



# The Centre for the Study of Violence and Reconciliation

Johannesburg Office: 4th Floor, Braamfontein Centre, 23 Jorissen Street, Braamfontein, Johannesburg, South Africa;

Tel: +27 (11) 403-5650, Fax: +27 (11) 339-6785;

Cape Town Office: 501 Premier Centre, 451 Main Road, Observatory, 7925;

Tel: +27 (21) 447-3661, Fax: +27 (21) 447-5356;

PO Box 30778, Braamfontein, 2017 Email: [info@csvr.org.za](mailto:info@csvr.org.za) Website: [www.csvr.org.za](http://www.csvr.org.za)

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## **Submission to the Portfolio Committee on Correctional Services:**

### **Prison Labour**

**Submitted 7 May 2010 by the Centre for the Study of Violence and Reconciliation**

#### **Introduction**

The Centre for the Study of Violence and Reconciliation (CSVr) is a NGO situated in Johannesburg. During its 21 years of existence, it has contributed to the development of research, policy, advocacy and interventions on violence and violence prevention. The CSVr has over 16 years experience in working on issues to do with the human rights and treatment of prisoners, including conducting research, interventions and policy work on violence and sexual violence in prisons, development and reintegration of offenders, law reform, and training and capacity development of inmates and correctional staff.

CSVr is grateful for the opportunity to make a submission to the Portfolio Committee on the issue of labour and development of inmates in correctional centres. We have over the years made various contributions to the Portfolio Committee, and have previously focused on development and reintegration. In this submission, we will focus on the rights regarding prison labour, and making recommendations around this.

#### **Background**

Prison labour has a particularly contentious history in South Africa. Like other countries, South Africa in its early days operated on the understanding that prisons were places of punishment which was primarily executed through forced prison labour. The philosophy of imprisonment shifted by the late 1800's to recognise that the purpose of imprisonment was to rehabilitate prisoners. But, central to this concept was the notion that rehabilitation could be usefully achieved through the labour of prisoners. This was often supported by racist ideology that labour was a means of introducing 'civilisation' to Africans.

With the abolition of slavery, convicts played a crucial role in providing much needed cheap labour. The enforcement of laws regulating the movement of indigenous people later provided sufficient prisoners to contribute to the labour demand. Under colonialism, prison labour was used in the development of roads, railways and farms and forestry. With the discovery of diamonds and gold, prison labour was often used in mining. The later use of Black prisoners who were outsourced to private farms for farm labour was justified by the discriminatory notion that 'non-Europeans' were more 'suitable' to unskilled and outdoor work. According to Minister of Justice Venter this 'enabled them to develop self-discipline and a positive approach to work in general. This favours his eventual rehabilitation'.<sup>1</sup> Under apartheid, thousands of black prisoners, and those who had contravened the pass laws, were handed over to farmers as labour. Prisoners were often accommodated on farm outstations.

Conditions on prison farms and mine compounds were regularly exploitative and harsh and employers were very seldom held accountable for the treatment of prisoners. Eventually, as a result of local and international pressure, prison labour was phased out. Prison outstations were closed down in 1988 and there was a decline in the use of prison labour and paroling prisoners under conditions of paid contract.<sup>2</sup>

The adoption of a Bill of Rights in 1993 guaranteeing the rights of all people led to fundamental shifts in the philosophy regarding imprisonment and the treatment of prisoners. International standards of imprisonment finally began to impact on local conditions, and the introduction of the Correctional Services Act 111 of 1998 sought to govern the rights, treatment and conditions of all prisoners within a human rights context.

The labour practices adopted in the past serve to illustrate the potential for prisoners to be abused and exploited in performing labour during their imprisonment. The international human rights system aims to protect against such abuse.

### **The rights perspective**

The International Bill of Rights guarantees people the right to be treated with dignity and equality. It gives people the right not to be held in slavery or servitude.

The International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup> provides that 'penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation' (Article 10(3)). This confirms that prisons should not be places where prisoners are merely required to perform forced labour, but indicates an expectation that they will be given the opportunity in prison to change their lives and behaviour.

