

Following numerous allegations of corruption, maladministration, nepotism, intimidation and other improper conduct in some of the Prisons, the Minister of Correctional Services approached the President to appoint an independent judicial commission of inquiry to thoroughly investigate the allegations and to make comprehensive recommendations in that regard. In 2001 a Commission of Inquiry called the Jali Commission was thus established. The final report of the Jali Commission is yet to be published.

However, some of the corrupt practices alleged include prisoners leaving the premises illegally and this was being done with the full knowledge and assistance of warders. Drug trafficking by warders in collaboration with prisoners was rife. There appears to be collusion between prison officials and some prisoners not only in the promotion of violence in prisons but also in the smuggling of tobacco and other illicit substances into prisons, such as knives and other dangerous weapons. It is alleged that some officials support certain gangs and lend them support when they are fighting other gangs.



Some of the weapons smuggled into prison that prisoners (gangs) use to stab each other. It is believed most of these items are brought in by prison authorities themselves. In the bags and containers are different kinds of illicit drugs confiscated by the authorities during routine search conducted in the cells.

Other major concerns within the South African Prison system include the following - HIV/AIDS seem to be a serious health burden. Most of those suffering from HIV/AIDS cannot afford treatment and are not taking any proper treatment while in prison. This problem has been exacerbated by the practice of sodomy. The latter is difficult to control as victims are reluctant and scared to report perpetrators.

It was also observed that in almost all the institutions the approved post establishments were never filled even though there is great need for more manpower. This leaves fewer personnel to attend to prisoners and impacts on the rehabilitation programmes and the moral of the officials. Human Resources are of paramount importance in accomplishing the goals of any correctional agency. They will make their optimum contribution if supported by effective personnel development opportunities and positive working conditions. Staff should also have the opportunity to participate in the formulation of policies related to both programs and administration. Staff organisations should be involved in furthering this process and correctional agencies must be seen to be accountable. They should be subject to regular, independent and public assessment

Related to the problem of shortage of staff, is the marked shortage of professional care givers, especially in the social sector. Professionals such as psychologists, social workers, probationers, psychiatrists etc are very few in most of the prisons visited. Very few prisons had full time doctors and the nurses were very few compared to the number of prisoners.

It was also revealed that a major section of the 1998 Correctional Services Act dealing with conditions of detention of prisoners have not yet come into force. This might be a hindrance to an effective implementation of the vision expressed in the White Paper.

At the Lindela Repatriation Center it was noticed that sufficient safeguards still needed to be put in place to avoid the unnecessary deprivation of the rights of persons legally in the country, especially South African citizens. Some South Africans with South African passports were found detained in the facilities. There were other detainees who claimed to have valid documents but were not in possession of them at the time of arrest and did not have persons to contact to bring those documents. The authorities should be in a position to assist such persons to collect their documents from wherever they have kept them. It will also be helpful if Government could promote a sensitisation campaign to encourage all those within South Africa to be with their identification documents at all times.

The Private Prison Initiative seems to be a good scheme. The infrastructure, programmes and treatment of prisoners, the discipline, security, staff to prisoner ratio, cell space and occupancy rate in the Mangaung prison attest to this.

However, three concerns are raised by this initiative. The first is the apparent unfair treatment displayed between those in private prisons and those in public prisons. Privileges accorded to prisoners in the private prison are different from those in public prisons. The budget allocation per prisoner per day is higher (R132) than that in public prisons (R114). This might raise questions of discrimination since all prisoners are under the custody of the government and deserve equal treatment.

Secondly, it was also noted that prisoners from private prisons are sent to public prisons at least six months before their release. This raises concern because a prisoner who has served his term in the private prison in a quite different environment and maybe, rehabilitated is now returned into another environment with quite a different management regime with a likelihood of meeting old gang members, engaging in drugs and violence, and other anti-social behaviour. These six months in public prison might reverse the rehabilitation of the prisoner.

Thirdly, private prisons hold only long term prisoners – ten years and over and most of the rehabilitation training for skills development last between 4-5 years. After completing their programme, the prisoners still remain in prison and by the time they leave, they might have forgotten what they learnt. There is little space within prison for them to effectively utilize their skills.

The above concerns notwithstanding, the operations of the private prison at Mangaung are an example that should be explored and replicated across the country in other prisons.

Another major concern is warders' (also referred to in South Africa as members) frustration and fear. Warders express frustration at the growing discipline problems with prisoners. Warders complain that the new laws prevent them from instilling discipline in prisons because when they use "minimum force" to quell violence or a fight, they become a subject of investigation for abuse of power. As a result some of them deliberately move away from violent scenes and allow prisoners to fight. A meeting with POPCRU revealed that members

are dissatisfied with their conditions of service and would require more incentives to venture into prisons, for instance, an increase in their dangerous allowance, increase in overtime pay.

