An analysis of the meaning of section 24(a) of the South African Constitution in the context of correctional centres

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Table of Contents

DECLARATION....7

DEDICATION....8

KEY TERMS....9

LIST OF ABBREVIATIONS....10

CHAPTER 1....11

INTRODUCTION AND BACKGROUND....11

1.1 BACKGROUND TO THE STUDY....11

1.2 CLARIFICATION OF CONCEPTS....14

1.2.1 Section 24(a): The right to an environment that is not harmful to health and well-being....14

1.2.2 'Everyone'....15

1.2.3 Health....15

1.2.4 Well-being....16

1.2.5 Humane detention....16

1.2.6 Environment....17

1.4 PROBLEM STATEMENT....18

1.5 SIGNIFICANCE OF STUDY....19

1.6 RESEARCH QUESTIONS....20

1.7 AIM OF STUDY....20

1.8 LITERATURE REVIEW....20

https://uwcscholar.uwc.ac.za/home

1.9 RESEARCH METHODOLOGY....26

CHAPTER 2....27

THE RIGHT TO HUMANE DETENTION FROM AN INTERNATIONAL, REGIONAL, AND DOMESTIC PERSPECTIVE....27

2.1 INTRODUCTION....27

2.2 HISTORICAL BACKGROUND....27

2.3 INTERNATIONAL INSTRUMENTS RELEVANT TO HUMANE DETENTION....29

2.3.1 Constitution of the World Health Organisation....30

2.3.2 Universal Declaration on Human Rights (UDHR)....31

2.3.3 International Covenant on Economic, Social, and Cultural Rights (ICESCR)....32

2.3.4 International Covenant on Civil and Political Rights (ICCPR)....35

2.3.5 United Nations Convention Against Torture....37

2.3.6 The United Nations Special Rapporteur on Torture and Other Cruel or Degrading Treatment....38

2.4 INSTRUMENTS RELEVANT TO HUMANE DETENTION UNDER INTERNATIONAL SOFT LAW....39

2.4.1 The Standard Minimum Rules for Treatment of Prisoners (Nelson Mandela Rules)....39

2.4.2 United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)....40

2.4.3 The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules)....40

https://uwcscholar.uwc.ac.za/home

2.5 REGIONAL INSTRUMENTS RELEVANT TO HUMANE DETENTION: THE INTER-AMERICAN SYSTEM 41

2.5.1 The Inter-American Convention on Human Rights (IACHR) 41

2.6 THE AFRICAN SYSTEM 43

2.6.1 The African Charter on Human and Peoples' Rights (ACHPR) 43

2.7 SOFT LAW INSTRUMENTS IN AFRICA 45

2.7.2 The Luanda Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa (Luanda Guidelines) 46

2.7.3 The Kampala Declaration on Prison Conditions in Africa (The Kampala Declaration) 47

2.7.4 The Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa (The Ouagadougou Declaration) 48

2.8 DOMESTIC INSTRUMENTS RELEVANT TO HUMANE DETENTION 49

2.8.1 The Constitution of the Republic of South Africa, 1996 49

2.8.2 The Correctional Services Act 111 of 1998 50

2.8.3 The White Paper on Corrections in South Africa 52

2.8.4 The White Paper on Remand Detention in South Africa 53

2.8.5 The Correctional Services Regulation 54

2.8.6 The Judicial Inspectorate for Correctional Services (JICS) Framework 55

2.8.7 CONCLUSION 56

CHAPTER 3 57

https://uwcscholar.uwc.ac.za/home

THE CONSTITUTIONAL RIGHT TO AN ENVIRONMENT THAT IS NOT HARMFUL TO HEALTH OR WELL-BEING 57

3.1 INTRODUCTION 57

3.2 THE CONSTITUTION 58

3.2.1 The right to human dignity: Section 10 of the Constitution 60

3.2.2 Freedom and Security of the Person: Section 12(1)(e) of the Constitution 61

3.2.4 Humane detention conditions: Section 35(2) (e) of the Constitution 62

3.2.5 Interpretation of the Bill of Rights: Section 39 of the Constitution 63

3.2.6 State's duty to respect, protect, promote and fulfil rights in the Bill of Rights: Section 7(2) of the Constitution 63

3.3 LEGISLATION 64

3.3.1 Correctional Services Act 111 of 1998 (CSA) 64

3.3.2 National Environmental Management Act 107 of 1998 (NEMA) 65

3.3.3 National Health Act 61 of 2003 (NHA) 66

3.3.4 Occupational Health and Safety Act 85 of 1993 (OHSA) 67

3.3.5 National Water Act 36 of 1998 (NWA) and Water Services Act 108 of 1997 68

3.4 POLICIES 69

3.4.1 The National Framework for the Management of Overcrowding (2008) 70

3.4.2 The Department of Correctional Services Strategic Plan (2019–2024) 71

3.4.3 The Occupational Health, Safety and Environmental Risk Management Policy (2018) 71

3.4.4 The National Sanitation and Hygiene Policy Framework (2016) 72

https://uwcscholar.uwc.ac.za/home

3.4.5 The National Environmental Health Policy (2013) 73

3.4.6 Integrated Environmental Management and Offender Development Programmes 73

3.4.7 Environmental Management Policy of the Department of Correctional Services (2011) 74

3.5 INADEQUACIES AND GAPS IN THE LAW 74

3.5.1 Fragmentation of Legal and Administrative Responsibilities 75

3.5.2 Lack of Enforceable Environmental Standards for Correctional Centres 76

3.5.3 Limited Integration of Environmental Rights in Correctional Legislation 76

3.5.4 Weak Oversight and Monitoring Mechanisms 77

3.5.5 Resource Limitations and Security-First Priorities 78

3.5.6 Policy–Implementation Gap 78

3.5.7 Conclusion 79

CHAPTER 4 80

CONCLUSION AND RECOMMENDATION 80

4.1 ACKNOWLEDGEMENT OF THE PLIGHT AND RIGHTS OF DETAINEES 80

4.2 RESEARCH QUESTIONS 80

4.3 AWARENESS AND OVERSIGHT 82

4.4 UPHOLDING DIGNITY 82

4.5 UNDERSTANDING SECTION 24(a) 83

4.6 CONCLUSION 84

BIBLIOGRAPHY 85

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DECLARATION

'I declare that an analysis of the meaning of section 24(a) of the South African Constitution in the context of correctional centres is my work that has not been submitted before any degree or examination in any other university, and all the sources I have used or quoted have been indicated and acknowledged as complete references.'

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DEDICATION

I dedicate this mini-thesis to my mother, Nomathemba Nowest Regina Ntamnani.

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KEY TERMS

Constitutional guarantees

Correctional centres

Corrections

Detainees

Detainees' environment

Freedom from a harmful environment

Human dignity

Humane detention

Mental and physical health

Pre-1994 prisons

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LIST OF ABBREVIATIONS

ACHPR	AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
ACHR	AMERICAN CONVENTION ON HUMAN RIGHTS
CAT	CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
CSA	CORRECTIONAL SERVICES ACT 111 OF 1998
DCS	DEPARTMENT CORRECTIONAL SERVICES
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
OPCAT	OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UNHRC	UNITED NATIONS HUMAN RIGHTS COMMITTEE
WHO	WORLD HEALTH ORGANIZATION

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CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 BACKGROUND TO THE STUDY

The history of prisons in South Africa is important not only to determine how far we have come in aligning the correctional system to constitutional and human rights standards, but also to understand how the past system has impacted upon the current context. The history of prisons (now called correctional centres) began with the Cape prison system. Singh explains that when Jan van Riebeeck invaded the Cape colony, he introduced the 17th-century Dutch form of punishment.[1] This manner of punishment was public and brutal. Despite its violent nature, this system influenced the administration of justice and the penal system in South Africa.[2] Public crucifixion and firing squads were used to punish offenders.[3] Convicted offenders were sometimes held in chains and kept in the Dutch East India Company's slave lodge and forced to do public labour. Some offenders were deported to Robben Island to remove them from the public. The system, according to Van Zyl Smit, had no concern for the well-being of its subjects.[4]

Robben Island was chosen as a site for imprisonment because it is an isolated island and would make it difficult for the inmates to escape. The Robben Island prison was converted into a museum in 1997.[5] Before this conversion, it was used for different purposes. Before 1652, it was used as an occasional settlement. Between 1657 and 1921, it was used as a colonial prison. During this time and beyond, i.e., between 1846 and 1931, Robben Island became a colonial hospital. From 1939 to 1959, it was used as a naval base and between 1961 and 1996, it was used as an apartheid prison.[6] The purposes for which the island was used suggest that it was intended to isolate inhabitants from the rest of the world. Isolation as an effect of detention

[1] Singh S 'The historical development of prisons in South Africa: A penological perspective' (2005) 50 *New Contree* 17.
[2] Singh (2005) 17.
[3] Schmalleger F *Criminal Justice Today: An Introductory Text for the 21st Century* (1997) New Jersey: Prentice-Hall, Inc. 432.
[4] For the detailed history of South African prisons see Van Zyl Smit D *South African Prison Law and Practice* (1992) 8.
[5] UNESCO World Heritage Centre, 'Robben Island' https://whc.unesco.org/en/list/916/. Accessed 3 May 2025.
[6] South African History Online. 'A brief history on South African prisons and prisoners' available at https://sahistory.org.za/article/brief-history-south-african-prisons-and-prisoners. Accessed May 3, 2025.

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(whether intentional or not) appears to have survived democracy, as correctional centres are still largely shrouded in secrecy and, imaginably, have an isolating effect on inmates.[7]

In the 18th century, several forms of cruel punishment were abolished.[8] This included corporal punishment and public beatings, which sergeants administered. Their abolishment stemmed from the rise in human rights awareness and the influence of humanitarian reformers.[9] Drowning as a method of execution involved taking prisoners to the sea to drown them, and it was discontinued due to its severe and brutal nature. Forced labour and banishment, which included tasks like mining and constructing dykes, were eliminated because they were condemned by the international community and viewed as exploitative.[10]

Apart from the abolition of some forms of cruel punishment, the treatment of prisoners appears to have remained dismal. Inhumane living conditions for prisoners persisted. They were subjected to inadequate shelters made from saplings and tarpaulins.[11] In later years, these practices were abolished due to prison reforms, which led to the establishment of more humane living standards. However, before significant reforms, isolation methods restricted prisoners' communication. They were not allowed to receive letters from the outside, and items like snuff and tobacco were banned.[12] These practices were eventually abolished due to the psychological harm they caused prisoners and the way the prohibition of snuff and tobacco limited prisoners' ability to cope or relax.[13] These realities further affirm the historically harsh nature of imprisonment in South Africa and perhaps even the state's lack of understanding regarding inmates' well-being.

Though the changes mentioned above are few, they reflect, to some extent, a shift towards slightly better treatment of prisoners during the colonial era. This era was influenced by evolving legal standards and growing awareness of human rights, and resulted in the expansion of informal imprisonment.[14] Despite the awareness of rights, prisons were still overcrowded and disorganised. Between 1795 and 1803, however, when the British occupied the Cape, there

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[7] Worden N *'Robben Island: A Place of Banishment, Isolation and Imprisonment'* (1995) 21–23.
[8] Nortje W "Decolonising the South African Criminal Procedure: Towards a Critical Approach to the Use of Ubuntu in Sentencing" *PER / PELJ* 2024(27) 5.
[9] Nortje (2024) 5.
[10] Robben Island Museum, 2025. *Prison Life (1825–1844)*. https://www.robben-island.org.za/prison-life-1825-1844 Accessed 24 Apr. 2025.
[11] Singh (2005) 5.
[12] Robben Island Museum (2025).
[13] Robben Island Museum (2025).
[14] Singh (2005) 18.

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was a reformation regarding punishment.[15] The reformation mainly meant, *inter alia*, physical bodily harm, declined, and incarceration for heinous offences replaced physical (corporal) punishment.[16]

The Convicts Law Consolidation and Amendment Act 23 of 1888 was passed by the Cape parliament in 1888 to consolidate and amend the law relating to convict stations and prisons.[17] Different categories of offenders were separated, a single prison system was created, and there was gender classification.[18]

In Natal, there was no prison system for a long time.[19] The first building with ten communal cells was established in 1849 and became overcrowded by 1907. During that period, the cells had increased to 260.[20] In 1854, the first prison was introduced in the Orange Free State in Bloemfontein.[21] The number increased, and there were thirteen prisons in 1873. The conditions in those prisons were reportedly extremely inadequate.[22] In 1878, the report by the district physician, Dr Kraue, highlighted dire conditions in the Volksraad prison, reportedly overcrowded, screaming injustice**,** poor ventilation, inadequate light, and the presence of mice and rats. Their facility housed sick prisoners who were exposed to health risks.[23]

The first prison in the Transvaal was built in Pretoria in 1865, and by 1893, there were thirty-three penal institutions across the Transvaal. The prison system applied was British, and it included regulations, corporal punishment, imprisonment, with hard labour or without hard labour, and solitary confinement.[24]

A cursory reading of the history of prisons in South Africa denotes that they did not comply with current human rights standards. The intentional disregard for the dignity of offenders was undeniable, as it was reflected not only by the laws but also in the physical settings in which offenders were detained. In the democratic South Africa, the Department of Correctional

[15] Cilliers CH & Cole J, *Penology PNL 199-C* (1997) 111.
[16] Institute for Security Studies (ISS) 'The Problem of Prisons. Correcting Corrections, Prospects for South Africa' available at *http://www.iss.co.za/Pubs/Monographs/No 29/Prison.html. accessed* 03 May 2025.
[17] Singh (2005) 18.
[18] Singh (2005) 18.
[19] Van Zyl Smit (1992) 8.
[20] Van Zyl Smit (1992) 8.
[21] Singh (2005) 19.
[22] Singh (2005) 19.
[23] South African Online 'Colonial History of Bloemfontein' (23 February 2018) *https://www.sahistory.org.za/article/colonial-history-bloemfontein* accessed 6 May 2025.
[24] Singh (2005) 20.

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Services (DCS) is responsible for the South African prison (now termed correctional) system. DCS staff members are no longer referred to as 'warders', they are called correctional officials, and correctional centres (previously called prisons) accommodate multiple categories of inmates (previously called prisoners) at the time of writing (2025).[25] The changes in terminology in this sector imply a transformed regime or at least the intention to do so. The new ethos denotes a definitive move towards correction and away from the punitive treatment of offenders.

1.2 CLARIFICATION OF CONCEPTS

This thesis contains several concepts that require clarification. These concepts are explained below and will apply throughout the thesis unless it is indicated otherwise.

1.2.1 Section 24(a): The right to an environment that is not harmful to health and well-being

The words 'health', 'wellbeing', and 'environment' are used repeatedly in this thesis. They are used in relation to inmates in the correctional setting in this study. Put plainly, these words are used in respect of inmates and their places of detention in South Africa, i.e., correctional centres.

Generally, 'health' in legal literature refers to the physical (bodily) and mental state of a person, and it is often used in the context of the constitutional right to health or healthcare.[26] The World Health Organisation (WHO) define 'health' as 'a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.'[27] The right to health or healthcare (used interchangeably) ought not to be understood as the right to be healthy. Generally, the right to health or healthcare refers to an entitlement to medical treatment, care, services, and/or necessities to manage, treat, prevent, cure, or palliate health conditions or illnesses. In this thesis, the right to health or healthcare is not the primary focus, but when it is used, it is to be understood as explained here.

The word 'health' is not only found in section 27 of the Constitution of the Republic of South Africa of 1996 (Constitution). It is also found in section 24 of the Constitution, the provision relevant to the environment. This section guarantees that

[25] See Correctional Services Act 111 of 1998.
[26] Du Plessis A 'The promise of well-being in section 24 of the Constitution of South Africa' *SAJHR* (2018) 34.
[27] Constitution of the World Health Organization, (1946) Preamble.

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> everyone has the right— (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.[28]

Section 24(a) and (b) read together to create an institutional obligation and individual right.[29] To understand the scope of section 24(a) for purposes of this study, the concepts of 'everyone', 'health', and 'wellbeing', 'humane detention', and 'environment' will be clarified next.

1.2.2 'Everyone'

The entitlement derived from section 24(a) is guaranteed to 'everyone.' This means that whatever is claimable in terms of the section applies to every person in South Africa. The provision is non-discriminatory and universal. As mentioned, this term includes all persons within the South African borders, irrespective of legal status, citizenship, or detention.[30] Despite the deprivation of liberty, detainees are included in the concept of 'everyone'.[31] This ensures that inmates are not stripped of their environmental protection merely because they are detained in correctional centres. When this thesis uses the word 'everyone' in relation to section 24, it therefore includes inmates.

1.2.3 Health

The distinction must be drawn between the word 'health' in section 24(a) and the 'right to health as alluded to earlier.' 'Health', as contained in section 24(a), and for the purposes of the thesis, refers to a person's mental and physical state, which can be negatively or positively affected by environmental conditions.[32] The state of inmates may be negatively affected by factors such as inadequate ventilation, lack of adequate sanitation, overcrowding, and unsafe drinking water.[33] It may be argued that section 24(a) affirms this by outlining environmental quality as a factor of health, making health and ecological protection inseparable. For detainees in correctional centres, environmental determinants of health include the factors mentioned

[28] Constitution of the Republic of South Africa, 1996.
[29] Glazewski J *Environmental Law in South Africa* 3 ed (2022) 140.
[30] Du Plessis (2018) 164.
[31] *August v Electoral Commission* 1999 (3) SA 1 (CC).
[32] Paterson A & Kotzé L (eds), *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (2009) 106.
[33] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2018/2019* 45–47.

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here, and these may expose inmates to diseases and affect their mental well-being. The reference to health in this thesis is thus in relation to how the correctional centre surroundings (and the factors mentioned, eg ventilation, sanitation, overcrowding, drinking water) affect inmates physically and mentally.

1.2.4 Well-being

'Well-being' encompasses psychological, social, and emotional elements of fulfilling life, and in this sense, it is broader than 'health'.[34] This concept is included in section 24(a) of the Constitution for the purpose of recognising that dignity extends beyond the absence of illness.[35] For detainees in correctional centres, well-being encompasses access to exercise opportunities, social contact, natural light, and freedom from degrading detention conditions.[36] Failing to provide humane support compromises the well-being of a person, even if medical treatment is available.[37] It may be argued that the inclusion of 'well-being' in section 24(a) of the Constitution suggests a constitutional benchmark that conditions of detention must promote human dignity, rather than merely preventing physical harm and disease.

1.2.5 Humane detention

Section 10 of the Constitution stipulates that 'everyone has inherent dignity and the right to have their dignity respected and protected.'[38] In the context of correctional centres and for the purpose of this thesis, the right to human dignity requires detention conditions that protect and respect detainees by ensuring adequate access to healthcare, adequate living space, and sanitation.[39] Therefore, humane detention is the principle that detainees must be held in conditions that respect their dignity and do not subject them to inhumane, cruel, or degrading treatment.[40]

Glazewski argues that section 24(a) intersects with humane treatment and dignity, as harmful environments undermine both mental and physical integrity.[41] The African Charter on Human and Peoples' Rights (ACHPR) affirms that humane treatment goes hand in hand with the right

[34] Du Plessis (2018) 170.
[35] Du Plessis (2018) 170.
[36] Albertus (2012) 73.
[37] Albertus (2020) 676.
[38] Constitution of the Republic of South Africa, 1996 s 10
[39] Albertus C 'The right to health care of terminally ill inmates in South Africa' (2012) 73.
[40] Constitution of the Republic of South Africa, 1996 s 35(2)(e)
[41] Glazewski J *Environmental Law in South Africa* 3 ed (2022) 139–140.

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to an environment that protects well-being and health.[42] It may be argued that in the context of South African correctional centres, this means *inter alia,* that minimum standards of medical care, shelter, amenities, ventilation, and hygiene are required to ensure humane detention.

