

INMATES' RIGHT TO ADEQUATE NUTRITION IN SOUTH AFRICA: IS THE ENFORCEMENT OF THIS RIGHT CONSTITUTIONAL?

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ABSTRACT

The South African Constitution entrenches, among other socio-economic rights, inmates' right to adequate nutrition. Measures aimed at enforcing this right include the Regulations and the court enforcement of inmates' right to traditional food in the case of *Huang v the Head of Grootvlei Prison*. While these measures are steps in the right direction, they do not fully comply with constitutional imperatives. The Regulation's restriction of access to cultural or religious food to pregnant or lactating remand detainees is contrary to section 9 (3) of the Constitution which prohibits unfair discrimination by the state. This is the case because, technically, this regulation has the effect of excluding even those pregnant or lactating inmates who had access to either a cultural or a religious food as remand detainees. Further, the court's failure to determine whether the inmates' claim to their traditional food was based on a sincere cultural belief, which could be objectively supported in the case of *Huang v the Head of Grootvlei Prison*, is unconstitutional.

1. INTRODUCTION

The South African Constitution is renowned throughout the world for its excellence partly because it incorporates socio-economic rights,¹ among which is prison inmates' right to adequate nutrition. This right obliges the state to ensure that inmates' physical welfare is well taken care of through, among other things, the provision of adequate

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1 The South African Constitution, 1996, hereinafter referred to as the Constitution.

nutrition in the correctional centres. In the case of *Minister of Correctional Services v Lee*, the Supreme Court of Appeal summarises this obligation as follows:²

A person who is imprisoned is delivered into the absolute power of the state and loses his or her autonomy. A civilised and humane society demands that when the state takes away the autonomy of an individual by imprisonment it must assume the obligation to see to the physical welfare of its prisoner. We are such a society and we recognise that obligation in various legal instruments [...].

This obligation partly emanated from the courts' recognition of a well-established residuum principle which became entrenched in the interim Constitution³ and later in the final Constitution. Essentially, this principle recognises that inmates do not lose all of their rights, including their socio-economic rights, which obliges the state to fulfil those rights upon their entering correctional centres. Among many cases that have enforced this principle is the case of *Thukwane v Minister of Correctional Services*⁴ where the court reiterated that it is an obligation on the state to treat inmates in a manner that takes into account the common law principle, legislation regulating correctional centres and, most importantly, the Constitution.⁵

It is against this background that this article seeks critically to analyse the obligation imposed on the state by inmates' right to adequate nutrition. Since rights in the 'Bill of Rights are inter-related and mutually supporting [...] affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2',⁶ this article also analyses other rights which are relevant to the protection and enforcement of this right. It concludes by exploring the constitutionality of the manner in which this right has been enforced in South Africa.

2. INMATES' RIGHT TO ADEQUATE NUTRITION

Inmates' right to adequate nutrition is constitutionally protected by section 35 (2) (e) of the Constitution which obliges the state to provide inmates with adequate nutrition, among other things, at its expense. This right, therefore, imposes a positive obligation on the state to provide inmates with adequate nutrition partly to ensure that they are not subjected to inhumane and undignified imprisonment.⁷ This obligation also emanates

2 (316/11) [2012] ZASCA 23; [2012] 1 SACR 492 (SCA); [2012] 3 SA 617 (SCA) (23 March 2012), para 36.

3 The South African Interim Constitution, 1993.

4 [2003] 1 SA 51 (T).

5 id paras 21–23. The entrenchment of the residuum principle into the Constitution was also reiterated by the court in *N v Government of Republic of South Africa* (No 1) [2006] 6 SA 543 (D) para 20.

6 *Government of the Republic of South Africa v Grootboom* [2001] 1 SA 46, [2000] 11 BCLR 1169 para 23.

7 Sandra Liebenberg, Socio-economic Rights, *Adjudication Under a Transformative Constitution* (Juta

from section 7 (2) of the Constitution which, obliges the state to, among other things, fulfil the rights in the Bill of Rights.

