



## **SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT**

Complaint Ref. No.: **FS/1213/0350**

In the matter between:

**SAHRC Own Initiative (Groenpunt Riots)**

**Complainant**

And

**Regional Commissioner of Correctional Services,**

**Free State and Northern Cape**

**First Respondent**

**Head of Prison, Groenpunt Correctional Centre**

**Second Respondent**

---

**REPORT**

---

## 1. Introduction

- 1.1 The South African Human Rights Commission (hereinafter referred to as the "**Commission**") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 1996 (hereinafter referred to as the "**Constitution**").
- 1.2 The Commission and other institutions created under Chapter 9 of the Constitution are described as "state institutions supporting constitutional democracy".
- 1.3 The Commission is specifically required to:
  - 1.3.1 Promote respect for human rights;
  - 1.3.2 Promote the protection, development and attainment of human rights; and
  - 1.3.3 Monitor and assess the observance of human rights in the Republic.
- 1.4 Section 184(2) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.
- 1.5 Further, section 184(2)(c) and (d) affords the Commission authority to carry out research and to educate on human rights related matters.

- 1.6 The Human Rights Commission Act, 54 of 1994 further supplements the powers of the Commission and provides the enabling framework for the powers of the Commission.
- 1.7 Section 9(6) of the Human Rights Commission Act determines the procedure to be followed in conducting an investigation regarding the alleged violation of or a threat to a fundamental right.

## 2. Parties

- 2.1 The Complainant in this matter is the South African Human Rights Commission an institution supporting constitutional democracy established in terms of Section 181 of the Constitution of the Republic of South Africa Act, 108 of 1996.
- 2.2 The First Respondent is the Regional Commissioner of Correctional Services, Free State and Northern Cape Region (hereinafter referred to as the "**1st Respondent**").
- 2.3 The Second Respondent is the Head of the Correctional Centre at Groenpunt Correctional Centre, Free State Province designated by the Commissioner to manage and control this Correctional Centre (hereinafter referred to as the "**2<sup>nd</sup> Respondent**")

### **3. Nature of Investigation**

3.1 The investigation into this matter seeks to determine whether any one or more of the human rights listed in Chapter II of the Constitution (Bill of Rights), were violated during a mass riot of inmates incarcerated at the Groenpunt Correctional Centre in Deneysville, Free State Province. The riots took place between the 7<sup>th</sup> and the 10<sup>th</sup> January 2013 respectively.

### **4. Background to the Complaint**

**4.1** On Wednesday, 9<sup>th</sup> January 2013, the attention of the Commission was drawn to media reports<sup>1</sup> that hundreds of inmates at the Groenpunt Maximum Security Correctional Centre in Deneysville, Free State Province had staged a riot.

**4.2** According to media reports, more than seven hundred (700) prisoners participated in the riot, smashing walls with home-made weapons and setting cells and offices alight. It was reported that nine (9) warders and fifty (50) prisoners were injured.

**4.3** Media reports further highlighted that the prisoners staged the riot following complaints they had lodged concerning the quality of the food that they were being provided with. The prisoners were further reported to have demanded that one of the unit heads at the centre be fired.

---

<sup>1</sup> The Times Newspaper, 07 January 2013.

## 5. Preliminary Assessment

- 5.1** The Free State Provincial Office of the Commission made a preliminary assessment of the complaint.
- 5.2** The Commission found the Respondents' alleged conduct to amount to a *prima facie* violation of the following rights: **Human dignity (s10) and the Rights of arrested, detained and accused persons (s35)**.
- 5.3** The Commission further determined that the alleged violations fell within the mandate and jurisdiction of the Commission.
- 5.4** The Commission further determined that a full investigation be conducted by the Commission in terms of the Complaints Handling Procedures of the Commission.

## 6. Institutions with mandate to provide redress

In the assessment of the Commission, three institutions have a complementary and not exclusive jurisdiction to investigate this incident:

## **6.1 The Office of the Inspecting Judge (JICS)**

The Judicial Inspectorate of Prisons is an independent office under the control of the Inspecting Judge. The object of the Judicial Inspectorate is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres.

