



CONSTITUTIONAL COURT OF SOUTH AFRICA

REPORT: DEVON CORRECTIONAL CENTRE, MODDERBEE MANAGEMENT AREA

Visit by Justice Edwin Cameron, accompanied by Miss Daniella Lupini, Mr Zenzele Gwala and Miss Caroline Stover, his law clerks, and Miss Mandira Subramony, law clerk to Justice Bess Nkabinde.

Introduction

[1] The purpose of the visit to the Devon Correctional Centre, Devon was to gain information on and evaluate its overall operation, management and administration. Particular emphasis was placed on the treatment of inmates by officials and the condition of the Centre's facilities. The visit was one of Justice Cameron's routine prison visits. He initiated the visit and officially confirmed it with the Centre's management in writing a day before the visit, on 26 June 2017.

[2] The visit took place on Tuesday, 27 June 2017 between 09h30 and 14h00.

[3] On arrival, we were welcomed by, and briefly met with:

- (a) Acting Area Commissioner – Mr MO Mkhaliphi;
- (b) Area Coordinator Finance & SCM – Mr SZ Ndlovu;

- (c) Acting Head of the Centre – Mrs S Masuku;
- (d) Centre Coordinator Staff Support – Mrs M Smalberger;
- (e) Centre Coordinator: Finance and Logistics – Mrs RR Mukatuni;
- (f) Centre Coordinator: Case Management Committee – Mr SH Moropane;
- (g) Head of Agriculture – Mr. EH Barnard;
- (h) Clinical Nurse – Mrs CM Ramollo; and
- (i) Secretary – Miss L Matshate.

[4] The team that welcomed us and took us through the tour / inspection of the Centre's facilities had extensive experience in the Department of Correctional Services (DCS). Mr Mkhalihi, the Acting Area Commissioner, started with the DCS in 1993 in Mpumalanga. He then moved to Bethanie, North-West, before joining the Devon team. Mr Barnard, Head of Agriculture, has 26 years' experience in the DCS.

Structure of the visit

[5] Our visit was structured as follows:

- (a) Introduction and welcome (Mr Mkhalihi);
- (b) Presentation on the Centre's medical facilities and logistics (Mrs Ramollo);
- (c) Presentation on case management (Mr Moropane);
- (d) Inspection of the clinic;
- (e) Inspection of the kitchen;
- (f) Inspection of other facilities (i.e. dining hall, cells, visiting area, showers, toilets, workshop and farm);
- (g) Address and discussion with inmates; and
- (h) Address and discussion with Centre officials.

Introduction and overview of the Centre

[6] Mr Mkhalihi welcomed us and formally introduced members of his team. A brief meeting ensued. Justice Cameron also formally introduced the law clerks who accompanied him and explained the purpose of the visit.

[7] Mr Mkhalihi expressed appreciation for our visit. We were advised that the last visit to the Centre by a judge was some years ago but that the Judicial Inspectorate for Correctional Services' Mr Lindani did visit the Centre in July 2016.

[8] Mr Mkhalihi gave us a brief overview of the structure and history of the Centre. The Centre is demarcated as a pre-release detention centre. It used to be an old army base – therefore not built for its present purposes - and was handed over to the DCS in 2002. It forms part of the broader Modderbee area. It houses offenders serving sentences of less than 24 months. Its approved accommodation capacity is 679 inmates but, as of 1 June 2017, it housed 447¹ inmates.

Presentation on medical facilities and logistics

[9] Mrs Ramollo (clinical nurse) did a presentation of the Centre's medical facilities and logistics. Her presentation is Annexure A to this report. The presentation demonstrated how relatively well-managed the Centre's medical facilities and logistics were.

[10] The Centre has one inpatient clinic. This renders primary healthcare services with five nurses appointed and one sessional medical practitioner who usually conducts consultations at the Centre once a week.

