



CONSTITUTIONAL COURT OF SOUTH AFRICA

REPORT: POLLSMOOR CORRECTIONAL CENTRE – REMAND CENTRE AND WOMEN’S CENTRE

Introduction

[1] On Thursday 23 April 2015 from 9h00 to 14h30, Justice Cameron, accompanied by law research clerks Chandni Gopal, Elizabeth Maushart, Tess Peacock and Yana van Leeve visited Pollsmoor Correctional Centre.

[2] The visit took place in terms of the Correctional Services Act.¹ This empowers a judge anywhere in South Africa, and a magistrate within his or her area of jurisdiction, to access all areas of a correctional centre, as well as the centre’s documentary records.² A judge or magistrate may interview any prisoner while visiting the facility.³

¹ Act 111 of 1998, section 99.

² Section 99(2) of the Correctional Services Act, 1998 (Correctional Services Act).

³ Id.

[3] In 2009, Constitutional Court judges instituted a prison visits and monitoring programme. The programme became operational in 2010. The purpose is to visit and inspect correctional centres, and then compile a report recording observations and findings about the correctional centre based on the inspection. The report is presented to the Minister of Justice and Correctional Services, the National Commissioner of Correctional Services, the National Council for Correctional Services, and the Judicial Inspectorate for Correctional Services.⁴ The reports are made publically available on the Constitutional Court's website.⁵

[4] The Constitution provides that detainees and sentenced prisoners have the right to “conditions of detention that are consistent with human dignity”.⁶ This provision requires that, at a minimum, prisoners and detainees should have access to—

- Exercise;
- Adequate accommodation;
- Nutrition;
- Reading material; and
- Medical treatment.

⁴ Id; section 3(2)(a) of Correctional Services Regulations 2004 as amended on 25 April 2012.

⁵ <http://www.constitutionalcourt.org.za/site/PrisonVisits/PrisonVisits.htm#prisonvisitsreports>.

⁶ Section 35(2)(e) of the Bill of Rights.

[5] The Constitution also seeks to protect prisoners and detainees from cruel, inhuman or degrading treatment or punishment.⁷

[6] In addition, the Correctional Services Act stipulates that correctional centres must have, among other things:

- (a) Sufficient space to enable inmates to *move freely* and *sleep comfortably* within the confines of their cells;⁸
- (b) Accommodation that is *properly ventilated*;⁹
- (c) Cells with *sufficient natural and artificial lighting* that allows inmates to read and write;¹⁰
- (d) Sufficient and accessible ablution facilities available to all inmates at all times, including access to *hot* and cold water for washing purposes;¹¹
- (e) *A separate bed and bedding* for every inmate which provides *adequate warmth for the climatic conditions* and which complies with *hygienic requirements*.¹²

⁷ Section 12(1)(e) of the Bill of Rights.

⁸ Section 7(1) of the Correctional Services Act; section 3(2)(b) of Correctional Services Regulations 2004 as amended on 25 April 2012.

⁹ Id.

¹⁰ Section 3(2)(c) of Correctional Services Regulations 2004 as amended on 25 April 2012.

¹¹ Section 3(2)(d) of Correctional Services Regulations 2004 as amended on 25 April 2012.

¹² Section 3(2)(e) of Correctional Services Regulations 2004 as amended on 25 April 2012.

[7] The statute stipulates that every prisoner must have the opportunity to exercise for at least one hour per day in order to remain healthy.¹³ The Act requires that exercise take place “in the open air” unless the weather permits otherwise.

[8] Regretfully, my law clerks and I found conditions very far from the standard the Constitution and the statute require. A central aim of the visit was to provide constructive recommendations on measures that can be taken to ensure that the treatment of Pollsmoor prisoners and detainees aligns with these requirements.

Introduction to Pollsmoor Correctional Centre

[9] Pollsmoor Correctional Centre (Pollsmoor) is located in the affluent suburb of Tokai, Cape Town. It has five demarcated facilities: a remand detention facility for awaiting trial prisoners; Medium A, Medium B, and Medium C which houses sentenced prisoners; and a female facility, and two community corrections offices. There are over 8 000 inmates.

[10] Pollsmoor remand detention facility (the awaiting-trial centre) was established in March 2012.¹⁴ The remand detention centre is the largest of the five facilities comprising Pollsmoor.

¹³ Section 11 of the Correctional Services Act.

¹⁴ In accordance with section 5 of the Correctional Services Act. The notice of its establishment was published by the then-Minister for Correctional Services in Notice 148 of 2012, Government Gazette 35071, on 27 February 2012.

[11] It is extremely overcrowded at over 300% capacity. Overcrowding has been a consistent problem over the last several years.

[12] The Pollsmoor female facility currently houses 787 inmates but has capacity for only half this number.

[13] There is no question that each of the five centres is overcrowded. But the remand detention centre's overcrowding problem is extreme . This was a priority during the visit.

[14] My law clerks and I were welcomed by Pollsmoor staff, as well as by representatives of the provincial Department of Justice and Correctional Services. They afforded the team a general overview of the centre's daily operations, as well as an explanation of general challenges confronting the facility. I record my appreciation to them for welcoming me and my clerks and taking time to facilitate the visit, in the midst of what are obviously arduous duties, performed in difficult circumstances. I also record my respect and appreciation for the personnel's professionalism and dedication, which were plainly in evidence during the visit.

