The role of the Inspecting Judge in dealing with human rights in prisons

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1 BACKGROUND

On 27 April 1994 South Africa's first free and universal election was held. An interim Bill of Rights was approved and on Human Rights Day, 21 March 1997, our final Bill of Rights came into operation, safeguarding the fundamental rights of all people in this country. One of those rights was the right to have one's inherent dignity respected and protected. This is expressly extended to prisoners who are entitled "to conditions of detention that are consistent with human dignity, including at least exercise and the provision of adequate accommodation, nutrition, reading material and medical treatment".[1]

With this, the essence of imprisonment changed to the loss of liberty rather than the imposition of a punitive regime in prison. If conditions are inhumane and our prisoners are not treated and respected as human beings, they will be released back into society feeling alienated and aggrieved, which would defeat the purpose of the criminal justice system.

The adoption of a Bill of Rights necessitated the revision of the laws governing the running of prisons and the treatment of prisoners. A group of specialists wrote the new Correctional Services Act[2] which provides for the introduction of radical and far-reaching changes in our correctional system and seeks to give effect to the Bill of Rights, particularly the provisions affecting prisoners.

The Act also provides for the establishment of an independent body called the Judicial Inspectorate "to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prison and on conditions in prison".

The concept of the Inspectorate is based on a similar body operating in the United Kingdom where a person, usually a retired public servant who is not a member of the judiciary, is appointed Her Majesty's Inspector of Prisons. Although there are similarities between the operation of the two bodies, the Judicial Inspectorate for South Africa is unique, something which necessitates considerable pioneering work.

1 Constitution of the Republic of South Africa Act 108 of 1996 s 35(2)(e).
2 Act 111 of 1998.

The Inspectorate stands under the control of an Inspecting Judge, to which position I was appointed by the President with effect from 1 April 2000. The Act also provides for the Inspecting Judge, in consultation with the Commissioner of Correctional Services, to determine the staff complement of the Inspectorate. Within this staff complement, the Inspecting Judge may appoint inspectors and administrative staff.

The main function of the inspectors is to assist the Inspecting Judge with the inspection of prisons, and to report to him or her on all matters relating to the treatment of prisoners and conditions in the prisons. Inspectors are furthermore required to carry out such functions as may be assigned to them, individually or as members of a team, by the Inspecting Judge.

The Act also provides for the appointment by the Inspecting Judge of independent prison visitors[3] at every prison in South Africa. The primary function of IPVs, as set out in section 93 of the Act, is to deal with the complaints of prisoners. All complaints from prisoners, save in exceptional circumstances, have to be submitted to the Judicial Inspectorate via IPVs. The IPV at each prison forms a vital link between the prisoners, the head of the prison and the Judicial Inspectorate.

As a prerequisite to the appointment of IPVs, the Inspecting Judge must "publicly call for nominations" and "consult with community organisations". What this means is not defined in the Act. The Inspectorate has construed the first requirement to mean that nominations have to be called for by means of appropriate notices published in community newspapers circulating in the areas where the relevant prisons are situated. We have also endeavoured to identify and consult with organisations actively interested in the welfare of prisoners in those areas such as Nicro.

Although the powers, functions and duties of IPVs are prescribed in the Act in general terms, the Inspecting Judge is required to make rules concerning the appointment and work of these officials. This includes matters such as the selection and appointment procedures for IPVs, their conditions of service, remuneration and allowances as well as arrangements for their security when visiting prisons.

2 STAFFING AND TRAINING

Although similar inspectorates in other countries are mainly staffed by experienced and trained correctional officials, it has become apparent that the success of the Judicial Inspectorate will, in very large measure, depend upon the extent to which it is perceived by prisoners and correctional officials to be an independent and impartial authority. For this reason, the staff of the Inspectorate has been appointed, with few exceptions, from outside the ranks of correctional officials. This has inevitably resulted in the appointment of people who have little or no knowledge about how to inspect and report on conditions in prisons and the treatment of prisoners.

3 IPVs.

Providing appointees with intensive training on the Correctional Services Act, regulations and orders, as well as the implications of the Bill of Rights, has been a very time-consuming but fruitful exercise.

Our inspectors have conducted inspections at various prisons and have also performed investigations into a wide spectrum of complaints including deaths in prison, alleged assaults of prisoners and many more. They also provide the Inspectorate with invaluable assistance in doing awareness work among prisoners and correctional officials, other public officials and the communities that we serve.