Apart from the Constitution, the obligation to fulfil this right is imposed by the Correctional Services Act⁸ and its Regulations.⁹ This is evidenced by the following provisions which not only give effect to this right but also serve as the state's guidelines regarding what constitutes adequate nutrition: the state needs to ensure that inmates whose physical condition requires a special diet must be provided with such diet;¹⁰ adequate diet must take into account a balanced spread of food which includes (a) grain; (b) fruits and vegetables; (c) dairy; (d) meat and proteins; and (e) fats, oils and sugar;¹¹ child inmates' diet must consist of a minimum protein and energy content of 2 800 kilo calories per day;¹² adult male inmates' diet should consist of a minimum protein and energy content of 2 500 kilo calories per day and for adult females it should consist of a minimum protein and energy content of 2 000 kilo calories per day;¹³ where reasonably practicable, the diet should take into account inmates' religious requirements and cultural preferences;¹⁴ pregnant and lactating remand detainees should be provided with food that takes into account their religious or cultural beliefs;¹⁵ diet should be served at intervals of not less than four and a half hours and not more than six and a half hours;¹⁶ the evening meal and breakfast should be served at an interval of not more than 14 hours;¹⁷ the change of the prescribed diet and the intervals at which the food is served

2010) 257.

- 8 Correctional Services Act 111 of 1998, hereinafter referred to as the Correctional Services Act, as amended by the Correctional Services Amendment Act 34 of 2001 and the Correctional Services Amendment Act 25 of 2008.
- 9 Correctional Services Regulations No 26626, 30 July 2004. Correctional Services Regulations No 35032, 27 February 2012.
- 10 S 8 (1) of the Correctional Services Act (n 8).
- 11 Reg 4 (2) of the Correctional Services Regulations No 35032 (n 9).
- 12 Reg 4 of the Correctional Services Regulations No 26626 (n 9).
- 13 *ibid.*
- 14 S 8 (3) of the Correctional Services Act (n 8). This obligation can be read together with s 7 (1) (e) (ii) of the Children's Act 38 of 2005 which obliges the state to consider the child's best interests in every matter concerning them including ensuring that they maintain a connection with their culture or tradition.
- 15 Regs 26 D (6) of the Correctional Services Regulations No 35032, (n 9) which gives effect to s 8 (3) of the Correctional Services Act, (n 8), which obliges the state, where reasonably practicable, to provide inmates with a diet that takes into account religious requirements and cultural preferences.
- 16 S 8 (5) of the Correctional Services Act (n 8) as amended by s 7 of the Correctional Services Amendment Act 2001 (n 8).
- 17 *ibid.*

should be effected with the medical officers' approval;¹⁸ and that inmates have access to clean drinking water.¹⁹

Rule 22 of the Mandela Rules obliges states to provide inmates with drinking water and food of nutritional value adequate for their strength and health²⁰. Principle 3 of the Basic Principles for the Treatment of Prisoners requires respect for the religious beliefs and cultural precepts of the group to which inmates belong, when local conditions so require.²¹ Further, Article 12 (2) of the Convention on the Elimination of discrimination against Women (CEDAW) obliges state parties to provide pregnant women with appropriate services that include adequate nutrition during pregnancy and lactation.²²

However, what is crucial to note is that the obligation to fulfil this right can be limited if it is reasonable and justifiable in terms of section 36. In other words, it can be limited if it is reasonable and justifiable in an open and democratic society based on dignity, equality and freedom taking into account the factors listed in section 36 of the Constitution. The reason is, unlike other socio-economic rights entrenched in the Constitution, this right lacks an internal limitation clause.

3. OTHER CONSTITUTIONAL RIGHTS RELEVANT TO INMATES' RIGHT TO ADEQUATE NUTRITION

3.1. Cultural and religious rights

Inmates' cultural and religious rights, which emanate from the diversity in South African society, are relevant to inmates' right to adequate nutrition.²³ Inmates' cultural rights are protected by sections 30 and 31 of the Constitution. Section 30 entrenches the right of everyone to participate in the cultural life of their choice that respects traditions that may include traditional food.²⁴ Section 31 protects the right of people who belong to a

18 S 8 (4) of the Correctional Services Act (n 8) as amended by s 7 (4) of the Correctional Services Amendment Act 2008 (n 8).

19 S 8 (6) of the Correctional Services Act (n 8).

20 UN, The Nelson Mandela Rules (General Assembly Resolution 70/490, 17 December 2015)

21 UN, *Basic Principles for the Treatment of Prisoners* (General Assembly Resolution 45/111, 14 December 1990).

22 UN, *Convention on the Elimination of All forms of Discrimination against Women* (UN General Assembly, 18 December 1979); entered into force on 3 September 1981. South Africa ratified this Convention on 15 December 1995.