Section 90(1) of the Correctional Services Act of 1998<sup>2</sup> provides that: "*The Inspecting Judge inspects or arranges for the inspection of correctional centres and remand detention facilities in order to report on the treatment of inmates in correctional centres and remand detention facilities and on conditions and any corrupt or dishonest practices in correctional centres and remand detention facilities*".

## **6.2 The South African Police Services (SAPS)**

Section 205(3) of the Constitution provides the following in terms of the mandate of SAPS: "*The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law*".

---

<sup>2</sup>Section 85, Correctional Services Act, 111 of 1998.

The Preamble to the South African Services Act<sup>3</sup> provides that there is a need to provide a police service throughout the national territory to –

*"(a) ensure the safety and security of all persons and property in the national territory;*

*(b) uphold and safeguard the fundamental rights of every citizen as guaranteed by the Constitution;*

*(c) ensure co-operation between the service and the communities it serves in the combating of crime;*

*(d) reflect respect for victims of crime and an understanding of their needs, and*

*(e) ensure effective civilian supervision over the service.*

### **6.3 The South African Human Rights Commission**

The Commission is mandated in terms of section 184 of the Constitution *to make steps to secure appropriate redress where human rights have been violated and to investigate and report on the observance of human rights in the country.*

---

<sup>3</sup> 68 of 1995.

In terms of section 3(b) of the Human Rights Commission Act<sup>4</sup> the Commission has jurisdiction *"to conduct or cause to be conducted any investigation on its own accord, into any alleged violation of or a threat to a fundamental right"*.

## **7. Steps taken by the Commission**

### **7.1 Request for written response to allegations**

- 7.1.1 On the 9<sup>th</sup> January 2013, the Free State Provincial Office of the Commission made a written request to the Respondents for further particulars relating to the reported riots. Attached to this letter was an Investigation Questionnaire which sought to gather information on whether, in the view of the Respondents, there had been any human rights violations and if so, how the violations could be remedied.
- 7.1.2 On 18<sup>th</sup> March 2013, the Commission sent a letter to the Office of the Inspecting Judge advising them of the Commission's mandate and the Commission's preliminary assessment and seeking a detailed report on the Groenpunt Correctional Centre riots, events leading thereto and subsequent events thereto.
- 7.1.3 On 18<sup>th</sup> March 2013, the Commission sent letter to the Regional Commissioner of Correctional Services for Free State and Northern Cape Region, advising of the Commission's mandate and the Commission's preliminary assessment and seeking a detailed report

---

<sup>4</sup>No. 54 of 1994.



on the Groenpunt Correctional Centre riots, events leading thereto and subsequent events thereto.

7.1.4 Similarly, on 25<sup>th</sup> March 2013, the Commission sent the same request to the Deneysville Police Station and in addition to seeking information on the riots, the Commission also sought a detailed report on whether a case regarding the death of the inmate at Groenpunt Correctional Centre had been opened. Attached to this letter was an Investigation Questionnaire which sought to gather information on the above.

7.1.5 On Friday, 5<sup>th</sup> April 2013, the Commission sent a further letter to Deneysville Police Station urging its response to the letter of 25<sup>th</sup> March 2013.

## **7.2 Inspection In Loco**

7.2.1 On the 10<sup>th</sup> January 2013, the Free State Provincial Office of the Commission dispatched an investigator to the Groenpunt Correctional Centre Maximum Security Centre in Deneysville for an inspection *in loco*.

The objectives of the inspection *in loco* were three-fold:

(a) To verify the accuracy of the media reports;

(b) To identify the causes of the riots;

(c) To determine whether the Commission can play a role in restoring the situation to normal and remedying any human rights violations.

The methodology employed in conducting investigations during the inspection in loco was interviews. The intention of the Commission was to conduct interviews with officials of the Correctional Centre, warders, inmates and their representatives.