As the IPV project was entirely novel and there were no existing rules, criteria or guidelines, it was decided to embark on a pilot project which entailed appointing 15 IPVs for three months at various Western Cape prisons. The main aim of this pilot was to enable the Inspectorate to draft a uniform system and rules of procedure for, amongst other things, the appointment of IPVs, their payments and budgetary needs, monitoring and reporting systems, as well as the establishment of visitors' committees. This project ended on 31 October 1999. However, as a result of the positive feedback from prisoners, correctional officials and members of the public, the services of most IPVs were extended. A final report on the pilot project was compiled in consultation with various role-players. It contained recommendations for what needed to be done to implement the provisions of the Act relating to IPVs nationally.

Since then, the Office of the Inspecting Judge has appointed, trained and deployed IPVs to all prisons in Gauteng. We have also already embarked on the process of publicly calling for nominations and consulting with community organisations in the Free State and the remainder of the Western Cape. IPVs will be appointed to all prisons in these provinces by September 2000. It is envisaged that IPVs will be appointed at each prison throughout South Africa by the middle of 2001, provided that sufficient funds are available.

Most IPVs have little knowledge and experience of the laws, rules and regulations governing the treatment of prisoners. Accordingly, the Office has published an Organizational Procedures and Administrative Rules Manual as a resource document and training manual for IPVs. We have also, in partnership with the office of the United Nations High Commission for Human Rights and with assistance from the Centre for Study of Violence and Reconciliation, Lawyers for Human Rights and the Human Rights Commission, developed a comprehensive training framework for IPVs.

IPVs are adding value to the development of a humane correctional system by dealing with the day-to-day complaints of prisoners in a fair and just manner, and they will continue to do so. By their positive and fair contributions they are, firstly, encouraging heads of prisons to resume their statutory responsibility to deal with all complaints from prisoners in a humane manner and, secondly, providing prisoners with the confidence to utilise official complaints procedures as prescribed by legislation. We believe that this will contribute to the reconciliation of the relationship between correctional officials and prisoners. As an example of this, IPVs reported that at many prisons in Gauteng there were no official

complaints procedures in place when they assumed duty. These procedures are now in place and are being monitored by the IPVs concerned.

3 DEALING WITH PROBLEMS IN PRISONS

To date, the Office of the Inspecting Judge has, with the assistance of IPVs, dealt with a wide spectrum of approximately 8 500 complaints covering such things as alleged assaults, hunger strikes, poor treatment and poor-quality food. We have received exceptionally good co-operation from the Department of Correctional Services, which has enabled us to resolve most complaints. However, certain categories of complaints such as alleged assaults are very difficult to resolve. Because many of these complaints emanate from incidents that happened some years back, they are difficult to investigate. We have decided to concentrate on new complaints of assault and to prevent assaults from taking place, rather than using our limited resources to investigate old complaints.

3.1 HIV/AIDS

The Office is concerned about the unprecedented growth in the number of deaths in prisons which have over the past five years escalated by 396 per cent. These deaths are, based on the postmortem reports, attributed to the effects of HIV. The Inspectorate expects the number of deaths in prisons due to HIV to rise to 68 000 over the next five years and to 44 755 over the next ten years if no cure is found for HIV and AIDS.

3.2 Overcrowding

The Office has determined that the main factor contributing to prisoner complaints about poor conditions is extreme overcrowding. Overcrowded conditions deprive prisoners of their constitutional right to humane detention. The 236 prisons in South Africa were built to accommodate a total of 100 668 prisoners but on 31 May 2000 the prison population was 171 880. In other words, approximately 70 000 people were kept in prisons without the necessary toilets, showers, beds and other infrastructure being available to them. This is worsened by the uneven distribution of prisoners made necessary by the separation of different categories of prisoners and men and women. Some prisons are just under 100 per cent occupied, but many are over 200 per cent full. One prison holds almost four times as many prisoners as it was built for – it has an astonishing 393 per cent occupancy rate. The burden of overcrowding affects prisoners and members of staff in the vast majority of prisons in our country. Prisoners cannot enjoy the rights they are entitled to, and correctional services staff are overworked and stressed.