23 Preamble of the South African Constitution (n 1).

24 Christa Rautenbach, Fika Janse van Rensburg and Gerrit Pienaar, 'Culture (and religion) in constitutional adjudication', (2003) 6 1 PER, 6/112, citing Iain Currie, 'Minority Rights: Education, Culture, and Language' in Matthew Chaskalson (eds), *Constitutional Law of South Africa* (Juta 1999) 35.19, emphasis added.

cultural community to enjoy their culture. Thus, by virtue of their being human beings, these provisions entitle inmates to nutrition that takes into account their cultural interests that have a meaning for them. In the case of *MEC for Education: KwaZulu-Natal and Others v Pillay*, the Constitutional Court indirectly affirms this argument as follows:²⁵

The protection of the Constitution extends to all those for whom culture gives meaning, not only to those who happen to speak with the most powerful voice in the present cultural conversation.

In the same case, the Constitutional Court indirectly justifies the afore-going argument when it argues that:²⁶

While people find their cultural identity in different places, the importance of that identity to their being in the world remains the same.

However, it is critical to note that these provisions do not impose a positive obligation on the state to provide inmates with cultural food. Instead, they impose a negative obligation on the state to respect inmates' right to food that takes into account inmates' cultural interests.²⁷ This negative obligation was affirmed by the court in the case of *Huang and Others v The Head of Grootvlei Prison and Another*, where it ordered the state to allow Chinese inmates to cook their traditional food in the correctional centre.²⁸

Inmates' religious right entitles them to nutrition that takes into account their religious interests. This right is protected by section 15 of the Constitution which guarantees everyone's right to freedom of religion, belief and opinion. This right imposes both a positive and a negative obligation on the state to ensure that inmates have access to food that takes into account their religious interests. This argument is indirectly affirmed by Sach J in the case of *Christian Education South Africa v Minister of Education* as follows:²⁹

[I]t is achieved indirectly through the double mechanism of positively enabling individuals to join with other individuals of their community, and negatively enjoining the state not to deny them the rights collectively to profess and practise their own religion.

25 (CCT 51/06) [2007] ZACC 21; [2008] 1 SA 474 (CC); [2008] 2 BCLR 99 (CC) para 54, emphasis added.

26 *ibid.*

27 This was affirmed by Dlamini in his chapter entitled, 'Culture, Education and Religion' in Dawid van Wyk, John Dugard, Bertus de Villiers and Dennis Davis (eds), *Rights and Constitutionalism: The New South African Legal Order* (Juta 1996) 579, emphasis added, when he argued that cultural rights do not impose an obligation on the state to employ resources to develop it, but obliges the state to allow people to practise it. It was also affirmed by Sach J in *Christian Education South Africa v Minister of Education* (CCT4/00) [2000] ZACC 11; [2000] 4 SA 757; [2000] 10 BCLR 1051 (18 August 2000) para 23, emphasis added.

28 [2003] JDR O658 (O).

29 See *Christian Education South Africa* case (n 26) para 23, emphasis added.

While this case dealt with the interpretation of the right to religion in relation to the provision of education in schools, it affirms that inmates' right to freedom of religion imposes both a positive and negative obligation on the state that ensures that inmates have food that takes into account their religious interests. However, both these obligations can be effected once inmates prove that their claim to have food that takes into account their religious interests is based on their sincere belief. This argument finds its justification from the case of *MEC for Education: KwaZulu-Natal v Pillay*, where the Constitutional Court stressed that: 'the centrality of the practice should be judged with reference to the importance of the belief or practice to the claimant's religious [...] identity'.³⁰ It is also supported by the European Court case of *Jakobski v Poland*,³¹ which found that the correctional centre's authorities' refusal to provide an inmate with a diet that takes into account his dietary requirements as a Buddhist violated Article 9 of the European Convention on Human Rights (ECHR) which obliges state parties to respect the right to freedom of thought, conscience and religion. In stressing the importance of the existence of an inmate's sincere belief in providing food that takes into account his religious interests, the court argued that an inmate's claim for a religious food should be motivated or inspired by a religion that incorporates a certain level of cogency, seriousness, cohesion and importance.³²

3.2. The right to conditions of detention consistent with human dignity and the right to human dignity

Inmates' right to conditions of detention consistent with human dignity is guaranteed by section 35 (2) (e) of the Constitution, chapter three of the Correctional Services Act and chapter two of the Regulations.³³ This right should be 'understood against the background of section 10 of the Constitution which provides that everyone has inherent dignity and the right to have their dignity respected and protected'.³⁴ Therefore, the state's failure to provide inmates with adequate nutrition also amounts to the violation of their right to conditions of detention consistent with human dignity and their right to human dignity.