## **8. Evidence collected during investigation**

### **8.1 Response submitted by the Regional Commissioner of Correctional Services: Free State and Northern Cape Region to the letter and Investigation Questionnaire of the Commission dated 9<sup>th</sup> January 2013.**

The Office of the Regional Commissioner forwarded its response to the Commission on 10<sup>th</sup> January 2013. The report highlighted the following in relation to the riots:

8.1.1 the inmates are all male and they are predominantly Africans;

8.1.2 that the underlying cause of the riots was due to the fact that inmates had submitted their complaints but that they had not

been addressed by any staff of the Correctional Centre authority and they became impatient and aggressive;

8.1.3 the inmates' complaints were in relation to the following:

- a) inadequate medical care;
- b) inadequate nutritional services;
- c) lack of rehabilitation programmes;
- d) the fact that the Case Management Committee sittings and their decisions are not communicated to the inmates;
- e) the fact that reclassification of inmates is not done regularly;
- f) the fact that there is no maintenance or repairs of the Centre;
- g) the conduct of the Emergency Support Team (EST) during searches;
- h) the fact that the administration of appeals is slow;

i) the establishment of a Prisoner's Management Committees.

- 8.1.4 about three hundred (300) inmates participated in the riots, they broke open the grill locks of the cells and instigated other inmates to join in the riots;
- 8.1.5 the inmates displayed aggressive and violent behaviour, they assaulted and injured officials and pelted them with stones, they also set the administration offices alight, broke open the Unit A tuck shop, looted it and set it alight and also barricaded the two entrances to the Unit with beds and cabinets, placed mattresses on them and set them alight;
- 8.1.6 the Centre immediately reported the matter to higher authority in the Department of Correctional Services and the Department's Emergency Support Teams, Sasolburg Fire Brigade, Deneysville SAPS, Sasolburg Ambulance Services and the Welkom Public Order Police were called in and they managed to bring the situation under control at about 02:00 in the morning;
- 8.1.7 the Administration brought in extra reinforcement to maintain stability, the instigators were identified, removed from the Unit and transferred to other Correctional Centre;
- 8.1.8 there is no organised body representing the inmates and there are no negotiations between the Correctional Centre and the

inmates, but an investigation is underway to assist in the determination of a way forward;

- 8.1.9 the Correctional Centre would like the Commission to educate offenders on their rights and their corresponding responsibilities and to assist the Department to identify where there were any human rights violations and the violations identified to be remedied;
- 8.1.10 the Correctional Centre further indicated that they would like the Office of the Inspecting Judge to continue to investigate inmates complaints and provide proper feedback at all times;
- 8.1.11 the Correctional Centre also identified SAPS as another stakeholder that is providing assistance in terms of providing security and investigating any criminal acts that might have been committed during the riots;
- 8.1.12 the Provincial Department of Correctional Services also responded promptly and provided leadership support in efforts to restore order and maintain peace, the National Department did the same;
- 8.1.13 the inmates committed criminal acts of arson, assault and public violence and investigations will determine whether the Correctional Centre infringed any laws, policies or regulations;

- 8.1.14 in future, inmates grievances are to be attended to urgently and the grievance procedure is to be followed by both inmates and officials.

**8.2 Report submitted by the Department of Correctional Services on 15<sup>th</sup> April 2013 after the completion of the Department's preliminary investigations. In the report received by the Commission on 15<sup>th</sup> April 2013, the Department noted the following:**

8.2.1 Mr Motloun, the Unit A Manager from the Maximum Correctional Centre reported to the Head of the Groenpunt Correctional Centre, Mr Sekele, that the inmates did not want to enter their cells and to be locked up by the Unit Case Officers because they had grievances that they wanted to be addressed by the Head of the Correctional Centre. Mr Mokhosi, a Case Officer from Unit A confirmed this;

8.2.2 A representative of the inmates, Mr Andrew Letshele communicated the grievances of the inmates to the Head of the Correctional Centre and provided a memorandum detailing complaints registered by the Prisoner's Management Committee dated 15<sup>th</sup> November 2012, the memorandum highlighted the following complaints:

- a) a lack of medical staff and the distribution of expired medication, negligence by staff, a lack of medication for a variety of illnesses and the fact that inmates with eye problems do not receive spectacles;