## H. Involvement of civil society

An overwhelming number of civil society organisations work in the criminal justice field in general and on prisons issues in particular. Some such as CSVR and NICRO are involved in penal reform, research, but the majority monitor prisons and the conditions of detention. The Government allows these organisations to visit detention facilities. Prison authorities are also cooperative, even though some organisations reported having difficulties visiting some facilities. The IPVs from the JIOP are regular visitors and have easy access to prisons. They have a statutory power to visit prisons and speak to prisoners. The South African Human Rights Commission, Lawyers for Human Rights and other NGOs also visit prisons and the Lindela Repatriation Centre.

NICRO and CRED also have skills development programmes in prisons. NICRO operates across the country while CRED operates only in the Western Cape Province, but is planning to extend its activities throughout the country. NICRO recently challenged in court the restriction of prisoners from voting. In the case of *the Minister of Home Affairs and Others v NICRO and Others*,<sup>19</sup> the Constitutional Court of South Africa held in NICRO's favour and argued that

a government that restricts the franchise to a select portion of citizens is a government that weakens its ability to function as a legitimate representative of the excluded citizens, jeopardizes its claims to representative democracy, and erodes the basis of its right to convict and punish law-breakers.

This landmark decision emphasises the point that an offender loses only those rights as prescribed by the courts to enable correctional officials to rehabilitate him/her for eventual reintegration into society. They do not suffer a "social death" leading to forfeiture of all civil rights. The right to vote is just one of the many rights that a prisoner retains whilst in prison. According to Sachs J, "the vote of each and every citizen is a badge of dignity and of personhood. Quite simply, it says that everyone counts".

Other initiatives by other sectors of civil society aimed at improving the lives of persons deprived of their liberty, especially prisoners include the President Award Youth Empowerment Programme, Civil Society Prison Reform Initiative, Restorative Justice and the proposed establishment of a Sub-Committee on Awaiting Trial Prisoners. These are good practices that should be emulated by other countries to improve their prison regimes.

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<sup>19</sup> CCT 03/04.

## I. Best practices

### i) Restorative Justice Project

Restorative or relational justice is an approach to crime that focuses on healing relationships and repairing the damage crime causes to individuals and communities. Restorative Justice is a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies. The concept has been accepted for some time by governments, communities, organisations, interest groups, and even by courts that are looking for more constructive ways to deal with crime.

As more programs and initiatives on how to enhance the justice system are developed, questions are being raised as well - how do we balance the needs of victims, communities, and offenders and ensure that everyone's rights are respected? What is the most effective relationship between government and the community in developing these programs? How can we ensure that restorative processes do not end up restoring unequal or even dangerous situations?

Over the past decades the South African public has become increasingly interested in alternative ways of resolving conflict and preventing crime. Many believe that the court-based, adversarial system needs to be supplemented by other approaches that allow for the active involvement of victims, offenders, and communities. Restorative justice tries to meet these needs by addressing the harm that a crime has caused to the victim, the community, and even the offender. The goal is to repair the damage caused by crime as much as possible, to restore harmony and stability, and to prevent further crime from occurring<sup>20</sup>.

Recent years have seen a growing interest in the concept of restorative justice in South Africa. In November 2001, the Department of Correctional Services held a conference to launch its new "restorative justice approach". Although other government departments have included restorative justice in their policy documents and the government has sponsored pilot projects, this was certainly the most highly publicized policy statement on restorative justice by the South African government. Another conference entitled "Restorative Justice and Community Facilitation" was hosted by the African Christian Democratic Party and funded by the *Konrad Adenbauer Stiftung*. The conference was not party political, with speakers and attendees representing a range of political backgrounds, different faiths and secular organizations. On 21 November 2001, the South African Cabinet approved the Child Justice Bill for introduction into parliament. This once again demonstrates the South African government's commitment to restorative justice policy as the Bill is based firmly on restorative justice principles. The government is seeking a moral regeneration, to fight crime and links this idea firmly to restorative justice, which it has characterized as giving communities more of a stake in the criminal justice system.

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<sup>20</sup> RESTORATIVE JUSTICE IN CANADA., A Consultation Paper - May 2000. [A national consultation](#), paper prepared by the Federal-Provincial-Territorial Working Group on Restorative Justice in Canada.

However, the abolition of the death penalty and corporal punishment (seen in the past by a larger sector of society as some form of justice) with the coming of the new democratic dispensation, has tended to send the victims of crimes and the communities far removed from the traditional justice system where the State claims to represent and speak on behalf of the victims. At the same time, the high crime rate and the appalling level of poverty amongst the people (especially those who commit crimes) cast a very dark shadow on restorative justice as an alternative in present day South Africa. It however, remains an area for much research and debate.

- ii) **Office of the Inspecting Judge** (See The Judicial Inspectorate of Prisons under the section dealing with Institutions consulted)

## **J. Best practices of other countries**

The management of prisoners in South Africa is an unenviable task especially as it is a complex society. Throughout the world, different communities have developed strategies to manage prisons and prisoners as best as they can to remain firm, but fair and just. Ethiopia presents a unique system of prison management which needs to be researched and explored further. In Ethiopia, Prison management is done through the *Prisoners' Committees*.