1.2.6 Environment

The term 'environment' in section 24(a) of the Constitution must be broadly understood to include, but not be limited to, natural resources such as land, air, biodiversity, and water, but also institutional and built conditions that sustain dignity and human life.[43] The Constitutional Court has affirmed that environmental rights must be centred around people and their interpretation should be in the light of their impact on well-being and health, not just the protection of wilderness areas.[44] This means that in the correctional centres context, the concept 'environment' extends to the physical structure (usually the building and land) in which they are accommodated, ventilation, cell space, sanitation, lighting, water supply, and the broader context of detention.[45] Environmental governance must address both human and natural environments.[46]

The abovementioned articulation is supported by the definition of 'environment' as set out in section 1 of the National Environmental Management Act 107 of 1998 (NEMA). Section 1 of NEMA acknowledges that 'environment' includes social and natural physical surroundings in which people work and live, with no establishment of any hierarchy between them.[47] As alluded to earlier, in the correctional centres context, this extends to the built environment, including ventilation, cell space, sanitation, and lighting affect the aesthetic and sensory experience of detainees. For instance, poor sanitation could lead to unhygienic conditions caused by foul odours that evoke discomfort, psychological distress, and degrade the physical environment.[48] The issue of foul odour, in light of section 24(a), has been addressed in the case of *Hichange v Investment Cape Produce,* where the Court highlighted that sensory pollution affects the quality of life and dignity.[49] Similarly, when inmates live in overcrowded, foul-smelling, and poorly ventilated facilities, their well-being and health are compromised.

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[42] African Charter on Human and Peoples' Rights (1981) Article 5.
[43] Glazewski J *Environmental Law in South Africa* 3 ed (2022) 118.
[44] *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Mpumalanga* 2007 (6) SA 4 (CC) para 44.
[45] Mike M 'Regional approaches to environmental rights' (2024) *African Human Rights Yearbook* 61.
[46] *HTF Developers v Minister of Environmental Affairs and Tourism* 2008 (2) SA 319 (CC).
[47] National Environmental Management Act 107 of 1998, s 1.
[48] Glazewski J *Environmental Law in South Africa* (2022) 139–140.
[49] *Hichange Investments v Cape Produce* 2004 (2) SA 393 para 31.

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'Environment' for the purpose of this thesis is not limited to natural elements but extends to how the built and institutional surroundings impact upon detainees' lives. As mentioned earlier, it includes *inter alia* adequate space, sanitation, lighting, ventilation, and institutional conditions of detainees.

1.4 PROBLEM STATEMENT

During apartheid, inadequate infrastructure led to overcrowding in prisons, and this impacted upon the physical and mental health of inmates.[50] In the apartheid system, nearly two million Black South Africans were incarcerated because they defied the system and opposed apartheid policies, which led to overcrowding.[51] This overcrowding led to limited or insufficient access to necessities such as medical care, nutrition, and living space, which included bed spaces and ablution facilities.[52] The prison system and infrastructure during apartheid were designed to dehumanise inmates. The fact that the same infrastructure is largely used to detain offenders' post-apartheid thus warrants closer scrutiny.

Before the inception of constitutional democracy, the DCS was highly militaristic. A change in the DCS was required at the time. The principles to effect such changes were outlined in the 1993 Interim Constitution and later the Constitution of the Republic of South Africa, 1996.[53] DCS focused on the changing of three fundamental areas, namely, demilitarisation, unionism, and affirmative action.[54] 'Affirmative action' was aimed at rectifying past inequalities, unionism gave workers the right to form trade unions, and 'demilitarisation' was aimed at phasing out the military system used in prisons.[55] This transition from apartheid to constitutional democracy was not easy, as some DCS members were not prepared for the transition.[56] It also seems that the changes were mainly aimed at improving employment conditions of the DCS staff and not at the plight of inmates.

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[50] Truth and Reconciliation Commission, *Final Report* vol 2 (29 October 1998). Available at https://www.justice.gov.za/trc/report/finalreport/volume%202.pdf.
[51] Nguyen J 'A Comparative Study of Prison Overpopulation and its Consequences' (2012)21.
[52] Nguyen (2012) 14.
[53] Commission of Inquiry into alleged incidents of alleged corruption, maladministration, violence, or intimidation in the Department of Correctional Services appointed by order of the President of the Republic of South Africa in terms of Proclamation No 135 of 2001, as amended, Final Report, (Jali Commission) (2005) 45.
[54] Jali Commission (2005) 46.
[55] Jali Commission (2005) 47-53.
[56] Jali Commission (2005) 50.

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Despite intentions to move away from South Africa's oppressive history insofar as prisons are concerned, it has been reported that most of the prisons used to detain prisoners during apartheid are still in use in the current democratic dispensation. Over 200 of the 243 existing (in 2025) correctional centres were built before 1994, and only approximately 30 of them were built in the democratic South Africa.[57] This means that most buildings utilised to detain inmates were initially constructed to serve a state not premised on constitutional democracy. Like the police, for example, the prison system was used as an instrument to control and punish the dissidents of apartheid.[58] Naturally, this reality evokes concern for the dignity of inmates and questions regarding their humane detention abound.

Overcrowding, a shortage of medical staff, and insufficient access to basic needs are issues that have been researched and are reasonably well-documented.[59] However, there are not many studies that have focused on how the well-being, and the mental and physical health of inmates are affected by the buildings and/or infrastructure in which they are detained.

Section 24(a) of the Constitution provides that 'everyone has the right— (a) to an environment that is not harmful to their health or wellbeing'[60] This provision confers a duty upon the state to ensure that the environment does not negatively affect the health of persons. The study questions what this duty means with respect to inmates who are detained by the DCS.

1.5 SIGNIFICANCE OF STUDY

Section 24(a) of the Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being.[61] Arguably, the connection between section 24(a) and other rights may be more pronounced in the correctional setting. Inmates do not have a say as to where and how they should be detained. The limitation of their right to freedom means that they are confined to a building usually constructed by the state during the apartheid era. If there is poor ventilation, inadequate sanitation, and limited bed space, no exercise space, many rights are negatively affected. These are issues that contribute to illnesses (mental and physical) in

[57] Correctional Services Facilities 2024/2025 https://safacts.co.za/correctional-service-facilities-in-south-africa/ accessed 2 May 2025.
[58] Alexander J and Kynoch G 'Introduction: Histories and Legacies of Punishment in Southern Africa', *Journal of Southern African Studies* (2011) 435-395.
[59] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2021/2022: Treatment of Inmates and Conditions in Correctional Centres (2022)* 45.
[60] Constitution of the Republic, 1996, s 24(a).
[61] Constitution of the Republic of South Africa, 1996.

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the correctional facilities.[62] The research sought to focus on the link between the physical environment and how it contributes to the non-fulfilment of section 24(a) rights. The significance of the study thus lies in interrogating this link.

1.6 RESEARCH QUESTIONS

The thesis poses the following questions:

(a) What are the state's duties in terms of section 24(a) of the Constitution in the correctional context?
(b) How do the current physical buildings and infrastructure of South African correctional centres affect detainees' right to humane detention?
(c) Which of the socio-economic rights of inmates are most intertwined with and dependent upon the fulfilment of section 24(a) of the Constitution?

1.7 AIM OF STUDY

The thesis analysed some of the laws aimed at humane detention in South Africa. The focus is on the environment of the correctional services facilities and how their conditions affect detainees' mental and physical health. The research analyses aimed to determine the challenges that emerge as a result of the physical correctional environment

1.8 LITERATURE REVIEW

South African correctional facilities continue to struggle with challenges from the apartheid era. The struggle includes defective infrastructure, inadequate resources, and overcrowding.[63] The state's responsibility to provide humane conditions for inmates, as provided by the Correctional Services Act 111 of 1998 (CSA) and the Constitution, remains significantly unfulfilled.[64] As of July 2024, the bed space capacity in South Africa's correctional services system was 107,346, which shows an increase from September 2023 when it was 104,558.

[62] Judicial Inspectorate for Correctional Services, *Annual Report 2022/23: Widespread Complaints of Poor Hygiene, Overcrowding, Tuberculosis in Prison (2023)10.*
[63] Democratic Alliance 'Prison Breaks at Critical High Risks with Half of SA Prisons Lacking Adequate Perimeter Fencing' 2025 available at *https://www.da.org.za/2025/02/prison-breaks-at-critical-high-risks-with-half-of-sa-prisons-lacking-adequate-perimeter-fencing\>* (accessed 29 April 2025).
[64] Democratic Alliance (2025).

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Despite this increase, the system faces overcrowding of approximately 46 per cent.[65] The DCS estimated that upgrading the existing facilities or building new correctional centres will cost around R36 billion.[66]

Section 3 (1) of the CSA stipulates that 'in every correctional centre provision must be made for general sleeping and in-patient hospital accommodation, consisting of single or communal cells or both'. Section 3(2) *(a)* stipulates that 'all cell accommodation must have sufficient floor and cubic capacity space to enable the inmate to move freely and sleep comfortably within the confines of the cell.' [67] There is a ventilation requirement that must be met too. The regulation provides that all cells accommodating inmates must be ventilated to ensure sufficient airflow, and this must be according to the National Building Regulation SABS 0400.[68] CSA requires that every prisoner be given a separate bed and bedding that meet hygiene requirements.[69] Some reports suggest that many facilities have insufficient bed spaces and bedding, and they are sometimes forced to sleep on mats.[70] Overcrowding aggravates inadequate lighting, compromised ventilation, and insufficient sanitation facilities.[71] There are cells designed for a single person, but are used to house more than one prisoner. This reduces space in these correctional facilities.[72]

Pullukattu emphasises the need for rehabilitative and conducive humane conditions in correctional centres with improved infrastructure.[73] A clean and ecologically healthy environment is essential for the well-being and health of any person. Pullukattu correctly suggests that introducing green infrastructure, such as therapeutic gardens and healing landscapes, would promote rehabilitation and reduce stress, which contributes to better mental

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[65] Fraser L, 'South Africa Needs R36 Billion to Build More Prisons' 9 December 2024 *https://businesstech.co.za/news/government/803512/south-africa-needs-r36-billion-to-build-more-prisons/\>* (accessed 4 May 2025).
[66] Department of Correctional Services 'South Africa's prison system short by 50,000 beds – R36bn needed for new prisons' 2024 available at *https://www.citizen.co.za/news/prisons-overcrowding-groenewald-correctional-services/\>* (accessed 29 April 2025).
[67] The Correctional Services Act 111 of 1998.
[68] Parliamentary Monitoring Group, 'Correctional Services Portfolio Committee Meeting Transcript: Oversight of Prison Conditions' 2002 available at <*https://pmg.org.za/committee-meeting/5609/\>* (accessed 29 April 2025).
[69] Correctional Services Act 111 of 1998, s 10(1).
[70] Human Rights Watch 'Prison Conditions in South Africa: The Prison Crisis' 1994 available at *https://www.hrw.org/reports/1994/southafrica/4.htm\>* (accessed 29 April 2025).
[71] Judicial Inspectorate for Correctional Services (JICS) *Annual Report 2020/2021* 52.
[72] Muntingh L 'Overcrowding and Its Impact on Prison Conditions' (*Research Paper No. 10* Cape Town: University of the Western Cape, Community Law Centre) (2007) 7-5.
[73] Pullukattu L *Prison City: Redesigning Pollsmoor Prison* (Unpublished MA thesis, University of Cape Town, 2017) 41.

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health.[74]. Contrarily, therefore, overcrowding results in stress, aggression, and poor mental health. Furthermore, lack of access to nature in correctional centres negatively impacts inmates' self-sufficiency and social behaviour.

Bantjes *et al* assessed the intersection of third-generation rights, mental health, and prison environments in South Africa.[75] The study shows insights into how correctional services facilities influence inmates' mental health and behaviour.[76] The authors highlight how health professionals are affected mentally by the lack of resources in the correctional services system. This hinders their capacity to provide adequate psychological care for inmates.[77] Bantjes et al point out how inadequate infrastructure contributes to suicide.[78] The findings of this study showed that suicide is the primary cause of unnatural deaths among inmates.[79] In 2015, 61 suicides were reported in correctional centres.[80] The authors further point out that there are gaps between daily practice in correctional centres and current policies that protect inmates. This contributes to inadequate mental health services and calls for systemic reform.[81]

Albertus contends that the layout and structure of the correctional centre's buildings affect the conditions to which inmates and staff members are subjected.[82] Correctional centres must be designed to ensure control, safety, and development of inmates; many prisons in South Africa were not built to serve these purposes. Originally, these correctional facilities were built to punish offenders, and the public was not always concerned about what occurred inside the prison.[83]

The lack of supervision in holding cells leads to violence and crime.[84] Correctional centres' designs contribute to inmates' violence. Heron asserts that design elements such as inappropriate material, inadequate spatial organisation, and poor visibility can create an environment that leads to gang activities and aggression.[85] Nel argues that the design flaws lead

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[74] Pullukattu (2017) 41.
[75] Bantjes J Swartz L and Niewoudt P 'Human Rights and Mental Health in Post-Apartheid South Africa: Lessons from Health Care Professionals Working with Suicidal Inmates in the Prison System' (2018) 3.
[76] Bantjes *et al* (2018) 3.
[77] Bantjes *et al* (2018) 4.
[78] Judicial Inspectorate for Correctional Services (JICS) *Annual Report 2019/2020* 64.
[79] Judicial Inspectorate for Correctional Services (JICS) *Annual Report 2021/2022* 72.
[80] Judicial Inspectorate for Correctional Services (JICS) *Annual Report 2015/2016:* 45.
[81] Bantjes *et al* (2018)1.
[82] Albertus C *The Right to Health Care of Terminally Ill Inmates in South Africa* (unpublished LLD, University of the Western Cape,2018) 160.
[83] Albertus (2018) 160.
[84] Albertus (2018) 160.
[85] Heron E C *Violence in prison: A situational design perspective*. (2013) 43 *South African Crime Quarterly* 178.

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to unsupervised inmates for a long period, which contributes to violence.[86] This may also contribute to other problems, such as no access to assistance during emergencies, such as medical crisis or fires.

Overcrowding causes aggression and tension and leads to the formation of gangs in correctional centres.[87] In addressing the issues, an approach is needed, and it needs to include redesigning prison layouts. The communal cells especially pose a high safety risk to the inmates. Noise levels and overcrowding affect the behaviour of the inmates.[88]

Booyens *et al* commented on the rules regulating space and the impact of infrastructure on the well-being and health of inmates. These authors show how ageing inmates are affected by a lack of adequate accommodation.[89] The challenges they face include accessibility to medical care and facilities, and this is due to their vulnerability to health issues.[90] The authors highlighted challenges emanating from the physical designs of correctional centres, i.e., climbing stairs, standing in lines for food, and many more, which are caused by old infrastructure or prison designs that cannot accommodate elderly inmates and inmates with illnesses and physical limitations. This negatively affects the physical and mental health of the elderly inmates in these facilities.[91]

The correctional environment affects all inmates to some extent. Booyens *et al* recommend improving conditions for elderly inmates only. For example, they recommend that the elderly should be detained separately from other inmates and that they should be given lower bunk beds due to their physical limitations.[92] While this is supported, it must be borne in mind that every inmate has the right to be detained in humane conditions which do not encroach unjustifiably on their fundamental rights guaranteed by the Constitution.

Agboola writes about mental health issues that are caused by a lack of reading material in these correctional services facilities.[93] Prison designs contribute to the scarcity of space for library

[86] Nel SL A Critical Analysis of Gangsterism in South Africa Correctional Centres: The Case of Baeberton Management Area (master's thesis, University of South Africa, 2017)37.
[87] Fitz, L, '*The Impact of Security Risk Classifications on the Safety and Security of Inmates in South African Correctional Centres'* (2021) 4.
[88] Albertus (2018) 161.
[89] Booyens *et al* 'Retiring in Prison Cell: The South African sentenced older adult male' (2023) 253.
[90] Boyens *et al* (2023) 251.
[91] Booyens *et al* (2023) 251.
[92] Booyens *et al* (2023) 242.
[93] Agboola C 'Memories of the Inside: Prison Conditions in South African Female Correctional Facilities' (2016) 23-56.

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services and the lack of reading material in correctional centres.[94] Limited reading resources may negatively impact the mental well-being of inmates by limiting opportunities for self-development and intellectual engagement.[95] Bantjes *et al* discuss how the lack of resources affects the South African correctional services system. The authors include a lack of recreational activities and rehabilitative programmes. They argue that these factors contribute to violence among detainees and psychological stress.[96] Limited resources and overcrowding elevate stress, illnesses, violence, assault, and sexual abuse within correctional centres.[97]

There is a link between inadequate infrastructure and a lack of psychological services in the South African correctional services system. This stems from space, which is influenced by prison designs and structure.[98] Sukeri writes about psychiatric units in the correctional facilities. The author stressed that none of the country's correctional centres have psychiatric units on site.[99] However, a 2020 study revealed that there are psychiatric units in some of the correctional centres, and an example is the Bizzah Makhate Correctional Centre in Kroonstad.[100] This shortage of these services leads to an increase in several mentally ill inmates being detained without proper assessments.[101] Baffour *et al* argue that inadequate infrastructure and overcrowding are some of the factors contributing to delays in medical treatment, which lead to human rights violations and avoidable health complications.[102] In *B v Minister of Correctional Services*, it was held that inmates should be afforded a higher degree of protection because they are not like the free population, who can access the facilities and resources for medical treatment. The mere fact that they are detained restricts them from accessing the available resources.[103]

Ndlovu *et al* argue that South Africa's correctional centre layout and design hinder inmates' access to essential resources, underlining the difference between the living conditions of

[94] Khumalo MS, Mugwisi T & Jiyane G 'Realising Rehabilitation and Social Inclusion through Correctional Services libraries in South Africa' (2018) 1-15.
[95] Agboola (2016)56-23.
[96] Bantjes *et al* (2017) 2.
[97] Bantjes *et al* (2017) 2.
[98] Sukeri K et al 'Forensic Mental Health Services: Current Service Provision and Planning for a Prison Mental Health Service in the Eastern Cape' (2016) 5.
[99] Sukeri K et al (2016) 5.
[100] Modupi MB, Mosotho NL & le Roux HE 'Prevalence of Mental Disorders Among Offenders at Health Facilities in Bizzah Makhate Correctional Service Centre Kroonstad, South Africa' (2020) 963-972.
[101] Sukeri K et al (2016) 5.
[102] Baffour F D Francis AP, Chong MD & Harris 'Prison Overcrowding and Harsh Conditions: Health and Human Rights Concerns to Persons in Custody, Staff, and the Community' (2024) 45-60.
[103] *B v Minister of Correctional Services* (1997) All SA 574 (C) 590.

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detainees and the general population.[104] Overcrowding aggravates these differences. Many correctional centres house more detainees than permitted by their designs, and this contributes to limiting access to necessities such as sanitation, healthcare, and personal space.[105] Overcrowding restricts service delivery and physical space in correctional centres.[106]

On 5 December 2016, the non-governmental organisation, Sonke Gender Justice and Lawyers for Human Rights (LHR) sought an interdict from the Western Cape High Court order the state by to address the inhumane conditions in the Pollsmoor detention facility.[107] The Court issued an order declaring that the conditions in the facility are unconstitutional, and the government implemented a plan for better conditions and to address overcrowding. Saldana J, a presiding officer in the case, granted an interim order, in which he declared that: the government acted unconstitutionally; several detained persons must be released; and that there must be a plan to address overcrowding, nutrition, health care, and accommodation.[108] This affirms that there is recognition that the manner in which inmates are detained is inconsistent with constitutional imperatives.

Although there is an abundance of research on inhumane conditions in correctional centres and the impact they may have on the rights of inmates, much more is needed regarding the nexus between such conditions and the physical built environment and infrastructure, and how the fulfilment of inmates' rights depends on the adequacy of the physical structures in which they are housed requires greater attention. The question of what section 24(a) of the Constitution means in the context of correctional centres thus warrants closer attention.

Although there has been little research done on the meaning of section 24(a) of the Constitution in the context of South African correctional centres and few available resources, this literature review explicitly shows the factors contributing to the violation of the rights of detainees. The state must promote and protect the rights of detainees guaranteed by the Constitution, the CSA, the National Health Act, international instruments, and any legislation relevant to rights to healthcare.

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[104] Luyt W F M 'Bed space management as a strategy for managing overcrowding in the corrections environment in South Africa', *South African Journal of Criminal Justice* (2023) 1-20.
[105] Luyt (2023) 1-20.
[106] Luyt (2023) 1-20.
[107] *Sonke Gender Justice v Government of the Republic of South Africa*, Case No. 24087/15, Western Cape High Court, Judgment dated 5 December 2016, paras 89–99.
[108] *Sonke Gender Justice v Government of the Republic of South Africa* (2016) paras 104-106.

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1.9 RESEARCH METHODOLOGY

The study is qualitative in nature and used techniques such as the doctrinal and document review, as these techniques can yield plausible findings. The data was collected via the UWC A-Z database, the organisation's websites, and Google Scholar. Subsequent to collecting data, it was analysed to address the objectives of the present study. This includes the use of primary sources such as statutes, cases, and secondary sources such textbooks, articles and other relevant legal resources.

