

SUBMISSION BY THE CIVIL SOCIETY PRISON REFORM INITIATIVE TO THE PORTFOLIO COMMITTEE ON CORRECTIONAL SERVICES: HUMAN RIGHTS AND INMATE LABOUR IN SOUTH AFRICA

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Introduction

1. This submission focuses on inmate labour in South Africa, with specific reference to the rights issues applicable and related to labour performed by sentenced inmates. The submission was prepared at the request of the Portfolio Committee on Correctional Services.
2. It is commonly accepted and supported by facts that very few inmates in South Africa are engaged in labour and even fewer in meaningful labour that would prepare them for their life after release. This is, obviously, cause for concern for a number of reasons. Large numbers of inmates leave prison having learnt little to equip them for economic activity, or having contributed to the costs incurred to the state as a result of their imprisonment. At the level of the individual inmates, it must be accepted that the enforced idleness due to the lack of work and work preparation opportunities, is a highly undesirable situation that must have direct negative effects on the physical and mental health of inmates.

International and regional law

1. The history of the prohibition of forced labour is rooted in the prohibition of slavery and other forms of servitude. In respect of prison labour cognizance should be given to the scale of prison labour in different jurisdictions. For example, the use of imprisoned labour was a large scale and significant component of broader economic policies in Nazi Germany, the Soviet Union and the People's Republic of China.¹ International law is replete with provisions guaranteeing the right to work and equally the right to be free from slavery and forced labour.² The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) also guarantees the right to work (Art 6), and adds the right to just and favourable conditions of work (Art 7) and the right to education (Art 13).
2. Two conventions on forced labour from the International Labour Organisation (ILO), the *Forced Labour Convention No. 29* (1930) and the *Abolition of Forced Labour Convention No. 105* (1957), prohibit forced labour. ILO Convention No. 29 defines

¹ De Jonge, G. (1999) Still 'Slaves of the State': Prison Labour and International Law *in* D. van Zyl Smit and F. Dünkel (eds) *Prison Labour: Salvation or Slavery*, Ashgate: Aldershot, p. 317

² Universal Declaration of on Human Rights - Articles 4 and 23; International Covenant on Civil and Political Rights – Articles 8 and 10; African Charter on Human and People's Rights - Articles 5 and 15

forced or compulsory labour as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.³ However, both these conventions as well as the *International Covenant on Civil and Political Rights* (ICCPR) allow for the exception that prison labour is a legal form of forced labour. The ILO Convention No. 29 only permits the use of forced labour for prisoners serving a sentence, but prohibits the use of prison labour for private enterprises⁴; the ICCPR does not make a distinction between sentenced and unsentenced prisoners, provided that they are lawfully detained.⁵ The fact that prisoners may be required to perform labour, appear to rest in the domain of common wisdom, but this has not been substantially challenged and there is regrettably little jurisprudence available on the matter. In view of this, guidance should be sought from the *UN Standard Minimum Rules for the Treatment of Prisoners* (UNSMR).

3. The UNSMR, in Rules 71 and 72, set a number of standards in respect of labour performed by prisoners. Given the status and specificity of the UNSMR, it is necessary to describe these in more detail.
4. Work performed by prisoners must, firstly, not be of an “afflictive nature”, meaning that it must not be harmful or cause suffering.⁶ This requirement ties in with the absolute prohibition of torture and ill treatment as a peremptory norm of international law.⁷
5. All sentenced prisoners should be required to work, subject to their physical and mental fitness as determined by a medical officer.⁸ The UNSMR is also clear that prisoners should perform work of a useful nature for a normal working day, and that demeaning and repetitive work would not meet this requirement.⁹ Following from this, it is required that prisoners should perform work that will maintain or increase their ability “to earn an honest living after release”.¹⁰ Especially young prisoners should be targeted for training in useful trades.¹¹ As far as is possible and practicable, prisoners should be able to choose the type of work they wish to perform.¹² The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.¹³ The interests of prisoners and of their vocational training, however, must not be subordinated to the purpose of making a

³ Art 2(1)

⁴ Art 2(2)(c)

⁵ De Jonge, G. (1999) Still ‘Slaves of the State’: Prison Labour and International Law *in* D. van Zyl Smit and F. Dünkel (eds) *Prison Labour: Salvation or Slavery*, Ashgate: Aldershot, p. 327

⁶ UNSMR Rule 71(1)

⁷ *UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975.