### **The Prisoners' Committees – the Ethiopian experience**

In all the prisons in Ethiopia, there are *Prisoners' Committees*. (See Annex VI for the Structure of the Prisoners' Committee in the Addis Ababa Prison). The Prison is divided into three levels – cells, zones and compounds, with the cell being the smallest unit and the compound the largest unit within the prison.

The Committees are established at all three levels of the prison structure – Cells, Zones and Compounds. At each level, prisoners elect representatives for each committee. Taking the Addis Ababa prison as an example, the prison has a *main committee* structure for the whole prison (compound). The prison is divided into six Zones. Each Zone has various committees. The zones are further divided into cells and each cell has its own committees.

There is thus a hierarchical organisation of committees from the cell to the compound level, with representatives being elected by the prisoners themselves at each level – from the cell to the main committee. There are usually ten committees at each level. This arrangement is reproduced in all the prisons.

However, depending on the size of the prison population, a prison might choose not to have all the committees at all the levels of the prison structure.

The cell is the smallest unit in the Prisoners' Committee structure. Depending on the size of the cell, each cell has its own administrative structure made up of committees. The smaller the cell, the fewer will be the number of inmates and the fewer will be the number of Committees from the cell. Members of each cell elect from amongst the prisoners in that cell, members of the various committees who would manage their affairs and ensure the proper behaviour and wellbeing of all the prisoners in the cell.

The Committee members elected from the cell level represent the cell at the Zonal level. The Zones have all the committees found at the cell level. Each zone will then elect representatives to the Main Committee or General Committee of prisoners. This Committee is also the General Assembly of Zonal Prison Administration. At the top of this organisation is the Chief Prison Administrator, the only non-elective, non-prisoner member. The Chief Prison Administrator serves as an ex-officio member.

All matters regarding prisoners' welfare, from allocation of cells to discipline are handled by the relevant committees. The prisons are like "independent self-administered communities". Prisoners have been allocated *plots* within the prison premises to undertake businesses. In all the prisons, there are "thriving businesses" – small provision shops, tailors, cafeteria, etc. The committees engage the authorities to complain on behalf of the prisoners about certain matters.

The prisoners also have Cooperative Shops for the prisoners' body as a whole. Income generated from this shop is saved in the prisoners' cooperative run by the prisoners. This money is used to buy items such as soap and other items for prisoners. In the Addis Ababa prison for example, the committee provides two soaps to each prisoner monthly.

When a prisoner is released, a certain fraction of the money from the Cooperative Shop is given to him/her. Individual prisoners can also save their money with the cooperative. The Cooperative Shop Committee employs prisoners to sell in the shops and they are paid. There is an Audit Committee which does routine auditing and inspection of the shops to ensure accountability.

The Committee system seems to be working very well as prisoners deal with their peers and are hardly "in contact with the authorities" where they can have confrontation.

The Special Rapporteur however raised certain concerns about the Committee system. The first is that, the Committee system has allowed the government to abdicate its responsibility of providing basic necessities to prisoners. Every aspect of prisoners' welfare has been left to the Committees. Secondly, the Committees are not made of experts or professionals in the various fields, so there is a possibility that things are not managed properly. Even though the prisoners claim that they try to ensure that persons with certain background are elected to a particular committee, they also concede that at times they have to do without professionals. This can be very harmful to the rehabilitation process. The Committee members know very little about rehabilitation and are more concern about their personal welfare. Third, there are very few women on most of the Committees. This might explain why women issues are not given attention. Fourth, the Committee system may also lead to corruption. It may encourage some prison authorities to withhold money meant for prisoners because they assume the Committees will deal with everything. If this succeeds, the authority might use the money for his/her personal business.

These shortcomings notwithstanding, the Committee system seems to be an interesting system to experiment in other African prisons. Caution must however be taken not to overburden the prisoners and allow the State to relinquish its responsibility. It may be difficult to introduce the Committee system within the South African prison system with an

entrenched gang network. However, it may be useful to experiment it in those prisons where gang activities are absent or less severe.

## **K. Conclusions and Recommendations**

The Republic of South Africa commemorated ten years of freedom and democracy in April 2004, after decades of struggle to combat the injustices of apartheid. The apartheid policy was manifested in all aspects of South African life – including the criminal justice system in general and prisons in particular. Prisons were regarded as places of punishment, to put away political opponents either temporarily or permanently. Rehabilitation was never part of the prison vocabulary as there was no prospect for reintegrating the “offenders” into the society.

After 1994, a new dispensation that recognised an open and democratic society characterised by respect for human rights, non racialism, non sexism, the rule of law and human dignity was ushered in. These values have been extended to every aspect of South African life and to every individual in South Africa, including prisons and prisoners. The emerging policy views prisons as places of corrections and rehabilitation for eventual reintegration into society. It considers the right to liberty as a fundamental right and has provided appropriate safeguards to any encroachment. Thus, the rights of arrested, detained or accused persons have been firmly enshrined in Article 35 of the 1996 Constitution.