Overcrowding results in ghastly conditions in some prisons, particularly affecting unsentenced prisoners. Some examples are: one toilet being shared by more than 60 prisoners; blocked and overflowing sewage pipes; a shortage of beds which results in prisoners sleeping two to a bed while others sleep on concrete floors, sometimes with a blanket only; inadequate

hot water; no facilities for washing clothes; broken windows and lights; and insufficient medical treatment for the contagious diseases that are rife in prison. The list of infringements of the basic human rights of prisoners caused by overcrowding is endless. Considering the enormous cost involved in the development and building of new prisons (an estimated R200 000 per prisoner), the answer is not to build more prisons.

3.3 Unsentenced prisoners

Overcrowding has been exacerbated by the unprecedented growth in the number of awaiting trial prisoners. Between January 1995 and March 2000 the number of unsentenced prisoners increased by a massive 155 per cent (from 24 265 to 62 952). Compare this with a 19 per cent increase in sentenced prisoners over the same period (from 92 581 to 108 510). Unsentenced prisoners are frequently deprived of their constitutional right to a speedy trial. Over the last four years, the number of unsentenced prisoners held for longer than three months has increased from 3 957 to 26 771, a growth of 577 per cent. Almost half of all unsentenced prisoners have been held in prison for longer than three months. A significant number of these are juveniles – 14 759 as at 31 May 2000.

The number of unsentenced prisoners in relation to sentenced prisoners currently stands at 36 per cent (and it was over 40 per cent a few months back). This is totally unacceptable. Going by British standards, the proportion of unsentenced prisoners should be less than 20 per cent. In other words, there should be fewer than 22 000 unsentenced prisoners in South African prisons at any one time. If this number can be reduced to the figures of five years ago, there would be almost 40 000 fewer people in prison. The cost to the state of keeping people in prison is enormous – R88 per day per prisoner. Approximately R5.4 million of taxpayers' money is spent every day on housing awaiting trial prisoners.

The inflow of unsentenced people to prisons averaged 26 224 per month in the period 1 January to 31 May 2000. This amounts to approximately 315 000 people per year. One way of bringing the number of unsentenced prisoners down to the acceptable total of approximately 20 000 is to reduce the inflow of people from the courts. A number of strategies could be considered to achieve this goal:

- Greater use could be made of pre-trial diversion, especially where juveniles are involved.
- Police could make greater use of their power to release on bail persons arrested for minor offences.
- Investigating officers could provide more information about accused persons to prosecutors. This could encourage them to ask magistrates to consider alternatives to incarceration pending trial (diversion; release on warning with or without conditions; bail in an affordable amount with or without conditions; placement under supervision of correctional officials; electronic monitoring; and placement of accused persons under 18 years in the care of parents or guardians or holding them in places of safety if at all possible).

- Magistrates could be reminded of the options available to them other than incarceration, including electronic monitoring when it becomes available this year.

The second approach to reducing the number of unsentenced prisoners is to assist those who should not be there in the first place. Some ways of doing this are:

- Encouraging the ministerial release of awaiting trial prisoners (that is, excluding those convicted but not yet sentenced) who were granted bail but could not afford to pay. The target group could be those with bail of R5 000 and under. Poverty is the only reason why these people are in prison pending their trials.
- Asking prosecutors to present the cases of accused people in prison before cases involving accused who are out on bail.
- Asking prosecutors to consider withdrawing trivial cases, weak cases and cases where the accused has been waiting for trial for an inordinate period of time.
- Asking prosecutors and magistrates to consider alternatives to further imprisonment when matters are remanded.
- Considering all methods of expediting the trials of unsentenced prisoners.

4 CONCLUSION

The overcrowding in many of our prisons warrants an immediate and combined effort of state departments and NGOs like welfare societies and associations of advocates and attorneys to reduce overcrowding and to restore the human rights of prisoners as enshrined in our Constitution and the Correctional Services Act. Although excellent projects have been undertaken by the South African Police Service, the Department of Justice, the Department of Correctional Services as well as NGOs and bodies such as the Integrated Justice System, Nicro and Business Against Crime, the total number of prisoners continues to rise (from 166 423 in January 2000 to 171 880 in May 2000). Steps taken to reduce prison overcrowding will certainly bring numbers down over time, but will not alleviate the present crisis situation. The positive effect of these efforts will only be felt in the long term.

Conditions in prison, particularly for unsentenced prisoners, are ghastly and cannot wait for long-term solutions. Infringements of the basic human rights of prisoners must be addressed without further delay. The Judicial Inspectorate is dealing with this matter as its foremost priority. We continue to hold discussions with all roleplayers, including the responsible ministers, in our endeavours to help create conditions which ensure the maintenance and protection of the human dignity of prisoners.