1.10 CHAPTER OUTLINE

Chapter 1 sets out the introduction, history, and background. The objectives and the problem statement.

In Chapter 2, the right to humane detention from an international, regional, and domestic perspective is discussed. The right to a humane environment for inmates in correctional centres was discussed at the international and regional, and domestic levels. The focus is primarily on the law as it applies to the physical and mental health of inmates, and the prescriptions regarding the environment in which they ought to be detained.

In Chapter 3, the constitutional right to an environment that is not harmful to health or well-being is discussed. The Constitution, legislation, policies, and case law are discussed to determine how detainees ought to be accommodated humanely. Gaps and inadequacies in the law are pointed out, too.

Chapter 4 is the conclusion and recommendations, which concludes by summarising the findings of the research and ensuring that the questions posed in the thesis are answered. Recommendations are also made.

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CHAPTER 2

THE RIGHT TO HUMANE DETENTION FROM AN INTERNATIONAL, REGIONAL, AND DOMESTIC PERSPECTIVE

2.1 INTRODUCTION

The aim of this chapter is to examine how international, regional, and domestic law instruments define and protect the right to humane detention in correctional centres. The right to humane detention is a constitutional right and not an isolated principle. In South African law, it is arguably linked to section 24(a) of the Constitution. The alignment between environmental health and humane detention forms part of the discussion that follows.

To appreciate the evolution of the right to humane conditions in detention, the chapter commences with a brief historical background of the recognition of detainees' rights to dignity and health. The context is essential to understanding the establishment of humane detention as a norm in international, regional, and domestic law. This chapter analyses international, regional, and domestic law instruments with a view to ascertaining what humane detention means.

2.2 HISTORICAL BACKGROUND

The health and dignity of a person are inextricably connected. It may therefore be argued that a physical setting which is not conducive to the health of persons is an affront to their dignity. Historically, inhumane conditions that denied prisoners their health seemed to be the case in many prison systems around the world. Hence, the recognition of the health and well-being needs and rights of prisoners has not had the same trajectory as that of persons who were not imprisoned. The brief discussion of the history of the right to health in prisons is thus, in short, founded on the understanding that it is integral to the right to humane detention. This discussion and the analyses of international, regional, and domestic law in this chapter are aimed at determining what human detention means in the 21st century and in a constitutional, democratic dispensation like South Africa. Though this chapter is not about the right to healthcare *per se,* the recognition, articulation, and interpretation of the right assist in shedding light on the issue of humane detention.

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According to Lines, the history of international law on the rights to health of detainees originates from the Act for Preserving the Health of Prisoners in Gaol.[1] The goal of the Distemper of 1744 was enacted to respond directly to the contagious outbreak of disease, which rapidly spread through British prisons and close communities.[2] The foundation was provided by the legislation for the rights to health of detainees as defined by international law.[3] The Health of Prisons Act 1774 formally established prisoners' rights to adequate infrastructure, access to medical care, and established legal obligations on the British government to provide medical healthcare for prisoners suffering from illnesses.[4] The Act required prison staff to possess qualifications and standards, and the state to provide healthcare for prisoners at its own cost.[5] The introduction of legislation specific to the health needs of prisoners possibly indicates that prisoners' health needs differed from those of free persons. The difference in health needs suggested that the prison setting must have affected the state of prisoners' health, and that this was not experienced outside prison walls.

The British influence on legislation regarding prisoners' health spread to other countries, including those in North America, Europe, and Africa.[6] This occurred during the colonial administration in the African colonies.[7] Before colonisation, the concept of imprisonment as punishment did not exist in Africa.[8] In most African states, including South Africa, prisons were introduced as a tool of oppression and to control indigenous nations.[9] This ethos or remnants thereof appear to have survived in many African prisons today. The health of prisoners and the conditions in which they were detained were, therefore, presumably not a fundamental concern in many African countries as it was in Europe and elsewhere at the time.

On the European continent, specifically during industrialisation, concerns were raised about public health, as there was fear of disease spreading from prisons to the public.[10] This in itself speaks volumes about the conditions in prisons and how they affected prisoners. It may also be inferred that the motivation for the protection of prisoners' health was perhaps not the recognition of their dignity as persons, but rather the prevention of transmission of disease to

[1] Lines R 'The right to health of prisoners in international human rights law' (2008) 3 I*nternational Journal of Prisoner Health* 5.
[2] Forsythe W *The Reform of Prisoners 1750–1850* (1987) 25.
[3] Lines (2008) 5.
[4] Lines (2008) 5.
[5] Lines (2008) 4.
[6] Ignatieff M *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750–1850* (1978) 64–66.
[7] Fazel S & Baillrgeon J 'The health of prisoners' (2011) 377 *The Lancet* 956–965.
[8] Onyango B, *African Penal Systems* (Routledge 1970) 12.
[9] Brown D *Race, Science and the Colonization of Africa* (2022) 87.
[10] R Lines (2008) 10.

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the public. These concerns played a vital role in the expansion of policies and legislation in prison healthcare.[11] They also denote that the prison setting had a unique impact on health, which was not found outside of prison amongst the general population, as already mentioned.

Later in the twentieth century, international human rights law started to develop. The adoption of instruments such as the Universal Declaration of Human Rights (UDHR) in 1948, the International Covenant on Civil and Political Rights (ICCPR) in 1966, and the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) marked a shift towards the recognition of the universal basic rights for all, including persons in conflict with the law. [12]

In South Africa and Africa at large, under colonial rule and apartheid, the correctional system was racially discriminatory and punitive, as alluded to earlier. Correctional systems were not concerned about the dignity or health of detainees.[13] In South Africa, the first significant recognition of the rights to healthcare and other rights linked to humane detention of detainees became evident in the post-apartheid era through the adoption of the 1996 Constitution. The Constitution guarantees a host of rights to detainees. Key amongst these rights is the right to humane detention. Collectively, these rights imply a vastly different regime from the colonialist and apartheid prison system. The specificities of what the current regime should entail, affording inmates what they are constitutionally and legally guaranteed, are at the heart of this chapter. To this end, the international legal framework relevant to the issue at hand is discussed next.

2.3 INTERNATIONAL INSTRUMENTS RELEVANT TO HUMANE DETENTION

This section of the chapter focuses on the right to health of prisoners as well as the right to humane detention. While there are other rights also closely connected to humane detention, the right to health is arguably one that is most susceptible to violation in a context of inhumane conditions.

[11] Huling A 'Public Health and the Prison System' (2017) *Journal of Law, Medicine and Ethics* 28.
[12] United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)* (2015) 24–35.
[13] Sarkin J 'Prisons in Africa': *an evaluation from a human rights perspective*' (2019**)** *International Journal on Human Rights* 123–126.

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2.3.1 Constitution of the World Health Organisation

The Constitution of the World Health Organisation of 1948 (WHO) was adopted by the Member States of the United Nations following the Second World War.[14] It was established as an instrument in the United Nations to coordinate and promote universal health.[15] Though there is no explicit provision on humane detention within this instrument, it has provided a definition of 'health', which, as mentioned earlier, is closely linked to dignity and therefore humane detention.[16] The WHO Constitution provides an international definition of health. It stipulates that 'health' is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.'[17] This is a broad conceptualisation that obligates Member States to provide adequate healthcare services beyond treating illnesses, which applies to every individual, including inmates. The motivation behind the introduction of the Constitution was a mutual understanding that the right to health is an essential human right and may bring about security and peace.[18] Therefore, this instrument aimed to promote joint efforts among nations in addressing issues related to health systems, disease prevention, and improved living conditions globally.[19]

Its preamble further stipulates that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.'[20] WHO was drafted in the context of global health, and it is relevant to South Africa's constitutional framework, specifically section 24(a) of the Constitution, which entitles everyone to the right to an environment that is not harmful to health and well-being.[21] This connection suggests that traditional healthcare extends to infrastructural and environmental conditions that influence health and well-being. In the correctional centre context, applying section 24(a) means ensuring that detainees' physical environment maintains adequate sanitation, air quality and mitigates overcrowding and access to sunlight.[22] This is linked directly to humane detention, as denial of adequate healthcare services undermines wellbeing and dignity.[23] Their health ought not to be negatively affected

[14] Constitution of the World Health Organization, 1946.
[15] Constitution of the World Health Organization, 1946.
[16] See discussion on the clarification of concept of 'health' under Section 1.2.3, Chapter 1.
[17] See discussion on the clarification of concept of 'health' under Section 1.2.3, Chapter 1.
[18] Constitution of the World Health Organization, 1946.
[19] Gostin LO Gostin OS & Meier BM *Global Health Law* (2014) 25.
[20] Constitution of the World Health Organisation, 1946.
[21] Constitution of the Republic of South Africa, 1996, s 24(a).
[22] Sloth-Nielsen J & Muntingh F *Human Rights and the South African Correctional System* (2001) 23–24.
[23] *S v Makwanyane* 1995 (3) SA 391 (CC) para 144.

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by their status as persons in conflict with the law. The WHO Constitution bound all its member states, including South Africa. This means correctional centres' policies must be in line with the principles of the WHO Constitution. [24]

In South Africa, much has been written about detainees' right to healthcare and the conditions of correctional centres. Arguably, the state's duty to ensure the 'highest standard of attainable health' requires much more than the provision of medical services. Section 24 (a) of the South African Constitution adds another layer of responsibility on the state. As alluded to earlier, the WHO vision extends to those deprived of liberty in that their conditions of detention must be consistent with environmental well-being and human dignity.

2.3.2 Universal Declaration on Human Rights (UDHR)

The General Assembly adopted the Universal Declaration on Human Rights (UDHR) on 10 December 1948 in reaction to World War II.[25] The UDHR was initiated by the international community. The purpose was to maintain equal rights and the dignity of all individuals.[26] It paved the way for modern human rights by laying the foundations for political, civil, social, economic, and cultural rights, including the right to dignity, humane treatment, and the right to health, all of which are relevant to the protection of the rights of detainees.[27] Article 5 of the UDHR also stipulates that 'no one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment'[28]

The UDHR does not contain an explicit clause on the right to health of prisoners or the environment in which they ought to be detained. However, it provides for the right to dignity and humane treatment. Detention in inhumane conditions would thus violate these explicit rights. Detention, which undermines health and human rights for all. Furthermore, specific rights such as the right to life and human dignity, which are guaranteed in the UDHR, are closely intertwined with the right to health of detainees.[29]

At this juncture, it is worth mentioning the case of *Lantsova v The Russian Federation. In casu,* the mother of the detainee brought a complaint on behalf of the deceased, who died in

[24] WHO, *Health in Prisons: A WHO Guide to Essentials in Prison Health* (2007) 5.
[25] Universal Declaration of Human Rights, GA Res 217 A (III) (10 December 1948).
[26] Morsink J *The Universal Declaration of Human Rights*: Origins, Drafting and Intent (1999) 37.
[27] UDHR (1948) Articles 1, 3, 5, 25.
[28] UDHR (1948) Article 5.
[29] Universal Declaration of Human Rights GA Res 217 A (III), UN GAOR 3rd Sess Supp No 13, UN Doc A/810 (1948).

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detention.[30] This complaint was considered by the Human Rights Committee.[31] The mother argued that her son was held in unhygienic and overcrowded conditions, with inadequate medical care, and that he died because of the failure of authorities to protect his health and life.[32] The Human Rights Committee found that the failure of the state to ensure conditions of detention that are humane and to provide medical attention as required constituted a violation of articles 6 and 10 of the ICCPR, which protect the right to human dignity and life, and gives a legally enforceable effect to the right to life of Article 3 of UDHR, which protects the right to human dignity and life.[33]

In addition to the above, the UDHR consists of several provisions relevant to the rights of detainees. Article 25 affirms the right to an adequate standard of living for well-being and health, including social services and medical care.[34] Section 24(a) of the South African Constitution, which provides every individual with the right to an environment that is not harmful to health or well-being,[35] appears to align with Article 25 of the UDHR. It is thus important to understand what constitutes an environment that does not threaten, undermine, or compromise the health or well-being of a detainee.

The UDHR requires equality, dignity, and humane treatment of every individual. Although it does not expressly mention detainees, it can be reasonably inferred that they are included in the word 'everyone.' Including those who are deprived of liberty, therefore, should be interpreted to include detainees. It provides a legal framework that creates the state's duty to ensure humane detention. [36]

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2.3.3 International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted in 1966 by the United Nations and came into effect in 1976.[37] The international community initiated the instrument to enforce economic, social, and cultural rights.[38] The ICESCR was

[30] *Lantsova v The Russian Federation* Communication No 763/1997, para 2.1.
[31] *Lantsova v The Russian Federation* Communication No. 763/1997 para 1.1.
[32] *Lantsova v The Russian Federation* Communication No. 763/1997 para 2.2.
[33] *Lantsova v The Russian Federation* Communication No. 763/1997 para 9.2.
[34] UDHR (1948) Article 25.
[35] Constitution of the Republic of South Africa, 1996 s 24(a).
[36] Universal Declaration of Human Rights (1948) Article 1–5.
[37] International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (1966).
[38] Craven M *The International Covenant on Economic, Social and Cultural Rights:* A Perspective on Its Development (1995) 16.

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driven by the need to promote equality, social justice, and dignity by obligating the states to recognise the right to education, health, and humane living conditions.[39] This was in response to the post-World War II setting, where it became clear that political and civil rights alone do not assure justice if large sections of communities were still excluded from basic needs such as shelter, healthcare, and food.[40] The ICESCR, therefore, reflects the international recognition of true dignity and the duty of the state to provide basic conditions of life.[41] The ICESCR is relevant in a correctional centre context. The duty of the state under ICESCR may be extended to protect against abuse of power against detainees. Arguably, the ICESCR affirms that correctional centres are not only judged by the ability to detain but also by their ability to uphold dignity, equality, and social justice.

The UN Committee on Economic, Social, and Cultural Rights emphasised in General Comment No. 4 that the right to physical and mental health extends to detainees.[42] The UN Committee did this because of detainees' full dependence on the state for their healthcare, living conditions, and food. A poor correctional facility environment often results in mental health challenges, the spread of disease, and neglect. It may be argued that this clarity was essential to deter states from limiting the right to health only to those citizens who are free. The fact that the protection also extends to living conditions also means that it is not sufficient for states to only make medical services available to detainees. Care must be taken to ensure that the conditions in which they are detained are consistent with their human dignity. In South Africa, section 24(a) of the Constitution may be applied to bolster this dimension of prisoners' entitlement.

The ICESCR does not explicitly address detention conditions. However, in 2015, the ICESCR was ratified by South Africa, and Article 12 recognises the mental and physical health of every individual.[43] ICESCR Committee's General Comment No. 14 stressed that the right to the highest attainable standard of physical and mental health extends to both mental and physical well-being and obligates states to provide medical care without discrimination.[44] For detained persons, the duty of the States is heightened due to their restricted ability to access healthcare

[39] International Covenant on Economic, Social and Cultural Rights 993 UNTS 3 (1966) preamble.
[40] Alston P and Quinn G 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 156,160.
[41] Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The nature of States parties' obligations (Article. 2, para. 1)*, UN Doc E/1991/23 (1990) para 10.
[42] UN CESCR, General Comment No 14 (2000) Doc 12/2000/4 at para 34.
[43] ICESCR (1966) Article 12.
[44] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health, General Comment No. 14* (2000) at paras 3–4.

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and other basic services.[45] Therefore, Article 12 establishes standards that correctional centres must implement to ensure that detainees' health is protected, similar to that of the general population.[46] This is because being detained does not remove their personal entitlement to human dignity. It would constitute discrimination if the provision of healthcare for prisoners is below societal standards, and such would be contrary to humane detention.

Furthermore, though medical care is important for the health and well-being of detainees, the conditions of their imprisonment are equally important. The provision of quality medical services may be futile if the environment in which they are detained is hazardous. In the South African context, there has been extensive contention and even litigation about both the need for health care as well as the abhorrent prison conditions. This is despite the guarantees of the Constitution, including section 24(a). As noted earlier in this thesis, the application of section 24(a) in the context of the prison environment and its intersection with the right to health has rarely been interrogated. This is arguably one of the major areas of need in research and advocacy concerning the state of prisons in South Africa in the current constitutional regime.

Article 11(1) stipulates that states parties 'recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.'[47] In the context of correctional centres, the wording of this article is central to humane detention because it affirms living conditions and accommodation that meet minimum standards of dignity and adequacy. It may be reasoned that this article assists in underscoring the right to a healthy environment in correctional centres.

The General Comment No. 4 of the United Nations Committee on Economic, Social and Cultural Rights provides a detailed interpretation of Article 11, which stipulates that housing is 'the environmental factor most frequently associated with conditions for disease, and inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.'[48]

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[45] UN Human Rights Council: *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health* (2009) at para 63.
[46] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2005) 284.
[47] ICESCR 1966) Article 11(1).
[48] Committee on Economic Social and Cultural Rights 'General Comment No. 4: The right to adequate housing' (13 December 1991) UN Doc E/1992/23 annex III at 114 (1991) reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies UN Doc HRI/ GEN/1/Rev.6 at 18 (2003) para 8(d).

https://uwcscholar.uwc.ac.za/home

The Committee's definition of adequate housing includes adequate living space, privacy, security, ventilation, lighting, washing facilities, sanitation, safe drinking water, and heating.[49] In correctional centres, this definition is not limited only to housing but includes conditions that respect detainees' dignity. Privacy relates to adequate space that affords detainees privacy and does not undermine their dignity.[50] Adequate space excludes overcrowded cells that force detainees to sleep on the floor.[51] The consistent levels of overcrowding in South African prisons are cause for profound concern. The enforcement of these standards is thus highly problematic in many parts of the world. Additionally, overcrowding may negatively impact upon sanitation, and safe drinking water is important to prevent outbreaks of disease, while heating and lighting ensure that inmates are not exposed to harmful and degrading conditions.[52] In that way, the conditions mentioned by the Committee express and relate to minimum standards that must be met to achieve humane detention in correctional facilities.

2.3.4 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1966 by the United Nations General Assembly and came into effect in 1976.[53] The ICCPR was ratified by South Africa in 1998. It was initiated to give legal effect to civil and political rights. This instrument was a response by the world to the protection of people's dignity and freedom after World War II.[54] The objective of the ICCPR is to safeguard civil and political rights, including the rights to liberty and security of the people. This protection applies equally to detainees.[55]

The Human Rights Committee, which oversees implementation of the ICCPR, has strengthened the principle of political and civil rights, fully applied to those who are deprived of liberty by interpreting them to guarantee humane detention. [56]It is contended here that rights

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[49] Committee on Economic Social and Cultural Rights 'General Comment No. 4: The right to adequate housing' (13 December 1991) UN Doc E/1992/23 annex III at 114 (1991) reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies UN Doc HRI/ GEN/1/Rev.6 at 18 (2003) para 8(d).
[50] Penal Reform International, *Global Prison Trends 2020* (2020) 12.
[51] United Nations Office on Drugs and Crime (UNODC), *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2015) rule 12.
[52] Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The right to adequate housing (Art. 11(1))* (1991) UN Doc E/1992/23 III para 8.
[53] International Covenant on Civil and Political Rights GA Res 2200A (XXI), UN Doc A/6316 (1966), 999 UNTS 171.
[54] Nowak M *United Nations Covenant on Civil and Political Rights: CCPR Commentary* (2005)3.
[55] ICCPR (1966) arts 6-10.
[56] United Nations Human Rights Committee, *General Comment No. 21: Humane treatment of persons deprived of liberty (Art. 10)*, UN Doc HRI/GEN/1/Rev.9 (1992) para 3.

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such as freedom from cruel, torture, degrading, or inhuman treatment as contained in Article 7 of the ICCPR operate to protect against state power abuse in correctional centres.[57] In *Lopez Burgos v Uruguay,* the Human Rights Committee held that detention, ill-treatment, and abduction of the applicant by the state agents violated Articles 7 and 10 of the ICCPR, highlighting that imprisonment must not be used as a tool to strip individuals of their dignity.[58] This case plays a vital role in strengthening the understanding that political and civil rights are not to be halted or negated in detention. In this way, the Human Rights Committee can be regarded as supporting detainees' humane detention, which includes adequate physical conditions.