The transformation from apartheid to an open and democratic society has not been easy. The expectation of the population has been high and although the government has been credited for doing well to bridge the social gap, poverty and unemployment remain a major challenge. The national budget has many competing social demands, not least amongst them, improving the conditions of detention of persons deprived of their liberty. Poverty, unemployment, illiteracy, diseases and other social vices remain relatively high amongst the formerly disadvantaged communities, especially the black community. These social problems notwithstanding, the Government has shown commitment to improve the conditions of persons under its custody.

A humane and compassionate prison system is not only consistent with the Constitution of the country but will also ensure the preservation of human dignity enshrined therein and in conformity with South Africa’s international human rights obligation. The Correctional Services Act of 1998, when fully implemented will go a long way towards affirming the principles set out in both the South African Constitution and international human rights instruments. More significantly, the Act incorporates principles espoused by the all-important *Standard Minimum Rules for the Treatment of Prisoners*<sup>21</sup> and Kampala Declaration on Prison Conditions in Africa.<sup>22</sup> There are three essential principles covered by the Standard Minimum Rules: all prisoners shall be treated with respect due to their inherent dignity and value as human beings; there shall be no discrimination on the grounds of, *inter alia*, race,

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<sup>21</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by ECOSOC, 13 May 1977.

<sup>22</sup> Vide PRISON CONDITIONS IN AFRICA; Report of a Pan African Seminar, Kampala, Uganda, 19-21 September 1996; Paris: Penal Reform International, 1997.

sex, religion, ethnic origin; and the prison system is afflictive by the very fact of the removal of one's liberty and should not, therefore, result in any further derogation of one's rights except those essential for the achievement of a lawful purpose.

The Kampala Declaration on its part makes the following affirmations of principle: that the human rights of prisoners should be safeguarded at all times ...; that prisoners should retain all rights which are not expressly taken away by the fact of their detention; and that prisoners should have living conditions which are compatible with human dignity.

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

### **Recommendations**

In making the recommendations that follow, the Special Rapporteur is mindful of the fact that resources, both human and financial are limited and that the various demands on the fiscals need to be prioritised and balanced. These recommendations are made against the backdrop of the delicate balance the Government has to make between respect for human rights and the provision of social services in a country that has endured social injustices for decades. At the same time and importantly the rights enshrined in the Constitution of the Republic of South Africa and other regional and international instruments to which South Africa adheres must become real and meaningful for all South Africans. In the context of prisoners it must include "the right to conditions of detention that are consistent with human dignity..."

The recommendations have been broken into different sections indicating the role each sector of society can and should play in enhancing the protection of the rights of persons deprived of their liberty. However, the African Commission urges cooperation between the different sectors of society to ensure proper implementation of the recommendations.

#### **I. To Government**

There is a general expression of good political will in government, at both national and local level, to improve the conditions of persons deprived of their liberty. This is manifested in the development of positive policies and engagement with civil society organisations promoting the welfare of prisoners. The African Commission would like to encourage government to continue these efforts and in particular, to:

- a) Increase the budget allocation to prisons to ensure that prison officials are properly remunerated and motivated to work. The kind of services they provide require their complete mental faculty, otherwise they become demoralised and ineffective. Staff is of paramount importance in accomplishing the goals of any correctional agency. They will make their optimum contribution if supported by effective personnel development opportunities and positive working conditions. Staff should have the opportunity to participate in the formulation of policies related to both programs and administration. Staff organizations should be involved in furthering this process and correctional agencies must be accountable. They should be subject to regular, independent and public assessment. Allocations should also be made to improve conditions in those prisons like Stanger and employ more personnel in the social and health sectors in prisons. Provisions should also be made for the acquisition of more equipment for skills development and recreational facilities.
- b) Ensure that prisons are regularly inspected by government officials such as the Commissioner and Deputy Commissioners of Prison and at quarterly intervals by authorities from the Department, namely, Director General, Deputy Minister and the Minister. The Heads of Prison, the Deputy Commissioners and even the Commissioner may be immune to the complaints they receive almost everyday and become accustomed to them such that they refer to them as the “usual complaints”. To a lesser extent, the IPVs can suffer the same fate. Prisoners may be reluctant to speak to IPVs and even the Deputy Commissioners because they are under the impression that they will not or cannot do anything. But a visit from a high ranking official such as the Director General or the Deputy Minister or Minister will afford the prisoners an opportunity to speak frankly.
- c) Expand the training of prison staff to include top prison officials – from the Commissioner to the warders. This training should include basic human rights, international norms on the treatment of offenders etc.
- d) Explore the possibility of encouraging small claims courts or courts for petty crimes. Alternative sentences to incarceration such as community service should also be explored and encouraged. This will go a long way to decongest the prisons and not disrupt the social life of those who commit minor offences. The building of new prisons might reduce the problem of overcrowding. However, without a simultaneous process of dealing with the causes of crime, the sentencing regime and a favourable community support, overcrowding in prisons would be hard to contain.
- e) Take steps to ensure that expectant and nursing mothers, including elderly people of more than seventy years should not be sent to prison. In the case of the latter category, they can be put under community corrections, while expectant and nursing mothers should be restrained from leaving the country or province for a certain period of time until the child reaches a certain age that the mother can be separated from the child.