- b) the Case Management Committee fails to apply the re-classification tool;
- c) the Emergency Support Teams (EST) conduct themselves inappropriately;
- d) maladministration in the handling of appeals and other administrative matters;
- e) a new Prisoner's Management Committee needs to be elected in all sections;
- f) the kitchen does not comply with hygiene and health standards, there is shortage of food, non-compliance with the dress code and there is non-compliance with nutritional standards;
- g) an absence of social worker programmes, the unavailability of developmental programmes and a lack of rehabilitative programmes;
- h) corruption of officials and the fact that they do not intervene when there are gang fights, the inmates have to stop the fights themselves;

- i) inmates allege that Mr. Motloung, the Unit Manager and the Case Officers do not serve them properly and they command no respect;
- j) inmates further complained about the fact that their cells are opened late and that they do not receive any exercise as per the policies;
- k) inmates further allege that the Acting Divisional Head: Security harasses them, he was also recently caught with a cell phone during the riot on 7<sup>th</sup> January 2013;
- l) inmates allege that their grievances were not handled properly or timeously as they were handed over to Management on 19<sup>th</sup> April 2012 but had not been addressed by 7<sup>th</sup> January 2013;
- m) lack of repairs when there are damages;
- n) inmates also indicated the people whom they allege are helpful and people whom they would like to be led by;
- o) inmates further indicated that officials from Unit A should be reshuffled as some of them are corrupt;



8.2.3 the inmates became aggressive, looted the tuck shop and burned down cells, the SAPS Public Order Section brought the situation under control at around 23h00;

8.2.4 about nine (9) officials and fifty (50) inmates sustained injuries during the riot, they all received medical attention and there were no fatalities;

8.2.5 twenty five (25) inmates were identified as the instigators and were removed, to date four hundred and seven (407) inmates were transferred successfully to other Correctional facilities and ninety three (93) inmates are due for transfer to other facilities soon;

8.2.6 due to the fear that other Correctional Centres would embark on riots as well, search operations were conducted at other Correctional Centres, including the Heilbron Correctional Centre, the Groenpunt Medium Correctional Centre and the Vereeniging Correctional Centre, during these searches, mobile phones and unauthorised items, including weapons were confiscated from officials and inmates;

8.2.7 in resolving the matter and ensuring that the riot never happens again, the Correctional Centre did the following:

a) Vacant posts were filled;

- b) Security at the Correctional Centre has been enhanced and the locks were repaired;
- c) The Unit was prioritised for renovations in the new financial year 2013/2014;
- d) The Memorandum of Grievances from offenders from Groenpunt Medium and Maximum Correctional Centres has been addressed by the Area Commissioner, Area Coordinator Corrections and Area Coordinator Development and Care with different stakeholders;
- e) Management of the Correctional Centre has been reviewed by the suspension of both the Area Commissioner and the Head of the Centre and other senior officials have been appointed pending the finalisation of the investigation and disciplinary enquiries.
- f) The Head of the Correctional Centre alleges to have addressed and handled the inmates complaints adequately.  
**(the report is annexed hereto as "Annexure A")**

### **8.3 Report submitted by the Office of the Inspecting Judge on 4<sup>th</sup> April 2013.**

The Office of the Inspecting Judge indicated that the report had been tabled in Parliament. The report highlighted the following:

8.3.1 In so far as how the riots came about, the report of the Office of the Inspecting Judge is similar to reports noted above.

8.3.2 Inmates were assaulted by the Department's officials and EST members after the situation had been brought under control, the JICS inspector noted that even inmates that did not pose any threat and were cooperating were being assaulted.