As mentioned earlier, Article 7 of the ICCPR prohibits cruel, inhuman, and degrading punishment or treatment.[59] It stipulates that 'every human being has the inherent right to life and that this right shall be protected by law and thus no one shall be arbitrarily deprived of life.'[60] On the face of it, this article appears to apply to situations where there is an explicit threat to life. However, it may be argued that where a person is subjected to conditions that may pose a threat to their survival or continued existence, the article is also relevant. Inhumane environmental conditions in correctional facilities threaten the quality of life of detainees. This indeed is the case in many South African correctional centres.[61] South African correctional centres are widely known to be breeding grounds for disease and violence. Such conditions may, in some instances, also lead to the spread of diseases in and outside of correctional centres and may cause death. The protection of civil and political rights, such as the right to life and dignity, is thus violated in such circumstances.

The ICCPR plays a significant role in addressing international standards for humane conditions and treatment of detainees within correctional centres. Article 10 of the ICCPR stipulates that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'[62] This article recognises detainees and that by being detained, they do not forfeit their rights to health, dignity, and humane conditions.[63] It also

[57] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Articles 7 and 10.
[58] *Lopez Burgos v Uruguay* Communication No. 52/1979, UN Doc CCPR/C/13/D/52/1979 (1981) paras 12.3–12.4.
[59] ICCPR (1966) Article 7.
[60] International Covenant on Civil and Political Rights GA Res 2200A (XXI), UN Doc A/6316 (1966), 999 UNTS 171.
[61] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2021/2022* (JICS 2022) 45.
[62] International Covenant on Civil and Political Rights GA Res 2200A (XXI), UN Doc A/6316 (1966), 999 UNTS 171.
[63] Nowak (2005) 252.

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distinguishes between types of detainees, such as accused persons and convicted inmates, requiring separate facilities and treatment for each.[64] As a state party to this instrument, South Africa should promote and protect these provisions under international law.

When reading section 24(a) of the Constitution with the ICCPR, it creates a dual duty on the government to ensure correctional facilities are not only secure and safe but also humane and conducive to health. Conditions such as poor ventilation, overcrowding, and inadequate sanitation, as prevalent in many South African correctional facilities, are direct violations of these legal prescripts.[65] In addition, section 24(a) of the Constitution is complemented by section 24(b), which obligates the state to take measures to promote conservation, prevent pollution, and secure the environment.[66] These sections, 24(a) and 24(b), apply to all environments, including correctional facilities, where poor sanitation, overcrowding, and pollution affect the health and well-being of detainees.[67] By requiring protective and preventive measures, section 24(b) enables the recognition of section 24(a) to ensure that detainees enjoy environmental protection.[68] Their application to detention highlights detention conditions consistent with health and dignity. Glazewski expresses that the section 24 conceptualisation must not be understood narrowly but broadly.[69] This said, Glazewski's conceptualisation must include institutional contexts such as correctional centres where the state controls the environment and impacts the dignity and well-being of detainees.

2.3.5 United Nations Convention Against Torture

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was adopted in December 1984 and came into effect in June 1987.[70] South Africa ratified the UNCAT in 1998.[71] In Article 1, 'torture' is defined as any act of suffering or severe pain inflicted for purposes of intimidation or punishment.[72] The UNCAT mandates the state parties to prevent inhumane, torture, or degrading treatment of individuals. This includes treatment that originates from poor detention conditions, such as

[64] ICCPR (1966) Article 10(2).
[65] Chenwi L 'The Right to an Environment that is Not Harmful to Health or Well-Being in South Africa' (2011) 22.
[66] Constitution of the Republic of South Africa, 1996, s 24(b).
[67] Judicial Inspectorate for Correctional Services (JICS): *Annual Report 2021/2022* 45.
[68] Glazewski J 'Environmental Law in South Africa' (2005) 71.
[69] Glazewski J *Environmental Law in South Africa* 2 ed (2005) 11.
[70] United Nations. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984 A/RES/39/46.
[71] United Nations Treaty Collection, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: South Africa* (Status of Ratification) https://treaties.un.org accessed 21 September 2025.
[72] United Nations: *Convention Against Torture* (1984) Article 1.

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overcrowding, poor sanitation, and inadequate medical care.[73] The body that oversees the UNCAT is the Committee against Torture (CAT), with independent experts who issue General Comments, review reports, and conduct investigations related to violations of the UNCAT.[74]

In 2019, South Africa ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and assigned the South African Human Rights Commission (SAHRC) to lead its National Preventive Mechanism (NPM).[75] The role of the NPM is to identify potential risks leading to inhumane detention and treatment and to recommend reforms where necessary.[76] This body is essential in the South African correctional centres to ensure accountability by the state. As mentioned earlier, NPM operates as an oversight institution, including SAHRC, Independent Police Investigative Directorate (IPID), Judicial Inspectorate for Correctional Services (JICS), Health Ombud and Military Ombud, which together oversee conditions in correctional centres and other custodial settings.[77]

In its communications and concluding observations, CAT has consistently noted that overcrowding significantly contributes to poor conditions in correctional centres, putting strains on sanitation, staff capacity, and infrastructure.[78] In South African correctional centres, such conditions threaten the health and well-being of detainees as protected by section 24(a) of the Constitution and various rights in the Constitution.

2.3.6 The United Nations Special Rapporteur on Torture and Other Cruel or Degrading Treatment

In addition to CAT's work, the United Nations Special Rapporteur on Torture and other Cruel or Degrading Treatment or Punishment has emphasised how overcrowding in correctional centres violates the health and dignity of the detainees.[79] The Special Rapporteur is an

[73] United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 Article 2; UN Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties* (24 January 2008) UN Doc CAT/C/GC/2 para 13.
[74] United Nations Office of the High Commissioner for Human Rights (OHCHR). *Committee Against Torture: Mandate and Functions*, available at: *https://www.ohchr.org/en/treaty-bodies/cat* (accessed 20 July 2025)
[75] South African Human Rights Commission: *South Africa's National Preventive Mechanism* (2020) available at: https://www.sahrc.org.za (accessed 02 August 2025).
[76] South African Human Rights Commission: *South Africa's National Preventive Mechanism* (2020) available at: https://www.sahrc.org.za (accessed 02 August 2025).

[77] Parliamentary Monitoring Group (PMG), *Report of the Portfolio Committee on Justice and Correctional Services on the National Preventive Mechanism (NPM) for the 2023/24 Financial Year* (2024)
[78] Committee Against Torture. Concluding Observations: Brazil (2008) at para 15.
[79] United Nations General Assembly. *Interim Report of the Special Rapporteur on Torture* (2011), paras 34–35.

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independent expert assigned by the United Nations Human Rights Council, obligated to conduct investigations and report ill-treatment and torture globally. In several reports, the Special Rapporteur identified overcrowding as a limitation to authorities in providing treatment and healthcare services.[80] The spaces in which inmates are detained are thus imperative to uphold the UNCAT. Put plainly, places of detention are directly relevant to the fulfilment of the rights protected by UNCAT.

2.4 INSTRUMENTS RELEVANT TO HUMANE DETENTION UNDER INTERNATIONAL SOFT LAW

Soft law instruments are non-binding formal rules. These instruments play a vital role in influencing international standards of humane detention and shaping the interpretation of domestic constitutions.[81] Soft law provides guidelines to determine what constitutes a humane environment.[82] It sets regulative benchmarks that guide policymakers, courts, and correctional authorities in identifying environmental conditions required for protecting both the mental and physical health of detainees.[83]

2.4.1 The Standard Minimum Rules for Treatment of Prisoners (Nelson Mandela Rules)

In the context of correctional centres and detention, soft law helps to clarify the meaning of humane treatment. One of the most important instruments in this regard is the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). This instrument was adopted in 1955 and revised in 2015 to reflect modern human rights rules.[84] These rules are not legally binding but are accepted by United Nations bodies and States as global minimum rules.[85] Minimum accommodation standards are set out in Rules 12 to 17. These standards include provisions regarding what is required in terms of lighting, adequate space, and sanitation in correctional centres.[86] Rules 24 to 35 require detainees to enjoy the same standard of healthcare available to the public.[87]

The South African judicial system presides over guarantees afforded by the Nelson Mandela Rules. In *Sonke Gender Justice v Government of the Republic of South Africa,* the Court

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[80] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at: https://www.ohchr.org/en/special-procedures/sr-torture (accessed 21 July 2025).
[81] Boyle A 'Soft Law in International Law-Making' (2018) 118–119.
[82] Constitution of the Republic of South Africa, 1996, s 24(a).
[83] Tobin J *The Right to Health in International Law* (2012) 321.
[84] United Nations Office on Drugs and Crime: *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)* Preliminary Observations (2015).
[85] Penal Reform International *Soft Law Instruments in Prison (*2017) 2.
[86] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) (2015) rules 12-17.
[87] Mandela Rules (2015)24-35.

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referenced the Mandela Rules in addressing poor health and overcrowding in correctional facilities. It was held that these factors undermine the dignity and well-being of detainees.[88] This case confirms that even though these rules are not binding, they are relevant to the interpretation of an environment not harmful to health and well-being as afforded by section 24(a).[89]

2.4.2 United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)

The United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) was adopted in 2010. These rules recognise the needs of detained women.[90]

The provisions of the Bangkok Rules underscore that the correctional centre environment must also cater to vulnerable women in detention.[91] Bangkok Rules highlight the protection of vulnerable children and women who are detained, expressing the broader principle that human detention must account for detainees' vulnerabilities and needs.[92] This recognition implies equality by ensuring conditions that respect the unique psychological, social, and physical circumstances of children and women. In practice, safeguards are achievable by having gender-sensitive facilities, access to adequate healthcare(including postnatal and prenatal care), separation of female inmates from male inmates, and proper training for correctional staff.[93] It may be argued that through the promotion of the differentiation in a dignified manner, the Bangkok Rules confirm that the humane detention concept at times requires adaptation of specific needs for those who are at high risk of degrading and inhumane treatment, such groups include women and children.

2.4.3 The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules)

The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules) were adopted in 1990 by the United Nations General Assembly.[94] Highlighting that

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[88] *Sonke Gender Justice v Government of the Republic of South Africa* ZAGPPHC (2020) at para 72.
[89] *Sonke Gender Justice v Government of the Republic of South Africa* ZAGPPHC (2020) at para 72.
[90] UNGA, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* (2010).
[91] Robertson O 'Women in Prison: The Bangkok Rules and Beyond' (2012) 45-49.
[92] UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* (21 December 2010).
[93] Penal Reform International, *Guidance Document on the Bangkok Rules* (2013) 14–16.
[94] United Nations General Assembly: *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (1990).

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detained children are entitled to an environment that promotes rehabilitation, education, and development.[95] They emphasise recreation, education, family contact, and prohibit actions that violate dignity.[96] Within the context of section 24(a) of the South African Constitution, the Havana Rules illustrate that an environment for detained children includes nurturing potential and psychological well-being. It is not just about infrastructure. Although this thesis does not deal with the detention of minors, these rules are instructive as they sketch, to some extent, what is required for the humane detention of a person.

2.5 REGIONAL INSTRUMENTS RELEVANT TO HUMANE DETENTION: THE INTER-AMERICAN SYSTEM

2.5.1 The Inter-American Convention on Human Rights (IACHR)

The American Convention on Human Rights (ACHR) was adopted in 1969 in San José and came into effect in 1978.[97] It encompasses a set of political and civil rights that apply to American states.[98] It establishes the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission on Human Rights (IACHR) as primary ways of enforcement.[99] The Inter-American Commission is responsible for publishing state reports and issuing measures to address risks on human rights complaints filed by individuals.[100] The IACtHR came into operation in 1979 and is responsible for presiding over cases brought by member states or by the Commission. The judgments issued by the IACtHR are binding under Article 63 of the Convention.[101]

Complementary to the Inter-American Convention on Human Rights is the Inter-American Convention to Prevent Punishment and Torture (IACPPT), which was adopted in 1985 and came into effect in 1987. IACPPT confers a mandate upon the state members to ensure accountability, carry out investigations when required, and put into place measures that prevent ill-treatment and any form of torture.[102] The Convention, Court, Commission, and IACPPT

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[95] UNGA, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, UN Doc A/RES/45/113 (1990).
[96] Rules 12–21.
[97] American Convention on Human Rights (1978) 1144 UNTS 123 (San José Convention).
[98] Organisation of American States (OAS) No 36(1969).
[99] Article 33.
[100] Inter-American Commission on Human Rights 1948 available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp (Accessed 9 August 2025).

[101] Article 61-64
[102] Inter-American Convention to Prevent and Punish Torture (OAS) No. 67 (1985).

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unite to provide substantive protection and procedural guarantees for persons deprived of liberty, which includes detainees.

Article 5(1) of the Inter-American Convention on Human Rights guarantees detainees the right to mental, physical, and moral integrity. Furthermore, it obligates the states to protect and respect the human dignity of detainees.[103] In interpreting this right, the IACtHR and Inter-American Commission on Human Rights include conditions such as sanitation, cell space, medical care, and ventilation.[104] Such interpretation establishes comprehensive standards for humane detention, highlighting that detention does not remove one's inherent dignity.

The jurisprudence of the Inter-American Commission on Human Rights clarifies that poor hygiene, overcrowding, and inadequate medical services are not only administrative failures but may lead to violations of Article 5 if an inmate's dignity is undermined.[105] It may be argued that this interpretation shows active protection of dignity is required to achieve humane detention. When correctional centres expose inmates to suffering or neglect, the harm extends beyond management failure and becomes a violation of human rights. This reveals that material conditions are inseparable from dignity.

In *Mendoza v Argentina,* the IACtHR held that detaining sixteen inmates in unventilated and overcrowded cells without medical assistance and bedding constituted degrading and inhumane treatment.[106] Similarly, in *Trinidad and Tobago v Inter-American Commission on Human Rights*, the Court found that neglect of detainees ' medical needs and exposing them to unsanitary environments violated Article 5, the right to humane treatment.[107] The conditions, described in the aforementioned cases, are similar to what is typically reported to be the state of South African correctional centres, as mentioned in Chapter 1 of this thesis. Though South African courts have consistently criticised these conditions as an encroachment upon prisoners' right to dignity and other fundamental rights, conditions have largely remained hazardous and unchanged over the years. The value in the aforementioned judgments, though not binding on South Africa as already mentioned, is that they affirm that medical assistance is but one aspect of health and that the physical environment is also vital to the health and dignity of detainees.

[103] Article 5 (1).
[104] IACHR, Report No 54/01, *Marry and Carrie v USA*, (2001)Case 11. 949.
[105] IACHR, Report No. 1/12, Situation of Human Rights in Brazil 2012.
[106] *Mendoza et al v Argentina* (Judgment) 14 May 2013.
[107] *Trinidad and Tobago v Inter-American Commission on Human Rights* (Judgment) 2010.

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In *Herrera Espinoza v Venezuela,* the IACtHR explained that systematic factors such as inadequate services, structural overcrowding, unhealthy physical environment, and gang violence must be evaluated cumulatively.[108] The purpose is to assess these factors by considering the aggregate or accumulation of their components, and cases where these factors exist must not be assessed individually; the overall deprivation must be assessed to promote humane detention.[109] This, too, is instructive for South Africa. Though issues such as overcrowding and some of its effects on health have been pronounced upon, there is yet to be a case in which all the factors mentioned in *Herrera Espinoza* have been litigated upon.

It may be argued that the Inter-American system highlights adequate cell space, sanitation, and healthcare services. The regional experience demonstrates that violations of human dignity may occur where the physical conditions of the living space of inmates are hazardous and a risk to detainees' health (mentally and physically).

Therefore, the Inter-American system is a helpful example for South Africa on how to set out rules and monitoring mechanisms in correctional centres. Section 24 (a) should be interpreted to give a mandate to the DCS for inmates to receive humane treatment.

2.6 THE AFRICAN SYSTEM

2.6.1 The African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and Peoples' Rights (ACHPR) was adopted in 1981 and came into effect in 1986. This instrument is also known as the Banjul Charter.[110] In Africa, the African Charter on Human and Peoples' Rights is regarded as a foundational human rights instrument. Article 5 guarantees the right to dignity and freedom from cruel, inhuman, and degrading treatment of every individual.[111] The ACHPR does not explicitly mention detainees. However, the African Commission on Human and Peoples Rights has broadly interpreted Article 5 to include them (detainees) in its protection.[112] This is because detained individuals are more susceptible to rights violations than others. Their dignity must thus be respected, and they must be protected from degrading or cruel treatment.[113] Article 5 may assist in shaping

[108] *Herrera Espinoza et al. v. Venezuela* (2016) Series C No. 318.
[109] *Herrera Espinoza et al. v. Venezuela* (2016) Series C No. 318.
[110] African Charter on Human and Peoples' Rights (Banjul Charter) 1981.
[111] Article 5.
[112] African Commission on Human and Peoples' Rights, *General Comment No. 2 on Article 5: The Right to Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment* (2017)
[113] African Charter on Human and Peoples' Rights (1981) 5.

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our understanding of humane detention by setting a minimum legal and moral standard that even detainees must retain their dignity.[114]

The African Charter on Human and Peoples' Rights established the African Commission on Human and Peoples ' Rights. It was established under Article 30 to promote and protect rights through the process of evaluating state reports, issuing recommendations, and considering communications.[115] The African Court on Human and Peoples Rights (African Court) was established in 2004 and commenced its operation in 2006. The purpose of its establishment was to enhance enforcement and to issue binding judgments on Charter violations.[116]

Through its jurisprudence, the African Court on Human and Peoples Rights has interpreted the African Charter in *Alex Thomas v Tanzania.* Alex, a Tanzanian national was charged with armed robbery in 1996.[117] He was detained for more than four years before trial. At the conclusion of the trial, he was sentenced to thirty years' imprisonment. Alex claimed that the period he was detained for before trial was unjustifiably wrong. He further contended that during the proceeding, he was denied legal representation. The Court on Human and Peoples Rights held that his rights under Article 5, which is the prohibition of cruel, inhuman and degrading treatment, and his right to a fair trial under section 7 were violated. The court held that the trial undermined his inherent dignity.[118] The case was about procedural delay, however, it also acknowledged that prolonged pre-trial detention results in degrading conditions, which negatively affect the physical and mental well-being of detainees.[119] This reasoning is linked to section 24(a) because unjustified and prolonged detention contributes to environmental factors such as psychological suffering, poor sanitation and overcrowding.

In African Commission on Human and Peoples Rights v Libya, Saif Gaddafi was detained in the 2011 conflict.[120] The African Commission argued that he was denied medical treatment and legal representation, and that his conditions of detention amounted to degrading treatment and torture. The African Court held that Articles 5, 6, and 7 were violated by keeping Gaddafi for a long period without trial and denying him procedural rights.[121] The court further highlighted

[114] ACHPR, *Report on Prisons and Conditions of Detention in Africa* (2023).
[115] Article 30.
[116] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998).
[117] *Alex Thomas v United Republic of Tanzania* (2015) 005/2013 para 2
[118] *Alex Thomas v United Republic of Tanzania* (2015) 005/2013 para 126-128.
[119] Mujuzi D 'Prolonged Pre-trial Detention in Africa: The Role of the African Court on Human and Peoples' Rights' (2017) *African Human Rights Law Journal* 17.
[120] *African Commission on Human and Peoples' Rights v Libya* (2016) Application No 002/2013 para 2.
[121] *African Commission on Human and Peoples' Rights v Libya* (2016) Application No 002/2013 paras 92-95.

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unhealthy and degrading conditions in detention environments that violate integrity and human dignity.[122] This reasoning confirms that conditions of detention are part of the broader environment, which requires protection.

Arguably, both cases illustrate a progressive interpretation of humane detention by the African Court. Although neither expressly addresses environmental rights, they establish detention environments that harm the dignity, health or well-being of detainees are human rights violations.

It may be argued that the African Charter on Human and Peoples' Rights interpretation of humane detention constitutes standards of living that extend to all elements of detainees' environment, psychological, and physical health Article 16 guarantees everyone the right to the best attainable mental and physical health, while Article 24 recognises that everyone has the right to a 'general satisfactory environment favourable to their development'[123] When read together, both provisions illustrate the position of the Charter on humane detention as not separated from the quality of the environment in correctional centres.[124]

2.7 SOFT LAW INSTRUMENTS IN AFRICA

2.7.1 The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (Robben Island Guidelines)

The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa were adopted in 2002 by the African Commission on Human and Peoples Rights to put into practice Article 5 of the African Charter.[125] The guidelines lay out measures to prevent ill-treatment and torture, including the establishment of an investigation of allegations of abuse, independent monitoring mechanisms, and correctional staff training to promote humane treatment standards.[126] Put plainly, the guidelines recognise that humane detention is not only for the prevention of torture but extends to environments of detention that maintain dignity, safety, and well-being.