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<sup>1</sup> For a discussion on the historical use of prison labour See Dissel, A. And Kollapen, J. (2005). *Racism and Discrimination in the South African Penal System*. Paris: Penal Reform International and the Centre for the Study of Violence and Reconciliation, p 25.

<sup>2</sup> Ibid, p 28.

<sup>3</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, and entered into force on 23 March 1976.

In relation to labour, the ICCPR provides that the right not to be required to perform forced labour does not preclude the performance of hard labour for the punishment of a crime that is determined by a court in countries where this is permitted. It also does not prohibit 'any work or service....normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention' (article 8 (3(a),(b) and (c)(i)).

The specific principles dealing with prisoners' rights provide for prisoners to work under certain conditions:

The UN Standard Minimum Rules for the Treatment of Prisoners (SMR)<sup>4</sup> provides that sentenced prisoners shall be required to work, subject to their physical and mental fitness as determined by medical officer (Rule 71(2)). Prison labour must not be afflictive of nature.

The SMR envisaged work as a useful occupation that can assist prisoners in their rehabilitation through learning vocational skills. It provides that prisoners should be given sufficient work of a useful nature to keep them actively involved for a normal working day. The work should as far as possible maintain or increase their ability to earn an honest living after their release. Vocational training in useful trades should be provided, especially for younger prisoners. Prisoners should as far as possible be able to choose the type of work they do (Rule 71).

In order to facilitate a prisoner's release, the organisation and method of work should as far as possible resemble those of similar work in outside institutions (Rule 72(1)). However, the SMR provides that the interests of prisoners and their training should not be subordinated to the purpose of making a financial profit from an industry or institution (72(2)).

The Rules go on to ensure the protection of prisoners who work. In order to safeguard against exploitation by private entities, the Rules provide that institutional industries and farms should preferably be operated by the prison administration rather than by private entities. Where they perform work that is not operated by the prison administration, then they must always be under the administration's supervision. Unless the work is for other government departments, prisoners should be paid the full normal wages for such work (Rule 73).

Prisoners should also be entitled to the precautions which are laid down to protect the safety and health of free workmen. Provision must be made to indemnify them against industrial injury, including occupational disease (Rule 74). The maximum daily working hours of prisoners must be fixed by law or administration, taking into account local rules or custom (Rule 75(1)). These hours should allow rest day in a week and sufficient time for education and other activities as required for their rehabilitation (Rule 75(2)).

Prisoners should be equitably remunerated for their work, and be allowed to spend at least a part of their income on approved articles for their own use in the prison, and be able to send part of their

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<sup>4</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955 and approved by the Economic and Social Councils in its resolutions 663 C (XXIV) of 31 July 1957.

earnings to their families. In addition, part of their earnings should be set aside to constitute a savings fund to be handed over to the prisoner on his release (Rule 76).

The more recent Basic Principles for the Treatment of Prisoners<sup>5</sup> provides that conditions must be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and that of their families (Principles 8).

The South African Constitution and common law protect the rights of prisoners. Section 10 recognises everyone's right to inherent dignity and the right to have that dignity protected. Section 12 gives everyone the right to freedom and security of person including the right not to be tortured or treated or punished in a cruel, inhuman or degrading manner. Section 13 prohibits slavery, servitude and forced labour. Unlike the International Covenant on Civil and Political Rights this does not expressly exclude prison labour.

Our courts have confirmed that prisoners are entitled to all the rights in the Constitution except where they may be limited by the application of section 36 – the limitations' clause. In the *Makwanyane* case, Judge President Chaskelson held that 'prisoners retain all the rights to which every person is entitled under [the Constitution] subject only to limitations imposed by the prison regime'.<sup>6</sup> They are therefore entitled to the same opportunities for education and work as people outside of prison, and under the same conditions.

### **The Correctional Services Act and Policy**

The Correctional Services Act (111 of 1998) sets out the threefold purpose of the correctional system. The Department of Correctional Services must detain all inmates in safe custody whilst ensuring their human dignity, and promoting the social responsibility and human development of all sentenced prisoners. It is clear from this statement that there is an obligation to provide inmates with opportunities for their human development. In respect of sentenced prisoners, the Act is more specific, and provides that the objective of the implementation of a sentence 'is to enable a sentenced offender to lead a socially responsible and crime-free life in future' (Section 36).