[15] The visiting party was considerable. At least 15 correctional personnel accompanied the team at all times, along with a group from the Judicial Inspectorate for Correctional Services (JICS). This included JICS's acting CEO, Mr Michael

Masondo, Ms Tania Stuurman (who provided helpful guidance throughout the visit), Mr Lennard de Sousa, and Mr Troy Titus.

[16] The Regional Commissioner, Mr Delekile J Klaas, and the Deputy Regional Commissioner, Mr Freddie Engelbrecht, accompanied the group, as well as Mr G Fredericks from Human Resources. They confirmed what external reports have stated: the remand detention centre is at over 300% capacity. Mr Engelbrecht explained that overcrowding is the largest problem facing Pollsmoor.

- This stems, he said, partially from delays in investigations following arrests.
- He also noted that detainees accused of less serious crimes, such as petty theft, are detained in the remand centre despite not posing a serious risk to society.
- Moreover, delays in criminal trials, unaffordable bail and compulsory minimum sentences contribute to the excessive inmate population.
- Mr Engelbrecht proffered an example – some detainees awaiting trial are there because they could not afford to pay bail amounts as little as R50 for petty crimes of which they are accused.
- These sentencing and detention patterns place strain on profoundly limited resources and contribute to plainly unacceptable conditions.

[17] While the report will later address the overall observations and recommendations associated with the visit, it must first be stated that I was deeply shocked by what my law clerks and I witnessed during the visit. The extent of overcrowding, unsanitary conditions, sickness, emaciated physical appearance of the

detainees, and overall deplorable living conditions were profoundly disturbing.¹⁵ We understood that the senior executive staff were also shocked by what we found, and that they, together with their operational personnel, are committed to immediate improvement of the conditions we saw.

Remand Detention Centre

[18] The head of the remand detention facility, Mr Cecil Jacobs, introduced the facility. The facility currently houses 4 198 detainees. He reiterated that this places the centre at over 300% capacity. The staff complement for the day was 1 424, with 129 vacancies. The centre serves fourteen courts across the southern Cape Peninsula. Approximately 400 detainees attend court each day. Seventy are released daily.

[19] Video technology, which we saw operating, allows detainees to remotely connect to several courts in the area. Approximately 20 detainees per day use the video technology to participate remotely in court proceedings. The technology is used mostly for postponements. It was explained that the technology makes “economic sense”: instead of transporting detainees to court, the technology enables detainees to receive remote notification that their proceedings have been postponed.

¹⁵ See this report’s sections entitled *Inspection of Cells and Interviews with Detainees* at paras [43] – [75]; *Remand Detention Centre Summary* at paras [113] – [120]; and *Action Items* at paras [121(a) – (m)] – [122(a) – (f)] for a full exposition of the team’s observations and recommendations.

[20] Does the video technology deprive detainees of confidential access to a lawyer? We were told that before the proceedings begin, the detainee is asked whether he would like to speak to a/his/her lawyer who is located at the court. If a lawyer is requested, they speak over the phone. However, it was unclear whether the conversation is confidential.

Admission area

[21] The admissions area is described as the “heart beat” of the centre. Here detainees are admitted and ultimately released. On arrival, detainees are searched, fingerprinted, and undergo a medical screening. A nurse also does a physical examination and conducts a risk assessment, with alert look-out for existing injuries.

[22] As part of the medical screening, a professional nurse uses an x-ray machine to screen for tuberculosis (TB). If a person has signs and symptoms of TB, they are kept isolated from the other detainees and further medical intervention is done. Newly admitted detainees are offered a “rapid test” for sexually transmitted diseases (STDs) and HIV. Thereafter, TB, STD and HIV screenings are offered on a six-month basis and on release.

[23] The nurse on duty at the time helpfully pointed out that in tandem with testing services, counsellors from non-profit and non-governmental organisations are available to provide on-site counselling. Condoms are also offered to prisoners upon

admission. There are 28 nurses to service the entire prison population of 8000, with nine vacancies. Seven nurses are on duty per shift.

[24] Because of weekend arrests, about 200 new detainees arrive on Monday mornings. This is likely attributed to increased crime over weekends and the fact that courts only convene in special circumstances during the weekend, for example, when minors are arrested. During the week, approximately 30 - 45 new detainees arrive per day. In total, about 400 new detainees per week are processed at the admissions area.

[25] Admissions personnel complained the department lacks human resource capacity. They expressed the need for more “fully trained” staff: “Numbers”, they said, “are not the central problem the real need is training.” For example, those who take fingerprints are not properly trained. The staff proposed that those taking fingerprints should be required to first undergo a fingerprinting training course. This would better equip them to do their job. An upgrade in fingerprinting technology is also needed.

[26] The staff also complained that the shift system is inadequate. It was established on the assumption that there would be a large hiring increase. Currently, the ratio of prisoners to staff is four to one. This is only half the *minimum* number of personnel required to run Pollsmoor. An adequate prisoner:staff ratio is two to one.

Kitchen

[27] All catering is conducted by BOSASA Operations. The kitchen appeared quite large and clean. The kitchen manager, Mr Lourens, explained Pollsmoor's rotating meal system. There are seven twelve-day cycles. One cycle includes three chicken, three pork, one red meat, two fish and two egg meals. This main portion is accompanied by vegetables (sweet potatoes, cabbage etc.), and/or starch (rice, mielie meal, samp) and a juice mix. For breakfast, detainees and inmates are provided with oats, 20g sugar, 20g milk, bread, a spread (peanut butter or jam).

