

**OFFENDERS' RIGHTS WITH REGARD TO REHABILITATION IN
SOUTH AFRICA**

by

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DECLARATION

I declare that **OFFENDERS' RIGHTS WITH REGARD TO REHABILITATION IN SOUTH AFRICA** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references and that this work has not been submitted before for any other degree at any other institution.

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I would firstly like to thank the Almighty GOD for giving me strength to execute this project. This dissertation is dedicated to the following important people who made it a reality:

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ABSTRACT

Every human being deserves to have their rights respected all the times. Not only does the correctional system have the responsibility to rehabilitate offenders before they are released to the community but also to respect their rights throughout the rehabilitation process.. In this research the extent in which human rights affect the process of rehabilitation was outlined. This was achieved by analyzing the provisions of major human rights instruments, both internationally and nationally as well as standards required for the treatment of offenders. In addition various rehabilitation programmes were also discussed.

The findings of the research indicated that South Africa has achieved a lot when it comes to the recognition of human rights. From the research it was discovered that indeed offenders' rights have an impact on the rehabilitation process. Based on these and other findings recommendations were made.

KEY TERMS

Human rights/ offenders' rights; Rehabilitation; Punishment; The Correctional system; Discrimination; Constitution; Correctional Services Act; Standard Minimum Rules for the Treatment of Prisoners; Universal Declaration of Human Rights and White Paper on Corrections

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CHAPTER 1

THE RESEARCH

1.1 BACKGROUND TO THE STUDY

The history of the correctional system in South Africa shows that correctional facilities were regarded as dumping sites for unwelcome citizens of society. But the recent changes have ensured that correctional systems are no longer characterised by severe punishment directed at offenders, such as hard labour and torture, which are in fact a violation of human rights. In those dark days even racial segregation was prescribed by legislation and it was ensured that it was enforced around the country. The issue of human rights did not exist within correctional centres. However, with the inception of the new democracy in South Africa in the 1990s, changes started to take place and the penal system that used to operate under the Department of Justice became the independent Department of Correctional Services.

Morodi (2004: 1) states in an article entitled “The constitutional rights of prisoners within the South African criminal justice system” that the Constitution of South Africa which was passed by parliament in 1996 is “founded on the values of human dignity, the realisation of justice and the promotion and advancement of human rights”. In order to be in line with the provisions of the Constitution, the Department of Correctional Services has been through major changes over the years. Not only is the Department striving to be in line with the Constitution of the country, but also to meet international standards when it comes to the treatment of offenders. Changes that have occurred include demilitarising the Department, placing the rehabilitation of offenders at the forefront of all departmental activities and introducing community-based sentences.

Chapter 2 of the Constitution of the Republic of South Africa of 1996 sets out the rights for every citizen of South Africa. These rights should be promoted and protected at all

times. Morodi (2004: 1) further emphasises that from the law enforcement, courts and correctional services, it should be ensured that the sentenced person's right to human dignity is respected at all times, as indicated in the Bill of Rights. Since the focus of the correctional services is currently on the rehabilitation of offenders, the implementation of rehabilitation programmes must never violate the human rights of offenders.

Even though the rehabilitation of offenders is a key policy of a correctional system, various problems stand in the way of executing rehabilitation programmes. These problems include lack of human resources, infrastructure and funding. Bhengu (2005: 1) supports this statement by writing that these problems lead to fewer than 28% of offenders participating in rehabilitation programmes which do not necessarily equip them with the necessary skill for jobs. She further claims that "the number of people going through the prison system each year is twice if not three times the size of its daily population". This statement gives rise to the question if rehabilitation together with offenders' rights is doing more harm than good for society. Internal problems such as maladministration and corruption also have a role in hampering the development of such programmes.

With all the challenges such as prison overcrowding, the South African Correctional Services states in its mission statement that it places rehabilitation at the centre of all departmental activities in partnership with external stakeholders through:

- "The integrated application of the departmental resources to focus on the correction of offending behaviour, the promotion of societal responsibility and the overall development of the person under correction;
 - The cost-effective provision of correctional facilities that will promote efficient security, correction, care and development services within an enabling human rights environment;
 - Progressive and ethical management and staff practices within which every correctional official performs an effective correcting and encouraging role"
- (Department of Correctional Services, 2005a: 10).