8.3.3 There is a serious staff shortage and the Inspecting Judge highlighted this shortage as a "ticking time bomb" in discussions between the Deputy Regional Commissioner and JICS, which discussions took place in February 2013;

8.3.4 The JICS maintains that had the Head of the Correctional Centre and the Area Commissioner done more to contain the inmate's agitation before the EST was deployed, it may have been possible to prevent the riot;

8.3.5 The JICS inspector highlighted that the Correctional Centre was unprepared for the crisis, the generator was faulty and could not be used immediately after the flow of electricity was disrupted and some of the fire fighting equipment had not been serviced since 2008, hence the Centre could not contain the fire and the fire brigade had to be called in;

8.3.6 The transfer process was poorly managed and inmates who had not even been involved in the riots were transferred, inmates who were perceived to be troublesome were also transferred to other Correctional Centres;

8.3.7 The Department indicated in its report that fifty (50) inmates had been injured but during its investigation, JICS found that seventy four (74) inmates had been injured and by the time the JICS final report was compiled a hundred and four (104) offenders had been injured although it is not clear whether the injuries were sustained during the riot and not immediately reported;

8.3.8 Officials of the Department had low staff morale as a result of staff shortage and the inappropriate shift system;

8.3.9 There is a breakdown in the relationship between personnel and management of the Correctional Centre and this contributed to the riot and the Correctional Centre's inability to manage the situation;

#### **8.4 Report submitted by Deneysville SAPS on 19<sup>th</sup> April 2013**

The report from Deneysville SAPS highlighted the following:

8.4.1 The SAPS and Officials from the Department of Correctional Services used minimum force in handling the violent Correctional Centre riots in that implements like tear gas and rubber bullets were used;

8.4.2 The police seized weapons from the inmates, these weapons included bricks, homemade knives and sharp objects, sixty eight (68) inmates were injured and there were no fatalities;

8.4.3 Twenty five (25) inmates were identified as the instigators in the riots and they were charged with arson, assault and malicious damage to property;

8.4.4 the cause of the riots were that inmates were not satisfied with the treatment they were receiving from the Department of Correctional Services, problems like corruption were highlighted by the inmates;

8.4.5 The matter is still under investigation and some of the inmates have been transferred to other Correctional Centres.

## 8.5 Evidence collected during Inspection in Loco

8.5.1 Not much information was gathered during the inspection in loco as officials of the Department and Management of the Correctional Centre were convening a meeting to address the situation with the rioters; This meant that there was no one available to address the Commission;

8.5.2 The investigator did however, manage to speak to Mrs Molatedi, the Deputy Regional Correctional Services Commissioner and she highlighted the following:

- a) The Correctional Centre was in a process of reconstructing files that had been damaged in the fire;
- b) The area that had been burnt down could not be accessed as it had been declared a crime scene as the SAPS was still busy with their investigations and could not allow any contamination of the crime scene;
- c) The Commission could not, at that stage have access to any inmates or their representatives as hundreds of inmates had been transferred to other Correctional Centres because during the riots, the inmates burnt down offices and inmate cells, hence those areas had become uninhabitable and the Correctional Centre was trying to sort out the logistics of

making the Correctional Centre habitable for inmates who had not yet been transferred;

d) The Department of Public works was on site to evaluate the extent of the damage so that they could ascertain how much money would be needed in repairs and renovations.

## 9. Applicable Legal Framework

### 9.1 International Instruments

#### (a) United Nations Declaration of Human Rights (UDHR)<sup>5</sup>

The UDHR, in its preamble recognises the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.

Article 3 of the UDHR provides that *"everyone has a right to life, liberty and security of the person"*.

Article 5 provides that *"no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"*.

---

<sup>5</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948.

**(b) United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>6</sup>**

These rules seek to set out what is generally accepted as being good principles and practice in the treatment of prisoners and the management of institutions.

Some notable provisions in the Rules are as follows:

Article 20(1) provides that *"every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served"*.

Article 21(1) provides that *"every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits"*.

Article 22(2) provides that *"sick prisoners who require specialist treatment shall be transferred to specialized or to civil hospital facilities. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceuticals supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers"*.

---

<sup>6</sup> Adopted in Geneva in 1955.



### **(c) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>7</sup>**

The Convention seeks to *"make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world"*.

*To this end, Article 16 (1) of the Convention mandates that "each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1 of the Convention"*.

### **(d) Basic Principles for the Treatment of Prisoners<sup>8</sup>**

Article 1 of the Principles provides that *"all prisoners shall be treated with the respect due to their inherent dignity and value as human beings"*.

Article 5 provides that *"except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights as well as such other rights as are set out in other United Nations covenants"*.