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[122] *African Commission on Human and Peoples' Rights v Libya* (2016) Application No 002/2013 para 100.
[123] African Charter on Human and Peoples' Rights, Articles 16 and 24.
[124] *Free Legal Assistance Group v Zaire* (1995) ACHPR para 47
[125] African Commission on Human and Peoples' Rights , *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa* 2002 ACHPR/Res117 (XXXII) 02
[126] African Commission on Human and Peoples' Rights , *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa* 2002 ACHPR/Res117 (XXXII) 02.

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The Robben Island Guidelines place a duty on the states to ensure sanitation, medical care, and access to exercise for all inmates.[127] These are the minimum conditions to establish whether an environment of detention can be deemed humane.[128] They encourage the foundation of national oversight institutions such as the NPM, subject to the Optional Protocol to the Convention Against Torture (OPCAT). This emphasises the need for transparency and accountability in detention facilities.[129]

In *Centre for Human Rights and Others v Ghana,* the African Commission found that lack of ventilation, extreme overcrowding, and inadequate sanitation in Ghanaian correctional centres constituted degrading and inhumane treatment.[130] Although the case referred to medical care, it is relevant not because of healthcare services but in how the environmental detention conditions undermine the mental and physical well-being of detainees.[131] When the case is read together with the Robben Island Guidelines, which obligate the states to maintain well-ventilated, hygienic, and safe detention environments,[132] it supports an environment that is not harmful to health, a principle of section 24(a).[133]

2.7.2 The Luanda Guidelines on the Conditions of Arrest, Police Custody, and Pre-Trial Detention in Africa (Luanda Guidelines)

The Luanda Guidelines on conditions of Arrest, Police Custody, and Pre-trial Detention in Africa (Luanda Guidelines) were adopted in 2014 by the African Commission on Human and Peoples' Rights.[134] They aim to ensure that detention stages are championed to respect and protect every person's inherent dignity. The Luanda Guidelines provide that detained persons must be held in a ventilated, adequately sized, and hygienic facility, with access to water, healthcare, food, and contact with their families.[135] They further highlight that pre-trial detention should be used as a last resort measure and requires monitoring to prevent overcrowding and abuse.[136]

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[127] ACHPR *Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)* (2002) 34–36.
[128] African Union, *Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa* 2014 para 16.
[129] South African Human Rights Commission, *NPM Coordination Report* (2024).
[130] *Centre for Human Rights and Others v Ghana* 211/98 (2006) AHRLR 56 (ACHPR 2006) para 49.
[131] *Centre for Human Rights and Others v Ghana* 211/98 (2006) AHRLR 56 (ACHPR 2006) para 52.
[132] African Commission on Human and Peoples' Rights *Robben Island Guidelines* (2002) 34–36.
[133] Constitution of the Republic of South Africa, 1996, s 24(a).
[134] African Commission on Human and Peoples' Rights, *Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (2014) ACHPR/Re.362.
[135] Luanda Guidelines(2014) 10–16.
[136] Luanda Guidelines (2014) 26–30.

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Luanda Guidelines denote a transformation from reactive punishment to proactive prevention, obligating states to investigate systemic failures leading to inhumane detention.[137] Their definition of humane detention includes an environment that promotes safety, health, and rehabilitation, stresses that detainees must be treated with respect and in a manner consistent with human dignity.[138]

The *Commission Nationale des Droits de l'Homme et des Libertés* v *Chad* case is an example of the effective implementation of these principles. In this case, the African Court held that inadequate food, extreme overcrowding, and unsanitary conditions in centres of detention violated the Luanda Guidelines' minimum standards of detention and Article 5 of the African Charter.[139] The African Court ordered the state to improve conditions in all detention facilities and implement structural reforms.[140] This decision is the reaffirmation that humane environments of detention are a continuous duty that requires legal compliance and oversight. The Luanda Guidelines demonstrate that achieving humane detention requires the coexistence of procedural, structural, and physical standards to preserve health or well-being.

2.7.3 The Kampala Declaration on Prison Conditions in Africa (The Kampala Declaration)

The Kampala Declaration on Prison Conditions in Africa was adopted at the All-Africa Conference on Prison Conditions, assembled by the African Commission and Human and Peoples' Rights and the United Nations in 1996.[141] The Kampala Declaration was a response to widespread reports of poor sanitation, overcrowding, and inadequate healthcare in African correctional centres.[142] It urged the member states to adopt measures that guarantee humane detention by ensuring adequate nutrition, improving physical conditions, and providing access to rehabilitation programmes and medical care.[143]

The Declaration affirms the entitlement of detainees to basic needs and respect for their dignity, and highlights the reduction of overcrowding by alternatives to imprisonment, such as parole

[137] ACHPR, *Report on the State of Prisons and Conditions of Detention in Africa* (2023)
[138] United Nations Office on Drugs and Crime, *The Nelson Mandela Rules: Standard Minimum Rules for the Treatment of Prisoners* (2015).
[139] *African Court on Human and Peoples' Rights, Case No. 009/2020 (Chad)* (2022).
[140] *African Court on Human and Peoples' Rights, Case No. 009/2020 (Chad)* (2022).
[141] African Commission on Human and Peoples' Rights, *Kampala Declaration on Prison Conditions in Africa* (1996).
[142] United Nations Economic and Social Council, *Report on the All-Africa Conference on Prison Conditions* (1997).18.
[143] ACHPR, *Resolution on the Implementation of the Kampala Declaration on Prison Conditions in Africa* Res.47/1999.

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and community service.[144] It recognises that the correctional centres' environment reflects the integrity of the state and its human rights commitment.[145] This recognition shifts the focus of humane detention from physical safety to a whole-systems approach that includes psychological, social, and rehabilitative dimensions.

The Declaration calls for the formation of independent oversight bodies to inspect detention conditions and make reform recommendations.[146] These mechanisms are important for the assurance of compliance with standards of humane development. The African Commission has utilised the Kampala Declaration principles to guide state reporting and assessment of detention conditions, to determine whether they are in line with Article 5 of the African Charter.[147]

It may be argued that, in terms of the Kampala Declaration, humane detention is a duty that extends beyond prevention of cruelty to promotion of humane environments. By advocating for education, reintegration, and rehabilitation, the Declaration sees detention not only as confinement but as a restoration opportunity.

2.7.4 The Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa (The Ouagadougou Declaration)

The Ougadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa (The Ougadougou Declaration) was adopted in 2002 to advance the humane detention principles introduced by the Kampala Declaration.[148] In its mandate of advancing the Kampala Declaration, the Ouagadougou Declaration calls for reform of penal systems in African states, such reform ensures that imprisonment is used as a last resort and advocates for correctional centres to meet minimum human rights standards.[149] It underscores the continuous problems of lack of resources, overcrowding, and neglect of detainees' health as barriers to achieving humane detention.[150]

The Ouagadougou Declaration emphasises reintegration and rehabilitation as key aspects of humane detention, calling for the reduction of recidivism by developing community-based

[144] African Union, *African Union Policy Framework on Prison Reform* (2002).
[145] ACHPR, *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa* (2022).
[146] Kampala Declaration para 14.
[147] ACHPR, *Concluding Observations on State Reports: Malawi* (2019).
[148] African Commission on Human and Peoples' Rights, *Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa* (2002).
[149] African Commission on Human and Peoples' Rights, *Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa* (2002). para 2–3.
[150] United Nations Office on Drugs and Crime, *Handbook on Strategies to Reduce Overcrowding in Prisons* (2013).

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programmes and sentencing alternatives.[151] Like the Kampala Declaration, Ougadoungou stresses that detainees' dignity must be preserved through healthcare, education, and fair treatment.[152] The Declaration aligns with other regional instruments, including the African Charter, by recognising humane detention.[153]

The African Commission has often cited the Ouagadougou Declaration when evaluating state compliance with humane standards of detention. *In the Report on Prisons and Conditions of Detention in Africa (2023),* the African Commission noted that even though there were reforms, overcrowding in the environment of detention continues to undermine the mandate of the Declaration.[154] This observation reaffirms that humane detention calls for continuous reform and evaluation.

2.8 DOMESTIC INSTRUMENTS RELEVANT TO HUMANE DETENTION

2.8.1 The Constitution of the Republic of South Africa, 1996

The Constitution of the Republic of South Africa, 1996 (Constitution) is the supreme law of the country, and guarantees fundamental rights, including rights of individuals deprived of liberty.[155] Section 10 guarantees everyone the right to human dignity, and section 12(1)(d) safeguards everyone from inhuman, cruel, or degrading punishment or treatment.[156] Section 24(a) further entitles everyone to the right to an environment that is not harmful to their health and wellbeing, and section 35(2)(e) affords detained, accused, or arrested persons the right to *inter alia* detention conditions consistent with human dignity.[157]

The provisions mentioned above create a constitutional framework for humane detention environments that protect mental and physical well-being.[158] Section 24(a) is not limited to the general public. It extends to correctional centres, recognising their environment, including quality of air, overcrowding, sanitation, and access to healthcare, which directly impact the dignity and health of detainees.[159] Thus, the Constitution links humane treatment with

[151] African Union, *Policy Framework on the Rehabilitation and Reintegration of Offenders in Africa* (2017).
[152] ACHPR, *Resolution on Prison and Penal Reform in Africa* ACHPR/Res 228 (2012.
[153] Kampala Declaration para 10.
[154] ACHPR, *Report on Prisons and Conditions of Detention in Africa* (2023).
[155] Constitution of the Republic of South Africa, 1996, s 2.
[156] Section 10 and 12(1)(d).
[157] Section 24(a) and 35(2)(e).
[158] *S v Makwanyane* (1995) 3 SA 391 (CC) para 144.
[159] *Van Biljon v Minister of Correctional Services* 1997 (4) SA 441 (C).

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environmental conditions, affirming that detention does not mean that inmates must be exposed to environmental conditions that are inconsistent with dignity or harmful to health.[160]

In *Lee v Minister of Correctional Services,* Mr Lee contracted tuberculosis (TB) while detained in Pollsmoor Correctional Centre.[161] This was a result of poor ventilation, overcrowding and unhygienic living conditions, and the absence of isolation and screening procedures.[162] The Constitutional Court emphasised the duty of the state to protect detainees from foreseeable harm, including diseases that can be prevented, such as tuberculosis emanating from detention conditions and held that DCS' failure constituted negligence because it had a constitutional and statutory duty to protect the health and well-being of detainees.[163] This case illustrates the link between the constitutional right to an environment not harmful to health or well-being and environmental conditions.[164] In essence, the correctional centre's environment, marked with a lack of sanitation, overcrowding and poor air quality, contributed to the transmission of the disease Mr Lee contracted. The Court's reasons for the decision tied health risks within correctional centres to a broader constitutional duty to provide a humane environment.[165]

Similarly, in *Sonke Gender Justice v President of the Republic of South Africa,* the court found that systemic overcrowding in correctional facilities violated the right of detainees to health, dignity, and humane conditions of detention.[166]

2.8.2 The Correctional Services Act 111 of 1998

The Correctional Services Act 111 of 1998 (CSA) gives legislative effect to sections 10, 12, 24(a), and 35(2)(e) of the Constitution on the rights of detainees.[167] The purpose of the CSA is to ensure that correctional facilities are in line with the well-being and human dignity of all detainees.[168] The CSA expressly mandates the DCS to provide safe, healthy, and clean facilities, recognising that environmental conditions of detention cannot be separated from humane treatment.[169]

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[160] *Sonke Gender Justice v President of the Republic of South Africa* 2020 (2) SACR 289 para 32.
[161] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) para 59.
[162] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) para 63.
[163] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) para 59.
[164] Constitution of the Republic of South Africa, 1996, s 24(a).
[165] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) para 63.
[166] *Sonke Gender Justice v President of the Republic of South Africa* 2020 (2) SACR 289 para 37.
[167] Constitution of the Republic of South Africa, 1996, ss 10, 12, 24(a), and 35(2)(e).
[168] Correctional Services Act 111 of 1998, preamble.
[169] Section 2(b).

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Section 12 of the CSA stipulates that DCS must maintain the welfare and safe custody of every detainee in accordance with their constitutional rights.[170] Section 13 requires that detainees be held under detention conditions that promote mental and physical health and respect human dignity. Section 20(1) provides that inmates be held in a hygienic living environment and have access to adequate treatment.[171] These provisions are linked to section 24(a) of the Constitution in ensuring that the correctional centres' environment does not expose inmates to disease, harm or degradation.[172] In correctional centres, this could be through pollution, overcrowding or neglect that may pose harm to the psychological or physical health of detainees.[173] This connection echoes the clarification of concepts made earlier in the thesis, where the term 'environment was not only understood in its ecological sense but also included physical and living surroundings that impact upon health and well-being.[174] Accordingly, the CSA is a legislative measure that concretises the application of section 24(a) within the correctional setting.[175]

In *Minister of Justice v Hofmeyer,* the Court found that correctional centre authorities owe inmates a duty of care, including provision of safe conditions and sanitary facilities, because detention places them under state control.[176]This case illustrates that the CSA seeks to realise humane detention. Failure of the state to ensure adequate sanitation, ventilation, and medical services can therefore constitute a violation of a constitutional and statutory duty. Section 24(a) right is also violated when detainees are accommodated in a manner that is contrary to their human dignity.[177] Under the CSA, humane detention attains legal force in that it requires continuous attention to the safety, humanity, and well-being of the correctional environment.

Successful enforcement of humane detention standards requires harmonisation and intergovernmental coordination of policies, actions relating to legislation and the environment.[178] Correctional environment management involves overlapping duties between the DCS, the Department of Forestry, Fisheries and Environment (DFFE) and the Department of Health (DoH), which influence environmental and health conditions within correctional

[170] Section 12.
[171] Section 13 and 20(1).
[172] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2023/2024* (2024) 42.
[173] Sloth-Nielsen J & Muntingh L *Human Rights and the South African Correctional System* (2001) 31–33.
[174] See discussion in Chapter 1 ('Clarification of Concepts')
[175] Glazewski J *Environmental Law in South Africa* 3 ed (2022) 30.
[176] *Minister of Justice v Hofmeyr* 1993 (3) SA 131 (A).
[177] *Sonke Gender Justice v President of the Republic of South Africa* 2020 (2) SACR 289 para 38.
[178] Constitution of the Republic of South Africa, 1996, s 41(1)(h).

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centres.[179] Section 41(1)(h) of the Constitution mandates spheres of government to coordinate, cooperate and avoid conflicts when performing their duties.[180]

2.8.3 The White Paper on Corrections in South Africa

The White Paper on Corrections in South Africa (2005) provides the policy basis for a human rights-based correctional services system founded in the values of respect, dignity, and rehabilitation.[181] The White Paper expands on principles provided by the CSA and the Constitution, by recognising that humane detention requires more than lawful detention. It demands environmental conditions that protect the well-being and health of inmates.[182]

The White Paper expressly provides that all inmates are guaranteed 'conditions of detention consistent with human dignity' and that management of correctional centres must be in accordance with the promotion of safety, personal development, and environmental health.[183] It highlights that unsanitary facilities, inadequate ventilation, and overcrowding undermine efforts of rehabilitating offenders and contravene the right to an environment that is not harmful to health or well-being as provided by section 24(a) of the Constitution.[184]

The White Paper policy framework envisions correctional facilities as 'centres of human development,' where rehabilitation happens within a hygienic, safe, and non-degrading environment.[185] This links humane detention with environmental accountability and restorative justice, recognising that the environment in correctional centres plays a vital role in obstructing or enabling rehabilitation.[186]

In *Lee v Minister of Correctional Services,* the Constitutional Court affirmed the duty of the state to maintain safe and hygienic correctional centre environments that mitigate the spread of disease.[187] This interpretation shows the aims and objectives of the White Paper, linking rehabilitation to humane detention and environmental health.[188] As alluded to earlier in *Sonke*

[179] Department of Correctional Services *White Paper on Corrections in South Africa* (2005) 41
[180] Constitution of the Republic of South Africa, 1996, s 41(1)(h)(iv).
[181] Department of Correctional Services, *White Paper on Corrections in South Africa* (2005) 7.
[182] Department of Correctional Services, *White Paper on Corrections in South Africa* (2005) 7.12–14.
[183] Department of Correctional Services, *White Paper on Corrections in South Africa* (2005) 7. 27.
[184] Constitution of the Republic of South Africa, 1996, s 24(a).
[185] Department of Correctional Services 40.
[186] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2023/2024* (2024) 33.
[187] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) para 63.
[188] Department of Correctional Services 30.

https://uwcscholar.uwc.ac.za/home

Gender Justice v President of the Republic of South Africa, the failure to address poor sanitation and overcrowding violates the Constitution and state policy.[189]

It may be argued that the White Paper embodies a transformative approach to the management of the correctional centres. It extends the comprehensive humane detention concept to include environmental safety, personal development, and mental well-being. The promotion of safe, clean, and rehabilitative environments by the White Paper in correctional centres gives substance to the section 24(a) goal of environmental conditions that support human flourishing and health.

2.8.4 The White Paper on Remand Detention in South Africa

The White Paper on Remand Detention (2014) was introduced to strengthen the policy and legal framework regulating detained but unsentenced inmates.[190] It ensures that remand (not convicted) detainees are held in conditions that safeguard their dignity, safety, health, and well-being. In this way, it complements the CSA.[191] This policy recognises that remand environments of detention often worsen or mirror the poor sanitation, overcrowding, and inadequate healthcare seen in correctional centres which accommodate sentenced inmates. Such harmful conditions affect detainees' psychological and physical health.[192]

The White Paper recognises humane detention as a constitutional mandate stemming from sections 10, 12(1)(d), and 35(2)(e) of the Constitution.[193] It requires that detention centres maintain adequate lighting, ventilation, access to medical care, and sanitation facilities, as these are environmental factors that affect human dignity and health.[194] The policy links these to section 24(a) by highlighting that overcrowding, unclean water in the correctional centres constitute inhuman treatment because of their potential to harm detainees.[195]

The White Paper further highlights the obligation of the state to separate sentenced inmates from remand detainees to prevent mental health issues and to ensure that they are held in an environment that maintains their health and well-being.[196] This separation is in line with

[189] *Sonke Gender Justice v President of the Republic of South Africa* 2020 (2) SACR 289 para 37.
[190] Department of Correctional Services, *White Paper on Remand Detention in South Africa* (2014) 5
[191] Department of Correctional Services, *White Paper on Remand Detention in South Africa* (2014) 7.
[192] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2023/2024* 49
[193] Constitution of the Republic of South Africa, 1996, ss 10, 12(1)(d), 24(a), and 35(2)(e).
[194] Department of Correctional Services 15–16.
[195] Department of Correctional Services 20.
[196] Department of Correctional Services 24.

https://uwcscholar.uwc.ac.za/home

regional and international human rights principles, which entail conditions of detention that respect the presumption of innocence and uphold humane standards.[197]

In Minister v Walus, the Court affirmed that detainees, including those awaiting trial, maintain their right to humane conditions of detention consistent with their dignity.[198] The decision reflects similar principles to White Paper (2005) discussed earlier, highlighting environments of detention that do not undermine rehabilitation and protect inmates from harm to their physical health. [199]It is evident that the White Paper on Remand Detention confirms that humane detention is not limited to convicted inmates. It is applicable and extends to all forms of detention.

2.8.5 The Correctional Services Regulations

The Correctional Services Regulations were created under the Correctional Services Act 111 of 1998. These regulations were enacted to give effect to statutory and constitutional governing standards of humane detention.[200] They specify minimum requirements for hygiene, accommodation, nutrition, and medical care in correctional facilities, recognising the impact of the physical environment on the health or well-being of detainees.[201]

Regulation 2(1) provides that all detainees must be held in environmental conditions that do not pose a risk to their safety or health. Regulation 6 prescribes standards of lightning, ventilation, and floor space. Regulation 8 requires access to clean water and the maintenance of sanitary installations at all times to protect inmates from environmental hazards and disease.[202] These regulations collectively ensure that the rights guaranteed by section 24(a) are protected at all times, including access to sanitation, quality air, and suitable spatial conditions.[203] In *Masingili v Minister of Justice and Correctional Services*, the Court held that failing to provide access to clean water and sanitary facilities constituted a degrading treatment not consistent with the constitutional values.[204]

The decision in the *Masingili* case provides a practical basis for section 24(a) by setting up measures of humane detention environment in correctional centres. The breach of these

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[197] African Commission on Human and Peoples' Rights, *Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (2014) para 5.
[198] *Minister of Justice and Constitutional Development v Walus* [2017] ZAGPPHC 841 para 48.
[199] *Sonke Gender Justice v President of the Republic of South Africa* 2020 (2) SACR 289 para 32.
[200] Correctional Services Regulations (2004) GN R875 GG 26626.
[201] Correctional Services Act 111 of 1998, s 2(b).
[202] Regulations 2(1) and 6.
[203] Regulations 8.
[204] *Masingili v Minister of Justice and Correctional Services* (2018) ZAGPPHC 403 para 25

https://uwcscholar.uwc.ac.za/home

standards may lead to poor air quality, lack of sanitation, and overcrowding, and such conditions undermine the right of detainees to an environment that supports their dignity and health. Therefore, these regulations play a vital role in bridging the gap between correctional centres' administration and the constitutional principle of humane detention conditions.