⁸ UNSMR Rule 71(2)

⁹ UNSMR Rule 71(3)

¹⁰ UNSMR Rule 71(4)

¹¹ UNSMR Rule 71(5)

¹² UNSMR Rule 71(6)

¹³ UNSMR Rule 72(1)

- financial profit from an industry in the prison.¹⁴ Private sector involvement in prison industries is not desirable.¹⁵ Prisoners performing work outside of the prison shall always be supervised by prison staff.¹⁶ If labour is performed for third parties “the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners”.¹⁷
6. The health and safety precautions applicable to free workers, shall apply equally to all prisoners performing labour¹⁸ and provision must be made to “indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.”¹⁹ The maximum working hours of prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom with regard to the employment of free workmen. The working hours must allow for one rest day per week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.²⁰
 7. There must be a system of equitable remuneration for prisoners performing labour and prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.²¹ Provision should also be made that at least part of the earnings should be set aside by the prison administration “so as to constitute a savings fund to be handed over to the prisoner on his release”.²²
 8. The *UN Convention on the Rights of the Child* (CRC) prohibits the economic exploitation of children and that children should be protected from performing any work that is “likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”.²³ The *African Charter on the Rights and Welfare of the Child* prohibits the economic exploitation of children protects children from performing labour that could be hazardous to their “physical, mental, spiritual, moral or social development”²⁴, which would also apply to children in prison settings.
 9. From the international instruments it can thus be concluded that adequate provision is made for prisoners to perform labour; that it is regulated by safeguards similar to that of free persons and, more importantly, that such labour is desirable.

¹⁴ UNSMR Rule 72(2)

¹⁵ UNSMR Rule 73(1)

¹⁶ UNSMR Rule 73(2)

¹⁷ UNSMR Rule 73(2)

¹⁸ UNSMR Rule 74(1)

¹⁹ UNSMR Rule 74(2)

²⁰ UNSMR Rule 75(1) and 75(2)

²¹ UNSMR Rule 76(1) and 76(2)

²² UNSMR Rule 76(3)

²³ UN Convention on the Rights of the Child Art 32

²⁴ African Charter on the Rights and Welfare of the Child, Art 15.

The Constitution

10. Section 13 of the Constitution prohibits slavery, servitude or forced labour. Freedom from slavery and servitude do not appear to have been the source of constitutional litigation in respect of prisoners to date. 'Forced labour' is, however, excluded from the Table of Non-Derogable Rights and only freedom from slavery and servitude enjoys non-derogable status. It is common practice around the world that prisoners are used to perform labour and South Africa is no exception.²⁵
11. That prison labour has not been a source of litigation is hardly surprising. After forced prison labour was abolished in the late 1980s, work opportunities had to be found for prisoners inside the prison system and these are increasingly scarce due to overriding security concerns. In 2005/6 only 9 965 out of approximately 120 000 sentenced prisoners were in fact placed in job opportunities.²⁶
12. What is perhaps more likely to be contested, is the pervasive idleness that prisoners are experiencing when serving their sentences. Such boredom must place a heavy burden on the mental health of prisoners and may amount to ill treatment.²⁷ Unlike the US, South Africa has not (yet) seen the type of large scale public-private partnerships which uses prisoners to provide a cheap, resident, docile and unprotected labour force. (A limited exception exists in respect of the privatised prison kitchens.) Such partnerships may in fact bring a new dimension to the issue. Recent initiatives by the DCS to use prisoners in poverty alleviation programmes to assist with community infrastructure development²⁸ is treading a fine line and this relationship may be increasingly difficult to justify in the light of the prohibition of an employer-employee relationship between prisoners and the DCS.²⁹

²⁵ For example, the Commission on Safety and Abuse in America's Prisons stated as a requirement that prisons must be 'productive' (Gibbons J and Katzenbach N (2006) *Confronting Confinement*, The Commission on Safety and Abuse in America's Prisons, Vera Institute of Justice, p. 11.).