[28] The detainees and inmates are offered three meals a day: breakfast (described above), between 07h00 and 08h00; lunch, usually consisting of the main portion, vegetables and/or starch with juice, between 11h00 and 12h30; and an afternoon meal of bread, spread, a cool drink and soup, between 15h00 and 15h30.

[29] The meals are cooked and sent in bulk to eating locations. We received complaints from detainees about the cleanliness of pots used to distribute meals (see below). In response, the kitchen manager and centre personnel reported that problems with hot water and lack of cleaning materials led to pots not cleaned well by inmates. A further problem is that there is a shortage of pots to keep food warm.

[30] There are 274 inmates on special diets. Of these, approximately one third require religious diets. According to the kitchen manager, this costs twice as much as the normal meal plan.

[31] Eight BOSASA employees and seventeen inmates work in the kitchen. These prisoners stay in cells separate from the other prisoners. Six of the inmates go to school twice a week for vocational training.

[32] The kitchen staff pride themselves on offering wholesome, healthy meals to detainees and inmates, doing their best with the limited resources available to them.

[33] Our relatively limited opportunity for observation confirmed their attainment.

Medical Wing/Unit

[34] The medical unit was busy. Detainees and inmates awaiting treatment were held in adjoining cells or stood along the corridors, some sitting or lying on stretchers on the floor. The medical unit is the remand centre's distribution hub for medication. It is staffed by one doctor, a dentist, a number of nurses and TB/HIV care association staff members.

[35] The unit was tidy. We spoke with the onsite doctor, Dr Luis Michaels. He is retired, and works on a locum basis. He is assisted by a nurse, Sister Salumela.

[36] Dr Michaels reported that he is unable to work effectively. He lacks essential supplies and medicine – in particular bandages, injections, gloves, drips and essential ointments to treat skin infections.

[37] In addition, there are delays in furnishing medication. He writes 30 to 40 prescriptions per day, including for chronic medication. At a minimum, there is a three to four day delay until the medication is actually received from Pollsmoor's on-site pharmacy.

[38] Reports from several inmates, endorsed by Ms Stuurman, indicate that the average wait time is actually much longer – two weeks.

[39] Dr Michaels noted the problem stems from Pollsmoor pharmacy's insufficient stock. There is also a shortage of staff at the pharmacy. According to Dr Michaels, there is "a great need for additional pharmacy staff." There is only one pharmacist and one assistant currently working at the pharmacy. This Dr Michaels described as "inadequate" for the number of prisoners needing medication. This problem is exacerbated by the fact that the pharmacy services a number of other correctional centres in the Cape Town area, including Malmesbury and Goodwood.

[40] Dr Michaels said: "No one can effectively practice medicine this way." He said that some weeks the stock levels are so low that the most basic consumables, such as needles, gloves, bandages and gauze are not available. He diligently places orders every month, but receives less than what he orders. "The problem is a lack of resources that must be sorted out" in order to provide the detainees with minimum health care services.

[41] The doctor, as well as several nurses, told us that scabies is a major and frequent medical problem. The best form of prevention for scabies is a warm bath – but the doctor said the lack of hot water and clean bedding in cells exacerbates this problem.

[42] Dr Michaels urged that the pharmacy's minimum stock levels be increased.

Inspection of Cells and Interviews with Detainees

[43] Entering cells in the remand detention centre proved to be a shocking experience. The conditions we witnessed can, with deliberate understatement, only be described as appalling.

[44] The overcrowding is extreme. To know, statistically, that there is 300% overcrowding does not prepare the outsider for the practical reality. Again, with understatement, it can only be described as horrendous.

[45] There is an average of 65 inmates per cell. The overcrowding is practically, undoubtedly and daily degrading and hazardous for every detainee subjected to it.

[46] The cells were filthy and cramped. Detainees are forced to share single mattresses, often on triple bunk beds. Those who are unable to secure a bed have to sleep on the floor.

[47] In one of the cells, we noted 60 inmates with 24 beds.

[48] There are no sheets on the beds. This is a serious problem, for which Dr Michaels tried to prepare us. Inmates reported that bedding and mattresses have never been washed. Consistently with Dr Michaels's reports, they complained of skin boils, scabies and severe itchiness. Some detainees displayed rashes, boils, wounds and sores to us.

[49] The ablution facilities we saw were deplorable. 50 to 60 people are forced to use one toilet and one shower. The toilets we saw had no seats, and the showers lacked shower heads. No privacy is possible.

[50] The drains in the first three cells we visited were blocked. And the toilets did not flush. Inmates are forced to flush the toilet with buckets. They are also forced to use the sink to bathe. And it appears they are also forced to use it to urinate. It appeared to leak and smelt of urine.

[51] Uniform reports to us suggested there is no hot water for the shower.

[52] Even in the middle of the day, the cells were dark, dingy and cold. There is hardly any natural light. And artificial lighting in the cells is inadequate. Several windows are also broken. The thickness of the air and lack of ventilation was

palpable. It raises the obvious question whether the Department is adhering to its own norms and standards.¹⁶

[53] Staff reported that detainees break the lights and use their contents for smoking.

[54] Detainees are forced to eat inside the cramped cells. They have no chairs or tables to sit while they eat.