---

<sup>7</sup> Adopted by the General Assembly, resolution 39/46 of 10 December 1984.

<sup>8</sup> Adopted by the General Assembly, resolution 45/111 of 14 December 1990.

**(e) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>9</sup>**

Principle 1 provides that *"all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person"*.

Principle 6 provides that *"no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment"*.

**9.2 Constitutional Framework**

**(a) Section 1 (a) of the Constitution Act, 108 of 1996**

Section 1(a) of the Constitution entrenches respect for human dignity, the achievement of equality and the advancement of human rights and freedoms. These are the foundational values of the Constitution and therefore form the bedrock upon which the Constitution is based.

---

<sup>9</sup> Adopted by the General Assembly, resolution 43/173 of 9 December 1988.

**(b) Section 7(2) of the Constitution**

This section requires the State, in this instance, the Respondents, to respect, protect, promote and fulfil all fundamental rights.

**(c) Section 10: The Right to Human Dignity**

Section 10 of the Constitution provides that:

*"Everyone has inherent dignity and the right to have their dignity respected and protected."*

**(d) Section 35: Arrested, detained and accused persons**

Section 35 of the Constitution provides that:

*"(2) Everyone who is detained, including every sentenced prisoner, has the right –*

*(e) to conditions of detention that are consistent with human dignity, including at least exercises and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment".*

### 9.3 Applicable Domestic Legislation

#### (a) Correctional Services Act<sup>10</sup>

The Correctional Services Act seeks to give effect to the Bill of Rights as enshrined in the Constitution and in particular, provisions relating to offenders.

The Act also seeks to recognise and give effect to international principles on correctional matters and to regulate the release of offenders and the system of community corrections and to provide for independent mechanisms to investigate and scrutinize the activities of the Department of Correctional Services.

### 9.4 Applicable Regulatory Framework

#### (a) Correctional Services Regulations<sup>11</sup>

The Regulations highlight the fact that custody of all inmates must be under conditions of human dignity.

The Regulations provide for the admission of inmates, their appropriate accommodation, nutrition and healthcare.

---

<sup>10</sup> Act 111 of 1998.

<sup>11</sup> Regulations in terms of section 134 of the Correctional Services Act 111 of 1998, Regulation Gazette, No. 35277.

Chapter 2(4) (1) provides that sentenced inmates must be provided with a nutritious balanced diet.

Chapter 7(1) (a) states that primary healthcare must be available in a correctional centre at least in the same level as that rendered by the State to members to the community.

## **9.5 Applicable Policy Framework**

### **(a) White Paper on Corrections (2005)**

Chapter 29 of the Department's White Paper provides that the Department commits itself to full compliance with the provisions of the Constitution and international instruments in relation to the honouring of the basic rights of offenders.

In its White Paper, the Department also highlights that it has a needs-based framework for implementation of their function of safety and security within a human rights context. According to the Department, the needs-based approach will ensure that there is *"a perfect balance between secure and safe custody on the one hand and correction, promotion of social responsibility and human development on the other hand"*.

## 9.6 Strategic Frameworks

### (a) Department of Correctional Services Strategic Plan<sup>12</sup>

In its strategic plan, the Department of Correctional Services highlights its strategic objectives as amongst others to ensure that:

- i. remand detainees and offenders are held in secure, safe and humane conditions;
- ii. effective case management processes are in place;
- iii. effective incarceration and rehabilitation programmes of offenders are in place;
- iv. offender behaviour is corrected through access to correctional programmes and psychological, social and spiritual services;
- v. offenders human development is improved through literacy, education and skills competency programmes;
- vi. inmates are provided with appropriate nutritional services;

---

<sup>12</sup> Strategic Plan 2013/2014 – 2016/2017.

- vii. inmates are provided with appropriate access to health care services;
- viii. inmates are provided with appropriate hygiene services.