²⁶ Department of Correctional Services Annual Report, 2006, p.30

²⁷ A five-year study at Lyon prison (France) to assess the health conditions of prisoners, using the notion of health adopted by the World Health Organisation, found amongst others, symptoms of the following:

- The meaninglessness of time is disorienting and 33% of prisoners were unable to concentrate.
- After one year of incarceration, 50% of prisoners could not control their memory adequately and 40% experienced sudden 'mind voids'.
- Some 75% experienced dizziness that was sometimes described as a 'menacing emptiness'.
- The feeling or experience of emptiness was linked to self-negation with prisoners trying to make themselves invisible in an effort to avoid being under constant observation.
- Bodily functions and senses atrophied. For example, eyesight deteriorated as a result of the confined space and it took double the effort to focus (there is also no reason to look around).
- Prisoners' sense of hearing was over-developed and they became hypersensitive to noise.
- Tactile senses tended to disappear in an apparent effort to deny the threatening environment in which prisoners found themselves.
- Many prisoners suffered from ulcers and fatigue.
- The suicide rate in prisons is six to seven times higher than outside. [D. Gonin "La santé incarcéré: médecin et conditions de vie en détention", L'Archipel, Paris, 1993 (reported in *Criminal Justice Matters* 35, Spring 1999)].

²⁸ Deputy Minister of Correctional Services, The Hon. Ms L Jacobus - Budget Vote Speech, National Assembly, 18 May 2007, pp 8-9.

²⁹ Section 40(6) Correctional Services Act. This position leaves prisoners outside the protection offered to employees with reference to the basic Conditions of Employment Act and the Labour Relations Act.

13. As noted above, prison labour has not been the subject of constitutional litigation but should a prisoner argue that the labour he is required to perform in prison is forced labour and thus prohibited under section 13 and that such labour does not amount to any other violation (e.g. dangerous work or working conditions), it is more than likely that the Constitutional Court will regard this as an acceptable limitation under Article 36 of the Constitution. In this regard the key issue will be the relationship between the limitation (to be compelled to perform labour) and its purpose. Apart from the deprivation of liberty, the purpose of a sentence of imprisonment “has the objective of enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future”.³⁰ Performing labour to foster habits of industry, acquire or maintain skills, and contributing to the self-sufficiency of the prison system are convincing reasons to permit the limitation, in respect of sentenced prisoners, of the right to be free from forced labour.
14. The more likely constitutional challenge is, however, to come from the other end, namely whether prisoners have a right to work. Continued and extensive idleness cannot be regarded as supportive of the broader objective of rehabilitation and, more specifically, may in fact be detrimental to the mental and physical health of prisoners. As such, enforced idleness may amount to conditions of detention that are not consonant with the right to dignity and the Constitutional purpose to “Improve the quality of life of all citizens and *free the potential of each person*” (emphasis added).³¹

The Correctional Services Act

15. The Correctional Services Act, in section 2(b) and 2(c), requires that the Department of Correctional Services (DCS) detains all inmates in safe custody and ensures their human dignity, and that it must promote social responsibility and human development of all sentenced offenders. Section 3(b) of the Act requires that the DCS must “as far as practicable, be self sufficient and operate according to business principles”. This means that the DCS must utilise its available resources, including prisoners, effectively and efficiently to create the maximum benefit for itself and society.
16. Section 40 of the Act deals with labour performed by “sentenced offenders”. Prior to the amendment of the Act, by Act 25 of 2008, no distinction was made between sentenced and unsentenced inmates and all “prisoners”, as they were known then, were permitted and may be compelled to perform labour. It should furthermore be noted that no limitation is placed on sentenced offenders in respect of sentence length or crime.³² The Act places a clear duty on the DCS: “Sufficient work must as far as is practicable be provided to keep sentenced offenders active for a normal working day and a sentenced offender may be compelled to do such work.”³³ The Act is also clear that such work must be purposeful and support the rehabilitative aim: “Such work must as far as is practicable be aimed at providing such offenders with skills in order

³⁰ Correctional Services Act, section 36

³¹ Preamble to 1996 Constitution

³² Some jurisdictions exclude prisoners of conscience from performing labour.

³³ Section 40(1)(a)

to be gainfully employed in society on release.”³⁴ While the Act places a duty on the DCS to provide work opportunities, it also acknowledges that this may not always be possible and thus the wording “as far as is practicable” in section 40(1)(a).