[11] There is no on-site pharmacy. Medication is sourced from Boksburg pharmacy – with weekly collections. The Centre has not experienced any “stock-outs” so far. Laboratory services are provided by HTM Medical with a daily courier system.

[12] The Centre's clinic conducts TB screenings on admission,² on release³ and bi-annually. It has 64 known inmates living with HIV who are on anti-retroviral therapy.

¹ This number is made up of inmates arrested for economic crimes (332), aggressive crimes (58), sexual offenders (2) drug related crimes (45) and other crimes (10).

² All 1277 inmates admitted in the 2016/2017 reporting period were screened.

The clinic also offers prevention services including HIV awareness with calendar events and campaigns (assisted by stakeholders), HIV counselling and testing, condom distribution (condoms were visibly available), medical male circumcision, peer education programs, HBV and HCV screening and prostate cancer screenings.

[13] There has not been many inmates requiring palliative care services and those who did were referred to Tambo Memorial Hospital in Boksburg. No inmate has required medical parole.

[14] The Centre has spiritual care pastors who cater for the spiritual needs of various faith groups including Muslims and Rastafarians.

[15] Mrs Ramollo informed us that the clinic is number one in the region in terms of HIV and TB monitoring. There are weekly checks on progress. It is known as a centre of excellence.

[16] All in all, there were no issues identified in relation to the Centre's medical facilities and logistics, which presented well and as being largely in order.

Presentation on Case Management

[17] Mr Moropane, the Centre Coordinator: Case Management Committee, did a presentation on the Centre's case management system.

[18] The Centre does not have correctional sentence plans because of the shortness of sentences (up to 24 months) of inmates housed there. On admission a full review of an inmate's record is conducted to ensure that the inmate's sentence is indeed 24 months or less. Those who do not qualify are sent back.

[19] Also on admission, in addition to medical assessments, the Centre conducts risk assessments to ascertain the level of security required and the inmate's work

³ All 964 inmates released in the 2016/2017 reporting period were screened.

experience to decide on work allocation. Where there is a serious rehabilitation need (e.g. sexual offenders, attempted murder cases, etc) the Centre's admission officials refer the cases to the Centre's social worker who then implements a rehabilitation program. No parole applications are considered until a rehabilitation program is successfully completed.

[20] Although there are no formal correctional sentence plans in place, the Centre keeps case notes where all interactions and exchanges between inmates and correctional officers are recorded.

[21] Inmates become eligible for parole after serving three to six months, depending on their sentences, but only if the inmate's support system is conducive to release.

[22] In general, inmates do not spend more than seven months at the Centre. However, families may sometimes request that an inmate serves the full sentence for fear that he will return to bad behaviour (e.g. taking drugs) if released without full rehabilitation, which they believe happens at the Centre. The sad reality, we were informed, is that most offenders are released back to the streets.

[23] When an inmate is due for release, the head of the Centre facilitates the confirmation of the home address through the Johannesburg Correctional Centre. That is the releasing Centre. The parole board does not get involved as the sentences served are almost invariably less than 12 months. The main challenge, on release, is the confirmation of an inmate's home address before release. There is generally not less than two weeks' delay, as the confirmation is done through the Johannesburg Centre. This results in frustrations and unhappiness on the part of inmates due for release.

Inspection of the Clinic

[24] As one enters the clinic, there are notice boards informing inmates when to collect medication and the dates and times of consultations. There is also a suggestion box for inmates.

[25] The most pressing challenge with the clinic is space. The clinic is too small to cope with the medical demands at the Centre. It has capacity for 8 beds, but generally 11 or 12 beds are required at any given time. There were mattresses placed directly on the floor, which we were informed are to accommodate inmate patients who suffer from seizures or fits. Where necessary, and in serious cases, inmates are sent to the Boksburg Centre for 24 hour assistance. The clinic registration area is too small and lacks privacy. Often an inmate is forced to describe medical problems in front of other people.