- f) Encourage periodic inter-regional staff exchanges and organise workshops to train prison officials on latest prison policies and management techniques. If this workshop is organised at national level, efforts should be made to replicate it at regional level;
- g) Organise a national conference involving all stake holders in the criminal justice system to discuss ways of improving the criminal justice system – the police, the prosecutors, the prison officials and the judiciary. NGOs and other members of civil society working in this sector should also be involved in the conference;
- h) Come up with a firm and concise strategy on how to deal with the problems of gangs in prison. Without such a policy, it will be difficult to combat this menace. Gangsterism is the cause of many problems in South African prisons including corruption, violence, sodomy, increase in HIV/AIDS, and jeopardises the educational and rehabilitation programme. The Special Rapporteur reiterates the recommendation made by the South African Human Rights Commission in 1998 that the prison authorities must develop a coherent strategy of dealing with gangs, other than the temporary isolation of their leaders;
- i) Immediately attend to the situation in Stanger Prison. The current situation jeopardizes the rehabilitation process and is a recipe for recidivism and violence. It provides the idle minds of the young offenders an opportunity to plan more sophisticated acts when they are released. It runs contrary to the Minister’s campaign of making prisons “universities of learning and not universities of crime”;
- j) Transfer or exchange prison authorities periodically. They should not stay for too long (preferably not more than five years) in one prison. They should be transferred to other prisons. Dealing with the same prisoners year-in-year-out makes them immune to their complaints and might affect their output and approach to treating prisoners. It might also lead to personal relationships developing between the authority and the prisoner that can result to corrupt practices.
- k) Provide arrested illegal Immigrants or undocumented migrants the opportunity to challenge their arrest and/or detentions in a court of law. They should be charged and if found guilty of breaking South African Immigration laws, be convicted and sentenced. In view of the serious problem of overcrowding, the court can issue an order that such convicted illegal immigrants be held at a designated place such as the Lindela Repatriation Centre and be repatriated within a certain period of time. The Court can also give the illegal immigrants a serious warning and make it clear that if they return to the country without utilizing proper immigration procedures, they will be rearrested and taken directly to prison. By depriving them of the opportunity to appear before the courts, the authorities are

depriving them of their right to be presumed innocent for whatever offence until proven guilty by a court of competent jurisdiction. The arbitrariness of the arrests and detentions, which in several occasions has led to the arrest and detention of even South Africans themselves, provides sufficient reason for a court determination on the matter;

- l) Report on the implementation of these recommendations during the submission of its next report to the African Commission.

## **II. To civil society**

- a) Members of civil society, especially NGOs should constantly visit prisons and other places of detention to ensure that the government is meeting its domestic as well as international human rights obligations towards persons deprived of their liberty;
- b) NGOs should encourage and organise retreats and workshops for prison officials and inform them of best practices in other penal systems in Africa and around the world;
- c) NGOs should also support the efforts of government by assisting in promoting the welfare of prisoners.

## **III. To prison authorities**

- a) Prison officials should be more involved in monitoring the welfare of prisoners and desist from sponsoring one gang against the other. Heads of prison should develop strategies to combat corruption by prison officials. To this end, complaints boxes should be posted outside each cell where prisoners can submit confidential complaints. The key to these boxes shall be with the Heads of the Institutions or someone duly designated by them. All complaints must be treated in confidence;
- b) Complaints of abuse should be investigated and dealt with expeditiously so as not to encourage impunity;
- c) Prison authorities, the police and the judiciary should meet regularly to discuss ways of further improving the criminal justice system;
- d) Human rights training should be extended to all levels of administration. Senior officials should be encouraged to attend human rights training courses relating to prison management and the treatment of prisoners. It was realized that when senior prison officials are invited to such trainings, they send junior members and the latter are usually not part of the policy making machinery of the department; and

- e) Female prisoners should also be engaged in and encouraged to take part in other vocational activities such as motor mechanic, woodwork in order to expand their choices and possibility of reintegration into society without dependent on others after their release.

**IV. To donors and the international community**

- a) The donor and international community should continue their support to the prison sector in South Africa. Emphasis should be placed on staff training, curriculum development and the establishment of programmes that would emphasise prisoners' rehabilitation and reintegration into society;
- b) The international community should also encourage exchange programmes or study tours for prison officials;
- c) The international community should support government's efforts in the field of research in areas such as alternative forms of punishment, non-custodial sentences and community service programmes.

**V) To the African Union**

- a) The Commission of the African Union should collaborate with members of the Southern African Development Community to explore the possibility of prisoner exchange. To this end, the African Union should organise in collaboration with SADC a meeting of SADC Ministers of Corrections.
- b) The African Union should make prisons and conditions of detention an important indicator in the peer review process of the NEPAD.

