



## THE INSANITY OF A CRIMINAL JUSTICE SYSTEM

*With South Africa's prisons 163% overcrowded and a progressive new Mental Health Act recently passed, Izindaba decided to check out how criminal suspects referred by the courts for 30 days' mental observation are faring.*

*Our sounding was made at Valkenberg Psychiatric Hospital's maximum security wing, where Western Cape patients are referred.*

At least 100 people suspected of violent crimes and referred by courts for mental observation are languishing for months on end in overcrowded and unsanitary Western Cape prisons, one man for at least 14 months – all of them victims of an overloaded and untenable system.

They are supposed to go directly to Valkenberg Psychiatric Hospital, considered by its psychiatric chief as probably the best-resourced mental health facility in the country.

***Van Reenen was acting on complaints that up to 60 people were still in Pollsmoor after being referred for observation.***

In reality, Valkenberg's maximum security wing, where the 100 will hopefully end up for assessment, is itself barely fit for human habitation with 8 patients per windowless, unventilated room and chamber pots for toilets overnight, an *Izindaba* visit confirmed. Professor Sean Kaliski, head of Valkenberg's forensic psychiatric department, said his court documentation showed that 100 observation patients were still in prisons throughout the Western and Northern Cape.

Asked to check records for just Pollsmoor Prison, the Western Cape's Co-ordinator of Corrections, Johan le Grange, put the referral waiting list number at 10 – which Kalisky openly questioned. Le Grange said this was down from 27 confirmed names at Pollsmoor in September last year when

the Chief Magistrate of Wynberg, Jaco van Reenen, intervened.

Van Reenen intervened after complaints that up to 60 people were still in Pollsmoor after being referred for observation. Le Grange told *Izindaba* he could only track 27 names. Kaliski said Correctional Services were unable to supply him with a comprehensive list of Pollsmoor observation patients when he requested it at the end of last year.

Le Grange said at the time of going to press that a suspected rapist had been waiting 14 months, a grievous assault suspect 10 months, a serious assault suspect 8 months, a murder suspect 7 months and 6 other suspects of violent crimes for between 2 and 3 months.

### **Valkenberg 'stretched'**

Meanwhile at Valkenberg, the maximum security wing remains 40% understaffed and runs at twice its design capacity. The hospital has a stormy and dramatic past including mass break-outs, murders and the provincial government nearly closing the entire complex in 1998 as part of a rationalisation process.

Court-referred patients are supposed to go to Valkenberg directly after any magistrate or judge orders them to undergo observation to assess their fitness to stand trial. Instead, they are going 'directly to jail' to effectively begin serving a 'sentence' for an offence they have yet to be convicted of or for which they may not even be mentally culpable.

A snapshot of Pollsmoor Maximum Security conditions (where awaiting trial prisoners are housed) provided by Mr Bheka Dlamini, an inspector with the Judicial Inspectorate for Prisons, taken in October last year, makes for sobering reading.

The Pollsmoor facility was 247% overcrowded with 2 509 awaiting trial prisoners and 1 509 convicts (total 4 050). It is designed to house 1 872 inmates. Communal cells built to house 19 people contained 30 and those built to house 30 had up to 70 inside. Each



cell had one toilet and one shower and awaiting trial prisoners slept on mattresses on the floor. Inmates use buckets to flush the toilets, many of which were broken or leaking due to overuse.

Le Grange said attempts were made to separate 'unstable' patients 'when we see them being teased or messed with during the day', but most people referred for mental observation generally mixed with other inmates during the day.

Dlamini said a psychiatrist visited Pollsmoor twice a month, adding that the Maximum Security hospital (6 converted communal cells totaling 180 beds) was staffed by 13 nurses working day duty (7am to 4pm) with just one nurse on overnight 'standby' for the entire prison. 'This is no place to send an unstable person. There can be no observation,' Dlamini told *Izindaba*.