Block E2: Cell 350

[55] The first cell we visited had at least 55 people packed into it. The cell contained triple level bunk beds with single mattresses. Multiple windows were broken. Blankets on the beds seemed filthy. An inspection of the sink and shower revealed that there was no hot water.

[56] I spoke to the group. He inquired about daily living conditions. Detainees reported as follows:

- (a) **Inadequate cleaning supplies.** They lack access to any cleaning supplies. This, coupled with extreme overcrowding, inevitably leads to filthy living conditions.
- (b) **Assaults by correctional staff.** Some detainees stated they had been assaulted by correctional staff. One interviewee said he was given the

¹⁶ See [114] below.

“beating of a life time” by one of the Pollsmoor correctional staff. I asked who. They pointed to one of the officials accompanying us, and named him as “Mr Hartle”.

- (c) **No exercise.** Several detainees told us they have not been let out of their cell to exercise for three to four weeks. One detainee even claimed, “I’ve been in this room for two years. It’s not right.”
- (d) **Plumbing problems.** Interviewees reported major plumbing problems. The shower will not drain. It is so problematic detainees are restricted from taking showers. Often, the shower drain is completely blocked.
- (e) **No hot water.** There was no hot water in the cell. I confirmed this by testing the shower and sink.
- (f) **Medical neglect.** Several interviewees complained of injuries and infections they have sustained that the medical staff have neglected. Detainees pointed out visible injuries and infections to us. They claimed their ailments have not been attended to because they are not allowed adequate chance to see a doctor.
- (g) **Filthy germ- and lice-infested blankets.** Detainees told us their blankets were dirty on arrival, and that they have never been changed. They complained the blankets were spreading infections. This conforms with Dr Michaels’s briefing to the team.
- (h) **Not enough food.** Many complained of inadequate quantity and quality of meals. The last meal is in the early afternoon between 13h00 and 14h00. They complained about hunger at night since they are not given

anything till breakfast. Some explained they try to save some of last meal to eat later in the evening.

Block E2: Cell 346

[57] The second cell we visited was even more overcrowded than the first. There were 65 detainees packed into it. These detainees corroborated complaints from the first cell. They pleaded for exercise and told us they have not been out of their cell for an entire month.

[58] In front of the detainees, I asked the accompanying personnel about this. Staff said “once a month” was an exaggeration. But they appeared to concede that no exercise had been permitted for at least two weeks and possibly more.

[59] The detainees in this cell, too, complained they have never been given clean blankets. One detainee complained that he was assaulted last year, but he provided no further details about the incident.

[60] Detainees said their complaints about illness are largely neglected. They often are not able to see a nurse or doctor; and even when given the opportunity, the staff is not attentive and rushes through an examination. Even in cases when their illnesses are severe, Pollsmoor personnel do not allow them to seek treatment at a hospital.

[61] Many detainees told us they have been waiting for long periods for prescribed medication, but have yet to receive it. Several pointed to a sickly, melancholy detainee who had an extremely swollen and visible gland. Other detainees spoke for him as he seemed too sick to talk. They said he was given medication, but it was not helping. They said there has been no follow up treatment.

[62] Detainees expressed that many suffer from scabies because of the unhygienic and overcrowded conditions in their cell. This conforms with Dr Michaels's briefing. The nurses confirmed that scabies is a common and major problem and that detainees' living conditions are a breeding ground for its spread.

[63] Other detainees in the cell suffered from boils and sores. Only a handful had been tested for HIV and no condoms were available in the cell.

[64] Like cell 350, the shower had no hot water. Detainees alleged that staff switch off the geysers. I checked the toilet. It did not flush. The sink did not drain. These plumbing problems produce a rancid stench.

[65] Like detainees in cell 350, detainees in cell 346 also complained they are not given adequate hygiene supplies. This extended to the buckets and pots in which detainees' food was delivered. This conformed with Mr Lourens's briefing.

[66] They also told me and my law clerks they did not have access to books, nor were they allowed to access the library.

[67] One detainee stated: “We’re human beings, but we’re treated worse than animals.”

Cell B3

[68] This cell housed 60 inmates. The area was cramped. It contained 27 beds. The detainees largely echoed the complaints in the cells visited earlier. There were very few windows and insufficient ventilation. Four detainees shared two beds. The air was stifling.

[69] Many detainees reported that they did not feel safe. Two detainees said they have been awaiting trial for five years. One was an undocumented migrant from Malawi. He said he had been waiting more than a month to be repatriated.

[70] Although we encountered only one known person held solely based on his alleged undocumented migrant status, JICS personnel informed the team there are approximately 40 detainees who are currently being held in the remand detention centre solely because of their alleged undocumented migrant status. Although the migrants are placed in administrative detention, they are kept in cells with accused persons. JICS representatives stated that international standards require that migrants who are detained for administrative purposes or pending deportation should be held in

facilities separate from detainees awaiting trial and convicted criminals. However at Pollsmoor, it seems migrants are held among alleged murderers, rapists, gangsters, and other potentially dangerous people.

[71] JICS personnel empathetically advocated for Pollsmoor to change its migrant policy by housing migrants in cells separate from criminal detainees. In addition to required international standards, the current xenophobia problem in South Africa where foreign nationals are frequently the targets of violence and hate emphasises the scope of the problem and need for policy reform. It was suggested that even one or two cells demarcated for migrants would make tremendous improvements for migrants' living conditions. This, according to JICS, needs to be an immediate and urgent priority since migrants are one of the most vulnerable groups at Pollsmoor.