17. The relationship between an inmate performing labour and the DCS does not constitute an employment relationship.³⁵ The Act, in section 37(1)(b), requires that every sentenced inmate must “perform any labour which is related to any development programme or which generally is designed to foster habits of industry, unless the medical officer or psychologist certifies in writing that he or she is physically or mentally unfit to perform such labour.”
18. The work performed by a sentenced inmate may also not be for his/her own account.³⁶ The intention is clear: inmates are to perform labour for the benefit of DCS or other approved contractors, and not operate their own businesses from prison. A sentenced inmate may also elect the type of work he/she prefers to perform if such a choice is practicable and aligned to an appropriate vocational programme.³⁷ The drafters of the Act clearly saw a link between work performed and further training, and although not stated explicitly, it is interpreted as a mechanism to avoid the dull and repetitive types of work often found in prisons.
19. Sentenced children enjoy special protection under the Act and work performed by children may not place the child's educational, physical, mental, moral or social well-being at risk.³⁸ Moreover, a “child may only do work for the purposes of training aimed at obtaining skills for his or her development”.³⁹ It is also important to note that all inmates who are children and of compulsory school-going age must attend and have access to educational programmes.⁴⁰ This requirement applies to awaiting trial, unsentenced and sentenced children of compulsory school-going age. Children who are not of compulsory school-going age should, as far as is practicable, have access to education programmes.⁴¹ Following the promulgation of the Child Justice Act (75 of 2008) only children aged 14 years and older may be detained in a prison or sentenced to imprisonment.
20. The Act also makes provision for the payment of a gratuity for labour performed by sentenced inmates.⁴² The purpose of a gratuity is to encourage and motivate inmates towards positive behaviour, diligence, conscientiousness and adaptation. It is the intention that payment received in this manner will be used constructively to make a contribution to the support of dependents, purchase study materials and save money that can be used after release. Gratuity can only be paid to the following persons:
 - a sentenced offender who performs recommended work and who does this for the benefit of the DCS.

³⁴ Section 40(1)(b)

³⁵ Section 40(6)

³⁶ Section 40(2)

³⁷ Section 40(3)

³⁸ Section 40(3)(c)

³⁹ Section 40(3)(b)

⁴⁰ Section 19(1)(a)

⁴¹ Section 19(1)(b)

⁴² Section 40(4)

- a sentenced offender who is hired out either free of charge or against payment.
- a sentenced offender who receives gratuity for the number of days worked in a month.

The amounts that inmates can earn through gratuity are very low, as indicated in the schedule below. The amounts are dated 2006 and may have been changed subsequently, but this could not be verified. The following list the per month payment of gratuity for the different levels and notches:

Level I:	Notch I:	R 9-24
	Notch II:	R17-16
	Notch III:	R26-40
Level II:	Notch I:	R43-56
	Notch II:	R50-16
	Notch III:	R58-08
Level III:	Notch I:	R75-24
	Notch II:	R87-12

21. A sentenced inmate may not be compelled to perform labour as a form of punishment or as a disciplinary measure.⁴³
22. Sentenced inmates performing labour are excluded from the Basic Conditions of Employment Act (75 of 1997) and the Occupational Health and Safety Act (85 of 1993). The Regulations require that inmates performing labour must at all times be issued with the necessary protective clothing, footwear and other items that may be necessary to protect their health and safety.⁴⁴ The Departmental orders (B Orders) are, however, detailed in respect of the administration of inmate labour and protecting the safety of inmates whilst performing labour. The B-Orders deal with the following in Order 1 Ch. 18:
 - Work performance by various categories of prisoners
 - Order of precedence for application of prison labour
 - Ban on application of prisoner labour
 - Work performance by prisoners
 - Working hours of prisoners
 - Separation of prisoners in work teams
 - Guarding of work teams: Temporary officials and permanent officials
 - Tools
 - Protective over clothes
 - Inspection of workplaces
 - Demolition of buildings
 - Quarries, ditches and holes
 - Machinery and mechanical tools
 - Sewage shafts/manholes
 - Toxic matter

⁴³ Section 40(5)

⁴⁴ Regulation 23(1)

