

REPORT ON VISIT TO POLLSMOOR CORRECTIONAL CENTRE ON 30 APRIL 2010

Introduction

This visit was part of the Constitutional Court's initiative to re-invigorate the tradition of judicial visits to correctional centres in terms of s 99 of the Correctional Services Act, the rarity of which was noted with concern in the last annual report of the Judicial Inspectorate of Prisons. The visit has convinced me that judges and magistrates will benefit enormously from acquainting themselves with the successes and problems of correctional centres within the areas they serve. My visit to Pollsmoor (and Beaufort-West where I also visited) was welcomed by the prison officials and I was assisted in every manner I requested. For this I thank the Director of Development and Care at Pollsmoor, Mr. Sabelo Mzanywa, for the time and trouble he took to make our visit (my two law clerks accompanied me) informed and worthwhile. I ask him to convey my thanks to all the officials that helped us during the day.

Pollsmoor is a large facility and consists of five centres: the admissions centre which accommodates male awaiting trial detainees and sentenced offenders awaiting trial on further charges; Medium A centre which accommodates juveniles and children; Medium B centre which houses sentenced adult male offenders; Medium C centre which houses short term male offenders; and the Female Centre (the Centre of Excellence) which houses sentenced and unsentenced females. It was not possible to visit all these centres, nor to visit all the cells in those centres that we did visit: the admissions facility, the juvenile and children facility and the female centre of excellence. This report, accordingly, is not comprehensive and concentrates mainly on broader concerns noted during the visit.

The abiding impression of the visit was that if Pollsmoor could operate properly for its primary purpose, namely the care and rehabilitation of sentenced offenders, the problems we encountered on our visit would be much less than they were and the correctional officials would be more fulfilled in their professional task. But that is not happening and the frustration of both dedicated officials and inmates at this is understandable.

Pollsmoor is designed to accommodate 4336 inmates. There are 1278 staff members. At the time of our visit there were 7264 inmates. Of these 5069 were awaiting trial detainees. Each of the centres

we visited was overcrowded,¹ but perhaps the extent of the problem can best be illustrated by referring to the conditions at the admissions centre.

The Admissions Centre

The admissions centre was designed to accommodate 1619 persons. On the day of our visit it housed 4215 male detainees, 3891 of whom were awaiting trial. The massive overcrowding is caused, amongst others, by the fact that: (1) all awaiting trial prisoners for the Cape peninsula are housed here, (2) persons who are sent for mental observation to Valkenburg Hospital come to Pollsmoor to await their turn because of backlogs at Valkenburg, (3) persons awaiting deportation as illegal immigrants are also accommodated at Pollsmoor, (4) many detainees are unable to arrange payment of bail, (5) bail is not being granted in many cases where it might or should be granted, and (6) trials are not being concluded timeously. None of these factors is under the direct control of the officials at Pollsmoor, but they are saddled with the responsibility for looking after these persons.

As we started our visit to the admissions centre a potential crisis arose in section D3. The inmates of this cell barricaded themselves in an attempt to prevent warders from entering the cell and they refused to come out of the cell in terms of the normal required routine. The reaction unit (I am not certain of its correct designation) trained to deal with these kind of situations was called in and we left so that the situation could play out without us interfering. We returned after lunch. The situation had been sorted out without violence. The inmates complained that the reason for their protest was that the authorities were not giving proper attention to their complaints. These complaints were wide-ranging: that they were being mistreated by warders; that they were humiliated upon their return from the courts; that female warders were allowed to watch them while they were naked in the showers; as well as complaints about the lack of facilities and toiletries. I was assured that the area commissioner had been summoned in the morning to hear them out and that all these complaints would be properly investigated. I trust that this has been done, or that the process of doing so is proceeding.

The condition of the cell was representative of others in the centre. It was designed for about twenty people, but housed about eighty people. There is only one toilet in the cell. To a relatively similar degree, this was also the case in respect of cells holding awaiting trial prisoners in the other centres. It takes little imagination to recognise that these kind of conditions give rise to the general complaints raised by awaiting trial detainees held in the other centres too, namely the lack of proper

¹ The Admissions Centre has a capacity of 1619 but houses 4215; Medium A has a capacity of 1100 but houses 1202; Medium B has a capacity of 534 but houses 932; Medium C has a capacity of 150 but houses 451; The Women's Centre of Excellence has a capacity of 329 but houses 447.

sanitary facilities, the lack of sufficient toiletries, that complaints about alleged assaults and indignities inflicted by warders were either ignored or not investigated properly, and that health matters needed more attention.