[72] Ms Stuurman also explained that migrants are detained for much longer than the allowed 30 day maximum detention period. She said arrest warrants in these types of cases are valid for only 30 days, and after that period of time, a new warrant is needed to extend migrants' length of detention. In order for a judge or magistrate to grant an extension for the period of detention, there must be "good and reasonable grounds". The extension must not exceed 90 days. JICS personnel stated although the Department of Home Affairs is supposed to make swift decisions on the immigration status of the individuals, it consistently fails to pick up immigrant detainees within the required 30 day or 90 day period. It was explained that migrants

are often kept much longer than 30 days or 90 days, which means the migrants are being held by Pollsmoor illegally.

[73] Detainees reported receiving no spread with their bread meals or juice mixes. They reported having last been out to exercise two weeks prior. The plumbing problems in this cell have resulted in the detainees resorting to the bucket system. Only two of the detainees had been tested for HIV and no condoms were available in the cell.

[74] The detainees also complained of the light fittings, and that televisions had been taken out of their cells.

[75] Staff when asked about this noted that detainees resort to smoking gas contained in the light fittings and televisions, and that they fashion weapons out of the fittings and condom containers.

Staff Challenges

[76] Not only were the cells desperately over-crowded, but it was apparent that there are serious staff shortages. A main concern for correctional staff is a lack of capacity because of personnel shortages. Hence they feel vulnerable. This means more risk of harm to them, and more risk of harm to inmates. Several staff members reported that gangs are a problem, not only at Pollsmoor but in other Western Cape prisons.

[77] Management explained to us that recruiting new staff is a major problem. They reported that the employment equity system, which they alluded to colloquially as a “quota”, negatively impacts the number of staff at Pollsmoor because there are not enough applicants to meet “quota” requirements for vacant posts.

[78] There is also a lack of recognition and promotion. This disincentives staff to continue at Pollsmoor. Existing staff are resigning more frequently.

Onsite Pharmacy

[79] Pollsmoor’s onsite pharmacy serves all five facilities, as well as Malmesbury and Goodwood correctional centres. The pharmacist, Mr Cassim, and his assistant explained that medical stock is provided through public procurement processes and contracts with wholesalers. Supplies often run out. This forces the pharmacy to procure supplies from retail pharmacies in the area, in particular Alphapharm and Helderberg pharmacies. This means there is unlikely to be a complete “stock out”. However, it is preferable to procure the drugs through government contracts because the unit price is cheaper.

[80] Mr Cassim explained the pharmacy frequently runs out or is in shortage of TB, hypertension, and diabetes medication. There is also a consistent shortage of Vitamin B6 and Penicillin, so he is forced to provide alternatives.

[81] He explained the end of the financial year can be the most tumultuous time to receive an adequate supply of medication because the pharmacy is not allowed to order after a certain date corresponding with the financial year-end date.

[82] The pharmacist attributes lags in delivery times to the supply shortages described above.

[83] The team was told that a stock auditor, who serves Pollsmoor, as well as other centres in the area, should, in the ordinary course, visit each centre at least once per month to see how much stock is used and what is needed. However, the pharmacist expressed concern that no stock auditor has visited Pollsmoor for a long time. This was a very important concern. It must be addressed, since pharmacy stock shortages are not uncommon.

[84] I asked the pharmacy staff why it takes up to two weeks to deliver prescriptions to the facilities within Pollsmoor. They could only say, understaffing.

[85] Ms Thabisa Solombela, the Associate Director of Health Care in the Admissions Centre, and Ms Fortuin reported that 276 inmates are currently on anti-retroviral treatment (ARVs). Awaiting trial (remand) detainees continue their treatment at primary healthcare facilities. When asked, the team was told that a large number of detainees require ARVs but are yet to be diagnosed.

Pollsmoor Female Detention Centre

[86] Pollsmoor Female is also severely overcrowded, but far less so than the remand centre. The head, Ms Ngoma, accompanied the group. There are 787 female inmates currently on capacity for only 400. This puts the facility at nearly 200% capacity.

Medical Wing

[87] In the medical wing, my law clerks and I immediately noticed several broken windows. We were told the windows have been broken for at least two years. The staff explained the broken windows were brought to the attention of management. Management, in turn, said someone would come to repair the windows – that was approximately six months ago. No repairs have been made. There are also roof leaks in the medical unit. The team was told that management has been notified, but the problem has not yet been addressed.

Pregnancy Wing

[88] There were approximately fifteen pregnant inmates, four of whom have been already been sentenced. They range from 20 to 30 years of age. We interviewed the pregnant inmates as a group. They told the team that they receive plenty of food; in fact, they are given four meals and one snack per day. They described the meals as balanced. They said they feel nourished.

[89] They asked staff whether pregnant female prisoners have access to termination of pregnancy facilities. They responded that pregnant inmates have “ante-natal

choice”, but did not give details about where and when they are able to get an abortion.

[90] Upon giving birth, toddlers and infants appear adequately cared for. The team was shown a play area for children.

Women’s Remand Detention Centre

[91] The remand cell visited was in as poor a condition as the male remand cells. 94 women were crowded into a poorly aerated room. The women shared beds or slept on the floor on thin mattresses. The mattresses were stinking. There was no working toilet, a clogged sink drain and only cold water. They showed us tattered and torn sheets and blankets, which were infested with lice. They noted that the cell was also infested with cockroaches. Finally, the women complained that as remand detainees they were not afforded library books or magazines to read. Fights often broke out. They attribute this to extreme boredom.