30 See *MEC for Education: KwaZulu-Natal and Others* case (n 25) paras 52 and 58. This was also accepted by the Constitutional court in *Christian Education South Africa* case (n 27) para 37.

31 *Jakobski v Poland* app no 18429/06, judgment 7 December 2010. In the USA case of *Mondrea Vinning-EL, Plaintiff—Appellant v John Evans and Rick Sutton, Defendant—Appellants*, no.10-1681, 2011, the United States Court of Appeal stressed the importance of determining an inmates' sincere belief as follows: 'Although sincerity rather than orthodoxy is the touchstone, a prison still is entitled to give some consideration to an organization's tenets. For the more a given person's professed beliefs differ from the orthodox beliefs of his faith, the less likely they are to be sincerely held'.

32 *ibid.*

33 Correctional Services Regulations No 26626, (n 9).

34 John Mubangizi, 'The Rights of Prisoners under the South African Constitution: Compatibility with International Norms and Standards' (LLD thesis, University of Durban Westville 2001) 109–110.

3.3. The right to equality

Inmates' right to equality is protected by section 9 (1) of the Constitution, which provides that, 'everyone is equal and should enjoy equal protection of the law'. Accordingly, any law that differentiates or has the effect of disadvantaging inmates by limiting their access to their adequate nutrition violates this right unless there is a rational connection between that differentiating law and the legitimate government purpose it is designed to achieve. This argument is indirectly affirmed by the Constitutional Court in *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development* which dealt with the right of access to social security:³⁵

In this case, the state has chosen to differentiate between citizens and non-citizens. That differentiation, if it is to pass constitutional muster, must not be arbitrary or irrational nor must it manifest a naked preference. There must be a rational connection between that differentiating law and the legitimate government purpose it is designed to achieve. A differentiating law or action which does not meet these standards will be in violation of section 9(1) and section 27(2) of the Constitution.

Apart from section 9 (1), inmates' right to equality is protected by section 9 (3) which prohibits unfair discrimination against them. Since inmates can be the victims of past discrimination, they could argue that they have been unfairly discriminated against if the state fails to formulate or implement a programme that gives effect to their right to adequate nutrition or when it unreasonably excludes them from existing legislative or other programmes giving effect to their right to adequate nutrition.³⁶

3.4. The right to have access to sufficient food, basic nutrition and the right not to be tortured, treated or punished in a cruel, inhuman and degrading way

The right to have access to sufficient food, protected by section 27 (1), imposes a positive obligation on the state progressively to fulfil it for everyone including inmates by taking reasonable measures subject to available resources.³⁷ Children's right to basic nutrition, guaranteed by section 28 (1) (c), on the other hand, obliges the state to ensure that child inmates have access to basic nutrition immediately because the content of this right is restricted to 'basic nutrition' instead of 'sufficient food'³⁸ and 'places the onus on

35 *Khosa v Minister of Social Development, Mahlaule v Minister of Social Development* (CCT 13/03, CCT 12/03) [2004] ZACC 11; [2004] 6 SA 505 (CC); [2004] 6 BCLR 569 (CC) (4 March 2004) para 53.

36 See Liebenberg (n 7) 133, emphasis added.

37 S 27 (2) of the Constitution (n 1).

38 Kirsty McLean, *Constitutional Deference, Courts and Socio-Economic Rights in South Africa* (PULP 2009) 19, emphasis added.

the state to make its case for justification of its conduct'.³⁹ Apart from the right to have access to sufficient food and children's right to basic nutrition, the State's obligation to provide inmates with adequate nutrition is also indirectly imposed by the right not to be tortured, treated or punished in a cruel, inhuman and degrading way guaranteed by section 12 (1) (d) and (e) of the Constitution. So, the state's failure to provide inmates with adequate nutrition without justification also violates the right to access to sufficient food, basic nutrition and the right not to be tortured, treated or punished in a cruel, inhuman and degrading way.