2.8.6 The Judicial Inspectorate for Correctional Services (JICS) Framework

The Judicial Inspectorate for Correctional Services (JICS) was established under the Correctional Services Act, section 85. This is an independent body and is mandated to oversee and monitor detention conditions in South African correctional centres.[205] The framework provides institutional oversight for the enforcement of sections 10,12, 24(a), and 35(2)(e) guaranteed by the Constitution by ensuring that inmates are not held in conditions that are unsafe, degrading, or harmful to health.[206]

The JICS executes its duties through independent visitors and inspectors who conduct assessments of the treatment of detainees, sanitation, food quality, access to medical care, ventilation, and the overall environment of correctional centres.[207] The importance of these inspections is to ensure that the correctional facilities meet humane detention standards as envisaged by the Constitution.[208] The JICS also enables detainees to file complaints related to their rights violations, including exposure to overcrowded or unhygienic conditions that may threaten their dignity and health.[209]

Jurisprudence has continuously referred to the role of JICS in assessing humane detention conditions. In *Sonke Gender Justice v President of the Republic of South Africa*, the high court underscored that the existence of monitoring mechanisms like JICS is important in ensuring that the government is accountable for the maintenance of humane detention conditions.[210] The court recognised the need for effective reporting and monitoring of detention conditions and that regular checks must be conducted.[211]

It may be argued that the JICS framework requires the state to continuously evaluate its compliance with the guaranteed rights of detainees. It recognises that health and dignity are not static but continuous obligations. Through oversight and transparency, JICS bridges the gap

[205] Correctional Services Act 111 of 1998, s 85(1)
[206] Constitution of the Republic of South Africa, 1996, ss 10, 12, 24(a), and 35(2)(e).
[207] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2023/2024* (2024) 12.
[208] Judicial Inspectorate for Correctional Services (JICS), *Annual Report 2023/2024* (202418
[209] Correctional Services Regulations (2004) reg 29
[210] Sonke Gender Justice v President of the Republic of South Africa 2020 (2) SACR 289 para 40.
[211] Sonke Gender Justice v President of the Republic of South Africa 2020 (2) SACR 289 para 44.

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between practice and policy in an effort to ensure that correctional environments uphold safety, human worth, and well-being.

2.8.7 CONCLUSION

This chapter illustrated that the right to humane detention from international, regional and domestic perspectives extends to include the environmental quality of detention facilities and how it affects the health and well-being of inmates. Case law and instruments identify that poor environmental conditions of detention, such as inadequate ventilation, overcrowding and unhygienic facilities, threaten the dignity and health or well-being of detainees. South Africa's legislative and constitutional framework, specifically CSA and section 24(a) of the Constitution, requires a cooperative approach to ensure that detention environments are not harmful to detainees' health or well-being.

The evaluation throughout this chapter underscores the convergence between humane detention obligation and environmental rights, demonstrating that international, regional, and domestic human rights standards recognise environmental conditions as integral to the well-being and dignity of detainees. These perspectives interpret section 24(a) within the correctional context and affirm that environmental health is inseparable from humane detention.

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CHAPTER 3

THE CONSTITUTIONAL RIGHT TO AN ENVIRONMENT THAT IS NOT HARMFUL TO HEALTH OR WELL-BEING

3.1 INTRODUCTION

While Chapter Two of this thesis analysed the broader legal framework within which the right to humane detention should be understood, this chapter provides a narrower analysis of the application and meaning of section 24(a) of the Constitution of the Republic of South Africa, 1996 (Constitution), within the context of correctional settings. To reiterate, section 24(a) entitles everyone to the right to an environment that is not harmful to health or well-being.'[1] The right is relevant to the correctional context, as alluded in Chapter Two and should become even more evident from this Chapter.

As previously alluded, the right to an environment that is not harmful to health or well-being is not limited to the natural environment, which is the physical world and its ecosystems existing independently from human creation, including land, air, water, flora and fauna.[2] It extends to any place where people live, work or are detained.[3] It may be argued that in a correctional context, the fulfilment of this right requires an environment that maintains the mental and physical health of detainees, supporting rehabilitation rather than contributing to degradation.[4] The correctional environment is both a social and physical space, and section 24(a) arguably requires that such an environment should meet minimum standards of human dignity, ventilation, nutrition, sanitation and safety.[5]

This Chapter examines how the South African Constitution, policies, case law and legislation collectively provide substance to section 24(a) within the correctional centres. The Chapter

[1] Constitution of the Republic of South Africa, 1996, s 24(a).
[2] Kidd M *Environmental Law* 3 ed (2019) 4
[3] Du Plessis A 'Environmental Rights: A Framework for Interpretation' (2008) 279 *SAJHR* 1.
[4] Bilchitz D *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (2007) 132.
[5] Van Zyl Smit D *South African Prison Law and Practice* 56.

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commences with a discussion of section 24(a) and its relationship with sections 10, 12 and 35(2)(e), section 7, section 36 and section 39 of the Constitution. It further analyses the NEMA, CSA and other statutes relevant to the constitutional duty of the state to provide a humane detention environment.[6] The examination of policy frameworks, such as White Paper on Corrections (2005), is essential to determine the practical aspect of humane accommodation.

Case law will be discussed to gauge the interpretation of South African courts and the enforcement of statutory and constitutional obligations relating to humane detention and environmental health. Through this evaluation, the chapter identifies inadequacies and gaps in the implementation of the laws governing correctional centres.

3.2 THE CONSTITUTION

The Constitution embodies the values of equality, dignity and freedom. Section 24(a) recognises a healthy environment for the enjoyment of all constitutional rights, including dignity, life and humane treatment. The right to an environment that is not harmful to health or well-being carries collective and individual dimensions. It is submitted that the aforementioned right obligates the state to safeguard environmental conditions that promote and protect human life in all institutions, including correctional institutions.

Section 24(a) of the Constitution must be interpreted with the Bill of Rights because it is inseparable from broader human rights protection. Such an interpretation recognises the link between human dignity and the environment,[7] meaning that detainees are guaranteed the same environmental protection as the general public.[8] The right in section 24(a) ensures that detention does not take away detainees' entitlement to healthy and humane conditions.

Section 24(a) applies to everyone regardless of their legal status, citizenship or detention.[9] The right guaranteed by section 24(a) resonates with section 35(2)(e) of the Constitution, which explicitly entitles detainees to detention conditions that are consistent with human dignity, including nutrition, adequate accommodation, medical treatment and medical care.[10] Both provisions may be interpreted to require an integrative relationship which recognises constitutional rights to environmental conditions that are consistent with human dignity.[11] This

[6] Correctional Services Act 111 of 1998; National Environmental Management Act 107 of 1998.
[7] Du Plessis L 'Environmental rights: Clarifying the scope and meaning of section 24(a)' (2011) 279 *SAJHR* 28.
[8] *Minister of Justice v Hofmeyr* 1993 (3) SA 131 (A).
[9] Section 24(a).
[10] Section 35(2)(e).
[11] Currie I and De Waal J *The Bill of Rights Handbook* 6ed (2013) 524.

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obligates the state to ensure safe, sanitary and humane conditions, and failure to do so violates both section 24(a), and section 35(2) (e).

The Constitutional Court consistently interprets rights purposively and contextually. This requires section 24(a) to be read as part of the living constitutional framework.[12] The purposive and structural interpretation of section 24(a) with the commitment of the Constitution to transformative constitutionalism is a continuous adaptation of governance and the law to achieve human flourishing and substantive equality.[13] This envisions the Constitution as an instrument aimed at restructuring institutional and social relationships consistent with democratic values of freedom and equality.[14] In correctional facilities, transformative constitutionalism demands a new approach which shifts from punitive detention to one that endorses human dignity through humane detention conditions. This requires correctional services management to form part of the constitutional duty to ensure that detention serves a rehabilitative purpose.[15]

Furthermore, section 7(2) of the Constitution obligates the state to 'respect, promote, and fulfil the Bill of Rights.[16] Section 7(2) read with 24(a) requires that the correctional centres authorities should avoid degrading conduct and conditions that expose detainees to a harmful environment. This demands the prevention of anyone, including service providers and the private sector, from causing a harmful environment in correctional centres. Fulfilling and promoting this right requires the establishment of infrastructure and monitoring mechanisms to ensure compliance with environmental health standards that respect human dignity.[17] These duties are absolute in nature. Section 36 of the Constitution, the limitation clause, does not justify life-threatening or degrading conditions of detention.[18] As alluded to earlier, such conditions infringe upon the Constitution's foundational values of human dignity and freedom. Life-threatening or degrading detention undermines everyone's worth and contradicts the state's obligation to treat every person humanely.[19] Arguably, the section 36 limitation clause cannot be used to justify conduct or conditions that undermine constitutional principles.

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[12] *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC).
[13] Klare K 'Legal culture and transformative constitutionalism' (1998) 14 *SAJHR* 146.
[14] Moseneke D 'Transformative Adjudication' (2002) 309 *SAJHR* 18.
[15] Klare (1998) 150.
[16] Section 7(2).
[17] Liebenberg S *Socio-Economic Rights: Adjudication under a Transformative Constitution* (2010) 45.
[18] Section 36.
[19] S v Makwanyane 1995 (3) SA 391 (CC) para 144.

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Section 24(a) further aligns with section 27 of the Constitution, as already mentioned, which entitles everyone to the right to have access to healthcare services, social security, sufficient water and food. Section 27 and section 24(a) complement each other in ensuring the state creates an environment that is conducive to both mental and physical health. These provisions are interdependent, and this is evident in the correctional centres' environment. The right to health cannot be realised in an overcrowded or unsafe environment.[20] The right to dignity cannot be preserved in environmental conditions that expose inmates to disease and filth. Therefore, the Constitution demands a dual function of protecting both psychological well-being and physical health.[21]

3.2.1 The right to human dignity: Section 10 of the Constitution

Section 10 of the Constitution stipulates that 'everyone has inherent dignity and the right to have their dignity respected and protected.'[22] This right provides the interpretive basis for understanding section 24(a). Dignity embodies the appreciation of everyone's inherent worth, which must always be respected, including detained individuals.[23] The individual's environment embodies their worth. Degrading, inhumane conditions, or exposing individuals to harm denies them the respect due as human beings.[24]

Section 24(a) provides material substance to dignity by assuring that environmental conditions do not undermine but reinforce individuals' humanity.[25] Put plainly, section 24(a) assists in concretising the meaning of dignity within correctional facilities. Within the correctional setting, dignity demands *inter alia* that the social and physical environment be clean, safe, and non-degrading. Holding detainees in unsanitary, overcrowded or facilities that expose them to harm constitutes a systemic violation of their dignity.[26] It may be argued that section 24(a) articulates to a significant extent the physical (environmental) dimension of dignity, and in correctional centres, dignity is preserved through humane and healthy detention conditions.

[20] *EN and Others v Government of the Republic of South Africa* 2007 (1) SA 514 (D).
[21] Albertyn C and Goldblatt B 'Equality' in Woolman S & Bishop M (eds) *Constitutional Law of South Africa* 2ed (2013) 35–9.
[22] Section 10.
[23] *S v Makwanyane* 1995 (3) SA 391 (CC) para 144.
[24] *Minister of Justice v Hofmeyr* 1993 (3) SA 131 (A).
[25] Du Plessis (2011) 91.
[26] *Stanfield v Minister of Correctional Services* 2004 (4) SA 43 (C).

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3.2.2 Freedom and Security of the Person: Section 12(1)(e) of the Constitution

Section 12(1) (e) guarantees 'everyone the right to freedom and security of the person, which includes the right- (e) not to be treated or punished in a cruel, inhuman or degrading way.'[27] This right protects everyone against inhumane environmental conditions and physical abuse.[28] Degrading or cruel treatment is not limited to violent conduct, it extends to systemic practices that subject individuals to continuous exposure to harmful conditions that pose a risk to their health or well-being.[29]

The interpretation of section 12(1) (e) creates a connection with section 24(a). Such a link lies in recognising that environmental neglect can lead to inhumane treatment and environmental conditions. Lack of ventilation, overcrowded cells, and inadequate sanitation may result in psychological distress, physical pain and indignity.[30] Such a condition infringes upon both the prohibition against cruel treatment and the right to a humane environment. Therefore, in correctional centres, the state has a duty to maintain the environmental conditions of detention that protect inmates from suffering.[31] The link between these two provisions frames environmental neglect as an issue of human degradation and cruelty. In correctional centres, harmful environmental conditions constitute a violation of the Constitution.

3.2.3 The right to have access to health care services: Section 27 of the Constitution

This thesis is not about medical care. However, sections 27 and 24(a) of the Constitution are complementary and affect dignity and humane detention. Section 27 of the Constitution stipulates that

> everyone has the right to have access to (a) healthcare services, including reproductive health care, and the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.[32]

Section 27 imposes a positive duty on the state to ensure access to health care services. In contrast, section 24(a) places a preventative obligation on the state to maintain environmental conditions that do not undermine but protect health.[33] In correctional centres, overcrowding often results in persons not receiving the medical treatment and care that they need. Hospital

[27] Section 12(1)(e).
[28] *EN and Others v Government of the Republic of South Africa* 2007 (1) SA 514 (D) para 31.
[29] Paul M. 'Article 7: Torture, Cruel, Inhuman or Degrading Treatment or Punishment' in *A Commentary on the International Covenant on Civil and Political Rights* (2020) ch 7.
[30] *Sonke Gender Justice v Government of the Republic of South Africa* (2020) ZAWCHC 111 para 48.
[31] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC) para 61.
[32] Constitution, s 27(1)(a)-(2).
[33] Du Plessis (2011) 93.

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facilities are perhaps not always available. These are examples of how the failure to uphold section 24(a) directly limits or negates the entitlement in terms of section 27.

In addition to the above, it must be considered that in a correctional setting, these rights cannot be separated. The provision of medical treatment is futile if detainees are consistently exposed to overcrowded and unsanitary conditions that may lead to illness.[34] Healthy environmental conditions are a foundation in the realisation of the right to humane detention.[35] Both sections 27 and 24(a) obligate the state to address the preventive and curative aspects of health.[36] It can be contended that section 24(a) provides a practical effect to section 27 by ensuring that the right to an environment that is not harmful to health of well-being promotes the realisation of the right to food, healthcare, and water in correctional centres. As alluded to earlier, healthcare is not only medical treatment. It extends to conditions of detention, too. Section 24(a) solidifies the aforementioned understanding of the right to healthcare.

3.2.4 Humane detention conditions: Section 35(2) (e) of the Constitution

Section 35 (2) (e) stipulates that 'everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.'[37] This section expressly identifies minimum standards of humane detention, and it is submitted that it constitutes an operational extension of section 24(a). Section 24(a) may be viewed as a provision that sets out the universal environmental standards, supplemented by section 35(2) (e) by localising it within a custodial setting, obligating the state to maintain physical conditions that uphold dignity, health and well-being.[38]

Humane detention is non-existent in an unsanitary, unsafe and overcrowded environment.[39] There are many which highlight poor conditions in correctional centres. Two well-known cases are *Sonke Justice v Government of the Republic of South Africa,* where the High Court affirmed that lack of sanitation and overcrowding were inconsistent with human dignity.[40] *Lee v Minister of Correctional Services,* in which the Constitutional Court confirmed that failure to prevent the transmission of tuberculosis infringed the right to humane detention.[41] Both decisions

[34] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC).
[35] *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (CC) para 44.
[36] Liebenberg (2010) 162.
[37] Section 35(2)(e).
[38] *Sonke Gender Justice v Government of the Republic of South Africa* (2020)ZAWCHC para 55.
[39] *Lee v Minister of Correctional Services* 2013 (2) SA 144 (CC).
[40] *Sonke Gender Justice* (2020) para 60.
[41] *Lee* (2013) para 70.

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affirm that environmental neglect in correctional centres is constitutionally prohibited. Section (35)(e) read with 24(a) concretises humane detention conditions. It affirms detainees' entitlement to an environment consistent with well-being and dignity, and conditions such as unsanitary facilities or overcrowding negate constitutional principles contained in these provisions. The provision ensures that the right to a healthy environment is measured by the quality of life behind the walls of correctional centres.

3.2.5 Interpretation of the Bill of Rights: Section 39 of the Constitution

Section 39 stipulates that

> When interpreting the Bill of Rights, a court, tribunal or forum, (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom, (b) must consider international law, and (c) may consider foreign law[42]

In Chapter 2, international and regional instruments, including the ICESCR and ACHPR, were covered and confirmed the entitlement of detainees to hygienic, safe and humane conditions of detention. Section 39(1)(b) obligates South African courts to consider these instruments when interpreting the scope of sections 24(a) and 35(2) (e). In so doing, the Constitution is consistent with universal standards of humane detention. Arguably, section 39 ensures that the section 24(a) interpretation remains internationally consistent and dynamic. In correctional facilities, it secures humane conditions of detention and affirms global environmental justice.

3.2.6 State's duty to respect, protect, promote and fulfil rights in the Bill of Rights: Section 7(2) of the Constitution

Section 7(2) of the Constitution stipulates that 'the state must protect, promote and fulfil the rights in the Bill of Rights.'[43] The effect of this provision is that it compels the state to fulfil its duties in respect of rights holders such as detainees. To respect every constitutional right, the state must avoid any conduct which violates rights. Additionally, the state must raise awareness of constitutional rights for detainees and staff to ensure that they know and understand their guarantees.[44] It must provide training and education programmes to promote the realisation of these rights in correctional facilities.[45] Finally, it must ensure allocation of resources so that personnel, facilities, and necessary services to uphold these rights.[46]

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[42] Section 39(1).
[43] Section 7(2).
[44] Churr C 'Realisation of a Child's Right to a Basic Education in the South African School System: Some Lessons from Germany' (2015) 279 *Potchefstroom Electronic Law Journal* 18.
[45] Constitution of the Republic of South Africa, 1996, s 7(2).
[46] Section27, *Basic Education Rights Handbook* (2017) ch 1 available *at* https://section27.org.za/wp-content/uploads/2017/02/Chapter-1.pdf accessed 2 November 2025.

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Section 7(2) applies to the state obligations which arise from section 24(a) and the right to humane detention. The correctional centres' authorities are required to maintain sanitary and safe environments, prevent environmental degradation, and they should prevent overcrowding and its impact.[47] This is a continuous obligation which cannot be relaxed or reduced due to resource constraints.[48] Failure to take reasonable steps to maintain humane detention conditions infringes the constitutional obligation of the state.[49] Section 7(2) compels the state to constantly safeguard detainees' well-being and health through proactive environmental management.

3.3 LEGISLATION

Legislation underpins the constitutional right to an environment that is not harmful to health or well-being. It creates administrative obligations and operational standards which the state must meet. The statutes give effect to the constitutional principle that detention does not eliminate the right to a humane environment and human dignity. These statutes include the Correctional Services Act 111 of 1998, National Environmental Management Act 107 of 1998 (NEMA), National Health Act 61 of 2004 (NHA), National Water Act 36 of 1998 (NWA), Water Services Act 108 of 1997 (WSA), Occupational Health and Safety Act 85 of 1993 (OHSA) and the Environmental Management Policy of the Department of Correctional Services (2011). Each statute is analysed below.

