



Human rights and TB, case study: Dudley Lee v the Ministry of Love

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Role of people v role of law, science, this conference

+ Lessons from law

+ How does this give power?



What happened on Friday?

- + *“The most revolutionary thing one can do is always to proclaim loudly what is happening.”* – Rosa Luxemburg

Call of the TAC case

- + “The magnitude of the HIV/AIDS challenge facing the country calls for a concerted, coordinated national effort in which government in each of its three spheres and the panoply of resources and skills of civil society are marshaled, inspired and led.” [para 123]



Dudley Lee's story



+ Credit: Nathan Geffen

Self advocacy: power question

- + The plaintiff had been warned that he could be reinfected and could develop drug resistant TB if he failed to take the medication as prescribed for the full period of six months and he accordingly 'begged, bullied and bribed' to get his medication.

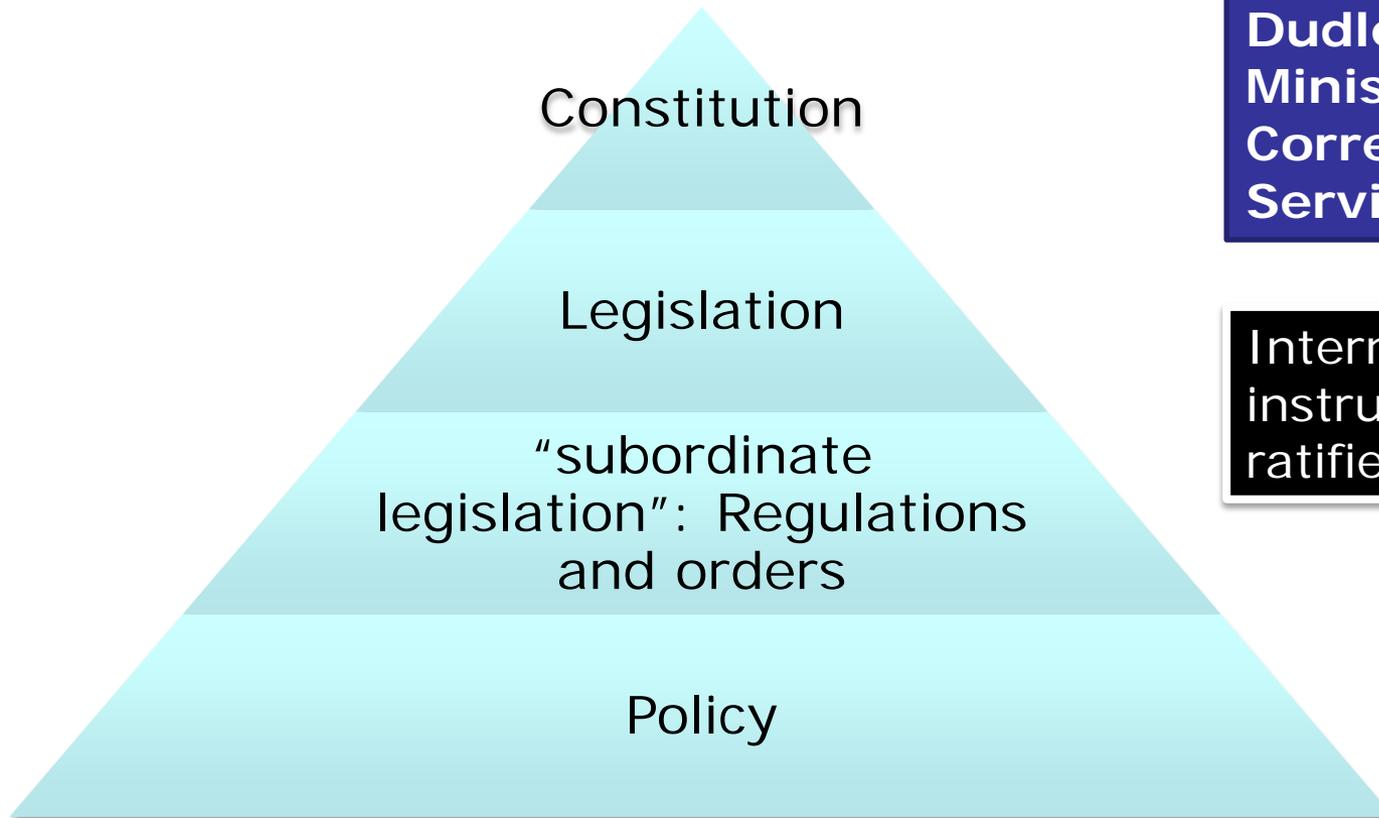
What the Court said

- + “It is indeed so that prisoners are amongst the most vulnerable in our society to the failure of the state to meet its constitutional and statutory obligations, and that a civilised and humane society demands that when the state takes away the autonomy of an individual by imprisonment it must assume the obligation . . . inherent in the right . . . to conditions of detention that are consistent with human dignity.” [para 65, internal quotations omitted]

Dudley Lee ruling

- + What you have to prove:
 - + DCS failed to do something it was supposed to do
 - + That failure increased the risk that a certain harm would occur
 - + The harm occurred
 - + This is EASY – challenges are elsewhere – access to justice, rights awareness, access to lawyers ...