### **Pollsmoor flouts Bill of Rights**

In his report to Ngconde Balfour, the national Minister of Correctional Services, Dlamini said conditions at Pollsmoor were 'not conducive to



human incarceration due to overcrowding', and that the status quo was 'inconsistent with the provisions of the Bill of Rights'. When people do get to Valkenberg for observation they spend their waking hours with fully committed State patients in another cauldron that is the antithesis of a therapeutic environment.

Says Kaliski: 'We're busy with stop-gap renovations that will make our (maximum security) facility a bit more bearable for human habitation. Up to now it's been so bad that it constitutes an abuse of human rights just to have anyone there.'

With up to two dozen court 'observation' referrals per month forced upon Valkenberg's capacity to deal with just 15, it soon becomes clear why an already overcrowded Pollsmoor has become home to so many of these pending cases.

Kaliski describes conditions in the Valkenberg overnight lock-ups as 'unbearable – everyone smokes, there's a lot of TB around that you cannot isolate', while the communal sewerage system hardly worked. The unit and ward were built in 1976 at the height of political upheaval, using the architectural template of apartheid prisons of the time, with no clinical consultation. It was designed to stand in the grounds of Pollsmoor Prison and features 5-metre high security perimeter walls topped by razor wire. Kaliski said the renovations at Valkenberg, due for completion in 6 months, would 'buy time' until plans could be approved for an entirely new unit.

### **Izindaba visits Valkenberg**

An authorised visit by *Izindaba* (permission to photograph refused in spite of undertakings not to identify patients or print anything establishing the location of the facility) revealed overcrowding on a bottom floor, aggravated by ongoing renovations on the identical top floor.

The spartan 7-metre square dormitories contained 8 metal bedsteads with mostly uncovered foam mattresses and nothing else. Staff said patients were given clean bedding 'three times a



*Inmates at Pollsmoor Prison.*

*Photo: Trace Images*

week' and issued 'two blankets in summer and three in winter'.

The building foreman on site said renovations included new windows, a vandal-proof flushing toilet and hand basin in each dormitory, better ventilation, air conditioning and security cameras in yet-to-be identified parts of the building, plus new baths in a centrally controlled shower block. The bleak prison-like bricked courtyard would have a new, pitched roof area plus an expanded communal toilet block alongside.

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Kaliski is lobbying for two separate daytime facilities – one for State patients and another for observation services. Besides the professional logic of this, nurses told *Izindaba* that some court-referred patients carefully studied and

then imitated committed inmates in order to 'beat the rap'.

### **Feasibility funds**

Kaliski has just persuaded the provincial government to back a funding proposal for a feasibility study for an entirely new private/publicly built maximum security unit. He hopes this could become a national resource for the handful of acknowledged State forensic psychiatrists (5) available countrywide.

'This is a national problem. We're trying to sell to government that there is no point in duplicating a super specialty facility at great expense. We could train forensic psychiatrists and render services for other provinces.'

Kaliski's ultimate ambition is to get forensic psychiatry recognised by the Health Professions Council as a subspecialty with an MPhil degree requiring an extra 18 months or 2 years of study as a recognised degree in forensic mental health. 'Then we'll all know that we have the people qualified to do the job properly,' he adds. Forensic psychiatry is not a recognised subspecialty within the HPCSA.

Ironically, one of the greatest systemic legal problems is a change in the Criminal Procedure Act that requires the court to appoint a panel of three



psychiatrists – one from the State, one independent and another chosen by the patient – whenever an offence involves serious violence (as defined by the presiding officer). This requirement originally was for murder only.

The change contributes to major delays when the court has to call each psychiatrist (and sometimes a psychologist as well) to testify and explain their independent reports, creating a scheduling nightmare with multiple postponements.

'The psychiatrists in private practice who do this work just can't cope,' he added. According to Dr Tuviah Zabow, a veteran and highly respected predecessor of Kaliski, the prison and judicial systems have become 'bogged down'. 'I used to be able to go to Pollsmoor and sit down there for a day and do all the cases – it's got a lot worse,' he observed.