## **L. Annexures**

- Annex I*                      *Menu for detainees of the Durban Central Police Station*
- Annex II*                     *Menu of the Lindela Repatriation Centre*
- Annex III*                  *Structure of the Judicial Inspectorate of Prison*
- Annex IV*                  *The number of detainees per region who are detained because they could not afford bail fees.*
- Annex V*                    *Structure of the Prisoners' Committee in the Addis Ababa Prison*

**Annex I – Menu for detainees of the Durban Central Police Station**

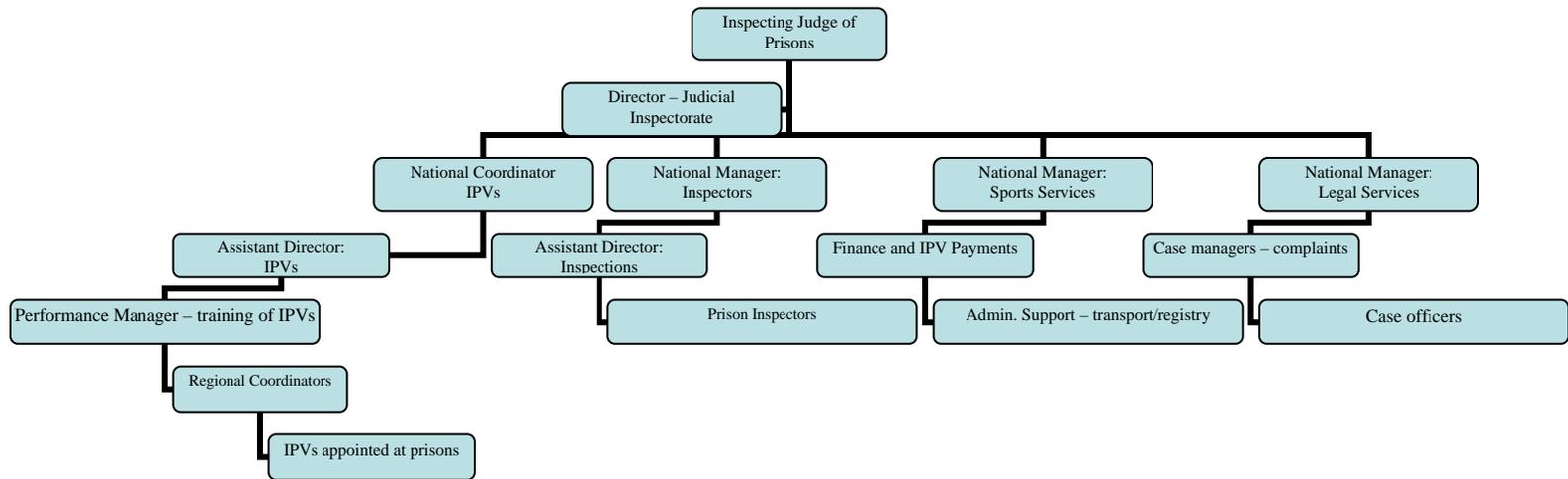
| Monday   | Tuesday  | Wednesday   | Thursday   | Friday   | Saturday   | Sunday  |
|--|--|---|--|--|--|---|
| <b>Breakfast</b>   |  |   |  |  |  |   |
| Mealie meal, porridge, milk/sugar, bread/margarine, coffee | Mealie meal, porridge, milk/sugar, bread/margarine, coffee | Mealie meal, porridge, milk/sugar, bread/margarine, jam, coffee | Mealie meal, porridge, milk/sugar, bread/margarine, jam, coffee |
| <b>Lunch</b>   |  |   |  |  |  |   |
| Thick Beef soup & Bread/Marg Juice                         | Thick rich soup & Bread/Marg Juice                         | Thick chick soup & Bread/Marg Juice                             | Thick Beef soup & Bread/Marg Juice                         | Thick rich soup & Bread/Marg Juice                         | Thick oxtail soup & Bread/Marg Juice                       | Thick chick soup & Bread/Marg Juice                             |
| <b>Supper</b>  |  |   |  |  |  |   |
| Savoury mince, phutu, coffee, milk/sugar                   | Vegetable curry, rice, juice                               | Mince curry with vegetable, rice, coffee, milk/sugar            | Beef sausage, casserole with vegetables, phutu, juice      | Vegetable curry, phutu, coffee, milk/sugar                 | Curry beans with vegetables, phutu, juice                  | Chicken curry with vegetables, rice, coffee, milk/sugar         |