Interviews and Findings

[92] Apart from the female remand detainees, the female inmates gave a more hopeful account of their day-to-day lives than male detainees. They said they feel safe for the most part and receive enough food. They also receive one hour of exercise per day in the courtyard. They are can go to the library once every two weeks. They have books to read to keep their minds focused. We observed books in the cells. This was

in stark contrast to the male and female remand detention centres where no books were in sight.

[93] I checked the toilet in one of the female cells. It was not flushing properly. It seems that at Pollsmoor, plumbing is a problem generally. Hand soap was available.

[94] The inmates explained that rehabilitation programmes are available to them. Staff confirmed that there are many restorative programmes available, as well as social workers who provide social support.

Access to Mental Health Services

[95] Female prisoners also have access to mental health services. Dr Manan is a psychologist employed at Pollsmoor Female. She spoke to my law clerks and explained that she facilitates one-on-one counselling sessions with every female prisoner twice a month, and also leads group therapy sessions. She shared a story of one prisoner who was pregnant with twins. The prisoner was diagnosed with several mental disorders including schizophrenia and other personality disorders. In preparation for her release, Dr Mahan explained the inmate was referred to a social worker for help with her children and managing her mental illnesses.

Debriefing Lunch Session

[96] On arrival, my law clerks and I were invited for a post-inspection lunch. I asked to eat the same meal served to prisoners that day. This was a first for the team

as well as for Pollsmoor staff. Mr Lourens and all personnel seemed pleased to comply. The food was of a good quality, palatable and nourishing.

[97] Regional Commissioner Klaas convened the post-inspection meeting. His address to the group manifested undisguised concern about what the inspection had revealed. He required immediate responsive action, while putting the structural and personnel problems in perspective.

[98] As background, he explained that the centre was built as a typical prison in the 1960s. For the past twenty years, there have been discussions about whether to sell the land and move the prison to a new location. This is because the facility has serious structural problems. He acknowledged there are many ceilings with water leaks, including what we observed in the female section. There is asbestos in Medium C. Major repairs have to be done by the Department of Public Works (DPW).

[99] He further explained that all major repair jobs are tendered by DPW. This is a problem since all decisions on major repairs are centralised at DCS head office. He tactfully called the relationship between DCS and DPW “a challenge”. DPW should be less defensive about its work. The turnaround time to fix structural problems is two to three years – this is much too long.

[100] He said that plumbing is the most serious structural problem at Pollsmoor. There are a few in-house plumbers – but they plumbers are equipped to fix small

maintenance problems only, not big structural issues. Mr Brandt, the plumbing supervisor, explained to us that there were fundamental problems in the sewage lines. This was because of old cast iron pipes, structural damage, and lack of adequate water pressure. This causes toilets not to flush. He explained they need urgent help from DPW. There is also insufficient hot water supply, particularly in the kitchen. He stated there are only eight geysers running on timers and 1,000 litres to service the entire prison. This, he said, is completely insufficient.

[101] Pollsmoor also has electrical problems. Similar to the plumbing conundrum, there is an electrician who handles small electrical problems, but is not able to fix infrastructural problems. Pollsmoor is in the process of convincing DPW that it would be more efficient to replace the broken glass windows with perspex (a tough, durable, transparent plastic). This process has, again, proved “challenging”.

[102] According to Regional Commissioner Klaas, long sentences with no hope of release cause major problems. These include violence and gangs. He confirmed that gang activities and related fights are a problem: “Last week in D1 and C2 cells, the 26s and 28s, two gangs here, got into a fight which involved stabbings.” He explained there is a new gang management assessment and strategy tool. It is hoped this will address gang problems.

[103] Mr Klaas also confirmed that Pollsmoor is quickly losing staff. This exacerbates already severe capacity problem. He noted three to four employees in the

region left DCS in February 2015. Their main reason was fear of pension fund collapse.

[104] He reflected on what we saw earlier in that day. He conceded that overcrowding is a serious problem both in the awaiting trial block and at the female block, but emphasised that overcrowding is not unique to Pollsmoor. It is a national problem.

[105] He was clearly shocked at the conditions we found, particularly that detainees were kept in their cells all day without exercise. He gave strict and emphatic instructions there and then that daily exercise was to be reinstated. He also acknowledged that cleanliness and hygiene are major problems. These, he ordered, staff must address immediately.

[106] The Regional Commissioner explained that budget constraints are a central problem. They limit ability to improve conditions at Pollsmoor. He said the budget has actually declined. And no additional funds are available from the Treasury.

[107] He undertook to take up the issue of filthy blankets and see what can be done. One priority is to ensure adequate numbers of washing machines, so inmates have clean linen and clothing.

[108] On clothing, Pollsmoor will in October 2015 be implementing a remand detainee uniform. This provides socks, undergarments and overalls. The hope is that the uniform will assist with hygiene.

[109] Mr Klaas required the following action to be undertaken—

- Increase exercise for inmates to at least once every day. Staff must report that prisoners are in fact receiving this amount of exercise;
- Increase number of meals from two per day to three per day;
- Improve access to medication; and
- Convene a meeting with Pollsmoor doctors, nurses and pharmacists to understand their needs and reasons for shortcomings and provide a more enabling environment.

