



## Iron cage?:

### *Combating HIV/AIDS in South Africa's prisons*

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**A**NECDOTAL evidence suggests that levels of HIV infection tend to be higher in prisons than among the general population. According to Johannes Fagan, inspecting judge for prisons, most of the deaths in prisons in 2001 were related to HIV/AIDS.<sup>1</sup> Moreover, the department of correctional services has revealed that, while 136 prisoners died of natural causes in 1995, the figure for 2001 was 1169<sup>2</sup> – an increase of 859 per cent.

UNAIDS has declared that 'the situation [of HIV/AIDS in prisons around the world] is an urgent one. It involves the right to health, security of person, equality before the law, and freedom from inhuman and degrading treatment. It must be urgently addressed for the sake of the health, rights, and dignity of prisoners; for the sake of the health and safety of the prison staff; and for the sake of the communities from which prisoners come and to which they return.'<sup>3</sup>

Given this, it is important that pragmatic policies are put in place to minimise the impact of AIDS in South Africa's prisons. As will be argued more fully later, one entry point would be to deal with the situation surrounding awaiting-trial prisoners, as Fagan and the AIDS Law Project have urged.

Most HIV/AIDS statistics in South Africa are derived from surveys conducted among pregnant women attending antenatal clinics, and testing is not compulsory. No prevalence surveys have been done in South African prisons, but a mini-study conducted in Durban-Westville Prison among 274 prisoners (2 per cent of the total of 11 711 inmates) revealed a prevalence rate of 45 per cent among prisoners younger than 30.<sup>4</sup> This should not be taken as an authoritative indicator of prevalence rates in prisons generally; however, when the rising rates of prisons deaths are examined, the impact of the epidemic is obvious and undeniable. In an interview in February this year, Fagan stated that 457 inmates of South African prisons had died of HIV/AIDS during the previous 30 months.<sup>5</sup> Some 7 000 were expected to die during the next five years, and 45 000 during the next ten.

T M Magoro, director of health and physical care of the department of correctional services (DCS), has pointed out that these statistics are projections, and that they should not be taken at face value. He points out that, in terms of established epidemiological patterns, the disease will spread rapidly but will then reach a plateau: 'as the rate goes up, awareness and also interventionist strategies increase. For example, HIV/AIDS in KwaZulu-Natal is almost at its peak. That is what happens when educational programmes are effective.'<sup>6</sup>

Therefore, the DCS seems to suggest that there is no cause for alarm, as educational programme will make an impact. However, combating HIV/AIDS in prisons cannot rely solely on conventional intervention mechanisms, because the conditions in

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prisons differ from those in broader society. There are no support structures such as families, and a significant number of prisoners have violent backgrounds.

Given that AIDS is a fairly new disease, certain of its aspects remain a mystery, and much research remains to be done. In the meantime, however, measures can be adopted that will lessen its impact in prisons. This will have to be done deliberately, rather than merely continuing with the limited interventions on which the DCS seem to rely. While the results of more comprehensive research on HIV/AIDS in prisons are awaited, everything possible must be done to minimise or limit those factors that promote the disease.

### **Prison conditions**

Conditions in prisons are such that HIV easily takes advantage of its victims. Although, in theory, prisoners have access to medical care, there is a shortage of medical staff. Prisons are also said to be a breeding ground for opportunistic diseases, which tend to shorten the progression from initial HIV infection to full-blown AIDS. Not only are levels of HIV among people entering prison fairly high; prisons also provide a perfect breeding ground for transmission of the virus.<sup>7</sup> High-risk behaviour, such as drug injection and unprotected – sometimes coerced – sex, are common in prisons around the world. Health care is usually substandard, and sometimes non-existent. South African prisons do not have their own full-time doctors; they only work during specified times.<sup>8</sup> Therefore, health care in South African prisons is inadequate, and they remain a breeding ground for various diseases other than AIDS. South African prisons are also overcrowded, which further exacerbates these problems.