The two or three private psychiatrists who regularly do forensic State work complained to *Izindaba* of being given 'ridiculously short notice' to prepare reports on patients and added their voices to the systemic human rights abuses being perpetrated daily. One, Dr Konrad Czech, who has a caseload of between 20 and 30 court patients, said he was seldom told when a patient was available for assessment. 'A lot of time the courts just send me unsolicited cases by registered post and I have no idea when they'll be at Valkenberg – it's chaotic.'

Valkenberg is virtually home to 500 patients who have been declared 'Wards of the State', of whom about 40%, according to Kaliski, have 'no prospect' of leaving. This means that at any one time about 200 people are full-time inpatients. The others are given 'leave of absence' and closely monitored to see how they are coping.

### Legal constraints

An additional pressure, he explains, is that to discharge from Valkenberg someone already found unfit to stand trial and not criminally responsible for their actions 'is very, very difficult. You have to convince a judge that they are no longer mentally ill, identify a family member who is prepared to supervise

them for 2 - 5 years, that they will not abuse drugs or alcohol, attend clinic regularly, that they will take their medication and generally behave'.

When the provincial authorities tried to close Valkenberg down in its entirety in 1998 (prior to the change in the Criminal Procedure Act) and adopt a so-called 'enlightened' of policy of 'societal rehabilitation', Kaliski quickly did some research.

He was able to show that 10 State patients had killed people in the first 5 years of their discharge from Valkenberg. Another of his headaches is that many of the patients in Pollsmoor awaiting observation have medical conditions presenting as mental health problems, or have both. 'We had one guy arrive here terminally ill with AIDS – he died within a few days,' he said.

***Of the 490 registered psychiatrists in South Africa about 100 work in the public service where too few posts exist to meet the demand.***

Dr Linda Hering, Director of Mental Health Facilities for the Western Cape, said many criminals 'worked the system' to get referred for observation, adding that a recent UCT Institute of Criminology report had identified 144 discrete gangs on the Cape Flats.

'There's very little sympathy for our staff who work in these settings. The tragedy is that because we're well resourced we can identify the gaps not being filled. Like our Constitution, the new Mental Health Act is very exciting, but requires a lot of people to make it work.'

Kaliski said what was urgently needed besides renovations, was to increase the State beds by about 15 (there are currently 15 'observation beds') and forensic training for psychiatrists.

### Too few psychiatrists

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pathing is dismal (you have to wait for a senior post to become available).

Psychiatry has been recognised as the medical specialty hardest hit by the 'brain drain'. Zabow said Britain, New Zealand and Australia were actively recruiting South African psychiatrists because these countries had 'planned ahead'.

'In South Africa the numbers of psychiatrists has not grown in 30 years, yet we are producing 20 - 25 psychiatrists a year between our eight medical schools.

He said UCT was 'looking closely' at offering a MPhil degree in psychiatry.

Conditions in Valkenberg have been the subject of judicial censure with courts sometimes looking in vain for viable alternatives to referring patients there overnight. On 21 June last year, defence advocate JC Marais told Cape High Court Justice Selwyn Hockey that conditions were so 'horrific' that anyone admitted to Valkenberg 'will go insane'.

### Judge identifies root problem

Inspecting Judge of Prisons, Hannes Fagan, admitted to *Izindaba* that his staff had 'simply not got to Valkenberg. We're concentrating on the gross overcrowding at prisons, but it's just the same there – too many people jammed inside'.

Fagan said the root of the problem was that South Africa had a total of 186 000 inmates and prison space for only 114 000 (72 000 too many or 163% overcrowded).

Of these 50 000 were awaiting trial, which was down from 64 000 in May 2000, indicating that some progress was being made.

'But the problem is that, because of the minimum sentencing legislation (for violent crimes, May 1998) the number of sentenced prisoners is going up at the rate of 7 500 per year,' Judge Fagan revealed. Alarming for forensic psychiatrists, the number of murder and rape-convicted inmates has risen from 600 before May 1998 to 6 000 last month.

Chris Bateman