- Performance of labour by prisoners in inclement weather conditions: Prevention of illnesses due to exposure to extreme temperature
 - The utilisation of prisoner labour in respect of shows/fetes/ sports meetings
 - Washing and polishing of cars
 - Cleaners
 - Food handlers
 - Operators of hoisting apparatus and heavy machinery
 - Tractor and tipper truck drivers
 - Utilisation of prisoners in the agricultural section
 - Utilisation of hairdressing salons
 - Free labour
 - Provision of free prisoner labour to state departments, state supported bodies and charitable organisations
 - Employment: Ex-prisoners by officials
 - Contracts for the hiring out of prison labour
 - Detention of sentenced prisoners in police lockups/ cells
 - Holiday homes and caravan facilities
 - Appointment of temporary officials for the guarding of prisoners for free prisoner labour and prison labour on hiring-out
 - Accounting procedure for prisoner labour
 - Control and management
23. The working hours of inmates are restricted to a maximum of eight hours per day.⁴⁵ Sundays and other religious days of rest also apply. On Sundays, only labour necessary for the essential services (e.g. meals) and general cleanliness and hygiene of the prison may be performed.⁴⁶ A sentenced inmate who is required to work on Sundays or religious days of rest must be compensated with a day off, or by other means as prescribed by Order.
24. If a sentenced inmate is injured during the performance of labour and the injury was not due to his own fault or negligence and the injury is of such a nature and extent that it will affect his/her future income earning ability, an *ex gratia* payment at the discretion of the National Commissioner can be made. No further information on such *ex gratia* payments could be established as well as the possibility that the injured prisoner may seek further compensation through a civil claim.

⁴⁵ Regulation 23(4)

⁴⁶ Regulation 23(6)

Conclusions

25. From the above, three key issues emerge:
- Access to work opportunities and the right to work
 - The legal status of working prisoners and their payment
 - Meaningful and purposeful work.⁴⁷
26. **A right to work?** Since the late 1980s there has been a dramatic decline in the number of prisoners performing labour in South Africa's prisons. The decline in work opportunities has to a large extent been the result of the abolition of a system whereby prisoners were hired out to farmers as part of their parole. Subsequent to this, the DCS has found it difficult to create sufficient job opportunities for sentenced prisoners. While the Act places a clear duty on the DCS to establish, as far as practicable, such work opportunities, there has been limited success. The issue of prison labour should also be seen against the broader context of enforced prisoner idleness and the proverbial "eet en lê" existence of many prisoners. It can be assumed safely that the majority of prisoners would prefer to be active through work activities and other means. In efforts at limiting prisoner idleness, labour should be seen as one measure, amongst others. Formal education, training, recreation and sport are other measures that the DCS should use to occupy prisoners constructively.
27. The socio-economic reality of and high unemployment rate in South Africa mitigate against a possible claim that sentenced prisoners may have that there exists a right to work. Such a right is not afforded to free citizens and it is less than likely that such a right would be extended to prisoners. Prisoners may indeed have a stronger claim to access to rehabilitation services. Such services are clear requirements in the Correctional Services Act and stand central to the purposes of the correctional system as described in the Act and the White Paper on Corrections. Performing labour as part of the rehabilitation process is also a stated objective in the Correctional Services Act and the link is clearly drawn between labour and skills training.
28. The enforced idleness characteristic of South African prison life cannot be considered as beneficial to the mental and physical health of prisoners or aligned to the objective of rehabilitation. From a human rights perspective, this raises question about the conditions of detention, but also about the duty of the DCS to prepare sentenced prisoners for release. On this issue it can thus be concluded that whilst prisoners cannot lay claim to a right to work, there are more grounds, found in law, of a right to services that will prepare them for release and re-entry into society.
29. **Legal status of working prisoners and their payment:** Working prisoners are not employees of the DCS and their status remains legally uncertain. Prisoners are not mentioned in the Basic Conditions of Employment Act, Unemployment Insurance Act or in the Occupational Health and Safety Act. This leaves them in a situation where they perform labour but are not recognised as workers and excluded from the

⁴⁷ The three issues identified are by and large overlapping with those identified by D. van Zyl Smit and F. Dünkel "Conclusion" in D. van Zyl Smit and F. Dünkel (eds) *Prison Labour: Salvation or Slavery*, Ashgate: Aldershot, p. 335-346.