## Annex II - Menu of the Lindela Repatriation Centre

| <b>BREAKFAST</b>       |                        |                        |                        |                        |                        |                        |
|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| <b>Monday</b>          | <b>Tuesday</b>         | <b>Wednesday</b>       | <b>Thursday</b>        | <b>Friday</b>          | <b>Saturday</b>        | <b>Sunday</b>          |
| Mabela 80gms           | Brown Lambalazi 80gms  | Mabela 80gms           | Brown Lambalazi 80gms  | Mabela 80gms           | Brown Lambalazi 80gms  | Mabela 80gms           |
| Brown Bread – 6 slices |
| Jam 24 gms             | Yellow spread 24 gms   | Peanut butter 24gms    | Yellow spread 24 gms   | Jam 24 gms             | Peanut butter 24 gms   | Yellow spread 24 gms   |
| Breakfast stew 20 gms  |
| Tea 300ml              | Coffee 300ml           | Tea 300ml              | Coffee 300ml           | Tea 300ml              | Coffee 300ml           | Tea 300ml              |
| <b>LUNCH</b>           |                        |                        |                        |                        |                        |                        |
| Wors 0.150             | Mince 0.150            | Chicken MCP 0.225      | Steak & Kidney 0.150   | Wors 0.150             | Giblets/Liver 0.200    | Beef stew 0.200        |
| Pap 0.250              |
| Mash Potatoes 0.200    | Cabbage 0.200          | Pumpkin 0.100          | Cabbage/Potato 0.200   | Mixed Veg's 0.200      | Cabbage/potato 0.200   | Cabbage/Potato 0.200   |
| Samp 0.100             | Samp 0.100             | Samp 0.100             | Samp and beans 0.100   | Samp 0.100             | Samp 0.100             | Samp 0.100             |
| Juice 300ml            | Mageu 300ml            | Juice 300ml            | Mageu 300ml            | Juice 300ml            | Mageu 300ml            | Juice 300ml            |
| Soup 25 ml             |                        |                        |                        |                        | Soup 25ml              | Dessert 60gms          |
|                        | Fruit 1 each           |                        |                        | Fruit 1 each           |                        |                        |
| <b>SUPPER</b>          |                        |                        |                        |                        |                        |                        |
| Brown                  | Brown                  | Brown Bread –          | Brown                  | Brown                  | Brown Bread – 6        | Brown Bread – 6 slices |

|                  |                      |                     |                  |                  |                      |                  |
|------------------|----------------------|---------------------|------------------|------------------|----------------------|------------------|
| Bread – 6 slices | Bread – 6 slices     | 6 slices            | Bread – 6 slices | Bread – 6 slices | slices               |                  |
| Jam 24 gms       | Yellow spread 24 gms | Peanut butter 24gms | Margarine 24 gms | Jam 24 gms       | Peanut butter 24 gms | Margarine 24 gms |
|                  |                      |                     |                  |                  |                      |                  |