According to Allen (1981: 2), within the rehabilitative ideal, the primary aim of all the correctional programmes is to institute changes in the characters, attitudes as well as the unacceptable behaviour of the offenders which will lead to the welfare and satisfaction of society in general. In order to ensure the effective implementation of rehabilitation programmes, the Department of Correctional Services developed eight values which it bases its functions upon and they are development, integrity, recognition of human rights, efficiency, accountability, justice, security and equity (Department of Correctional Services, 2005a: 9).

This study examines the concept of human rights and rehabilitation and describes their impact on the correctional services of South Africa. This is achieved by doing research on relevant statutes, such as the South African Constitution 108 of 1996 and the Correctional Services Act 111 of 1998, as well as other international statutes, such as the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, amongst others. Upon completion of the research, the importance of the upliftment of offenders' rights, how offenders' rights affect the rehabilitation of offenders and how rehabilitation affects the lives of individual offenders after they have been released should be clear.

1.2 PROBLEM STATEMENT

Since the Department of Correctional Services has shifted its focus to the upliftment of offenders' rights, there have been different perceptions of the shift. According to statistics of the Department of Correctional Services, prison overcrowding stands at 140% and the annual inmate expenditure is approximately R40 489, 45 from taxpayers (Department of Correctional Services, undated). Given these statistics, it can be argued that correctional centres have become universities of crime and that those who live in them regard them as five-star hotels, given that the daily expenditure for an individual prisoner is far more than what some households spend. People would rather see an overhaul of the criminal justice system, the police service, courts and the correctional system and, most importantly, the correctional centres to be unattractive places characterised by hard

labour. On the other hand, a number of views recommending punishment or any other means that can reduce the number of crimes through reforming, correcting, rehabilitating or improving the lives of offenders have been expressed (Honderich, 2006: 112).

More often, the issue of offenders' rights causes tension amongst offenders themselves as these rights are often not applied equally. This is mainly because of the preferential treatment that certain offenders get from the Department of Correctional Services. This preferential treatment leads to some offenders getting the opportunity to be rehabilitated at the expense of others. In some instances offenders' rights are believed to be contributing to the ineffectiveness of rehabilitation programmes. An HIV-positive offender, for example, is granted a right to privacy that comes with the right to confidentiality by the Constitution 108 of 1996. That offender is not obliged to inform anyone about his or her status. When it comes to the treatment of HIV/AIDS, Correctional Services might not be able to provide the necessary treatment to that offender simply because he or she has the right not to disclose his or her status. The situation will, in turn, affect the rehabilitation process since it stands in the way of the provision of better medical services.

However, there are positive stories that come out of correctional centres, such as the one written by Ramadikela (2007/2008: 2) about a 78% pass rate out of 7 062 offenders who have written their examinations in adult basic education and training (ABET) levels 1 to 3 and the National Senior Certificate for Grade 12. It is also mentioned that one Grade 12 learner, Zakhele Khuzwayo from Durban-Westville's Usethubeni Youth Centre, obtained five distinctions out of seven subjects that he was doing while incarcerated. This and many other stories make one wonder what would have happened if that person was denied the opportunity to study simply because he was an offender. For these reasons it can be said that offenders deserve their right to be treated as other citizens of society.

1.3 AIM OF THE RESEARCH

The primary aim of the research was to determine the impact of rights on the rehabilitation process of offenders in South Africa.

The secondary aims of the research were:

- To examine the concept of international human rights, from its origins to its implications on individual citizens
- To describe the process of offenders' rehabilitation in general
- To identify the international standards required for the treatment of offenders
- To outline the rights which have an impact on the rehabilitation of offenders and to describe their impact
- To describe the concept of rehabilitation and functioning of the South African Department of Correctional Services in South Africa
- To determine the obligations posed by offenders' rights on the functioning of the Department of Correctional Services in South Africa
- To identify the status of the offenders' rights and rehabilitation programmes in the South African correctional services

1.4 LAYOUT OF THE DISSERTATION

In order to achieve the above objectives, together with determining the impact of rights on the rehabilitation process of offenders, the research was broken down into six chapters.

Chapter 1 sets out the basis of the study and the reasons for conducting it. The methods used to undertake the study are also outlined in this chapter.

Chapter 2 covers the background and explains the issue of human rights. The chapter attempts to trace the development of the concept of international human rights. The developments of law, an overview of human rights as well as the development of

offenders' rights are also mentioned in this chapter. The focus is on the development of offenders' rights in various countries.