Individual complaints from all the centres we visited are listed in the first document annexed hereto. The second document reflects those detainees who have been awaiting trial for more than a year in some of the various centres of Pollsmoor.

A further distressing event occurred whilst visiting the admissions centre. Persons ordered to undergo mental observation at Valkenburg are kept separate in the hospital area of the admissions centre. We were shown a detainee who had been sent to Valkenburg the previous day (at long last, having awaited his turn on the backlog), but returned with the terse comment that he was terminally ill and that Valkenburg did not have the facilities to cope with his condition. The reality is that neither does Pollsmoor. This man is dying in the awaiting trial facility at Pollsmoor where, despite the fact that the proper facilities for his care in these circumstances are not available, he is at least being treated with compassion. It is a shocking matter and although I have no authority to order anything of the sort I urge the Minister and the Judicial Inspectorate to consider authorising a full investigation of how this could occur under the present dispensation and to take steps to ensure that it does not happen again. As with most of the recommendations I make at the end of this report, the remedy does not primarily lie with the Department of Correctional Services alone, but in conjunction with other state departments.

A heartening contrast

I do not think I exaggerate when I say there is a stark contrast when the position of sentenced prisoners is compared with those of awaiting trial detainees. In the female centre of excellence we saw groups of women being trained in hairdressing, needle work, sports and computers; mothers housed in intimate surroundings with their babies, and a crèche for pregnant mothers. We were shown the 'bird centre' where a small number of male sentenced prisoners live and look after birds in single cells. We heard from them what a difference it has made to their lives: learning of compassion and responsibility for others. One of them was due for release in a couple of weeks – he felt confident that he had learnt his lesson and could function properly in normal society. There were markedly less complaints from inmates in these centres than from their awaiting trial counterparts.

That does not mean that there are no problems. A measles outbreak was in progress at the female centre at the time of our visit. There were general complaints about toiletries, food and the like also in these areas, but certainly not of the intensity heard from awaiting trial prisoners. In the juvenile

centre it seems to me that apart from exercise and sport more might be done insofar as rehabilitation programs are concerned, but I say so with caution because I did not have sufficient time to investigate this more fully.

Medical and health care²

The hospitals we visited at the various centres were clean and appeared in good order. There were, however, fairly general complaints about a lack of attention to health complaints by inmates. It is difficult to assess the validity of these, but it is clear that there are not enough medical staff members available.

Food and kitchens

It does not appear as if there is any major problem.

Single cells

No major problem here either, from what I could ascertain.

Violence and gangs

There is a strong and prevalent gang culture at Pollsmoor. To a large extent it reflects the gang culture that exists in the surrounding communities in certain parts of Cape Town. I enquired about the perception that exists in certain quarters that the gangs 'run' Pollsmoor and not the officials. There was a frank acknowledgement of the problem by the Mr. Mzanywa, but he explained the different measures that have been and are being taken to address the problem. On admission inmates are identified as members of gangs and accommodated accordingly in order to prevent gang friction. Where gang-related problems arise the leaders are identified and removed from the particular cells. In this way long term dominance of leadership and 'control' of life in prison is sought to be undermined. Mr. Mzanywa expressed confidence that, although gangsterism will never be exterminated (at least while the culture still exists outside prison), the control or effective 'running' of life in Pollsmoor is not in the hands of gang leaders.

I was told that the general level of violence in Pollsmoor has reduced. I have no independent means of verifying whether this is so, but I did not observe or glean anything from my visit to suspect that it is incorrect.

² The Department of Correctional Services has employed one full time medical doctor to work at Pollsmoor. The Department of Health also appointed two other doctors who visit the centre on occasion. Pollsmoor currently has approximately 12-15 detainees waiting to be admitted at Valkenberg.

In the juvenile facility rapes are now being reported fairly regularly and procedures have been put in place to facilitate not only the reporting, but also to assist in the initial investigation of these reports. The head of the juvenile facility is justifiably proud of this fact. It is another indication that violence at Pollsmoor may be on the decrease or, when it occurs the cycle of fear in reporting it is being broken.