In order to support this objective, the Department is obliged to provide, or give access to as full a range of programmes and activities to inmates, including needs-based programmes in order to meet the educational and training needs of sentenced offenders (section 41). It may also provide correction, development and care programmes and services to all inmates, even when not required to do so (section 16). This includes the provision of social work services, psychological services and education and training.

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<sup>5</sup> Adopted and proclaimed by the General Assembly resolution 45/111 of 14 December 1990.

<sup>6</sup> 1995 6 BCLR 665 (CC); 1995 3 SA 391 (CC) 142.

The Act also provides for the work of sentenced prisoners. It states that they must perform any labour which is related to any development programme or which is generally designed to foster habits of industry, unless a medical officer or psychologist certifies that he is mentally or physically unfit to perform such labour (Section 37).

The White Paper on Corrections in South Africa (2005) recognises the principles of the SMR in relation to work and states that the DCS's approach to 'rehabilitation should ensure that constructive work by offenders is integral to the sentence plan.' The work should be consistent with the profile of the offence categories and offenders, and should contribute towards the human development and employability of the offenders once they are released. Such work should be constructed in the framework of the country's labour and safety legislation and the departmental policy on skill-based remuneration (paragraph 9.10.1).

It is clear then that the international principles on the treatment of prisoners, and our Correctional Services legislation supports the notion that sentenced prisoners should be required to work if it contributes to their human development.

### **The benefits of work**

The success of rehabilitation in prisons depends on an offender's ability to find work, stay out of crime and be a productive member in society once he or she is released. Many prisoners who enter prison do so with a minimum degree of skills, and few have had the benefit of prior working experience. A small study conducted by Lukas Muntingh with a group of released prisoners in the Western Cape revealed, somewhat unexpectedly, that only 13% of them were unemployed at the time of their imprisonment, 47% were employed, and 38% engaged in casual jobs.<sup>7</sup> However, on release only 42% found employment in the first few weeks and thirty percent of these had returned to jobs they had prior to their imprisonment. The majority of ex-offenders had no employment and no income after their release.<sup>8</sup> This picture illustrates how prisoners who had no skills or working experience prior to imprisonment were less likely to find work. Prisoners, who are sentenced while they are still young, are even less likely to have had the benefit of skills training or work experience.

In South Africa's climate of high levels of unemployment, a released prisoner must try to survive outside with the additional burden and stigma of a prison record, as well as try to find work while complying with restrictive parole conditions.<sup>9</sup>

It is important then that the work and training that is provided for prisoners inside prison prepare them for life outside. For many, participation in vocational training and work in prison will be the first time many have had the opportunity to learn skills. While work and vocational skills training forms and

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<sup>7</sup> Muntingh, L. (2008). *Prisoner re-entry in Cape Town: an exploratory study*. CSPRI Research Paper No. 14. Cape Town: Civil Society Prison Reform Initiative, p.8.

<sup>8</sup> *Ibid*, p 18.

<sup>9</sup> *Ibid*, p 19.

essential component of rehabilitation, it must be supported by a full programme of other development programmes designed to address the problems associated with offending behaviour. These include life skills, communication skills, anger management and substance abuse programmes. Social work and psychological services are also crucial.

In addition to providing prisoners with useful skills, work has the additional benefit of keeping prisoners occupied during the day. Although more prisoners are involved in development programmes and education, than in work, it is an unfortunate fact that the majority of prisoners spend their time unoccupied during the prison day, and this leads to idleness, depression and engagement in anti-social activities. In prisons, this takes the form of gang activities, smuggling, assault and violence and sexual abuse. There is some evidence to support the claim that engaging prisoners in meaningful activities in prison reduces violence and disorder in prisons. A study by McCorkle et al based on a review of 317 prisons in the United States concluded that '[E]ven after controlling for other institutional characteristics, prisons in which a large percentage of the prisoner population was involved in educational, vocational and prison industry programs reported lower rates of violence against inmates and staff.'<sup>10</sup> It is important that these programmes offer opportunities for self improvement. In a study conducted by CSVR with young male prisoners in Gauteng on attitudes and experience of violence and sexual violence in prison, the majority of informants recommended 'keeping busy, education and development opportunities' as a means to improve safety in prison. Suggested activities included educational, work and recreational opportunities. The respondents were concerned about idleness, even during the times when they were unlocked from their cells, and saw this as fundamental feeders of conflict and violence.<sup>11</sup>

Prison work also has the advantage of familiarising offenders with the routine of working life – getting up at a certain hour each day, being on time at the work place, and being required to complete an allocated task each day. Regular feedback on work performance may also contribute to the personal development and work related skills of offenders, as well as giving them a general sense of personal efficacy, status and esteem.