Chapter 3 begins with a discussion of the aims of punishment and prisons. The chapter also presents an overview of the process of rehabilitation from its significance to the programmes that are aimed at ensuring that it takes place. After reading through the chapter, the reader will have an understanding of the impact of rights on the rehabilitation of offenders, the role of the correctional official in the process as well as the role of the offender.

Chapter 4 deals with the international concept of offenders' rights. International human rights instruments are studied, which recognise the rights of every human being, thereby including offenders. Special reference is made to the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners in this chapter because every country must ensure that its correctional laws correspond with them. The chapter concludes by mentioning the conditions required for those categories of offenders with special requirements.

Chapter 5 covers issues of offenders' rights in South Africa. The relevant rights contained in Chapter 3 (Bill of Rights) of the Constitution of the country are discussed. The standard that is acceptable for the treatment of offenders as set out in the Correctional Services Act 111 of 1998 and the implications of the White Paper on Corrections are also mentioned. The extent to which the offenders' rights can be limited and the various programmes aimed at rehabilitation which are offered by the Department of Correctional Services are also mentioned in this chapter.

Chapter 6 comprises a summary of findings of the research project as well as conclusions. Finally, it is hoped that the recommendations presented will have a positive impact on the day-to-day operations of the correctional system in South Africa.

1.5 MOTIVATION FOR THE RESEARCH

1.5.1 Scientific value

The treatment of offenders has over the years raised so many concerns, with the majority of society holding the opinion that the correctional system has become too soft when it comes to the treatment of offenders. The outlining of the impact of rights and the process of rehabilitation, as well as the recommendations made in this study can help the Department of Correctional Services to develop programmes aimed at the treatment of offenders.

1.5.2 Value to society

The research can help society understand its role in the integration of the offender into the community. By identifying the importance of offenders' rights, the community will not only gain the knowledge as to why offenders, like other citizens, deserve their rights, but they will also understand how important the rights are for every individual within society. If every individual can understand the functioning of correctional services, then people will understand that the rights are not meant to make things easier for the offenders, but to protect them against violations and that is what this study aims to achieve.

1.5.3 Value for the administration of correctional services in South Africa

Since the aim of the correctional system is to rehabilitate offenders, it is important to understand how the rights that offenders have affect the rehabilitation process. If all the role players within the correctional system understand the rights that offenders have while incarcerated and strive to respect them at all times, it can lead to the prevention of major problems such as hunger strikes, high rate of infectious diseases and escapes, thereby leading to offenders focusing on programmes that result in their development. By focusing on developmental programmes, offenders will be able to live successful lives

after their release, which will in turn reduce overcrowding in correctional centres, the high recidivism rate and, most importantly, crime in the country.

1.6 DEFINITION OF KEY CONCEPTS

1.6.1 Human rights/offenders' rights

Human rights are those rights that are set out to eliminate inequality amongst citizens. All the rights that individuals have should never be violated by any individual or the state. Within the correctional system context, offenders' rights entail all the rights that offenders retain while they are incarcerated that cannot be taken away by the correctional system and that include life, food, accommodation, health care, education and human dignity.

1.6.2 Rehabilitation

Rehabilitation entails an attempt to reduce the offending effect on the behaviour of the offender. According to Sechrest, White and Brown (in Masters, 1994: 6), any planned intervention that is aimed at reducing further criminal activity by an offender constitutes rehabilitation. The reduction of offending behaviour can be mediated by personality, behaviour, abilities, attitudes, values and other factors.

1.6.3 Discrimination

Discrimination refers to the unequal treatment of individuals. The Oxford English Reference Dictionary (Pearsall & Trumble, 1996: 405) defines discrimination as the unfavourable treatment which is based on prejudice related to race, colour, age, gender, etc.

1.7 RESEARCH METHODS

1.7.1 Research design

A research design is a plan through which the researcher obtains research participants or subjects in order to collect information from them (Welman & Kruger, 2001: 46). When developing a research design, it is important for the researcher to consider the purpose of the research, the theoretical paradigm informing the research, the context or situation within which the research is carried out and the research techniques employed to collect and analyse data (Durrheim, 2006: 37). All these aspects were considered in the process of conducting this research.

Sources such as official documents, books, newspaper articles, journals as well as both international and national statutes, such as the Universal Declaration of Human Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners, Correctional Services Act, White Paper on Corrections, the Constitution of South Africa, amongst others, were used in the research in order to describe the impact of rights on the rehabilitation of offenders.