In a draft policy document on a management strategy for HIV/AIDS in prisons, presented to the parliamentary portfolio committee on correctional services in May 2001, the DCS stated that its approach to HIV/AIDS in prisons would be similar to that employed by the department of health to fight HIV/AIDS outside prisons.<sup>9</sup> The DCS insists that awareness programmes are the best way of preventing the spread of HIV in prisons, as compulsory testing does not protect someone against acquiring HIV/AIDS.<sup>10</sup> But the environment in prisons is very different from the outside world. The way in which power is distributed within them may spread HIV/AIDS. This may persist until prisons are democratised, and patron–client relations dismantled. There are also few things to do in prisons, and no family pressures to behave in a particular way. In terms of DCS policy, HIV-positive prisoners are not segregated from non-HIV prisoners, and are treated in the same way as members of the public outside.

Statements by some senior bureaucrats in the DCS display a high level of ignorance of sexual practices in prisons. For example, Magoro has stated: 'The occurrence of sodomy is very difficult to identify. Prisoners do not want to reveal their sexual orientation. The issue of reporting lies with the custodial staff, who are with prisoners most of the time.'<sup>11</sup> The fact is that most sex in prison is not consensual; therefore, to expect prisoners to come forward points to a serious lack of knowledge of the kind of sex that takes place in that environment.

**Recently convicted and awaiting-trial prisoners are likely to be assaulted, and coerced into sex; the latter category may include innocent people who cannot afford bail**

The chances of a person sent to a South African prison contracting HIV soon after admission are said to be high. Recently convicted and awaiting-trial prisoners are likely to be assaulted, and coerced into sex; the latter category may include innocent people who cannot afford bail. Short-term imprisonment may therefore literally be a death sentence. Convicted prisoners usually come from lower-income groups, and can often not afford bail; therefore, poverty enhances prisoners' vulnerability to infection. Fagan asserts that 'almost one third of our prisoners (55 285) are awaiting trial, many for years. And, of those awaiting trial, almost 40 per cent are in prison only because of poverty.'<sup>12</sup> He argues further that awaiting-trial prisoners do not receive any tuition or training; nothing is done to improve their lives. Also, magistrates have found that a significant number of awaiting-trial prisoners would pose no threat to the community should they await trial outside prison.

Teboho Kekana of the AIDS Law Project<sup>13</sup> argues that awaiting-trial prisoners are vulnerable – and therefore dangerous to others – because they are in transit. They are easily manipulated by experienced prisoners. Also, many of them are released relatively quickly (although a significant proportion is rearrested). The time spent by prisoners awaiting trial varies between one week and two years.

What exacerbates the situation is that sentenced prisoners have access to awaiting-trial prisoners' cells, and not the other way round. They are familiar with the prison environment, and sometimes do the cooking and cleaning. This gives them access to those cells occupied by awaiting-trial prisoners; familiarity with the prison gives them an edge over awaiting-trial prisoners and warders. Awaiting-trial prisoners might fear that if they do not co-operate with sentenced prisoners, and are then found guilty, they are likely to face the consequences when they return to prison to serve their sentences. Sentenced prisoners are said to be very sophisticated, and usually let the inexperienced prisoners do their dirty work. As much as awaiting-trial prisoners are at risk of contracting HIV in prison, they are also likely to be carriers once they are released; some 6 000 to 7 000 of all prisoners are released every month.

### **Possible solutions**

Distinguishing among types of prisoners and their behaviour patterns may offer a solution to the dilemma that has made prisons breeding grounds for criminal behaviour and HIV/AIDS. Awaiting-trial and sentenced prisoners exhibit different behaviour patterns.<sup>14</sup> Short-, medium-, and long-term sentenced prisoners are also different categories. Understanding these categories and the behavioural patterns associated with them may be crucial in the fight against HIV/AIDS in prisons. Strategies should be devised to minimise the number of awaiting-trial prisoners to those that pose an immediate danger to their communities. Treating this as a priority could go a long way towards reducing the rate of infection in prisons, and protecting those outside who might eventually be affected.