## 9.7 Relevant Case Law

### (a) **Goldberg v Minister of Prisons**<sup>13</sup>

In the **Goldberg** case, Corbett JA highlighted the following:

*"It seems to me that fundamentally, a convicted and sentenced prisoner retains all the basic rights and liberties of an ordinary citizen except those taken away from him by law, expressly or by implication, or those necessarily inconsistent with the circumstances in which he as a prisoner, is placed. Of course, the inroads which incarceration necessarily makes upon a prisoner's personal rights and liberties are very considerable. He no longer has freedom of movement and has no choice in the place of his imprisonment. His contact with the outside world is limited and regulated. He must submit to the discipline of prison life and the rules and regulations which prescribe how he must conduct himself and how he is to be treated while in prison. Nevertheless, there is a substantial residuum of basic rights which he cannot be denied, and if he is denied them, then he is entitled to legal redress"*

---

<sup>13</sup>1979 (1) SA 14 (A), 39.

**(b) S v Williams<sup>14</sup>**

In referring to punishment in general, the Constitutional Court, in *S v Williams*, held that the Constitution required that *"measures that assail the dignity and self-esteem of an individual will have to be justified; there is no place for brutal and dehumanizing treatment and punishment. The Constitution has allocated to the State and its organs a role as the protectors and guarantors of those rights to ensure that they are available to all. In the process, it sets the State up as a model for society as it endeavours to move away from a violent past. It is therefore reasonable to expect that the State must be foremost in upholding those values which are the guiding lights of civilized societies. Respect for human dignity is one such value; acknowledging it includes an acceptance by society that even the vilest criminal remains a human being possessed of common human dignity"*.<sup>15</sup>

**(c) NM v Smith**

In **NM v Smith (Freedom of Expression Institute as Amicus Curiae) 2007 (5) SA 250 (CC)** the court held that *"a constant refrain in our Constitution is that our society aims at the restoration of human dignity because of the many years of oppression and disadvantage. While it is not suggested that there is a hierarchy of rights it cannot be gainsaid that dignity occupies a central position. After all, that was the whole aim of the struggle against apartheid – the restoration of human dignity, equality and freedom."*<sup>16</sup>

---

<sup>14</sup>1995 (3) SA 632 (CC).

<sup>15</sup>*ibid* para 58.

<sup>16</sup>NM v Smith at para 49.



*The Court further held that if human dignity is regarded as foundational in our Constitution, a corollary thereto must be that it must be jealously guarded and protected. The Court referred to judgements made in the matter of Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others:*

*"The value of dignity in our constitutional framework cannot therefore be doubted. The Constitution asserts dignity to contradict our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhuman or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitations analysis. Section 10, however, makes it clear that dignity is not only a value that is fundamental to our constitution, it is a justiciable and enforceable right that must be respected and protected".<sup>17</sup>*

---

<sup>17</sup> NM v Smith at para 50-51

*mhm*

(d) **S v Makwanyane and Another**<sup>18</sup>

In **S v Makwanyane and Another**, the Court observed as follows:

*"Respect for the dignity of all human beings is particularly important in South Africa. For apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution".*

*Chaskalson P further stated that although imprisonment impairs a person's dignity, the State has the power to impose this form of punishment as part of the criminal justice system. Prisoners, however, do not lose their rights on entering prison. On the contrary prisoners "retain all the rights to which every person is entitled under the Bill of Rights subject only to limitations imposed by the prison regime that are justifiable under the limitations clause".<sup>19</sup>*

---

<sup>18</sup>1995 (3) SA 391 (CC).

<sup>19</sup>S v Makwanyane at paras 142-143.

## 10. Analysis

### 10.1. Right to Human Dignity

- a) The Commission's preliminary assessment is that the inmate's rights to human dignity had been violated. The state has obligations to respect, protect, promote and fulfil the rights in the Bill of Rights, including the right to human dignity.
- b) Prisoners generally need to tolerate a greater limitation of their rights, including their right to dignity, than other persons, but an infringement of inmates rights must be justifiable with reference to the objectives of their incarceration, which are the prevention of crime and the rehabilitation of the offender.
- c) There was nothing gleaned during the course of investigations that suggested that the Respondents responded to the complaints of the inmates adequately and timeously.
- d) The Respondents did not comply with the minimum standards of detention in light of domestic law and international instruments and the inmates were not treated with the necessary respect towards their human dignity.
- e) The Respondents did not respond to calls by personnel to employ more staff as there is a shortage of staff, this affects the security of the Centre and inmates cannot be taken care of properly.