### Annex III - Structure of the Judicial Inspectorate of Prison

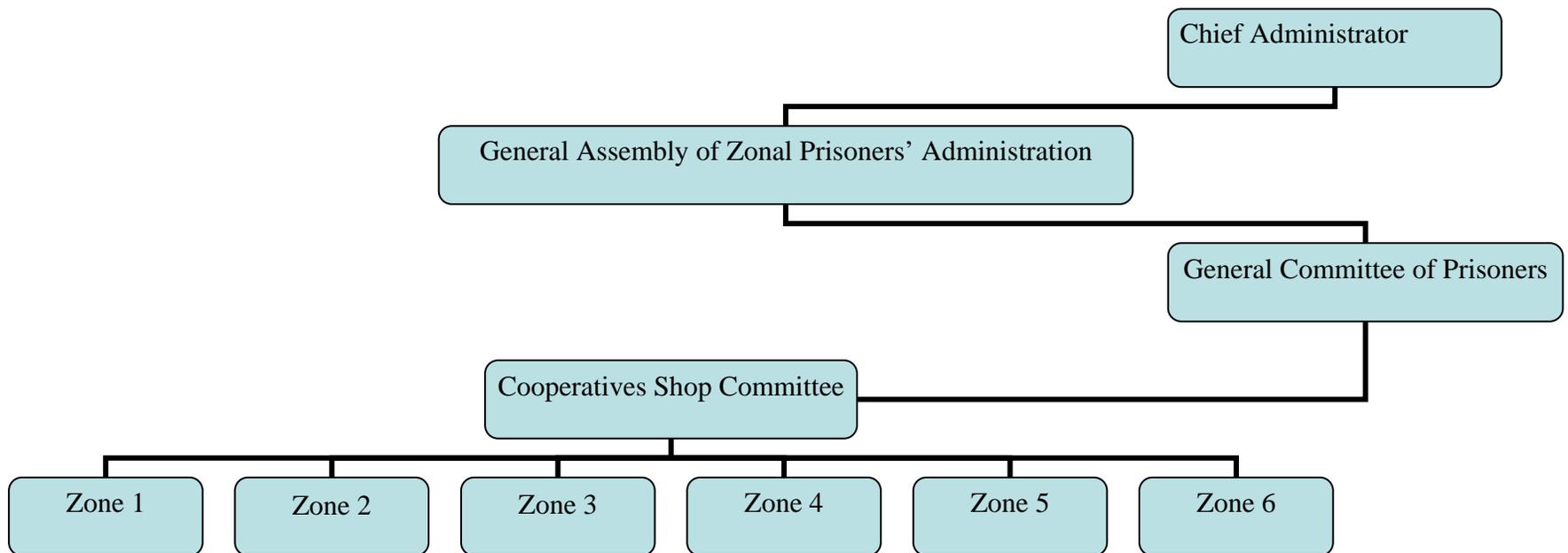


**Annex IV - The number of detainees per region who are detained because they could not afford bail fees.**

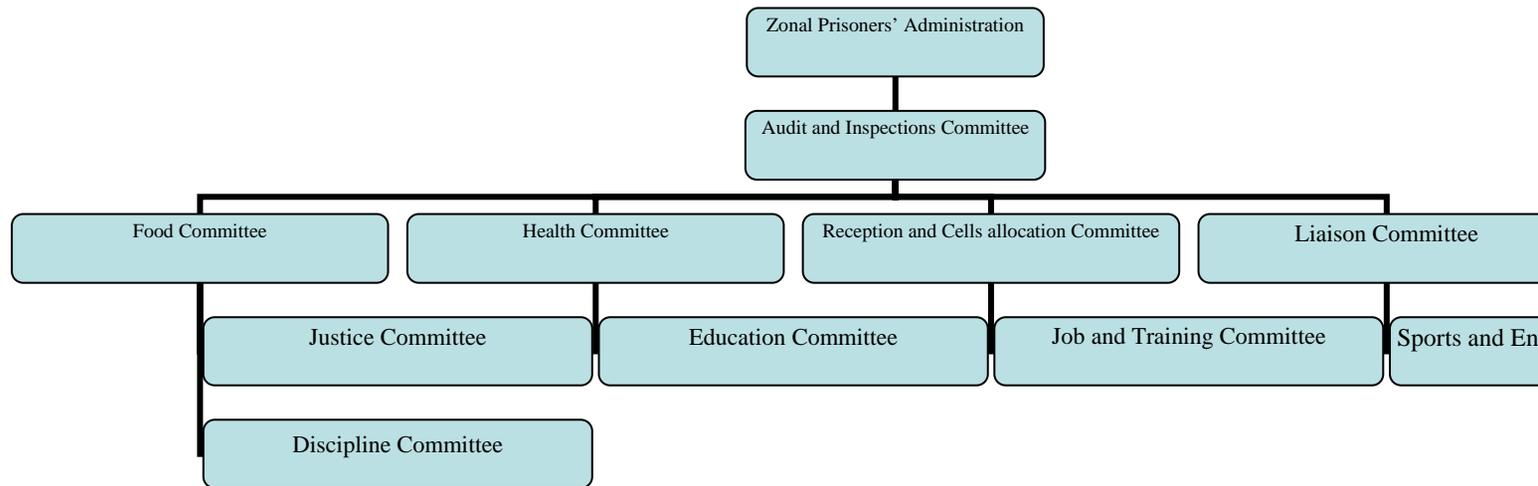
| <b>Amount in ZAR</b>            |          |           |            |            |            |              |            |            |            |           |              |              |              |            |              |  |
|---------------------------------|----------|-----------|------------|------------|------------|--------------|------------|------------|------------|-----------|--------------|--------------|--------------|------------|--------------|--|
| <b>Region</b>                   |          |           |            |            |            |              |            |            |            |           |              |              |              |            |              |  |
|                                 | 0-50     | 51-100    | 101-200    | 201-300    | 301-400    | 401-500      | 501-600    | 601-700    | 701-800    | 801-900   | 901-1,000    | 1,001-2,000  | 2,001-9,999  | 10,000+    | TOTAL        |  |
| Eastern Cape                    | 1        | 22        | 287        | 425        | 162        | 747          | 86         | 32         | 123        | 1         | 315          | 104          | 33           | -          | 2338         |  |
| Gauteng                         |          |           | 6          | 32         | 16         | 517          | 26         | 7          | 111        | 2         | 995          | 1,081        | 548          | 40         | 3381         |  |
| Kwa Zulu Natal                  |          | 11        | 56         | 122        | 52         | 522          | 68         | 36         | 232        | -         | 815          | 694          | 235          | 27         | 2870         |  |
| Limpopo, Mpumalanga, North West |          | 1         | 11         | 36         | 12         | 283          | 35         | 7          | 59         | 4         | 432          | 430          | 207          | 19         | 1536         |  |
| Northern Cape, Free State       | 5        | 4         | 60         | 110        | 20         | 396          | 20         | 19         | 61         | 2         | 400          | 316          | 81           | 10         | 1504         |  |
| Western Cape                    |          | 13        | 84         | 262        | 52         | 501          | 46         | 29         | 108        | 2         | 340          | 111          | 41           | 5          | 1594         |  |
| <b>Total</b>                    | <b>6</b> | <b>51</b> | <b>504</b> | <b>987</b> | <b>314</b> | <b>2,966</b> | <b>281</b> | <b>130</b> | <b>694</b> | <b>11</b> | <b>3,297</b> | <b>2,736</b> | <b>1,145</b> | <b>101</b> | <b>13223</b> |  |

**Annex V – Structure of the Prisoners’ Committee in the Addis Ababa Prison**

**i) Structure at the Prison or Main Level**



ii) Structure at the zonal level



iii)

iii) Structure at cell level