The DCS's draft HIV/AIDS strategy does not prioritise awaiting-trial prisoners; however, they are a significant factor in any fight against HIV/AIDS, because they are vulnerable, and prone to manipulation. Currently, there are 55 285 awaiting-trial

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prisoners in South African prisons,<sup>15</sup> constituting one third of the prison population. The average conviction rate is about 35 per cent; therefore, about 65 per cent of these prisoners are not convicted even after being imprisoned for up to two years. Keeping them in prison even though they are unlikely to be convicted poses serious ethical dilemmas. Also, exposing awaiting-trial prisoners to prison life may work as an incentive for them to offend again, and ensure that people who might have entered the prison HIV-negative leave it with a positive status.

This is not to argue that all awaiting-trial prisoners should be released; however, given the low conviction rate, this issue needs to be reviewed. Magistrates are the ones who decide whether prisoners pose an immediate danger to society; they should be given wider powers to recommend that these prisoners await trial outside prisons. The criteria should not only be whether a prisoner can afford to pay bail or not; other issues must be taken into consideration as well. People should not be disadvantaged by factors such as poverty. In a recent study, it was found that more than 20 000 of 55 285 awaiting-trial prisoners would pose no threat to society should they await trial outside prison.<sup>16</sup> Such people should be released. Also, relying on bail means that financial resources determine whether people are released or not. Therefore, there is an urgent need to examine policies relating to the status of awaiting-trial prisoners.

### **Current strategies**

Current strategies to fight the disease in prisons, such as distributing condoms and conducting educational programmes, are unlikely to reduce the infection rate. Even though condoms are distributed in prisons – South Africa has set a precedent in this respect – their efficacy is limited, as most sex in prisons is not consensual. The power long-term prisoners have over other categories of prisoners, particularly youths and first-time offenders, shows that the system has too many loopholes that work against its main aims: reducing crime, and rehabilitating prisoners. Sentenced prisoners, especially the long-serving ones, are said to be able to move easily in prisons. They also have access to most places in prisons. They are the ones who normally clean and cook, and they are involved in activities such as sports.

Presently, prisons are above-average incubators of HIV, with awaiting-trial prisoners acting as key conduits to the broader community. The DCS's policy on HIV/AIDS relies on similar preventive measures to those used in normal society; however, much more needs to be done if the prison population as well as society at large is to be protected.

If the current approach is maintained, prisons are less likely to achieve the desired results – to reduce crime – and more likely to contribute to increased HIV infection rates among their inmates as well as those who associate with them outside.

The solution does not lie in closing prisons, as they are still perceived as an essential part of the fight against crime; rather, it will lie in sealing the gaps where possible. As suggested earlier, resolving the status of awaiting-trial prisoners will go some way towards minimising the impact of HIV/AIDS.

**People awaiting trial should be assessed more carefully to ensure that they are not imprisoned if they do not pose a danger to society**

It is widely accepted that the main role of prisons is to help protect society against criminals and crime. They are meant to do so in three ways; by removing offenders from society; by rehabilitating offenders, which renders them less likely to commit further crimes; and by deterring other members of society from committing crimes.

Thus the history of prisons shows that they became more than just places where liberty was deprived; they were also places where discipline was used as a means of instilling useful social qualities in convicts.<sup>17</sup> This was an attempt to reform and rehabilitate criminals so that, upon release, they would be less likely to re-offend and more likely to contribute positively to society.<sup>18</sup>

As things stand now, South African prisons do not achieve this goal, but rather its opposite; by bringing awaiting trial prisoners and first offenders into contact with hardened offenders, as well as criminal networks that operate in and out of prison, they increase, rather than reduce, their propensity to offend again. One dimension that is rarely discussed and researched in South Africa, both within the criminal justice and crime prevention sectors, is the problem of repeat offending, or recidivism.<sup>19</sup> As noted earlier, awaiting-trial prisoners – who may spend up to two years in prison – are not even given an opportunity to participate in any educational or rehabilitation programmes.