Drugs and corruption

Officials acknowledged the use of drugs in the prison and that this was assisted by the conduct of prison officials in some cases. They considered the problem to be manageable and that by the use of informers guilty officials have been identified, disciplined and removed from the facility.

Discipline

As noted earlier, there were a number of complaints that allegations by inmates of misconduct on the part of prison officials were either ignored or not properly investigated and given attention to. I was assured that these would be looked at.

There were no specific complaints about internal discipline measures. Prison officials ascribe this to the fact that parole plays a very important part in the lives of prisoners and that the forfeiture of privileges relating to possible release on parole are regarded seriously by inmates.

Summary, conclusion and suggestions

It was a visit where I learnt a good deal and I hope that judicial colleagues will do these visits more often. The visits are not for the purpose of checking on prison authorities, but to assist in making their work more effective and meaningful, to the benefit of the inmates.

I found two contrasting pictures: the one full of hope, the other one almost despairing.

The divide lies between convicted inmates on the one hand, and awaiting trial detainees on the other.

The former should be the real focus of a *correctional* facility. At Pollsmoor sincere and in my judgment good efforts are being made to fulfil that task. The physical facilities and circumstances of sentenced prisoners are generally speaking of a good standard. The rehabilitation programs in the female "centre of excellence" are impressive, as is the more limited program with birds for certain male sentenced prisoners. If the problem of overcrowding caused by the excessive number of awaiting trial prisoners in Pollsmoor can be addressed it will mean that rehabilitation programs can

be extended and improved. It will mean that staff shortage problems will ease, with immediate beneficial effects especially in regard to health and medical care.

There is an irony in the fact that awaiting trial prisoners cause the overcrowding that adversely affects the *correctional* measures aimed at sentenced prisoners. It lies in this: these are people who have not yet been found guilty of any crime. There is no rational reason to treat them worse than convicted and sentenced prisoners. Yet their conditions of detention are worse than those of convicted prisoners. Their cells are shockingly overcrowded, resulting in worse sanitary conditions, less individualised attention in relation to health and other complaints, and fewer opportunities to take part in sport and leisure activities. The reality is that Pollsmoor will always have a large number of awaiting trial detainees because of its location in the Cape Peninsula. Steps need to be taken to increase Pollsmoor's capacity to deal with these large numbers.

These observations are not new, but they nevertheless remain acute. The suggestions that follow are also not new, but perhaps their repetition might contribute to quicker remedial action:

1. The number of awaiting trial prisoners can be reduced by making judicial officials – judges and magistrates – more aware of:
 - (a) the consequences of refusing bail where it may be legitimately granted for less serious offences;
 - (b) the undesirability of short term sentences for less serious offences where alternatives are available;
 - (c) the more imaginative use that may be made of s 62 of the Criminal Procedure Act in bail matters;
 - (d) the length that some detainees have been awaiting trial for.
2. There appears to be a fairly efficient system in place for consultation on these matters between correctional officers, judicial officers and the police in the Cape Peninsula. Perhaps the Judicial Inspectorate could consider more frequent visits to judicial officials throughout the country to spread this message. From personal experience I know that one such visit to the Eastern Cape judges had a greatly beneficial effect.
3. Methods to dispose of postponements and non-contentious court appearances by way of video link-ups and the like should be given further priority. I look forward to hearing how these systems presently being installed at the juvenile and admissions facility at Pollsmoor will work in future.

4. I do not know how practically feasible it is, but in the absence of more permanent solutions urgent attention should be given to allow awaiting trial detainees more exercise time, or time outside their overcrowded prison cells.
5. A system needs to be developed which tracks the amount of time people spend awaiting trial. This information must be made available on a continuous basis to judicial officers at the relevant courts in order to encourage and facilitate the speedy conclusion of trials.
6. Immediate and urgent attention should be given to increasing staff numbers, especially health and medical staff.
7. I trust that immediate attention will be given to the investigation of:
 - (a) The barricading incident in the Admissions section on 30 April 2010; and
 - (b) The plight of the terminally ill Mr Altus Thierzen (Prison number: 209946593). I strongly feel that this should be taken further and the role not only of Valkenburg hospital, but the whole system of medical supervision and intervention under these circumstances, be investigated with a view to improve it.
 - (c) The lengths of time persons have spent awaiting trial.

J.C.FRONEMAN

JUDGE OF THE CONSTITUTIONAL COURT.