[26] The clinic provides a “supermarket” approach and offers almost all services. Those who cannot be helped are referred to Tambo Memorial hospital.

[27] The TB isolation room is congested as it is also used as a store room for other clinic material. Patients requiring isolation are generally isolated for about two weeks, after which they are integrated with other inmates, mask-free.

[28] The clinic has a fully functional and equipped toilet with a loaded condom dispenser. There is a small kitchen where patients and peer educators eat their meals, supplied from the main kitchen. The consultation room seemed to have poor ventilation. There is also a dental room; the dentist comes once every two weeks.

[29] There is a small pharmacy room with pre-packed medication. A medical trolley is used for day to day routine medication and is loaded daily.

[30] The clinic utilizes peer educators, trained on a health component. These are usually inmates who will not be released within six months. This ensures proper training and fewer turnovers.

[31] Whilst there we met one of the five nurses, Ms Nkwani, two security officers Messrs Hadebe and Lesufi, peer educators, Calvin and Tshepo [surnames not supplied] and a representative from the Aurum Institute, Rethabile, who re-emphasises on TB screening. They all seemed content and offered no reports or complaints.

Inspection of the Kitchen

[32] A security official, Mr Sehlula, manned the door to the kitchen. The kitchen is well-equipped and in a good state of cleanliness. Sixteen inmates work there. They have a separate sleeping room with sufficient beds, linen and natural light. There is a curtain in the lavatory. There is also a separate bathroom with showers with hot water for the kitchen workers.

[33] The kitchen area has two large freezers. One is used to store meat. There is also a chemical storeroom for cleaning chemicals. Just over the fence from the yard is accommodation for the Centre's officials with about 75 houses. Water tanks outside the kitchen collect cleaning water for when there is no water. This, we were told, happens often.

[34] All inmates working in the kitchen get screened for health to ensure suitability. Food waste is collected by neighbourhood farmers weekly for agricultural purposes.

[35] We were told the meals are carefully prepared with regard to the inmates' dietary requirements for various cultures and religious faiths or other reasons, though there is no separate serving for vegetarians. A chart on the wall listed precise numbers for specific dietary requirements, for example high protein (33), fish-free (4), Muslim (28), Nazareth (15), ZCC (11), etc. Vegetables are supplied by the Centre's farm

nearby, which also farms beef / cattle and supplies meat to the Centre. The Centre has informed us that:

Offenders are encouraged to stick to their diets especially therapeutic that are prescribed by the medical personnel and the dietician

[36] Breakfast is served at 7am – white or brown soft porridge plus four slices of bread with butter and jam. Lunch and evening meal are both served at 15h30. The evening meal consists of seven slices of bread with condiments.

[37] The kitchen inmates and personnel were friendly and seemed to be in good spirits.

[38] We inspected the lunch the inmates were receiving that day - pap, gravy, meat and vegetables - and found it to be fresh and appetising.

Inspection of other facilities

[39] We inspected the segregation units A-C. These are used to segregate “sexually vulnerable” inmates and, sometimes, inmates requiring isolation for TB or other patients when the clinic unit is too full. Each cell houses four inmates. We found the units to be of acceptable standard with all the necessary facilities in working order.

[40] We were advised that there used to be a condom box outside each. Because it had been vandalised a few times, it was moved to the supervisor’s office. This is close to the cells and is open during the day. We saw the box, which remains easily accessible.

[41] We were informed that there were no study facilities at the Centre because of inmates’ short duration. Inmates requiring study facilities are transferred to Modderbee.

[42] We also inspected the dining hall and visitors' area and were satisfied with their condition. Visitors are permitted Saturdays and Sundays 8am to 2pm. The visitors' area has indoor and outdoor areas. The indoor area has a heater.

[43] The Centre has a swimming pool that is not in use because of lack of funds. It was previously used by the Centre's personnel and family members who contributed financially to maintaining it.