As regards acting as a deterrent, there is no correlation in South Africa between the large percentage of people in prison and a reduced crime rate – ie, while our prisons are overcrowded, we have not witnessed a reduction in levels of crime. According to Foucault, 'those leaving prison have more chance than before of going back to it', and this is certainly the case in South Africa. Thus, in the case of South Africa, most of the failures of prisons observed in the 18<sup>th</sup> century still hold today. Given the escalating HIV/AIDS epidemic in the country, it is high time that their role is revisited.

The government should consider a multipronged approach. First, people awaiting trial should be assessed more carefully to ensure that they are not imprisoned if they do not pose a danger to society. Also, the system should be changed so that people are not imprisoned merely because they lack financial resources. As regards remaining awaiting-trial prisoners, their trials should be heard more speedily, and their conditions improved.

The freedom given inside prison to especially long-term convicted offenders inside prisons should be curtailed, and their access to awaiting trial prisoners restricted. Convicted prisoners also should be separated into different categories, and kept apart if necessary. Medical services should be improved.

## **Conclusion**

Prisoners, along with long-distance truck drivers, prostitutes, and soldiers, are considered to run a very high risk of contracting HIV/AIDS. These groups have much in common: among other things, they are away from their families for long periods. Prisoners and prostitutes are even more at risk because of their exposure to violence. The HIV/AIDS epidemic offers us an opportunity to assess the conditions some members of our society are subjected to by virtue of their social status. In this

respect, the situation of awaiting-trial prisoners stands out as a major problem. Prisons have been dubbed 'universities of crime', and in the age of an HIV/AIDS epidemic they can also be described as incubators of the HIV virus. Resolving the status of awaiting-trial prisoners in particular could be a step in the right direction in the fight against AIDS.

The situation surrounding this category of prisoners is exacerbated by the fact that so little information is available on them; among other things, there are no data on the HIV infection rate among them. The only thing we know about them is that they provide a link between prisons and the outside world. Their status makes fighting AIDS in prisons very difficult.

## Endnotes

- 1 *Daily News*, 20 May 2002.
- 2 Department of correctional services, HIV/AIDS in prisons: response submitted to the correctional services portfolio committee, 28 May 2002.
- 3 UNAIDS, Statement on AIDS in prisons, 1996.
- 4 Department of correctional services, HIV/AIDS in prisons.
- 5 Johannes J Fagan, interview, 21 February 2002.
- 6 Department of correctional services, HIV/AIDS programme in prisons. Briefing, 8 May 2001. Minutes of the correctional services portfolio committee.
- 7 Human Rights Watch, *HIV/AIDS in prisons*, <http://www.hrw.org/advocacy/prisons/hiv-aids.htm>
- 8 Department of correctional services, HIV/AIDS programme in prisons.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid.
- 12 *Daily News*, 20 May 2002
- 13 Kekana has done extensive work on prisons and HIV/AIDS. Since 1995 he has also been influential in raising the issue of AIDS in prisons, and has done research in numerous prisons, including Johannesburg Central Prison, where most of these observations were carried out.
- 14 Interview with Tebogo Kekana, advocacy and outreach officer, AIDS Law Project, 5 February 2002.
- 15 Ibid.
- 16 *Daily News*, 20 May 2002
- 17 Michel Foucault, *Discipline and punishment: the birth of the prison*, London: Allen Lane, 1977.
- 18 Ibid.
- 19 Lukas Muntingh, *After prison: the case for offender reintegration*, Monograph no 52, Johannesburg: Institute for Security Studies. March 2001.