3.3.1 Correctional Services Act 111 of 1998 (CSA)

CSA is the main statute governing inmates' conditions and treatment. Section 2 of the CSA sets out the purpose of this statute, which is the maintenance of safe custody while ensuring the promotion of human development and protecting human dignity.[50] Section 12(1) mandates the DCS to ensure that inmates are kept under conditions consistent with human dignity, including adequate medical care, accommodation, nutrition and exercise.[51] Furthermore, section 79 requires that all correctional facilities comply with safe and healthy standards.[52]

These provisions underpin section 24(a) requirement that everyone must live in an environment not harmful to health or well-being. The CSA directly links environmental safety to humane detention by explicitly setting out the factors which contribute to the attainment of such detention. In this regard, section 134(1)(f) provides that the Minister of Correctional Services

[47] *Lee* (2013) para 80.
[48] *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC) para 31.
[49] *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 45.
[50] Correctional Services Act 111 of 1998, s 2(b).
[51] Section 12(1).
[52] Section 79.

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may make regulations consistent with the CSA which ensure the 'accommodation of inmates in cells in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions'. Section 7 of the CSA also provides that.

> Inmates must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity.

The environment in which inmates are accommodated is thus vital to ensuring that their health and dignity are protected. These regulations will be discussed later in the chapter.

As alluded to earlier, the state has failed to fulfil its duty to ensure the humane detention of inmates. The state's failure to protect the health and dignity of inmates is not only a result of shirking its duty to provide adequate medical care. It is also the failure to honour and recognise the link between environmental health and dignity. This negates humane detention in South African correctional facilities.

3.3.2 National Environmental Management Act 107 of 1998 (NEMA)

The National Environmental Management Act 107 of 1998 (NEMA) is South Africa's environmental Act. NEMA provides a governance environmental framework.[53] The purpose of this Act is to ensure environmental protection, promote sustainable development, and integrate considerations into spheres of government.[54] In the correctional setting context, NEMA reinforces the obligation of the state to maintain correctional centres' environments that do not harm the health and well-being of detainees.[55] Section 2 of NEMA sets out principles of national environmental management that bind all state organs.[56] Section 2(2) provides that environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.[57] Secondly, section 2(4)(ii) stipulates that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied.[58] Finally, section 2(4)(1) provides that there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.[59] For the latter principle, section 2(4)(l), arguably, extends the obligations of the manner in which the environment-health-

[53] National Environmental Management Act 107 of 1998, Preamble.
[54] Section 2.
[55] Glazewski J *Environmental Law in South Africa* 2 ed (2013) 35; Kidd M *Environmental Law* 3 ed (2019) 4.
[56] National Environmental Management Act 107 of 1998, s 2.
[57] National Environmental Management Act 107 of 1998, s 2(2).
[58] Section 2(4)(ii).
[59] Section 2(4)l.

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facilities nexus must be addressed, especially from a government administrative position. Department of Water and Sanitation (water), local government (water access), and public works (infrastructure maintenance) must integrate DCS must play its role in reporting and audit. By doing so, the realisation is therefore through integrated policy and actions by these departments that progressively make strides towards achieving coordination.

The above-mentioned NEMA principles are directly applicable to correctional centres, as the DCS is a state organ engaged in operations that affect human health and well-being, particularly in relation to the environment.[60] The DCS is in control of the environment in which inmates find themselves. Under NEMA, the DCS therefore has a duty to prevent environmental harm and must assess compliance through environmental audits, amongst other things that do not fall within the scope of the thesis.[61] Environmental neglect in correctional centres, such as waste accumulation, water contamination or inadequate sanitation, constitutes a constitutional and statutory violation.[62] In the *Sonke* case, for example, the correctional environment is sketched as one plagued by hazardous conditions such as lack of functional ablution facilities, squalor, poor ventilation and lighting. This is not only a violation of the Constitution and the CSA, but also a violation of NEMA, which ensures that the environmental obligation of the state extends to custodial institutions, including correctional centres and the rights of detainees to humane conditions of detention.

3.3.3 National Health Act 61 of 2003 (NHA)

National Health Act 61 of 2003 (NHA) arguably creates a nexus between the protection of health with environmental management. Section 3 of the Act mandates the Minister of Health to guarantee the provision of essential health services and to promote a healthy and safe environment.[63] This arguably affirms that the legislation recognises that the provision of health services alone does not suffice in fulfilling the constitutional guarantee regarding health. The environment in which persons find themselves is equally important to their health.

Furthermore, section 25 places an obligation on authorities to control and prevent communicable diseases through waste management, sanitation and hygiene measures.[64] In a correctional setting managed by the DCS, this duty translates into the need for regular cleaning, functioning sewage systems, adequate access to clean water and proper management of waste

[60] Section 2(1).
[61] Section 31C.
[62] *Sonke Gender Justice v Government of the Republic of South Africa* (2020) ZAWCHC 111 para 55.
[63] National Health Act 61 of 2003, s 3.
[64] Section 25.

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disposal. However, many South African correctional facilities struggle with inadequate sanitation, overcrowding, and intermittent supply of water. These factors undermine NHA's vision of disease prevention.[65]

The NHA reinforces the protection in terms of section 24(a). It obliges correctional authorities to manage environmental hygiene as pivotal to public health, recognising that prevention of disease begins with a safe and clean environment.

3.3.4 Occupational Health and Safety Act 85 of 1993 (OHSA)

The Occupational Health and Safety Act (OHSA) objective is to protect workers from workplace hazards. Section 8 of the OHSA obligates employers to maintain and provide environments that are safe and do not pose risks to the health or safety of the workers. Section 9 extends this protection to individuals other than employees who may potentially be affected by workplace conditions.[66] Since there is an obligation on employers towards 'employees' and 'individuals other than employees', there is also a correlative obligation upon employees to prevent the occurrence of an unsafe working environment.[67]

In correctional centres, these provisions apply directly to correctional staff, but have an impact on inmates because they share the same environment.[68] Therefore, the DCS has a duty to ensure proper sanitation, ventilation, and maintenance to prevent communicable and occupational risks to its staff.[69] The OHSA establishes a legally binding standard that complements section 24(a) by making the safety of the environment a matter of legal compliance.[70] The OHSA affirms that neglect of the environment in correctional centres affects everyone occupying the space. In this instance, the employer is the state, and the employees are the correctional services staff. When the employee contracts a disease due to environmental deficiencies, inmates are also at risk.

The aforementioned is strengthened by the analysis of the OHSA in conjunction with sections 2(4)j and 29 of NEMA. Section 2(4)j makes provision for ‘the right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected’,[71] whilst section 29 makes provision for the ‘Protection of workers

[65] Department of Correctional Services, *White Paper on Corrections in South Africa* (2016) 42.
[66] Occupational Health and Safety Act 85 of 1993, ss 8–9.
[67] Occupational Health and Safety Act 85 of 1993, s 8(1).
[68] *Lee* (2013) para 71.
[69] Section 31.
[70] Section 38.
[71] Section 24j.

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refusing to do environmentally hazardous work'.[72] It is posited here that section 2(4)(j) provides a framework within which section 29 exists, as the latter clearly sets out the steps the employee must take to exercise this right. Sections 2(4)(j) and 29 of NEMA can suggest promoting the protection of employees (for instance, correctional service staff) from environmentally hazardous workplaces, which aligns with protecting and thereby results in the protection of inmates too.

3.3.5 National Water Act 36 of 1998 (NWA) and Water Services Act 108 of 1997 (WSA)

The NWA and WSA deal directly with water but have juxtapositions in their aims. The NWA is promulgated to, among others, protect, manage, conserve, and use South Africa's water resources, while the WSA aims to address issues regarding access to water. The National Water Resource Strategy III (2023) aims to integrate the objectives of the NWA and WSA for comprehensive and holistic water management and water and sanitation services.[73] For purposes of administration, the Department of Water and Sanitation (DWS) is obliged to enforce the enabling provisions of the NWA, whilst access is (not wholly) the mandate of local government as set out in the WSA and Constitution.[74]

The NWA regulates the use and quality of water as stated in its object. The purpose of NWA is to ensure South Africa's water resources are used, developed, protected, managed, conserved and controlled equitably and sustainably to benefit all.[75] NWA promotes equitable access to safe and clean water and pollution reduction.[76] NWA declares water a natural resource and must be managed and utilised to promote sustainable use to the benefit of the public.[77] Additionally, section 19 requires all water users, including state facilities, to prevent water pollution.[78]

Correctional facilities rely on water for hygiene, cooking and sanitation. This statement overlaps with access to sanitation services and water under WSA. The National Resources Strategy III (NWRS-3) highlights that management and protection of water resources must enable 'equitable and sustainable access to water and sanitation' to support well-being and socio-economic growth.[79] Therefore, when discussing correctional settings and the need for

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[72] Section 29.
[73] Department of Water and Sanitation *National Water Resources Strategy III* 2023) 7.
[74] National Water Act 36 of 1998, ss 19–20, also see Department of Water and Sanitation *National Water Resources Strategy III* (2023) 12.
[75] National Water Act 36 of 1998 s 2(a)
[76] National Water Act 36 of 1998 s 2(h).
[77] National Water Act 36 of 1998, s 2.
[78] Section 19.
[79] Department of Water and Sanitation, *National Water Resources Strategy III* (July 2022) 6 available at https://www.gov.za/sites/default/files/gcis_document/202208/47133gon2327.pdf accessed 2 November 2025.

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water for sanitation and hygiene, it is appropriate to connect this to statutory obligations of WSA and practices under NWRS-3.

The NWRS reinforces section 24(a) by requiring adequate sanitation and clean water to be maintained even in correctional environments.[80] The NWA places environmental rights under the management of essential resources. In correctional centres, water integrity is one of the measures of humane detention, and its neglect constitutes a disregard for inmates' constitutional rights.

WSA provides legislative effect to section 24(a) by ensuring that everyone has access to sanitation services and adequate and safe water that are not harmful to health or well-being.[81] WSA regulates the provision of sanitation and water services, obligating municipalities and other water services authorities to ensure hygienic, reliable and sustainable water access.[82] Within correctional centres, fulfilment of this obligation becomes a matter of compliance with constitutional principles, as poor sanitation, insufficient water supply negatively impact the detention environment, thus endangering the dignity and health of detainees.[83]

The objectives of NWRS-3 are reinforcement of the intent of WSA by underscoring reliable, equitable and access to water for all, this extends to institutions such as correctional facilities.[84] The NWRS-3 protects and promotes efficient utilisation of water resources to safeguard public health and maintain a healthy environment. These principles complement section 24(a) entitlement to an environment not harmful to health or well-being.[85] Therefore, in the context of correctional centres, these goals emphasise that human detention requires not only physical infrastructure but also the management of water that prevents contamination, supports rehabilitation and ensures sanitation.[86] Arguably, NWRS-3 gives effect to the statutory and constitutional duty of the state by linking environmental management, human dignity, and water access.

3.4 POLICIES

Policies consist of practical guidelines to implement constitutional rights. They play a vital role in transforming the constitutional mandate for an environment that is not harmful to health or

[80] Constitution ss 24(a) and 35(2)(e).
[81] Constitution of the Republic of South Africa, 1996, s 24(a).
[82] Water Services Act 108 of 1997, s 4(1).
[83] Department of Correctional Services, *Annual Report 2022/23* (2023) 45.
[84] Department of Water and Sanitation, *National Water Resources Strategy III* (Govt Gazette 2023) 8.
[85] Department of Water and Sanitation, *National Water Resources Strategy III* (Govt Gazette 2023) 10.
[86] Department of Water and Sanitation, *National Water Resources Strategy III* (Govt Gazette No 47133, 2023) 13.

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well-being into enforceable principles which guide the management of correctional centres.[87] In the South African context, policies function as a governance critical instrument because they broadly reinforce rights articulated by the Constitution.[88]

The state requires policies that regulate conduct within institutions.[89] Through these guidelines, the administration in the correctional centres internalises constitutional duties and creates accountability structures and outcomes that are measurably related to section 24(a).[90] When policies are aligned with the principles of the Constitution, they not only serve as regulatory instruments but also as transformation tools within correctional centres.[91]

3.4.1 The National Framework for the Management of Overcrowding (2008)

The National Framework for the Management of Overcrowding recognises that environmental degradation in correctional centres cannot be separated from the problem of the extreme overpopulation of inmates.[92] Overcrowding impairs sanitation quality, air circulation and access to medical services, and thus undermines the right to health and wellbeing.[93] Therefore, the framework establishes management of the population as a constitutional requirement rather than a logistical matter of interest.[94]

The health of individuals depends on environmental balance and spatial adequacy.[95] There is thus a connection between section 24(a) and all the provisions which speak to health and humane detention. The policy promotes diversion programmes and community corrections to prevent congestion in correctional centres and possible environmental harm.[96] Within this framework, space must be maintained to serve the dignity of the person. The maintenance of the space thus evolves into environmental justice, as spatial deprivation tends to relate to social

[87] Van der Merwe M 'Operationalising environmental rights in South African correctional institutions' (2018) 34 *SAJHR* 45–67.
[88] Dlamini T 'Administrative constitutionalism and the enforcement of socio-environmental rights' (2020) 36 *SAJHR* 65–88.
[89] Pillay R 'From policy to practice: Implementing socio-economic rights in South Africa' (2019) *SAJHR* 117–142.
[90] Mokoena L 'Governance and rights-based administration in correctional settings'(2020) *SAJHR* 128–149.
[91] Jacobs P 'The environmental dimensions of human dignity in South African law' (2019) *SAJHR*110–133.
[92] Department of Correctional Services *National Framework for the Management of Overcrowding, Offender Population and Prison Utilisation* (2008) 7.
[93] Department of Correctional Services: *National Framework for the Management of Overcrowding, Offender Population and Prison Utilisation* (2008) 9.
[94] Department of Correctional Services: *National Framework for the Management of Overcrowding, Offender Population and Prison Utilisation* (2008 11.
[95] Nkosi N 'Environmental governance and spatial justice in correctional institutions' *Environmental Governance Journal* (2017) 139–158.
[96] Department of Correctional Services (2008) 13.

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marginalisation.[97] This is a shift away from punitive detention towards rehabilitation, consistent with transformative constitutionalism.[98] It may be argued that overcrowding is a question of humanity, not merely numbers. Spaces of detention that strip detainees of their inherent dignity are a reflection of the state's moral decay. The state is, after all, the custodian of all inmates. How inmates are treated and the manner in which they are detained, therefore, mirrors the integrity of the state.

3.4.2 The Department of Correctional Services Strategic Plan (2019–2024)

The Strategic Plan (2019-2024) provided a strategic framework for the implementation of the constitutional rights in the correctional centres.[99] The Strategic Plan provided indicators for waste management, sanitation, hygiene practices and infrastructure maintenance, human rights objectives and integrating the environment.[100] By defining measurable targets, the strategic plan provided guidance as to how the fulfilment of section 24(a) can be evaluated and monitored.[101]

Measurable obligations and indicators of environmental performance in the strategic plan signified an explicit interpretation of the constitutional into governance practice.[102] This plan situated correctional facilities comprehensive national strategy for sustainable development, recognising correctional centres as a social and ecological fabric of the nation.[103] Therefore, the Strategic Plan illustrated that section 24(a) is measurable and not aspirational. Humane detention becomes a reality when environmental health becomes or is regarded as an indicator of state performance.

3.4.3 The Occupational Health, Safety and Environmental Risk Management Policy (2018)

The Occupational Health, Safety and Environmental Risk Management Policy (OHSERM) require that environments of correctional centres comply with environmental and national

[97] Hlongwane K 'Overcrowding and human dignity in South African prisons' *Social Justice and Environment* (2020) 53–74.
[98] Molefe P 'Correctional reform and environmental sustainability' *Correctional Studies Quarterly* (2021) 32–56.
[99] Department of Correctional Services *Strategic Plan 2019–2024* (2019) 33.
[100] Department of Correctional Services (2019) 34.
[101] Department of Correctional Services (2019) 38.
[102] Sibiya (2018) 80.
[103] Moeketsi J 'Sustainable correctional management and environmental accountability' (2018) 9(2) *Journal of Environmental Law and Policy* 133–152.

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occupational safety standards.[104] This is done by mandating health surveillance, environmental risk assessments, and safety audits as standard management practice.[105]

The OHSERM obligates the state to eliminate and anticipate environmental conditions that may pose a danger to health.[106] It therefore speaks to the guarantee in section 24(a). A proactive approach to managing safety, health and environmental risks is important for ensuring humane detention rather than a crisis response.[107]

The policy acknowledges that correctional environments affect both inmates and staff because they share the same space daily.[108] Inadequate lighting, poor ventilation and unsanitary conditions compromise the health and well-being of detainees, and they hinder rehabilitation efforts within the correctional facilities.[109] Preventive care is a significant expression of section 24(a). This policy turns environmental surveillance into a routine practice, in that way, constitutional protection ought to become ingrained as a daily discipline.

3.4.4 The National Sanitation and Hygiene Policy Framework (2016)

The National Sanitation and Hygiene Policy Framework deals with sanitation as a core element of environmental protection and human rights.[110] It requires waste disposal, access to adequate sanitation, and hygienic facilities of all state institutions, including correctional facilities.[111]

Adequate sanitation, waste control, and clean water are not only recognised as public health imperatives but also as a duty to fulfil the right to a clean environment not harmful to health and dignity.[112] Therefore, inadequate sanitation is viewed as environmental degradation that violates mental and physical integrity.[113]

Integrating sanitation management into the constitutional rights discourse bridges the gap between environmental and socio-economic justice.[114] Within correctional centres, the policy

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[104] Department of Correctional Services *Occupational Health, Safety and Environmental Risk Management Policy* (2018) 3.
[105] Department of Correctional Services *Occupational Health, Safety and Environmental Risk Management Policy* (2018) 5.
[106] 7.Department of Correctional Services *Occupational Health, Safety and Environmental Risk Management Policy* (2018).
[107] Radebe M 'Preventive governance and institutional responsibility under the Constitution' (2020) 36 *SAJHR* 55–73.
[108] Mothapo L 'Shared ecological risk and custodial rights' (2019) 7(2) 71–90.
[109] Department of Correctional Services (2018) 8.
[110] Department of Water and Sanitation *National Sanitation and Hygiene Policy Framework* (2016) 12.
[111] Department of Correctional Services (2018) 15.
[112] Khumalo N 'Environmental degradation and human rights in detention'(2020) 36 *SAJHR* 310–329.
[113] Khumalo (2020) 315.
[114] Mthembu Z 'The intersection of sanitation and dignity in South African correctional policy' (2021) 37 *SAJHR* 80–101.

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requires that access to water, cleanliness, and basic hygiene meet the minimum standard for humane detention.[115] In essence, this policy illustrates the importance of access to the means for achieving cleanliness and how that constitutes environmental justice. Within the correctional centres, the right to breathe, wash, and be free from filth embodies the guarantees of section 24(a).

3.4.5 The National Environmental Health Policy (2013)

The National Environmental Health Policy sets the foundation for monitoring environmental factors of health in public institutions.[116] It provides for air quality testing, routine inspections, and waste management monitoring by environmental health authorities.[117]

By institutionalising preventive monitoring, the policy fulfils the obligation of the state to protect against possible harm.[118] Therefore, compliance is measured by consistent maintenance of safe conditions and absence of crises.[119] This policy strengthens cooperative governance between the DCS and DoH, ensuring that correctional centres comply with the same environmental health requirements applicable to all public institutions.[120] It may be argued that this policy brings section 24(a) into the administration realm. It ensures that a humane environment is integrated into routine governance. In line with NEMA section 2(4)(l) promotes cooperation of public authorities to coordinate environmental health benchmarks within correctional facilities.[121]

3.4.6 Integrated Environmental Management and Offender Development Programmes

Integrated Environmental Management and Offender Development Programmes (IEM) and Offender Development Programmes combine rehabilitation with environmental sustainability.[122] They promote food cultivation, recycling and environmental education within the correctional facilities.[123]

Participating in these programmes nurtures personal responsibility and dignity while improving environmental conditions.[124] Inmates' contribution to a clean environment affords them a sense

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[115] Mthembu (2021) 83.
[116] Department of Health *National Environmental Health Policy* (2013) 6.
[117] Department of Health *National Environmental Health Policy* (2013) 9.
[118] Department of Health *National Environmental Health Policy* (2013) 12.
[119] Moyo G 'Environmental health oversight and state accountability' (2018) 34 *SAJHR* 85–105.
[120] Ndlovu P 'Public health integration in custodial governance' (2017) 33 *SAJHR* 218–237.
[121] National Environmental Management Act 107 of 1998, s 2(4)(l).
[122] Department of Correctional Services *Environmental Management Policy* (2011) para 9.
[123] Department of Correctional Services *Environmental Management Policy* para 11.
[124] Zondo L 'Rehabilitation through sustainability: The dual role of environmental programmes in prison (2019) 35 *SAJHR* 100–122.