[44] The Centre offers skills development opportunities in sewing, computer literacy, welding, food management, farming, livestock, etc.

[45] We visited the skills' centre (workshop). This is located a short distance away from the Centre itself, but within its precinct. Skills / services offered include welding and spray painting.

[46] The Centre is in the process of upgrading its perimeter fence. The fence / palisade used for this is made in the workshop by inmates. Five long term inmates teach welding.

[47] We were, sadly, informed that the Centre is short of steel and welding rods and steel paint. There is no material for the skills area. The facility has been informed that budget has run out. This seemed a very great pity, for the welding instructor was keen to continue with skills transfer.

[48] The skills centre is attended on a voluntary basis. We were told it has capacity to accommodate all inmates who wish to take part.

[49] Next to the workshop about half a dozen inmates were busy constructing a garden structure using concrete bricks and cement. Justice Cameron addressed them along the lines he addressed the inmates in the Centre (discussed below) and invited

them to report any issues to him regarding abuse or maltreatment from the Centre officials, fellow-inmates, the conditions of the Centre facilities.

[50] The inmates responded that they had no issues and seemed content, in the circumstances, and in good spirits.

[51] We also visited the farm. We were informed that about seven officials and 56 inmates work on the farm. There are six cattle herders. Twelve inmates prepare daily meals. The farm has 246 cattle in total. We were also informed that theft of cattle is a big problem for the Centre. The Centre is trying to increase security to address the problem (patrols at night). There is a suspicion that the culprits might be former inmates or personnel familiar with the area. During the last incident, nine cattle were stolen and slaughtered.

[52] There is a vet who looks after the cattle's health. The abattoir is also close by in case emergency slaughtering is required.

Meeting with inmates

[53] The Centre officials assembled all the inmates for an address by Justice Cameron.

[54] Justice Cameron informed the inmates that the main purpose of the visit was to see that any issue or complaint they have is addressed.

[55] He delivered a personal message about HIV/AIDS, encouraging inmates to remove stigma, adopt prevention and to embrace ARV treatment – for themselves, and their families and loved ones.

[56] Justice Cameron then invited the inmates to raise concerns in relation to how they are treated by the Centre officials and fellow inmates, the Centre facilities, etc.

[57] The following concerns were raised:

- a) Brand Jansen
 - i. He mentioned that he has a short temper as a result of which he often fights with the warders. This usually lends him in hot water and he ends up being assaulted by warder Tshabalala.
 - ii. He also complained of inmates [Sikhulu, Sihlavana and “a short guy called Induna”] who smoke nyaope and the warders protect and support them.
- b) Ziyaad Bulil
 - i. He also complained of being assaulted by warder Tshabalala. He stated he was disrespected by the warders who often say “voetsek” in response to their complaints.
- c) Sphehile Bruno Masilela
 - i. A friend left him a kettle and a radio but warders confiscated these from him – and they are using them themselves.
- d) Zakhele Zikode
 - i. He was given wrong pre-packed medication belonging to a certain “Tshepo” – this caused him to develop an infection.
- e) Tsepo Nkosi and Themba also complained of being assaulted by warder Tshabalala.

[58] Centre’s responses:

- a) Sister Ramollo investigated Mr Zakhele Zikode’s complaint of wrong medication whilst we were there. She reported that he was in fact given correct medication (although it had wrongly been pre-packed for Tshepo) – but because it was a different brand, not Tribas he is used to, he wrongly thought it was incorrect.
- b) In relation to the alleged assaults by warder Tshabalala, the Acting Area Commissioner, Mr Mkhali, undertook to send investigators from

Modderbee to investigate and report back. This report has since been provided. It is Annexure B to this report.

Address to the Centre officials

[59] The Centre officials assembled in the meeting hall. Justice Cameron addressed them and invited them to engage with him.

[60] In his address, Justice Cameron complimented the officials for the often unrecognised and unrewarded work they are doing. He expressed respect and appreciation of the difficult conditions they sometimes have to work under.