Sources of law



Case law: (eg
Dudley Lee v
Minister of
Correctional
Services)

International
instruments
ratified by SA

What is required?

- + implementation of an effective and comprehensive HIV and TB prevention, diagnosis, treatment, care and support programme in prisons

What did we get?

- + “Guidelines for the management of tuberculosis, human immunodeficiency virus and sexually-transmitted infections in correctional centres, 2013”

Progress?

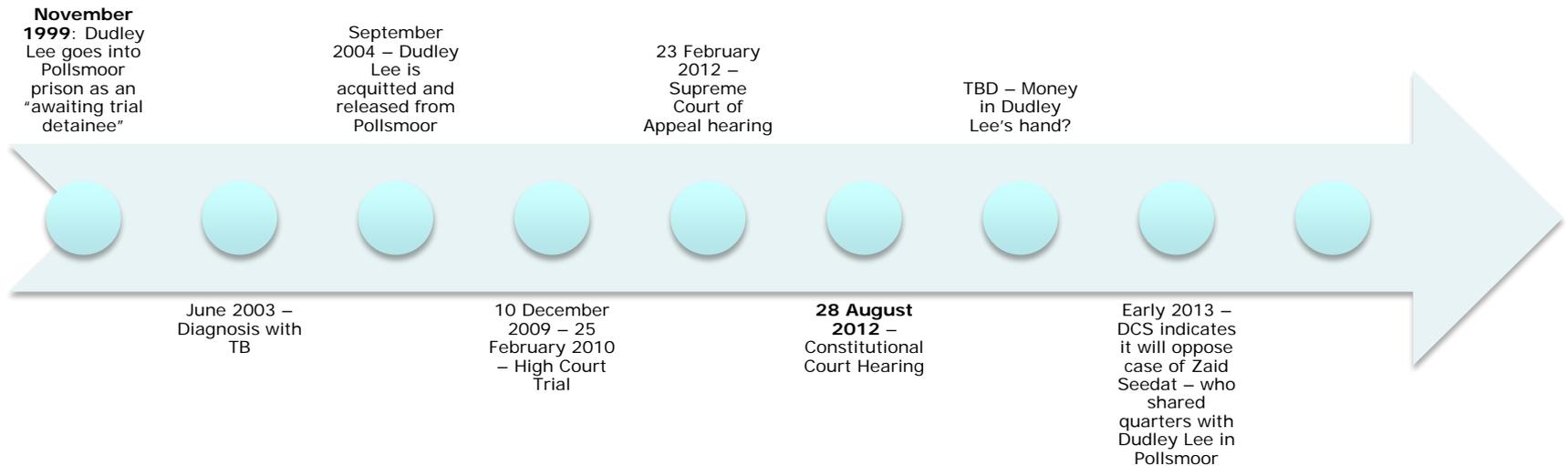
- + Unkown
- + Zaid Seedat
- + New cases: Siyanekekela Support Group v Department of Correctional Services

Conclusion

“Your Honor, years ago I recognized my kinship with all living beings, and I made up my mind that I was not one bit better than the meanest on earth. I said then, and I say now, that while there is a lower class, I am in it, and while there is a criminal element I am of it, and while there is a soul in prison, I am not free.” -- Eugene Debs (Statement to the court upon his conviction for sedition)

“Peoples do not judge in the same way as courts of law; they do not hand down sentences, they throw thunderbolts; they do not condemn kings, they drop them back into the void; and this justice is worth just as much as that of the courts.” Maximilien de Robespierre – French revolution

Dudley Lee timeline



What the constitution requires of government action (in brief)

- + It must be reasonably conceived and implemented.
- + It must be capable of facilitating the realisation of the right.
- + It must be comprehensive and coherent.
- + It must be coordinated in terms of Chapter 3 of the Constitution. This means it must be determined by all spheres of government in consultation and that each sphere must accept responsibility for the implementation of particular parts of the plan.
- + Appropriate financial and human resources must be made available for the programme. Budgeting duties apply to national, provincial and municipal governments in appropriate circumstances.
- + It must be balanced and flexible and make appropriate provision for short-, medium- and long-term needs.
- + It must be transparent, and its contents must be made known effectively to the public.
- + It must make rights more accessible to a larger number and wider range of people as time progresses.
- + It must make short-term provision for those whose needs are urgent and who are living in intolerable conditions.
- + Must be conceived of with an appropriate understanding of constitutional and statutory obligations.