4. THE CONSTITUTIONALITY OF THE ENFORCEMENT OF INMATES' RIGHT TO ADEQUATE NUTRITION

The constitutional enforcement of a constitutional right is critical because it facilitates its realisation. South Africa is commended for taking steps such as the Regulations⁴⁰ and the court's enforcement of inmates' right to traditional food in the case of *Huang & Others v The Head of Grootvlei Prison* aimed at enforcing inmates' right to adequate nutrition,⁴¹ but these steps do not enforce this right in a manner that is required by the Constitution.

The Regulations' restriction of access to a cultural or religious food to pregnant and lactating remand detainees, contrary to section 9 (3) of the Constitution, excludes even those pregnant or lactating inmates who had access to such food when they were remand detainees.⁴² The reason being, technically, the Regulation caters only for pregnant or lactating remand detainees and not for pregnant or lactating inmates who had access to such food when they were pregnant or lactating remand detainees. In other words, in terms of a Regulation, once a pregnant or lactating remand detainee is sentenced and becomes an inmate she may not be entitled to a cultural or religious food to which she had access as a pregnant or lactating remand detainee. This Regulation, therefore, is contrary to section 9 (3) of the Constitution which prohibits unfair discrimination by the state. In terms of the equality test, discrimination that is based on an unspecified ground is unfair if (a) the complainant has suffered from patterns of disadvantage in the past; (b) the purpose of discrimination is not aimed at achieving a 'worthy and important societal goal'; and (c) 'the discrimination has affected the rights or interests of complainants and has led to an impairment of their fundamental human dignity or constitutes an impairment of a comparably serious nature'.⁴³

39 Danie Brand, 'Food' in Stu Woolman (eds), *Constitutional Law of South Africa* (2nd edn, Juta 2002) Ch 56 C at 56 C-8, emphasis added.

40 The Correctional Services Regulations No 35032 (n 9).

41 See *Huang* (n 28).

42 Regs 26 D (6) of the Correctional Services Regulations No 35032, (n 9).

43 *Harksen v Lane NO* (CCT9/97) [1997] ZACC 12; [1997] 11 BCLR 1489; [1998] 1 SA 300 (7 October 1997) para 51.

In view of this test, the regulation's exclusion of such an inmate from accessing such food clearly discriminates against her. This discrimination is unfair because it has the effect of impairing her dignity as she would have had access to a cultural or religious food when she was a pregnant or lactating remand detainee and her appetite for such food would surely not disappear simply because she is no longer a pregnant or lactating remand detainee but a pregnant or lactating inmate. Further, as an inmate, she belongs to a group of people who have suffered past patterns of disadvantage in South Africa and neither the regulations, the Correctional Services Act nor the 2004 Department of Correctional Services White Paper provide a purpose, which these measures seek to achieve by her exclusion from accessing such food, to which she would have had access as a pregnant or lactating remand detainee.

The violation of such an inmate's right to equality also emanates from the fact that her exclusion from accessing a cultural or religious food amounts to an unreasonable exclusion from the programme which gives effect to her right to adequate nutrition. Liebenberg indirectly stresses this argument when she argues that the violation of a positive duty imposed by socio-economic rights 'involves an allegation of unreasonable exclusion from an existing legislative or other programmes giving effect to socio-economic rights'.⁴⁴ Thus, the absence of a provision catering for such an inmate in the Regulations may open doors for the abuse of her right to adequate nutrition and has the effect of violating her right to equality. It is unimaginable that a pregnant or lactating inmate who had access to a cultural or religious food as pregnant or remand detainee may find herself not having access to such food or struggling to have access to such food on the basis that she is no longer a pregnant or lactating remand detainee but a pregnant or lactating inmate. Therefore, the exclusion of pregnant or lactating inmates who had access to a cultural or religious food by the Regulations violates those pregnant or lactating inmates' right to equality and their right to adequate nutrition together with all the afore-going rights that are relevant to inmates' right to adequate nutrition. The violation of these constitutional rights, therefore, cannot be rescued under section 36 of the Constitution.