Offenders who work in prison receive a small remuneration or gratuity. This is meant to provide incentive to do work, but it provides some extra money to purchase needed goods and extra food in prison. However, the gratuity currently is very small and has been criticised as being insufficient to meet this objective.

## **Practice in South Africa**

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<sup>10</sup> McCorkle, R., Miethe, T., Drass, K. (1995). 'The Roots of Prison Violence: A test of the deprivation, management, and 'not so total' institution models'. *Crime and Delinquency*, 41(3), 317-331, quoted in Muntingh, M. (2009). *Reducing Prison violence: Implications from the literature for South Africa*. CSPRI Research Report No. 17. Cape Town: Civil Society Prison Reform Initiative, p 22.

<sup>11</sup> Gear, S. (2007). *Fear, Violence and Sexual Violence in a Gauteng Juvenile Correctional Centre for Males*. Criminal Justice Programme Briefing Report No. 2. Johannesburg: Centre for the Study of Violence and Reconciliation.

As is apparent from the historical discussion above, and current practice, prisoners have long been required to work during their period of incarceration, and also while outside on parole or serving community corrections. Under the current legislation and constitutional regime, the conditions of such work are prohibited from being exploitative or punitive, instead it is meant to contribute to the development of prisoners, through learning of new skills, learning working responsibilities, and contributing to the enhancement of their human dignity.

However, it would appear that despite these provisions in the legislation and policy, very few prisoners do benefit from the opportunity to work. Even though the policy of the DCS, supported by the 2005 White Paper on Corrections has moved more towards the rehabilitation and development of inmates, trends indicate that less prisoners are working now than over 10 years ago.

In 1997, there was an average of 10,750 work opportunities for prisoners per day. This included work in the building and maintenance services, agricultural services, production workshops, and maintenance workshops.<sup>12</sup> Training was also provided for chefs, waiters or blockmen in messes, kitchens, abattoirs, for petrol attendants and shop assistants.

By 2009, this figure had reduced substantially to an average of 1,834 inmates in production workshops and a further 2,960 in agricultural workshops (there had been 6,674 prisoners working on farms in 1997). The reduction in the number of inmates working according to the modest targets set for the year was attributed to vacant artisan posts and the temporary reallocation of artisans to corrections centres; insufficient funds to purchase raw materials for the workshops; and problems associated with the implementation of the new logistics systems which impacted negatively on the production; and inability to procure fertilizers seeds, pesticides and vaccines timeously.<sup>13</sup>

The decline in the number of inmates usefully employed reflects the percentage share of the budget for development which had decreased from 5% in 1997 to 3% for the 2010/11 budget.

From CSV's experience in working with correctional officials, the implementation of the seven day establishment has also led to a further reduction in the number of prisoners in work opportunities as there are insufficient members to escort and ensure the safe custody of members and inmates at work. This is also reflected in the Judicial Inspectorate of Correctional Services' submission on the 2010/11 budget which notes a suspension of rehabilitation and recreation services. A reduction in training workshops as a result of materials not being available was also noted.<sup>14</sup>

## **Recommendations**

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<sup>12</sup> Department of Correctional Services. (1998). Annual Report 1997/1998.

<sup>13</sup> Department of Correctional Services. (2009). Annual Report 2008/2008, pp 63 – 64.

<sup>14</sup> Judicial Inspectorate for Correctional Services. (2010). Presentation to the Parliamentary Portfolio Committee on Correctional Services in regard to the budget allocated by Budget Vote 20: Correctional Services, 10 March 2010, available on <http://www.pmg.org.za/report/20100310-money-act-stakeholder-hearings-department-correctional-services-strat>.