## 10.2. Rights of Arrested and Detained Persons

- a) The Commission's preliminary assessment is that the Respondents did not provide inmates with conditions of detention that are consistent with human dignity, which obligation rests on them in terms of section 35(2)(e) of the Constitution.
- b) In its White Paper on Corrections, the Department highlight that it has a needs-based framework for implementation of their function of safety and security within a human rights context. According to the Department, the needs-based approach will ensure that there is *"a perfect balance between secure and safe custody on the one hand and correction, promotion of social responsibility and human development on the other hand"*. The Department however has not reached this goal in that they did not provide inmates with this balance within a human rights context and thus violated inmates right to conditions of detention that are consistent with human dignity.
- c) Nothing gleaned from the various reports obtained by the Commission shows that both Respondents took reasonable measures to ensure that they provide the inmates with exercise, adequate accommodation, reading material, medical treatment and with generally excepted standards of accommodation in line with their obligations.

### **10.3 Obligations and Responsibilities of the National and Provincial Department of Correctional Services**

- a) National and provincial government departments have a clear responsibility to ensure compliance with standard procedures and they also have a monitoring role.
- b) It is incumbent upon both provincial and national departments to monitor and intervene if necessary in the work of correctional centres. National and provincial departments should have exercised closer monitoring of the Correctional Centre. Such monitoring would have ensured compliance with the Department Strategic Plan Objectives, the Department's Regulations and compliance with International instruments.

## **11. Findings**

Based on the investigation conducted by the Commission and the analysis of the Constitutional rights, court judgments and applicable legislation, the Commission finds that:

- 11.1. The First and Second Respondents failed to adequately and timeously address inmates' complaints and grievances and this ultimately led to the riots that took place;
- 11.2. The Complaint of violations to the right to human dignity, and the rights of arrested and detained persons is upheld.

## 12. Recommendations

In terms of the human Rights Commission Act, the Commission is entitled to:

***"make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution".***

The Commission recommends accordingly that:

12.1 The Department of Correctional Services and Management of the Correctional Centre must ensure that inmates have access to rapid health treatment and to social and psychological services, within twelve (12) months from date of this finding;

12.2 The Department of Correctional Services and Management of the Correctional Centre must, with immediate effect, monitor how food and supplies are distributed, to this end, they must ensure that all inmates get basic necessities; rations and that these are not intercepted by other inmates and/or staff.

12.3 The Department and Management of the Correctional Centre must improve patrols by having systems where inmates can raise the alarm about corruption and irresponsible behaviour of officials, regular patrols to the cells and unannounced visits to cells, rapid access to the cells in the event of incidents and during lock-up must be ensured within three (3) months from date of this finding;

12.4 Proper developmental and rehabilitative programmes must be developed and implemented in line with the Departmental policies and regulations within six (6) months from date of this finding;

12.5 Inmates complaints/grievances must be responded to timeously and handled appropriately with immediate effect.

12.6 The Commission shall regularly monitor the implementation of the recommendation made herein and this end the Head of the Correctional Centre must submit written progress report at least every six (6) months until all recommendations shall have been implemented.

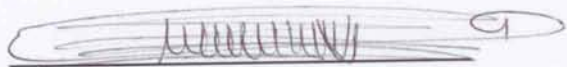
### 13. **APPEAL**

You have the **right to lodge an appeal** against this decision. Should you wish to lodge such an appeal, you are hereby advised that you must do so in writing **within 45 days of the date of receipt of this finding**, by writing to:

**The Chairperson, Adv M.L. Mushwana  
South African Human Rights Commission  
Private Bag X2700  
Houghton  
2041**



SIGNED AT Bramfontein ON THIS THE 3rd DAY OF AUGUST 2013.

A handwritten signature in black ink, consisting of a series of vertical strokes followed by a horizontal line and a small loop at the end.

Chairperson

M L Mushwana

**South African Human Rights Commission**