[110] In response, I emphasised the objective of the Constitutional Court's and other courts' prison visits. This is for the judiciary and correctional services to work together, while giving the judiciary a glimpse into personnel's working, and detainees' living, conditions. At the same time, the visits provide a channel of direct complaint, sharing information in an effort to remain transparent and improving conditions in the prison system in accordance with notions of accountability. In the last six years, I have undertaken fifteen inspections, and like all my colleagues I am committed to finding ways to advance constructive progress for the benefit of both those detained and the personnel whose task it is to guard them.

Summary

Pollsmoor Female – Summary

[111] What the team witnessed at the female facility was much better than at the male remand detention centre. The facilities seemed tidier, less crowded, and more hygienic. Other than those in the women's remand detention cell, the beds had sheets and blankets that appeared clean. Female inmates seemed to have adequate access to meals, hygiene supplies, and books. We were also pleased to learn that rehabilitation programmes, social workers and a psychologist are available to inmates.

[112] But in the women's remand detention cell, conditions echo those in the male remand detention centre. Unsanitary conditions, plumbing problems, bug infestations, lack of acceptable bedding arrangements and lack of reading material cumulatively make for dire and unacceptable living conditions.

Remand Detention Centre – Summary

[113] The Remand Detention Centre stands in stark contrast to the Pollsmoor Female Detention Centre. The extent of overcrowding and the unsanitary conditions the team witnessed was deeply disturbing. Sickness seemed rife because of unhygienic living conditions. The group saw insufficient beds for detainees. Many are forced to share beds or sleep on the floor. The team also observed insufficient and unsatisfactory sanitation installations. Many of the sinks and showers were plugged, and several toilets could not flush. The ratio of showers, sinks, and toilets to the number of detainees was visibly and deplorably insufficient. In addition, with winter impending,

there was no warm or hot water for showers. Detainees did not have access to adequate hygiene supplies. According to JICS's representative, Wayne J. Phoré, the decrepit conditions in which detainees are presently held are the biggest motivating factors to move Pollsmoor to a different location. He ardently stated, "as it stands, I firmly believe no one could be rehabilitated under the inhumane conditions that inmates are enduring at Pollsmoor."

[114] Lighting and ventilation in the cells is also subpar. The air seemed so thick, one felt one could cut it with a knife. There seemed to be no air flow. The lack of natural and artificial lighting made the cells extremely dim.

[115] My law clerks and I were especially troubled to receive allegations of correctional staff assaulting detainees.

[116] Generally, detainees are not getting nearly enough physical exercise. Inmates from many remand cells strongly and repeatedly stated they have been kept under lock and key and not allowed to go to the courtyard to exercise for periods of as long as a month.

[117] Staff conceded that detainees are not given regular exercise breaks. Additionally, the Regional Commissioner and the Deputy Regional Commissioner acknowledged how emaciated and unhealthy the prisoners looked. The Deputy Commissioner stated, "it is obvious they are not getting exercise." Based on what the

group witnessed, and reports from detainees and staff, it seems irrefutable that detainees are not given adequate or regular exercise breaks.

[118] It is shocking and unacceptable, under almost any circumstances, that inmates are locked in their cells 24 hours a day. They cannot leave their cells to exercise, to eat, to use the restroom, to shower, or to go to the library. They have no access to books. It entails no rhetoric to say these are inhumane and appalling circumstances which are unacceptable in our correctional system.

[119] Detainees also appear to have justified complaints about meals; their last meal ends around 14h00. Detainees complain of hunger in the evening because they are not given an evening meal.

[120] The medical treatment is patently inadequate.

- Both medical staff and detainees complained of a lack of basic medical supplies and medication.
- There is often extensive delay before medication is received.
- Detainees complained they are unable to see nurses and doctors when they are sick to get a proper diagnosis and treatment.
- In the rare chance they go the medical unit, they complain of rushed treatment and inadequate care.
- Detainees complained that staff fail to take them to the hospital when they need heightened care.

Action Items

[121] I recommend that the following *immediate* measures be taken to improve the condition of detainees and inmates at Pollsmoor Correctional Centre:

(a) Correctional Staff Assaulting Detainees

Correctional management must immediately follow up on allegations that personnel assault detainees. There can be no tolerance policy for any employee found to have assaulted a detainee. Disciplinary measures and/or criminal charges should follow.

(b) Physical Exercise

I note and urgently endorse the Regional Commissioner's instruction that detainees must be let out of their cells for exercise for at least one hour every day. This needs immediate attention under section 11 of the Correctional Services Act.

(c) Medication and Medical Access

- Detainees in need of medical treatment must be given expedient access to medical staff. They must also be given outside treatment when appropriate and needed.
- Basic medical supplies and medication are insufficiently supplied. The Department's stock auditor must visit Pollsmoor immediately and regularly thereafter address the shortage of medical stock.

- Delivering more ward stock to be kept in a secure and locked place may lessen the waiting period. Alternatively, better systems to anticipate orders, especially where demand is predictable, should be designed.
- Likewise, the Regional Commissioner's instruction about increasing access to medication must be supported. The Department of Correctional Service must provide an adequate amount of medical supplies and medication. I also support his idea about convening a medical staff meeting to brainstorm ways of improvement.
- Faster turnaround time for prescriptions is essential.

(d) Food

I endorse the Regional Commissioner's insistence that prisoners receive three, not two, balanced and nutritious meals per day – breakfast, lunch, and supper. The meal provision must also be better-spaced: detainees should not have hunger pangs from long intervals between meals.

