

LIFERS MEMORANDUM OF GRIEVANCES

June 13, 2017

From: Lifers (Republic of South Africa)

To: Adv Michael Tshililo Masutha
Minister of Justice & Correctional Services
316 Thabo Sehume Street
SALU building
Pretoria
0002
By hand & email

And to: Ms V Riley (Secretary)

National council of Correctional Services
Poyntons Building, West block
Corner Schubart & church streets
PRETORIA
0002
By hand & email

And to: Ms Cindy Balie (Secretary)

Portfolio committee of Justice and Correctional Services
90 Plein Street
CAPE TOWN
8000
By fax and email

Sir/Madam

Re: PROTEST AGAINST STRUCTURAL VIOLENCE AND UNDUE PUNISHMENT

1. The above matter refers.
2. Section 136(3)(a)¹ of the Correctional Services Act, 1998 (Act 111 of 1998) as amended by Correctional Matters Amendment Act, 2011 (Act 5 of 2011) when read with van Wyk judgement need no interpretation.

¹ Any person serving a sentence of incarceration immediately before the commencement of Chapters IV, VI and VII is subject to the provisions of the Correctional Services Act, 1959 (Act No. 8 of 1959), relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those Chapters.

LIFERS MEMORANDUM OF GRIEVANCES

June 13, 2017

3. In terms of section 136(3)(a)² of the CSA 111 of 1998, all lifers sentenced before 1 October 2004 should be considered for possible placement on parole after having completed 20 years, however after the van Wyk ruling, the Department of Correctional Services immediately instituted a policy directive under reference number 16/1/1 whereby paragraph 3 of the policy directive reads;

“During July 2011 the North Gauteng High Court handed down a judgment in the van Wyk case which had the effect to change the minimum detention period for offenders sentenced to life before 1 October 2004 prior to them being eligible for consideration for placement on parole. The implication was that the previous credit system is also applicable to those offenders sentenced to life sentences from 1 September 1993 up to 30 September 2004 and after allocation of maximum number of credits, the high court ruling/judgment advanced their consideration dates from 20 years to 13 years and 4 months. The 2012 special remission of sentence has also now advanced the consideration of these offenders to 12 years and 10 months”.

4. Another policy directive was issued during 2015/2016 directing all Correctional Centres dealing with lifers to update all lifers' detail reports minimum sentence to reflect 2005 remission of sentence and as a result, the minimum detention period of a lifer sentenced before 1 October 2004 was no longer recorded as 12 years and 10 months but 12 years and 4 months.
5. The Department of Correctional Services computers have been programmed in such a way that when a sentence is captured on the system and whenever such sentence is updated in terms of further sentences, reduced sentences and or remission of sentences, the system will automatically calculate *inter alia*, minimum sentence to be served by the offender and the profile submission date for parole consideration by the CSPB.
6. All this information should reflect in every prisoner's detail reports and should be kept in the prisoner's case file so that every member including the Case Review Team working on the offender's correctional sentence plan, would be able to be alert about such dates to ensure efficiency in the administration of the offenders files.

² Any sentenced offender serving a sentence of life incarceration immediately before the commencement of Chapters IV, VI and VII is entitled to be considered for day parole and parole after he or she has served 20 years of the sentence.

LIFERS MEMORANDUM OF GRIEVANCES

June 13, 2017

7. Unfortunately, as lifers we are being deliberately ignored and our G326 profiles are being attended long after our minimum detention period has lapsed. *Section 33(1) of the Constitution* entitles everyone a right to administrative action that is lawful, reasonable and procedurally fair. No difference exist between offender serving determinate sentence and the one serving life sentences but surprisingly offenders serving determinate sentences have their G326 profiles being submitted to the CSPB³ in time whereas those serving life sentences are delayed. Why are we subjected to this kind of differentiation⁴?

In law, differentiation can only be valid as long as it has a legitimate purpose and bears a rational connection to that purpose. If not then, the law or conduct is said to violate *section 9(1)*⁵ of the Constitution.

8. Department of Correctional Services as an organ of state is bound by law as provided for in *section 8(1)*⁶ of the Constitution. It is a creature of statute and therefore any administrative action by it should be in accordance with Correctional legislation authorising its action, and such legislation is the Correctional Statute⁷.

9. We regard the treatment that is given to majority of lifers as cruel punishment due to the following;

- It is not recognised by law and there is no justification to such treatment.
- It tortures us psychologically and undermines our right to dignity, equality before the law and administrative action that is lawful, reasonable and procedurally fair.

10. We need the urgent attention of the authorities, in particular the National Council of Correctional Services, the Minister and the members of the National Assembly in the form of Portfolio Committee members (Justice and Correctional Services). It cannot be correct that the authorities becomes law unto themselves and start

³ Correctional Supervision and Parole Board.

⁴ Differentiation means to treat people in the same position differently from one another.

⁵ Everyone is equal before the law and has the right to equal protection and benefit of the law.

⁶ The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.

⁷ Correctional Services Act 1998 (Act 111 of 1998) as amended by Correctional Matters Amendment Act 2011 (Act 5 of 2011).

LIFERS MEMORANDUM OF GRIEVANCES

June 13, 2017

trembling on the rights of other people, especially the defenceless people taking advantage of their incarceration.

11. It cannot be correct that our G326 Reports and/or profiles are prepared long after the expiry of our minimum detention periods and be that as it may, we still have to wait more than 90 days to get the feedback from the honourable Minister.

12. Lifers from Correctional Centres around South Africa including the following Centres have engaged the Management/Department but to date nothing has materialised in as far as the feedback is concerned;
 - Kgosi Mampuru Lifers submitted the memorandum for your attention on the 10 April 2017 and embarked on one day strike on the 19 April 2017.
 - Lifers at Barberton engaged on hunger strike and submitted their memorandum for your attention on the 04 May 2017 yet no progress.
 - Lifers at Groenpunt submitted their memorandum for your attention on the 22 May 2017 for the same challenges as raised by us and other lifers throughout the Correctional Centres in the Republic of South Africa yet no progress in that regard.
 - Empangeni lifers also submitted memorandum for your urgent attention on the 23 May 2017 but to date no progress with regard to the matter raised thereon.

13. Honourable Minister, we are refusing to be pushed towards unbecoming conduct but we are afraid that your reluctance to address our legitimate challenges will result in us being not cooperative and thus anarchy which might unfortunately trigger your officials to use force on us.

14. Various litigations have been instituted against the Department and some other matters have been adjudicated already yet the Honourable Minister is reluctant to

LIFERS MEMORANDUM OF GRIEVANCES

June 13, 2017

comply with such court orders. This frustrates us because we don't know where to go anymore hence going to court become just a futile exercise.

15. We hope that the Minister will attend to this memorandum as soon as possible and come and address us within 14 calendar days of the receipt of this letter of which a failure will leave us with no option but to start being uncooperative.

Thank you

Disgusted lifers

REPUBLIC OF SOUTH AFRICA