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of agency, integrating personal reform to institutional transformation.[125] This cooperative method embodies the constitutional principle of active citizenship and strengthens the notion that environmental stewardship is fundamental for social rehabilitation.[126] In this way, inmates' participation is a shift away from passive protection to active creation. Detainees become caretakers of the environment they occupy, and this is a form of reclaiming a measure of humanity within detention, in addition to contributing to the fulfilment of the guarantee in section 24(a).

3.4.7 Environmental Management Policy of the Department of Correctional Services (2011)

The Environmental Management Policy of DCS provides administrative guidelines for statutory environmental obligations. It mandates the implementation of water conservation, waste reduction, hygiene management and energy efficiency in accordance with the CSA and NEMA in every correctional centre.[127] This policy promotes environmental sustainability and awareness as part of rehabilitation, describing correctional facilities as 'centres of human development.'[128]

Policy documents are not binding. However, they are important instruments in the realisation of section 24(a) in the institutional setting.[129] The policy should ensure that management of the environment becomes a daily part of the correctional centres' administration, integrating sustainable practices with humane treatment.[130] In essence, this policy shifts environmental rights into institutional practices. It confirms that environmental stewardship and rehabilitation are complementary objectives, making sustainable correctional management an expression of upholding human rights and dignity.

3.5 INADEQUACIES AND GAPS IN THE LAW

Although South Africa's legislative, constitutional and policy frameworks seem comprehensive on paper, significant gaps continue to exist in the enforcement of section 24(a) within correctional centres. The detachment between the practical realities of the correctional system and the transformative constitutionalism aspirations has resulted in a fragmented regime

[125] Zondo (2019) 108.
[126] Dube S 'Participatory environmental rights and correctional reform' (2020) 36 *SAJHR* 95–116.
[127] Department of Correctional Services *Environmental Management Policy* (2011) para 3.
[128] Department of Correctional Services *Environmental Management Policy* (2011) para 8.
[129] *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) para 41.
[130] Department of Correctional Services (2011) para 10.

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in which environmental rights are not consistently implemented.[131] While the state has the duty to ensure environments that are not harmful to health or well-being, implementing this obligation in correctional centres remains uneven and is largely reliant on the judiciary rather than the execution of systemic policy.[132]

The holistic safeguard envisioned by section 24(a) warrants coordination between administrative, legal and institutional mechanisms. However, correctional centres' environmental governance continues to operate within a fragmented framework. The environmental right, which is supposed to operate as a guiding principle throughout correctional governance, instead continues to be treated as a peripheral concern.[133]

3.5.1 Fragmentation of Legal and Administrative Responsibilities

A key shortcoming in the existing framework rests in the fragmentation of institutional duties. The DCS, the DFFE, and the DoH each have partial responsibilities in relation to environmental management and public health in correctional centres, but no formal collaboration mechanisms align their operations.[134] This results in inconsistent enforcement, duplication and lack of accountability.[135]

The lack of an integrated environmental governance structure compromises the preventive intention of section 24(a).[136] Environmental challenges within correctional centres are typically addressed only after harm takes place, and examples are infrastructure failures or disease outbreaks, which could have been prevented or mitigated through monitoring and continuous risk assessment.[137] Even though the DCS has adopted internal policies addressing occupational and environmental health, these policies are not enforceable by law.[138] Therefore, non-compliance continues without consequence, enabling degradation of the environment to become a chronic feature of detention.[139]

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[131] Van der Merwe M 'Accountability and environmental governance in closed institutions' (2020) 36 *SAJHR* 122–144.
[132] Dlamini T (2019) 201–225.
[133] Mokoena (2020) 88–112.
[134] Pillay (2018) 75–97.
[135] Ndlovu P 'Environmental oversight and interdepartmental coordination' (2021) 7(2) 155–176.
[136] Ndlovu (2021) 160.
[137] Department of Correctional Services *Annual Report* (2022) 42.
[138] Department of Correctional Services *Annual Report* (2022) 44.
[139] National Environmental Management Act 107 of 1998; Correctional Services Act 111 of 1998.

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3.5.2 Lack of Enforceable Environmental Standards for Correctional Centres

Another serious deficiency is the absence of measurable and binding standards designed specifically for correctional centres. While CSA and the NEMA 107 of 1998 impose general obligations relating to environmental protection and humane treatment, they do not explicitly establish benchmarks for sanitation, air quality, spatial adequacy or waste management in correctional centres.[140]

In practice, this means that identification of what constitutes a 'humane' or 'healthy' environment is left to administrative discretion. Such discretion leads to disparities between the centres and contributes to unequal detention conditions. The Inspectorate for Correctional Services (JICS), which inspects detention conditions, can only make recommendations. It does not have the statutory power to enforce or compel remedial measures.[141] Consequently, the fulfilment of constitutional rights depends largely on a centre's goodwill rather than on a common commitment to comply with the law.[142]

Without measurable benchmarks, section 24(a) may become symbolic instead of being a substantive right.[143] Entitlements with no enforcement mechanisms are ineffective in meeting the constitutional principle that the state must 'respect, protect, promote and fulfil' the Bill of Rights.[144]

3.5.3 Limited Integration of Environmental Rights in Correctional Legislation

Even though environmental rights are guaranteed by the Constitution, they are not fully integrated into correctional legislation. The CSA primarily regulates security, discipline, and administrative order, but does not explicitly provide for the recognition of environmental integrity as a component of humane detention.[145] Such omission indicates a correctional law historically designed as a mechanism of authority rather than rehabilitation.[146]

The lack of a statutory connection between environmental rights and correctional management leads to interpretive uncertainty.[147] It mitigates detainees' ability to directly invoke section 24(a) in litigation or grievance procedures.[148] The silence of the CSA also influences

[140] Judicial Inspectorate for Correctional Services *Annual Report* (2021) 31.
[141] Judicial Inspectorate for Correctional Services *Annual Report* (2021) 34.
[142] Judicial Inspectorate for Correctional Services *Annual Report* (2021) 36.
[143] Moseneke (2002) 309–331.
[144] Constitution of the Republic of South Africa, 1996 s 7(2).
[145] Correctional Services Act 111 of 1998 ss 12–13.
[146] Moyo 2019) 42–61.
[147] Moyo (2019) 46.
[148] Ncube T 'Legislative silence and the right to environmental health' (2021) 37 *SAJHR* 188–205.

https://uwcscholar.uwc.ac.za/home

institutional culture, correctional staff receive training primarily in custodial management and security, with little attention on human rights and environmental care.[149]

Management of correctional centres becomes marginal to correctional practice, dealt with as maintenance, as opposed to a constitutional obligation.[150] The result is an administrative and legal gap between the right to an environment that is not harmful to health or well-being and its everyday realisation within correctional centres.[151]

3.5.4 Weak Oversight and Monitoring Mechanisms

Implementing section 24(a) and all the other constitutional rights with which it is so closely intertwined effectively depends on accountability mechanisms and robust oversight. Existing institutions often lack either the necessary resources or a clear mandate to ensure compliance within the environment of correctional facilities. The Judicial Inspectorate for Correctional Services plays a vital role in monitoring detention conditions, but it does not have enforcement powers.[152] Its recommendations and reports are consistently ignored by the DCS, which is under no statutory duty to comply with them.[153]

Similarly, environmental oversight conducted by local municipalities or health departments is poorly coordinated and sporadic.[154] There is no central repository for inspection data or environmental audit results, leaving gaps in accountability and transparency.[155] The public is limited in accessing such findings, further weakening external inspections.[156]

Comparative research reveals that effective environmental management in detention facilities requires independent monitoring regimes empowered with enforcement authority.[157] In South Africa's correctional centres absence of such authority makes environmental rights in detention institutions largely declaratory.[158]

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[149] Radebe M 'Training and environmental compliance in correctional management' (2021) 37 *SAJHR* 55–77.
[150] Radebe (2021) 59.
[151] Radebe (2021) 60.
[152] Judicial Inspectorate for Correctional Services (2021) 39.
[153] Judicial Inspectorate for Correctional Services (2021) 41.
[154] Department of Health *Environmental Health Inspection Report* (2022) 13.
[155] Department of Health *Environmental Health Inspection Report* (2022) 15.
[156] Dube S 'Transparency and accountability in prison governance' (2020) 4(1) *Journal of Correctional Governance* 101–120.
[157] Mbatha N 'Independent monitoring and human rights in places of detention' (2020) 36 *SAJHR* 415–438.
[158] Mbatha (2020) 420.

https://uwcscholar.uwc.ac.za/home

3.5.5 Resource Limitations and Security-First Priorities

Scarcity of resources remains a common limitation on the realisation of section 24(a).[159] Funding allocation priorities in correctional services continue to favour surveillance systems, security infrastructure, and personnel costs over rehabilitation and environmental management.[160] Funding for improvements of ventilation, sanitation upgrades and waste management is often put off due to competing financial demands.[161]

This 'security first' approach reinforces a culture where degradation of the environment is endured as an unavoidable consequence caused by limited resources.[162] However, this reasoning is rejected by constitutional jurisprudence, declaring that funding limitations cannot justify the failure to protect and respect basic rights.[163] A rights-grounded budgeting approach, grounded in progressive realisation and transparency, would assure that the allocation of funding aligns with constitutional requirements rather than operational convenience.[164] Therefore, institutional planning must extend beyond the reactive maintenance model and adopt sustainability-oriented and preventive strategies that incorporate environmental management into yearly budget cycles.[165]

3.5.6 Policy–Implementation Gap

South African policy framework for humane detention explicitly articulates commitments to clean, safe, and rehabilitative correctional environments. However, the implementation of these policies is not consistent, and their outcomes are hardly monitored.[166] Environmental reports and audits frequently highlight inadequate waste disposal, failures in sanitation systems, and deteriorating infrastructure.[167]

This gap in implementation shows weak administrative accountability. Policy directives frequently lack performance-based incentives for compliance or enforcement mechanisms.[168] Furthermore, the lack of environmental training for correctional services staff perpetuates

[159] Department of Correctional Services (2021) 50.
[160] Department of Correctional Services (2021) 52.
[161] Department of Correctional Services (2021) 55.
[162] Khumalo N 'Security and human rights: The tension in correctional administration' (2019) 35 *SAJHR* 233–256.
[163] Khumalo (2019) 239.
[164] Molefe P 'Budgeting for rights: Financial accountability and section 24(a)' (2020) 36 *SAJHR* 85–106.
[165] Molefe (2020) 91.
[166] Department of Correctional Services *Strategic Plan 2019–2024* (2019) 39.
[167] Judicial Inspectorate for Correctional Services (2021) 47.
[168] Radebe M 'Institutional inertia and policy non-compliance' (2019) 35 *SAJHR* 88–105.

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mismanagement and neglect.[169] Care of the environment is seen as secondary to correctional obligations rather than an integral part of them.[170]

The outcome is a continuous discrepancy, while the language of policy embraces the mandate of section 24(a), the correctional system undermines it. With a lack of systematic implementation, environmental rights continue to strive, and are only affirmed in theory but denied in daily practice.[171] It may be argued that environmental neglect in correctional facilities illustrates that constitutional guarantees require more than legal frameworks. They demand sustained accountability and administrative will. The gap between lived reality and the law is not just technical but moral.

3.5.7 Conclusion

In conclusion, this chapter demonstrates that section 24(a) of the Constitution forms an essential part of the constitutional architecture protecting the rights of detainees. The right to an environment that is not harmful to health or well-being, in the context of correctional centres, extends to sanitation, water, air quality, waste management, and overall living conditions. The state legislative and constitutional obligations require proactive management and integration, recognising that environmental neglect in correctional centres is not only an administrative failure but also a violation of constitutional rights.

The review of policy, legislation and judicial frameworks illustrates that while South Africa has a strong statutory and constitutional foundation for environmental rights protection in correctional centres. Practical challenges remain. The enduring prevalence of unhealthy, unsafe and degrading conditions underscores a gap between the lived realities of inmates and section 24(a) legal architecture. Systemic commitment is required to address these challenges.

[169] Department of Correctional Services *Training and Development Report* (2020) 22.
[170] Department of Correctional Services *Training and Development Report* (2020) 25.
[171] Department of Correctional Services *Training and Development Report* (2020) 27.

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CHAPTER 4

CONCLUSION AND RECOMMENDATION

4.1 ACKNOWLEDGEMENT OF THE PLIGHT AND RIGHTS OF DETAINEES

The right to an environment that is not harmful to health or well-being is central to dignity and human existence. This right does not depend on privilege, status, or freedom. It extends to everyone who is in the jurisdiction of the State, including those deprived of liberty. Inmates are human first and detainees second. Their living conditions are a reflection of constitutional and moral character.

This study commenced with recognising the vulnerability of detainees. Upon detention, their ability to safeguard their environment entirely depends on the State. Therefore, the constitutional guarantee of section 24(a) becomes more pressing in detention contexts, where a person's health and well-being are significantly dependent on governance and institutional design. When correctional centres are poorly ventilated, unsanitary, and overcrowded, they not only infringe administrative norms but also violate constitutional principles.

In South Africa, the plight of inmates has been well documented through academic studies, oversight visits, and judicial reports. Nonetheless, the persistence of harmful and degrading conditions of detention implies that even though correctional authorities are aware of what the Constitution, legislation and policies require, they have not yet shown full commitment to the fulfilment inmates' rights. The right to an environment not harmful to health or well-being is not an optional or secondary guarantee, it is a foundation for dignity and enjoyment of a quality life.

Examining section 24(a) in the correctional context revealed that inmates who are the marginalised, poor and socially excluded of society, are at a greater risk of environmental degradation.

4.2 RESEARCH QUESTIONS

The thesis aimed to answer three questions regarding the application and meaning of section 24(a) in South African correctional centres. The following are summarised findings:

(a) *What are the state's duties in terms of section 24(a) of the Constitution in the correctional context?*

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The research found that the State has a duty to promote the right to an environment that promote both health and wellbeing, within a correctional services context. The promotion of well-being can be achieved by actively fostering an environment that supports dignity, rehabilitation, and mental and physical health. Legal prescripts regarding the physical and infrastructural integrity of correctional centres are absolute requirements in this regard. From space for movement, bed space, exercise and privacy are only some of the essentials for a dignified life behind prison walls. Adequate lighting, ventilation, sanitation, ablution facilities, water quality all impact on human dignity and thus promote health and well-being. Prevention requires the state to ensure correctional facilities are hygienic and safe. Safety extends to protection against all forms of pollution that may compromise health and dignity. The fulfilment of these duties requires resources, proactive maintenance, staff training, effective monitoring, and integration of all relevant departments.

(b) How do the current physical buildings and infrastructure of South African correctional centres affect detainees' right to humane detention?

The study found that overcrowded, outdated, and poorly maintained correctional facilities undermine the right of detainees to an environment not harmful to health or well-being. Insufficient natural light, inadequate ventilation, and structural decay contribute to psychological stress, physical illness, and erosion of human dignity. Infrastructure is not only a technical challenge but a constitutional concern, it impacts the rights guaranteed by section 24(a) of the Constitution. The aesthetics and design of buildings undoubtedly impact on the social engagements of inmates and staff. Poor designs of correctional centres are largely responsible for the singular focus on security and safety. Despite this, overcrowding, violence, crime and abuse have been consistent features of the correctional regime. The limited emphasis on mental and physical health has thus resulted in chronic neglect, disease, undiagnosed and untreated health (mental and physical) conditions. Poor building aesthetics furthermore create an atmosphere of despair for many.

(c) Which of the socio-economic rights of inmates are most intertwined with and dependent upon the fulfilment of section 24(a) of the Constitution?

The thesis reveals that environmental rights are interconnected with human rights and socio-economic rights, including the rights to health, water, food, and humane conditions of detention. For instance, contaminated water and poor sanitation undermine the right to health,

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while unsafe and overcrowded spaces compromise security and dignity. For these rights to be realised, fulfilment of section 24(a) is essential.

With the above concerns in mind, recommendations are made next.

4.3 AWARENESS AND OVERSIGHT

Awareness is essential in ensuring that rights do not remain theoretical concepts, but become practical guidelines for governance and behaviour. This study discovered that awareness of environmental rights within the DCS remains fragmented and limited. Even though policy documents recognise the significance of a healthy and safe environment, the key focus remains on security over sustainability.

Effective implementation of section 24(a) in correctional centres depends on public oversight and administrative knowledge. Environmental managers, medical staff, and correctional officers need to grasp that environmental neglect constitutes a violation of rights. Additionally, detainees must be informed of their rights and procedures for lodging their complaints. An informed detainee population can contribute to consistent reporting and compliance.

Furthermore, external oversight is very important. JICS and other independent oversight bodies play an important role in bridging the gap between institutional practice and constitutional principles. However, this study revealed that the monitoring bodies do not have enforcement power, as their mandate is limited to reporting and observation. Without enforcement power, they cannot compel compliance. It is therefore recommended that empowering legislation should be passed to ensure the enforceability of the findings of oversight bodies like JICS.

In order to strengthen oversight, there must be interdepartmental collaboration. The DCS needs to work with government departments, including the DoH, DFFE, DPWI, DWS and local government to ensure coordinated interventions, data sharing, and joint ventures. This must be achieved with due regard to institutional boundaries. Environmental reports should, be made available to the public, which will assist in promoting transparency and civic engagement. When there is public awareness of detention conditions, the chances of reform increase, and this also creates accountability.

4.4 UPHOLDING DIGNITY

Human dignity is a crucial principle in South Africa's constitutional framework. It is both a value and a right, it can be viewed as the foundation of all other rights. The examination of the

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study demonstrates that section 24(a) cannot be understood separately from dignity. An overcrowded, unsanitary, and polluted environment diminishes the worth of detainees.

Upholding dignity in correctional facilities requires more than preventing physical harm and cruelty, it extends to the creation of detention conditions that nurture self-respect and human potential. Environmental quality is very central in this context. A ventilated, well-maintained and clean environment not only contributes to the prevention of diseases but also supports discipline, mental health, and rehabilitation. Therefore, in this context, dignity becomes both a legal standard and a moral compass. A correctional system that degrades detainees undermines the justice system and constitutional principles.

4.5 UNDERSTANDING SECTION 24(a)

This study sought to analyse the meaning of section 24(a) in the context of correctional centres and to have an understanding of its humane detention implications. Section 24(a) guarantees everyone the right ‘to an environment that is not harmful to health or well-being.’ This has a broad interpretation that encompasses both psychological and physical dimensions of human existence.

One must appreciate section 24(a) 's transformative intent to understand it fully. The Constitution treats the environment as integral to human welfare. In correctional facilities, this gives the DCS a constitutional duty to manage the environment.

The study found that South Africa has progressive correctional and environmental legislation, but their integration remains limited. Therefore, section 24(a) must be read with other relevant constitutional principles, including section 35(2)(e), which guarantees detainees the right to conditions consistent with human dignity. These provisions create a dual duty to promote well-being and prevent environmental harm.

The concept of ‘environment’ is not limited to natural surroundings, but extends to social and built environments, this concept also applies to the correctional services context, as demonstrated in the study. This said, lack of natural light, poor ventilation, contaminated water, and unhygienic facilities fall within the scope of harm as considered by section 24(a). Additionally, psychological well-being is affected by the aforementioned factors, which may lead to mental health issues and infringement of human dignity.

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To give full effect, the interpretation of section 24(a) must be context-sensitive and purposive. The courts should recognise that the environmental rights of detainees are inseparable from their right to humane treatment and right to health.

4.6 CONCLUSION

The South African Constitution envisions a society grounded on the recognition of the equal worth of everyone and inherent dignity. This study has illustrated that to realise this vision, a holistic understanding of human rights is necessary, one that integrates health, environmental protection, and humane treatment. Section 24(a) embodies the principle of a quality environment, and it defines the quality of human life.

In analysing the meaning of section 24(a) in the context of correctional centres, this study found both shortcomings and progress. The policy and legal frameworks are comprehensive but inconsistently applied. Monitoring frameworks exist but lack enforcement power. Institutions are dominated by control instead of care.

Transformation potential remains strong. By aligning constitutional principles with environmental management, correctional centres can transform into rehabilitation spaces rather than degradation. Administrative accountability, cultural awareness, and legislative reform can turn section 24(a) into a tangible safeguard for those deprived of liberty.

Furthermore, a state that upholds environmental rights even in correctional centres confirms that justice is guaranteed for everyone. Therefore, upholding the right in section 24(a) within correctional centres represents transformative constitutionalism, proof that the pursuit of equality, dignity, and well-being extends to everyone, including inmates.

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