(e) Beds and Structural Factors

Each detainee must be provided with a bed. No detainees should have to share a bed and no detainees should sleep on the floor. While this seems a counsel of perfection, it is not. It is elementary. If it is impracticable in present circumstances, then the external penological

and criminological policies that lead to over-crowding (bail; and long detention periods) must be swiftly addressed.

(f) Filthy Blankets

Each detainee must be given a clean blanket upon arrival. Blankets must be regularly washed in order to kill germs and curb infections.

(g) Hot Water

Hot water must be available for each detainee to take a warm shower once per day. This is also imperative for hygiene and to fight rampant infections such as scabies.

(h) Sinks, Showers and Toilets

More working showers and toilets must be made available. One shower and one toilet for 50 to 60 people is unacceptable. That they are mostly in unfit condition only makes the situation more deplorable.

(i) Light and Ventilation

Burned out light bulbs must be changed, and more lights should be installed. There must also be improvement to airflow and ventilation. If the bulbs are used for ulterior purposes, an alternative solution must be found.

(j) Hygiene Items

Detainees should have access to soap and other basic hygiene supplies.

(k) Access to Library and reading material

Some plan should be devised to enable detainees to get regular access to reading supplies.

(l) Testing and Preventative Measures

- Condoms should be available in every cell. This reflects current policy. While metal containers may create problems, there are alternatives – paper bags, plastic containers, cardboard boxes.
- Campaigns to promote testing for HIV, STDs and TB screenings should be directed at remand detainees, with appropriate counselling.

(m) Detaining Migrants Separately from Other Detainees

- I endorse international standards and JICS personnel recommendations that Pollsmoor urgently move individuals held solely because of their alleged undocumented migrant status to cells separate from criminally accused detainees. This requires immediate attention.

[122] We recommend that the following *systemic* issues be addressed. In doing so we note that correctional personnel bear the brunt of laws and policies they are obliged to implement, on inadequate budgets, and in patently unfit environments.:

(a) Budget Increase

Pollsmoor needs more funds. Parliament must take action to alleviate the inhumane conditions at Pollsmoor by allocating more funds.

(b) Staff Increase

The Department must focus its efforts on hiring more staff who are adequately trained and on retaining skilled current staff.

(c) Extreme Overcrowding

The levels of overcrowding we witnessed is unacceptable and may be vulnerable to constitutional challenge. There must be movement toward an immediate solution. Additional cells must be constructed either by transforming existing infrastructure into liveable cells or by building additional cells. The Inspecting Judge's reports have, over the years, addressed the structural factors in the administration of justice that keep cell populations high, particularly unaffordable bail. These recommendations command attention.

(d) Increased Access to Nurses, Doctors and Dentists

An increase in the number of medical staff and pharmacy staff should be a priority.

(e) Action by Department of Public Works

The Department of Public Works should cooperate urgently with the Department to find practical quick ways of addressing plumbing, electrical and other infrastructure problems. There can be no excuse for a prison facility's works order to take two or three years to fulfil.

(f) Increased Cooperation between JICS and Pollsmoor

I also urge increased cooperation between JICS personnel (including Independent Correctional Centre Visitors (ICCV)) and Pollsmoor personnel in order to support both JICS and the Department in fulfilling their statutory mandates. That of JICS is to inspect correctional centres and report on treatment of inmates and correctional centre conditions.¹⁷

[123] My law clerks and I express appreciation to Pollsmoor personnel and to the Regional Commissioner Mr Klaas. JICS personnel and ICCV, including Mr Masondo, Ms Stuurman, Mr de Sousa, and Mr Titus are thanked for their obvious commitment to improving prison conditions by arduous programmes of inspecting correctional facilities.

Response from Officials/Comments on Draft Report by Pollsmoor Management

[124] This report was forwarded to the Regional Commissioner, Mr Delekile J Klaas; Deputy Regional Commissioner, Mr Freddie Engelbrecht; Pollsmoor Management Area Commissioner, Mr Mketshane; Head of Pollsmoor Female Centre of Excellence, Ms N Ngoma; and Head of Pollsmoor Remand Detention Facility, Mr C Jacobs for their information and comment. This report takes account of the responses received.

[125] In particular, I received an action plan provided by Pollsmoor Management Area Commissioner, Mr Mketshane, which is designed to address the deficiencies

¹⁷ See section 85 of the Correctional Services Act.

identified above. I welcome the action plan which is attached to this report as “Annexure A”.¹⁸ The Regional Office has indicated that it will monitor the action plan.

[126] This report was also forwarded for comment to the office of the Inspecting Judge, who replied that he has perused it and is content with its contents.

Justice Edwin Cameron
Constitutional Court

27 July 2015 and 13 August 2015



¹⁸ By direction of the DRC, Mr F Engelbrecht permission was granted that the action plan, though an operational plan within the Department, be attached to this report

Back row (from left to right): Justice Edwin Cameron; Regional Commissioner Mr Delekile J Klaas; Acting CEO of JICS Mr Michael Masondo; JICS Manager of Investigations/Inspections Mr Lennard de Sousa; Mr Mashego

Middle row (from left to right): Deputy Regional Commissioner Mr Freddie Engelbrecht; Linda Fortuin; Elizabeth Maushart

Front row (from left to right): Mr Lourens; Yana van Leeve; Chandni Gopal; Tania Stuurman; Tess Peacock.