1.7.2 Methodological design

1.7.2.1 Qualitative research

Denscombe (1998: 207) explains that qualitative research is an umbrella term covering a wide variety of styles to conduct social research which originates from a wide variety of disciplines, such as sociology, social anthropology and social psychology. In qualitative research the researcher studies social phenomena. While conducting the research the researcher becomes the primary research instrument and takes over the functions of the control group in order to rule out counter explanations, observe whatever it is that is being observed and to keep the expectations under control (Welman & Kruger, 2001: 8).

Almost all the qualitative methods share certain features (Payne & Payne, 2004: 175):

- “The core concern is to seek out and interpret the meanings that people bring to their own actions, rather than describing any regularities or statistical associations between variables.
- They treat actions as part of a holistic social process and context, rather than as something that can be extracted and studied in isolation.
- They utilise non-representative, small samples of people, rather than working from large representative samples to identify the broad sweep of national patterns.
- They focus on the detail of human life.
- Rather than starting with a theoretical hypothesis, and trying to test it, they explore the data they encounter and allow ideas to emerge from them {i.e. using inductive, not deductive, logic}”.

This current research met the above expectations of qualitative research, hence the qualitative method was followed as it provides a simple way of gathering information. Through the research an in-depth knowledge of how offenders’ rights affect the rehabilitation process was acquired. Rather than focusing on broader human rights, the research focused on those rights that have an impact on the rehabilitation of offenders. Rehabilitation of offenders forms an integral part of the correctional system; hence understanding offenders’ rights and the entire correctional system can lead to a better understanding of how human rights facilitate the rehabilitation of offenders. Through the literature survey the information obtained leads to better understanding and utilisation of human rights within the correctional system, thereby resulting in new developments.

1.7.2.2 Exploratory research

Exploratory research is research that is intended to develop initial insights into the phenomenon, thus providing direction for further research needed into the phenomenon if they arise. Burns and Bush (1998: 111) define exploratory research as informal research that is conducted with the purpose of obtaining background information related to the general notion of the problem in a sense that it does not have a formalised set of

objectives, sample plan or questionnaire. Zikmund (1997: 127) mentions that the purposes of conducting exploratory researches are to diagnose a situation, screen alternatives and discover new ideas. Exploratory research, since it does not follow formal research protocols and procedures, was conducted prior to the study to gain insight into and understanding of the phenomenon.

1.7.2.3 Population

Welman and Kruger (2001: 46) state that the population in a research study is related to the study object and can be individuals, groups, organisations, human products and events and even the conditions to which they are exposed.

Since rights are universal and everyone, irrespective of race, colour, gender, language, religion, political affiliation, nationality and marital status, is entitled to them, the study covered all offenders' rights as prisoners are all equally affected and they all deserve them. However, the focus was on both sentenced male and female offenders within a prison environment since they are the ones that Correctional Services has the responsibility to rehabilitate.

1.7.2.4 Sampling

Payne and Payne (2004: 204) explain that the process of sampling involves selecting a subset of people or social phenomena that are going to be studied from a pool to which they belong as determined by:

- Anticipated techniques
- How much variation there is believed to be in the universe
- The level of precision needed in estimates to be made about the universe, which is the basis of data from the sample

As indicated in 1.7.2.3, everyone is entitled to human rights, so the study covered the general population of both sentenced male and female offenders within the correctional system. Persons subject to community corrections do not form part of the study. When it

comes to the issue of rights, only the rights that have an impact on the rehabilitation of offenders and that offenders retain while they are incarcerated are discussed. The research does not include the rights that are not applicable in a correctional setup, such as the freedom of movement and residence.

The rights considered are as follows:

- Equality
- Human dignity
- Freedom and security of the person
- Slavery, servitude and forced labour
- Privacy
- Freedom of religion, belief and opinion
- Freedom of expression
- Political rights
- Health care, food, water and social security
- Freedom of association
- Assembly, demonstration, picket and petition
- Education
- Language and culture
- Access to information
- Just administrative action

In addition to all the above rights, the research was done on the various programmes that are offered to sentenced offenders to ensure effective rehabilitation. They include psychological programmes, social work programmes, health care programmes, skills development and educational programmes.

1.7.2.5 Data collection

Wright and Crimp (2000: 32) mention that research data can be collected in two ways:

- **Primary data:** this involves the information that is obtained by the researcher himself or herself for the purpose of the study.
- **Secondary data:** this involves data that is readily available and that builds upon previous research and information.