[61] He then invited the officials to raise any issues they may have or ask questions.

[62] The first general concern that was raised related to the uniform. Some officials complained that they have had the same uniform for close to eight years, and are yet to be issued with new uniforms.

[63] Other complaints raised were:

- a) The water pipes are very old. This results in an unacceptably high frequency of pipe bursts and then shortage of water for days. Sometimes the Department of Public Works takes up to two weeks to attend to the problem. The Centre is liaising with this Department to replace the pipes.
- b) It is sometimes difficult to handle gangsterism without physical force. Justice Cameron expressed appreciation for the difficulty but stressed that assault is never an option, except in legitimate self-defence.
- c) Development within Correctional Services is slow. The majority of warders are cramped in one level, earning little for many years, without any promotion – by contrast, a small number of employees, who do less rigorous work, earn more income.

- d) There was also a complaint that there does not seem to be a promotion policy in the DCS because a certain warder has been receiving the same salary for the past 15 years.
- e) The shift pattern is irregular and problematic. In response, Mr Mkhaliphi mentioned that this issue is being addressed by the national office. The Minister and unions are negotiating and will come up with a solution. Officials who work double shifts are paid for that.
- f) When personnel have to travel for relocating offenders and on other occasions, the S&T allowance is too little. Only R20 is allowed for breakfast, which is inadequate at road stops for even minimal sustenance. In addition, there is a delay of about eight months in its payment. In response, Mrs M Smalberger (Centre Coordinator: Staff Support) mentioned that this is being attended to. She said the delay is in fact two not eight months. This is a national problem, she said.
- g) The Centre is in many respects treated as a fully-fledged prison within the DCS, yet it is not. This creates many structural challenges for the Centre, including security and space and results in escapes – although the last escape was in 2013.

Issues and Recommendations

[64] The main issue with the Centre is that it was not built for purpose. This creates practical problems, as we witnessed in the clinic, and general space constraints. The clinic is the most compromised from a space perspective.

[65] The TB isolation room is almost non-existent with no proper ventilation. It is more a storeroom than a room suitable for a sick patient. This leads to cells being used at times to house inmate patients.

[66] The clinic registration area is cramped and small. This compromises inmates' privacy.

[67] There is not enough room for additional beds, which are required. We recommend that this issue be given urgent attention. More space should be allocated to the clinic or it should be relocated to larger premises within the Centre's precinct, all other logistics considered.

[68] Another issue arising from the Centre not being built for purpose is that substantial renovations and additions will be required to upgrade the Centre to a medium security centre so that it can house longer-term inmates.

[69] This will address a number of issues, including that there is currently not enough time to up-skill inmates as they are there on a short-term basis.

[70] There is also lack of skills transfer between inmates as there is not enough time for those who acquire skills or come with certain skills to train others before their release. This means that Centre officials continuously train or half-train inmates, whilst the Centre and fellow inmates derive very little practical benefit from those who have been trained.

[71] Water shortages as a result of burst pipes are an obvious problem. As is DPW's slow response time. It sometimes takes up to two weeks for DPW to send a contractor to fix the problem. The Centre has procured water containers to assist when there is no running water. This is laudable, but cannot be a permanent solution. The old pipes must be replaced to avoid the continuous bursting. It was noted that the pipes that burst or equipment that malfunctions whilst under warrant gets fixed or replaced quicker by the contractors.

[72] The pattern of complaints naming warder Tshabalala was marked and insistent. He was named in the presence of personnel and we had no basis to suspect malingering or fabrication. The Centre has informed us that:

The official was sensitized and counselled. An investigation was conducted on the allegations levelled against Mr. Tshabalala and there was no proof to substantiate the allegations as a result no further disciplinary actions were taken against him.