The court's enforcement of inmates' right to traditional food in the case of *Huang v The Head of Grootvlei Prison* does not adhere to constitutional imperatives because the court did not determine whether the applicants' belief in traditional food was based on their sincere belief which could be objectively supported.⁴⁵ This case related to applicants of Taiwanese (Chinese) origin who sought an order that they be allowed to receive raw food and to prepare it in accordance with their Eastern tradition in the kitchen of Grootvlei correctional centre at their own expense. They argued that, at the beginning of 1999, they had received a concession that entitled them to receive and prepare their own Eastern food. This concession, they further argued, was unlawfully taken away on 14 January 2003 in violation of their right to special food in terms of section 35 (2) (e)

44 See Liebenberg (n 7) 133.

45 See *Huang* (n 28).

of the Constitution. The court found that the state's failure to allow them to receive raw food and prepare it in accordance with their Eastern tradition, as required by section 8 (3) of the Correctional Services Act, which had not yet commenced at the time, violated their right to adequate nutrition. In justifying its reliance on the above-mentioned provision of the Correctional Services Act, which had not yet come into operation, the court argued that this provision 'does manifest the policy to be followed by the Department which is in line with the fundamental rights in the Constitution'.⁴⁶ The court then ordered the state to allow them to receive raw food and prepare it in accordance with their Eastern tradition. It further granted the applicants leave to approach it with supplemented and amplified papers for an order that their special food be provided at the expense of the state. While the issue of resource constraint was not raised by the state, the court emphasised that resource constraints on the part of the state play an important role in determining whether an inmate's right to adequate nutrition has been violated:⁴⁷

The requirement of adequate nutrition means that the State must supply these within the resources and financial constraints of the State.

This is an excellent judgment because it represents 'the good illustration of the fact that socio-economic rights are not commodities intended solely to meet people's physical needs, but in many circumstances, also protect the expressive, cultural and religious dimensions of human identity'.⁴⁸ However, the court's failure to determine whether the applicants' belief in traditional food was based on their sincere belief, which could be supported objectively amounts to a failure or does not enforce this right as required by the Constitution. In the case of *MEC for Education: KwaZulu-Natal and Others v Pillay*, the Constitutional Court stressed the importance of establishing whether an applicant's claim to have access to traditional food is based on his or her sincere belief which could be supported objectively as follows:⁴⁹

[T]he centrality of the practice should be judged with reference to the importance of the belief or practice to the claimant's ... cultural identity.

Further, in the same case, the Constitutional Court affirms the relevance of this argument when it argues that:⁵⁰

Sunali also endured a large measure of insensitive treatment from her peers, including the prefects of the School, and media exposure, yet continued to stand by her belief. All this points to the conclusion that Sunali held a sincere belief that the nose stud was part of her ... culture.

46 id para 33.

47 id para 31.

48 See Liebenberg (n 7) 265.

49 See *MEC for Education: KwaZulu-Natal* (n 25) paras 52 and 58. This was also accepted by the Constitutional Court in *Christian Education South Africa* (n 27) para 37.

50 id para 58.

Therefore, the court's failure to have regard to the afore-going procedural interpretation of inmates' right to traditional food in the case of *Huang v the Head of Grootvlei Prison*, is not constitutional. The reason being, the court, in terms of the jurisprudence set out above, should have requested evidence proving that the applicants' claim to be allowed to cook their Chinese food was based on their sincere cultural belief. This procedural interpretation is crucial since it prohibits the potential abuse of the resources of the state by inmates who may demand to be allowed to cook a baseless cultural or religious food.

5. CONCLUSION

South Africa, indeed, can be praised for its protection and enforcement of inmates' right to adequate nutrition. The protection of this right is strengthened by other constitutional rights, which are relevant to its protection. South Africa has also taken some good steps aimed at its enforcement. However, even if it has exceeded its international law obligation by extending the right to demand religious or cultural nutrition to pregnant or lactating remand detainees, its Regulation's restriction of access to such food to pregnant or lactating remand detainees unfairly discriminates against those pregnant or lactating inmates who had access to such food when they were remand detainees. So, this Regulation has to be amended to cater for the interests of those pregnant or lactating inmates who had access to such food as remand detainees. Further, the court's failure to determine whether the inmates' claim to their traditional food was based on a sincere cultural belief, which could be objectively supported in the case of *Huang v The Head of Grootvlei Prison*, is unconstitutional.