Although secondary data has been restricted to a minimum, both primary and secondary data were used for the purpose of this research.

1.7.2.6 Data analysis

After collecting the data and double-checking it, the process of analysing it begins (Taylor, 1994: 9). There are two ways of doing qualitative data analysis, i.e. interpretive analysis, which involves the description of the characteristics, processes, transactions and contexts that are related to the phenomena that are being studied, and social constructionist analysis, which involves the revealing of cultural materials from which particular utterances, texts, or events have been constructed. This study was analysed by means of interpretive analysis. This was done by listing all the findings of the research and describing how they are related to the phenomenon being studied.

1.8 VALIDITY AND RELIABILITY

Brown and Curtis (1987: 21) reveal that because researchers use a variety of data collection instruments in their research process, an important element is to adopt a valid and reliable data gathering instrument. According to Hoyle, Harris and Judd (2002: 83), the reliability of a measure is the extent to which the results are free from random error, whereas validity of a measure is the extent to which it measures what is required. For a measure to be valid it has to be reliable first and it must be able to present the expected results. Hence in this research reliable and valid sources listed in the list of references were used.

Validity refers to the ability of the scale to measure the intended results. It addresses the problem of whether a measure that was used indeed measures what it is supposed to

measure; it will amount to problems if does not (Zikmund, 1997:335). Silverman (2001: 233) identifies two forms of validation:

- It can be confirmed by means of comparing the different kinds of data which have been collected (e.g. qualitative or quantitative) and the different methods which have been used (e.g. observation and interviews) in order to find out whether they are related.
- It can also be done by taking the findings of the research back to subjects being studied and they confirm the findings so one can be sure that they are valid.

So to ensure that the findings obtained in this research are valid, validation was confirmed by means of relating the different kinds of data collected to the methods that were used to collect the data.

The validity of the findings of the research project was checked by determining the following:

- Whether the conclusions reached do justice to the complexity of the phenomenon in question and whether they avoid oversimplifications while at the same time also offering internal consistency.
- Whether the researcher's self is recognised as an influence in the research but not a cause of biased and one-sided reporting. Although this is difficult to execute, it is vital in the context of such research.
- Whether the instances that were selected for investigation were chosen on explicit and reasonable grounds when it comes to the objectives aimed to be achieved through the research.
- Whether alternatives for possible explanations have been explored. It is the responsibility of the researcher to indicate that he or she is capable of exploring as many fields as possible to come to an explanation that fits.
- Whether the findings have been triangulated with alternative sources in order to ensure their validity and their reliability.
- Whether the findings of the research were fed back to the informants in order to get their opinion on the findings. The informants would then be able to identify the

shortcomings of the research and indicate the extent to which their expectations were met.

- Whether the findings and conclusions would bring any change to what is already known regarding the phenomena being studied (Denscombe, 1998: 213).

1.9 SUMMARY

To ensure the effectiveness of the rehabilitation, everyone who is involved in the process has to be fully committed, and this includes the offenders. Offenders can only commit themselves in a situation where they are recognised for their own being and not treated as unwelcome citizens. Rights form an important part of every individual's life and offenders, like anybody else, deserve to have their rights protected and recognised at all times. In that way they will commit themselves to any programme that is aimed at developing them while they are incarcerated. Failure to respect offenders' rights can only lead to major problems which will in turn hamper the objectives set to ensure successful rehabilitation of offenders.

Because everyone can do their best in a situation where there is no unnecessary inequality and discrimination, the rights aim to give offenders enough room to do that. The research shows the major impact of offenders' rights on the rehabilitation process and the reader will therefore obtain a clear indication of why offenders deserve to retain their rights.

CHAPTER 2

HISTORICAL ORIGINS AND DEVELOPMENT OF THE THEORY OF THE RIGHTS OF OFFENDERS

2.1 INTRODUCTION

The focus in this chapter will be on the origin and the development of international human rights. The chapter begins with an overview of human rights, followed by the development of law since human rights emanate from law and require full protection by the law to be applicable. Since human rights are universal, it is important to understand their origin and how they became such an important part of every individual's life given the role that they play in the protection of citizens. The purpose is to investigate those instruments that led to the development of other international human rights instruments that now promote human rights and protect against their violation and how they have changed the way people used to live.

The development of offenders' rights in different countries will also be discussed. It is important to understand the reasons behind the development of offenders' rights and what their implications are for the treatment of offenders within the different correctional systems. In general, the chapter aims to explore the concept of the development of human rights and, more specifically, offenders' rights.