[73] Particular vigilance is therefore needed to ensure that offenders do not experience assaults at the hands of officials. The Centre has informed us that:

In order to prevent assaults on offenders' platforms such as personnel meetings and morning assemblies are utilised to sensitize officials about section 32(1)(c) and section 21 of the Correctional Services Act 111 of 1998.

[74] Last year 29 assaults were recorded. Twenty five were inmate on inmate, whilst four were official on inmate. All four of those were investigated. Although the investigation on the alleged assaults by warder Tshabalala has failed to support the allegations, it is concerning that a number of inmates had the same complaint about Tshabalala.

[75] The delays in the confirmation of addresses must be addressed. We realise this is a systemic problem, which requires middle management expertise from regional and head office. But it must be addressed. Not doing so leads to unhappiness and grievances, and complicates the working conditions of personnel.

[76] The majority of inmates at the Centre come from Johannesburg Centre (Sun City) and must thus be returned to Johannesburg when they are due for release. However, before they can be shuttled to Johannesburg, addresses (often in distant areas) must be confirmed by the Johannesburg Centre. This takes time which results in inmates spending longer than required at the Centre. Also, the back and forth shuttle service is costly and cumbersome.

[77] Another issue is that the Centre does not take non-citizen (foreign) inmates. This means the Centre cannot be utilised to ease the overcrowding pressure at

Modderbee Centre, which is located close to the Centre, and which houses foreign inmates.

[78] This means the Centre must take inmates from far-away areas like Pretoria, Atteridgeville and elsewhere. This merely exacerbate the address confirmation delays.

[79] The pap (maize porridge) ration has been reduced from 200 to 160 grams. This represents a 20% reduction. It is problematic. We were informed that 160 grams is not sufficient and has caused unhappiness with some of the inmates.

[80] Indeed when Justice Cameron was addressing the inmates, one inmate complained that he eats a lot and is often hungry when he goes to bed, despite having consumed his daily supply. Seeing the practical effects of the reduction in ration, we must recommend that the 200 grams allowance be reinstated.

[81] The Centre has an impressive skills development program. It is unfortunate that it often runs out of steel, welding rods, and steel paint.

[82] It is recommended that this be remedied. The supply of material to a well-functioning Centre, where pre-release offenders can usefully be trained, should not be affected by budgetary cuts. Those cuts should rather take effect elsewhere. We have since been informed that:

Procurement for maintenance material has been approved, still waiting for the supply chain processes to be finalized.

[83] Related to this is that the Centre's perimeter wall is not in good order. The Centre is however fixing it using the palisades made at the Centre's workshop by

inmates. The unavailability of material means that this very important project also comes to a standstill.

[84] The complaint about uniforms not being renewed seemed warranted and needs to be addressed. We have been informed that:

Whenever the uniform is received from the Supply Chain office it is distributed to the officials.

But this does not resolve the officials' complaint. The complaint appears to be that either the supply chain office has not procured new uniforms in a long time or the distribution has not reached most, if not all, the intended recipients.

[85] Overall, the Centre is in good condition.

[86] We were impressed with the high level of experience, professionalism and commitment exhibited by the officials we met.

[87] A notable feature of the meeting with officials was the level of disgruntlement expressed. This led one of the senior officials accompanying us to remark that a younger generation of warders no longer see service as a calling.

[88] We urge top management in the Department to be alert to this and keep a watch on it. The job is tough. The complaints of personnel, where warranted, should be watchfully attended to.

Conclusion

[89] We express our appreciation to the personnel for the accommodating and courteous way in which our visit was handled. The personnel were informative and answered questions openly and frankly.

[90] The general atmosphere in the Centre was marked by efficiency and responsiveness. Before even this report was compiled, we had already received the Centre's response to most of the complaints we heard. This is a notable first.

[91] We also appreciated the informal discussion with some of the members of the management over lunch provided by the Centre.

[92] We noted the ready willingness of Mr Mkhalihi and his colleagues to cooperate, thereby enabling a smooth, unencumbered and unrestricted visit.