CSVSR supports the principles espoused in the Correctional Services Act and White Paper that all offenders should be provided the opportunity to engage in meaningful work, education and developmental opportunities. However, more clearly needs to be done to ensure that **all** prisoners are indeed able to participate in these opportunities.

1. The DCS needs to conduct an analysis of its available workshops, farm industries and other working environments to ascertain their capacity for accommodating inmates in work programmes and to determine what are blockages related to their full utilisation. These need to be addressed.
2. More offenders should be given the opportunity to work around the correctional centre on gardening projects, building maintenance and in the kitchens and doing office work. There are always ample opportunities for this. It has the advantage of allowing prisoners to be usefully occupied, to learn some skills and to be engaged in meaningful work. The DCS should also report on the number of prisoners engaged in such work, the nature of that work, and the remuneration they receive.
3. The DCS needs to revisit its budget allocation in order to make a greater percentage share of the budget available for development, correction and reintegration services.
4. Work opportunities should match the potential for employment opportunities in society. An analysis needs to be done of these potential employment opportunities, and these need to be matched with the jobs and skills training in prison.
5. Experience has shown that there are few work opportunities and vocational training courses available to female prisoners, and these which are available are typically stereotyped to include teaching, hairdressing, sewing and domestic work. While it is true that there are few correctional centres accommodating female prisoners in South Africa, and a declining number of women, it is also true that women suffer from a higher percentage of unemployment in the country, lower wages and fewer potential career paths. It is therefore important that women are offered a full range of vocational training and work opportunities as men, and that these are related to career paths and work availability for women.
6. Prisoners should be remunerated at wage equivalent to what they would receive outside of prison after deductions for the cost of their incarceration. A small portion of this should be

made available to them for use on necessities and or communal facilities (e.g. gym equipment, television, musical instruments) in prison, but a portion should be set aside for them when they are released, and a further portion be paid to their families to contribute to their living expenses. The best mix of payment options requires further investigation to ensure that remuneration for prison work does not amplify inequalities and power hierarchies between inmates – thus making other poorer inmates more vulnerable to victimisation.

7. In order to increase the number of potential work opportunities, DCS should encourage the involvement of civil society organisations. Given the high levels of unemployment and the difficulty for prisoners to find a job, organisations need to help prisoners to learn how to be self sufficient and create their own income once they are released. This could help with the development of micro enterprises and other self employment initiatives.
8. There have been some attempts to involve offenders in projects to benefit deprived communities. Their work contributes to the development of these communities, but also allows the offender to participate in giving back to the community and ‘making good’ which is an important part of rehabilitation. The number of these initiatives needs to be increased, taking into account security risk considerations.
9. Measures must be taken to ensure the safety of offenders at work, and they must be entitled to the full benefits of a workmen’s compensations scheme in the event of injury. The extent of their compensation must be based, in the same way as compensation claims outside of prison, on the extent and nature of their injuries, their future prospects for employment and the short and long term consequences of their injuries. The determination of any such compensation should be made by an external and independent body.
10. Inmates awaiting trial are not obliged to work. However, they often spend long periods of time in prison, and have less access to education and developmental opportunities. They therefore suffer all the disadvantages of idleness in prison. They should be provided with opportunities to work, and to be remunerated for that work, on a similar basis to sentenced offenders.
11. The DCS is increasingly engaging the services of private companies to render services in and for the Correctional Services. Offenders may be used in such services, for instance, working in the kitchens that have been outsourced to the management of private companies. The DCS must ensure that these prisoners are not used merely as a source of cheap labour for these

companies, and that their conditions of employment match those of people performing similar work outside of prison, as well as those of other prisoners.

12. There have been ongoing debates about whether the Correctional Services, government or private industry can make use of prison labour to manufacture goods for sale in an open market. Prison industry has been widely used in other countries such as the United States and Britain, though has been contentious. Private industry has concerns about prison labour being able to undercut its own production costs, and human rights groups are concerned with the rights and treatment of working inmates. However, CSVR is of the view that this might present a viable option for the DCS as long as it is able to ensure that the principles relating to prison labour, as set out above, are strictly adhered to.

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Enquiries – Sasha Gear, Criminal Justice Programme, CSVR

[sgear@csvr.org.za](mailto:sgear@csvr.org.za)