2.2 AN OVERVIEW OF HUMAN RIGHTS

“In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person, the neighbourhood he lives in, the school or college he attends, the factory, the farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning everywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Eleanor Roosevelt (1958)

In the above statement, Eleanor Roosevelt, widow of the former US President, Franklin D. Roosevelt, and Chair of the United Nations Commission that wrote the Universal Declaration in 1948, emphasises the importance of human rights for every human being. The statement, “every man, women and child seeks equal justice, equal opportunity and equal dignity without discrimination”, indicates the fact that human rights are universal and they have to be applied without any form of discrimination.

MacFarlane (1985: 3) writes: “Human rights are those moral rights which are owed to each man or woman by every man or woman solely by reason of being human.” Everyone deserves to have their rights respected and everyone should know what their rights are and what they mean to them. International human rights refer to an international movement which ensures the promotion and protection and also assumes and asserts international responsibility for national human rights (Davidson, 1993: 6). The international human rights movement is based on the idea that all the nations must respect the human rights of citizens and a nation should never violate the rights of its citizens.

Human rights are universal and if they are not known, abuses such as discrimination, intolerance, injustice, oppression and slavery can arise. Since human rights are universal they can never be beyond the reach of any human being and they should be protected. Everyone, irrespective of race, colour, gender, language, religion, political affiliation, nationality and marital status, is entitled to their human rights. Not only are the civil and political rights protected by modern constitutions and international laws, but also economic, social, cultural and other rights are protected by these laws (Davidson, 1993: 6).

According to Shelton (1999: 14), many human rights violations are related to political, economic and social problems which the law alone cannot repair. Rather, there is a need to educate people about human rights to avoid abuses.

2.2.1 Characteristics of human rights

The United Nations identifies the most important characteristics of human rights as follows (United Nations, 2001: 3):

- Everyone's dignity has to be regarded as foremost. Since everyone's dignity is important, it must be ensured that when doing their term of incarceration, offenders' dignity is always respected. Every activity undertaken within the correctional centre by officials, whether for security or rehabilitation purposes, must not infringe the dignity of offenders. Offenders will pay attention to rehabilitation programmes if their dignity is respected.
- Human rights apply equally to everyone without discrimination. Because offenders have all their rights, like every human being, they should never be discriminated against just because they are incarcerated. In order to ensure effective control amongst offenders, they should be treated equally. This is mainly because discriminating against offenders on the basis of race or gender, for example, will only lead to problems such as the ineffectiveness of the rehabilitation programmes.
- Human rights can never be replaced by anything else and they can only be limited in specific situations. As indicated, the value of human rights can never be sacrificed for anything else. The incarceration of a person does not mean that he or she is no longer entitled to rights as a citizen. As a result, it has to be borne in mind that whatever the situation might be, offenders will always have their rights. Although certain rights might be limited within the correctional centre, such as the right to property, the limitation must be lawful and justifiable.
- All human rights have to be respected and applied equally and not at the expense of other rights. In addition, everyone should enjoy their rights without being discriminated against, and rights themselves should be applied equally. This applies to offenders too. Within a correctional centre, offenders must have the opportunity to

have all their rights respected. For example, the enjoyment of the right to religion does not mean this can be done at the expense of the right to privacy.

2.2.2 Classification of human rights

Human rights can be classified into different categories. Nel and Bezuidenhout (1995: 51) identify the different classifications of human rights, i.e. classic and social rights, civil rights, political rights, economic and social rights, cultural rights as well as fundamental and basic rights.

2.2.2.1 Classic and social rights

Classic and social rights are the rights which restrict the powers of the state towards the individual with the aim of creating the conditions that are necessary for human development. Individual needs such as employment, education and health care are referred to as classic rights. Social rights, on the other hand, oblige the government to provide the necessary means to cover the needs of the community.

Within the correctional context, the value of classic and social rights implies that offenders must be provided with the necessary means suitable for their development. Offenders must be given educational opportunities, for example, to ensure that when they walk out of the correctional centre, they become better citizens than they were before. It is the responsibility of the state to provide such services without the offender paying anything.

2.2.2.2 Civil rights

Civil rights refer to the physical integrity rights which ensure that every individual enjoys their rights without being victimised by other individuals or the state. Offenders need civil rights in order to protect them from any violations or victimisation by the state or other offenders. Civil rights, which include the security of the person and liberty, the right to be protected against torture and other inhuman or degrading treatment, and the right not to be subjected to slavery or servitude, protect offenders from any ill treatment

while they are serving their sentences. Offenders will only be treated in a manner that is socially acceptable.