concomitant protections arising from this status. This is starkly illustrated in the gratuity paid to prisoners for the labour they perform; R87.12 per month for the best paid working prisoner.⁴⁸ While the DCS provides working prisoners with meals, accommodation, clothing and healthcare, it should also be accepted that the value of the gratuities being paid are well below what similar work would earn in the free market. It is therefore not surprising that a number of countries have adopted the principle of equitable pay for equitable work (Hungary and India) or have legislated that work in prison shall be remunerated at no less than the minimum wage (Russia, Poland).⁴⁹ In some countries it is also the practice that portions of the wages earned are then used to cover the expenses incurred by the state and a portion is set aside in a savings fund to be made available upon release.⁵⁰ As far as could be established no such measures are currently in place in South Africa.

30. Of particular relevance in the South African context is the situation where a number of prison kitchens have been outsourced to a private company for a number of years now. This company is evidently operating these kitchens at a profit while using prison labour. Whether or not the prisoners working in these kitchens benefit any more than what the current gratuity scales provide for is not known and further investigation is necessary. If private company profits are indeed generated by relying on using prison labour at a cost well below market levels, this raises not only serious ethical questions about decision-making in DCS, but could amount to a violation of Rule 73(1) of the UNSMR.
31. A further issue which requires clarification is the compensation of prisoners injured whilst performing labour. As noted above, this is currently done through an *ex gratia* payment at the discretion of the National Commissioner. The exact manner in which this is currently being done is uncertain. However, the procedure needs to be measured against the requirement in section 34 of the Constitution affording everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
32. Whilst it is accepted that labour in prisons is not employment, it is also not clear what it is. It is not described in the Correctional Services Act as part of a training programme or as an amenity (privilege). However, a working prisoner may lose his work as a result of a disciplinary infringement. It then appears that at operational level labour is regarded more as a privilege than anything else. This has often been a source of great dissatisfaction amongst prisoners because of the severe lack of such opportunities in the prison system. In view of this it is required to gain greater clarification about the status of “work” in prisons and distinguish working in, for example, the kitchen from a participating in an in-service training programme with clear goals, objectives and achievements.

⁴⁸ Please note that these may have been subjected to adjustments.

⁴⁹ Van Zyl Smit D and Dunkel F (eds) (2001) *Imprisonment Today and Tomorrow – international perspectives on prisoners’ rights and prison conditions*, Kluwer Law International: The Hague.

⁵⁰ Ibid.

33. **Meaningful and purposeful work:** International⁵¹ and domestic law is clear that work performed by prisoners should be meaningful and with purpose. The overall objective being to prepare the prisoner for release and successful re-entry. The annual reports of the DCS provide little additional information as to the exact nature and scope of the labour performed by prisoners with respect to the skills being used, skills acquired, the time spent on the work per day and so forth. It is, however, known anecdotally that a large proportion of the small number of working prisoners are engaged in dull repetitive tasks of an unskilled nature with little or no skills development taking place, such as cleaning and prison grounds maintenance.
34. The security classification system used by the DCS also impacts on labour as well as training available to prisoners. Maximum security prisoners are excluded from labour performed outside of the prison walls as well as from the technical workshops. While there may indeed be legitimate security concerns in this regard, the problem lies not with the principle but with the practice. The formula used for security classification relies heavily on sentence length and as a consequence of the rapid increase in sentence lengths imposed by the courts over the past 15 years, prisoners who may in the past not have been classified as maximum security prisoners, are now classified as such. In 2009 there were reports that the security classification system was under review and this requires further investigation. However, adjustments to the security classification need to move away from the current formulaic approach and be individualised, as is required by the Act and Regulations.⁵²
35. Most of the work performed in prisons by prisoners is in many regards only performed in prisons: there is little chance that the skills and abilities acquired, if any, will have any real value after release. To overcome this dilemma it is firstly necessary that the skills required and sought in the labour market need to be developed in the prisons. This requires an approach that sees beyond the prison walls and is focussed on the employability of released prisoners. Secondly, a far greater effort on the side of DCS needs to be made to place released and paroled prisoners in employment.

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⁵¹ The European Prison Rules, in line with the UNSMR, also requires that: Prison authorities shall strive to provide sufficient work of a useful nature (Rule 26(2)).

⁵² Section 29 and Regulation 22