2.2.2.3 Political rights

Political rights offer individuals an opportunity to participate in the political activities of their country without being limited by anyone else. Individuals are also allowed to be part of any political party of their choice without being obliged to be a member of any party. Both civil and political rights are immediately enforceable and justifiable.

Political rights offer offenders the power to participate in political activities of the country. Offenders are free to be associated with any political party of their choice and are also free to participate in the election. The right to participate in the political activities can be related to freedom of association, assembly and freedom of expression, which offenders are also entitled to.

2.2.2.4 Economic and social rights

Socio-economic rights offer a stepping stone for every individual to achieve their goals since they give access to a fair wage, trade unions, medical care, acceptable standards of living and reasonable limitation of working hours.

Socio-economic rights give every individual an edge to achieve their goals in life. Offenders are entitled to socio-economic rights because they also have their own needs which must be fulfilled. They are entitled to better medical care and an acceptable standard of living as well as education while they are within the correctional centre.

2.2.2.5 Cultural rights

Everyone has the right to be part of his or her community culture without being restricted by anyone else or anything else. Cultural rights offer individuals full protection of their culture and their morale. According to Davidson (1993: 41), economic, social and cultural rights depend on their positive and effective implementation.

The correctional population is made up of offenders from different communities with different ways of living. The same also applies to culture. Because of cultural diversity, each offender must be given enough opportunity to participate in his or her own cultural activities. This culture must be of an offender's choice and cannot be forced onto someone else. Preference must not be given to certain offenders' cultures, but rather they should all get equal attention.

2.2.2.6 Fundamental and basic rights

Basic rights are important for every human being and they are necessary to have in order to lead a normal life. Such rights can never be compromised for anything else. An example is the right to life. Fundamental rights are binding and they are non-negotiable rights.

Fundamental and basic rights are those rights that one needs in order to get through the day. Offenders need adequate food, clothing and shelter, amongst other things, for them to lead a normal life. As soon as offenders are admitted into the correctional centre, the state takes responsibility for ensuring their fundamental and basic rights and they should make sure that this happens.

2.2.3 Elements of a human rights based approach

The following are the six elements of a human rights based approach that provides a valuable basis for assessing the international human rights standards (United Nations Economic and Social Council, 2003):

- Both individuals and groups should participate in the decision-making process. Offenders, like any other human being, must participate in the decision-making process, especially if such a decision is going to have an impact on their rehabilitation process. Because offenders are the most important role players in their own rehabilitation, they too must participate in making decisions that affect them. The process of rehabilitation will be effective if offenders are allowed to make decisions on what they think will work for their rehabilitation.

- Both individuals and groups have the power to challenge any decision that affects them. Offenders also have the right to challenge any decision that affects them. Most importantly, when it comes to their rehabilitation offenders must ask questions where they do not understand what impact such a decision has.
- No one can be discriminated against and both individuals and groups should enjoy their rights equally. The fact that offenders should all enjoy their rights equally without discrimination is mentioned in 2.2.1. Rehabilitation requires the participation of every offender without the exclusion of certain categories of offenders.
- Both individuals and groups should be empowered to ensure that they know what the rights imply for them. Offenders should receive enough education on the rights that they have while incarcerated. This will empower offenders so that they know when and how to apply their rights. Through this offenders will know when their rights have been violated and what options are available to them to deal with such violations.
- All the human rights should be known by people and they should be balanced to ensure that no one right is superior to another. Offenders' rights should apply equally to everyone. It must be ensured that the enjoyment of a certain right is not at the expense of another right. For example, offenders' right to education cannot be enjoyed at the expense of the right to food. Offenders need all their rights for them to participate in the rehabilitation process.
- There should be a link between the decision-making at all levels regarding human rights. When decisions are taken, it should be ensured that they are not in conflict with the rights of offenders.

Respecting, fulfilling and protecting everyone's rights is not a luxury, but rather an obligation that has to be fulfilled at all times under the terms of regional, national and international law. Offenders must also have full protection of their rights. It is the duty of

the government to take progressive steps to ensure that all people, including offenders, enjoy their rights without violation and with full access to services such as justice, health, education, food and water.

Even though there has been some progress made with regard to putting human rights at the centre of international agenda, the truth of the matter is that some people view them as rhetoric rather than legal realities that have to be respected and treated as serious. As a result everyone should understand that the rights were formulated to protect us against abuse and not for them to be abused. Everyone should practise their rights at the right time and try to understand what they are. It should be understood that the protection of offenders' rights is not a means of making their sentence easier. It should be seen as a means of ensuring that they are treated with respect like every individual wants to be treated.

2.3 THE DEVELOPMENT OF THE APPLICATION OF LAW

History indicates that from the earliest times, members of society had laws regulating them (Carlson, Hess & Orthmann, 1999: 41). When societies began learning language and writing skills, the process of recording laws began. The next sections will define and examine the true origins of law that now form part of every human being. In addition, the historical sources of law mentioned by Schmallegger (2001: 118), which include the Code of Hammurabi, the Mosaic Code and the early Roman law, will be outlined. The Feudal Period, the Middle Ages and the Renaissance will also be discussed.

“Any group in which human beings associate together for any length of time requires some mechanism to ensure its collective stability. Among other things, that mechanism must ensure a predictable degree of conformity by the members of the group to some coherent rules of conduct. Such rules are normative or prescriptive: They call on the members of the group to do some things and to refrain from doing others, in given circumstances. Their mere existence will not of course guarantee that the actual conducts of the members of the group will always conform with them. But in order to maximize such conformity, the rules will generally also prescribe incentives towards that end, in the

form of rewards for conformity, or of punishments or other sanctions for infringement. All this is the case as much for families, clubs, companies, co-operations, political parties and trade unions as it is for more heterogeneous communities such as villages, towns, provinces and nations” (Sieghart, 1984: 3).

From the above passage it is clear that laws affect almost everything that individuals do. They are the sets of rules that are recognised as having authority over any conduct or action. These sets of rules are enforced by the legislation of any given state. The idea is that by adhering to these rules, there will be order and justice within the community.

2.3.1 The Code of Hammurabi

The Code of Hammurabi is the first known description that was used by society in order to regulate their behaviour and at the same time take vengeance on those who disobeyed the rules (Carlson, Hess & Orthmann, 1999: 41). The 282 clauses of the Code, which were engraved on stone tablets, were developed by the sixth king of Babylon, Hammurabi (1792 – 1750 BC). In the Code, rules that govern social behaviours concerning issues such as false accusations, witchcraft, military service, family laws, tariffs, loans and debts were set out. The Code of Hammurabi was based on the principle of punishment.

The laws which were included in the Code dealt with both public and private matters, with humane approaches to human problems. The laws covered, amongst other things, marriage and family relations, negligence, fraud, commercial contracts, duties of public officials, property and inheritance, crimes and punishment, techniques of legal procedure, protection for women, children and slaves, fairness in commercial exchanges, protection of property, standard procedures for adjudicating disputes, and debt relief for victims of food and drought.

2.3.2 The Mosaic Code

The Code of Hammurabi was chronologically followed by the Mosaic Code, which was less sophisticated. Vito, Maahs and Holmes (2007: 7) mention that the Mosaic Code of the Israelites, which came into effect in 1200 BC, developed the laws of the Old Testament, which include the Ten Commandments. The intention of developing the Mosaic Code was to form a republic of freemen who were equally protected by the government. Breaching the laws in the Code would be regarded as offending God. It was based on the perception that all crimes are sins, just as all sins are crimes. This is confirmed by Westerholm (2004: 28), who states that Mosaic laws prohibit – thus makes sinful for those bound by its statutes. Instead of saying “do such and such a thing”, the laws of Moses usually say “don’t do this and that”. An example of this can be found in the Ten Commandments where there are only three do’s and seven don’ts.

White (2000: 95) mentions that the outstanding difference between the Code of Hammurabi and the Mosaic Code is that the Hammurabi Code was civil in nature, whereas the latter was a combination of both civil and spiritual. Hammurabi claimed to be responsible for the laws that he developed and took credit for the establishment of justice in his people, while Moses gave credit to his God and believed that by developing the laws, he was serving his God. The Code of Moses legislated respecting the whole subject and preventing slavery amongst citizens (Elliot, 1859: 212). The Code also established a model-free government with just and equal laws.

2.3.3 Roman law

Roman law laid the foundations for much of the modern Western civil and criminal law. In 451 BC a commission of ten citizens was selected to prepare a written text of customary law (Stein, 1999: 3). The end-product of their work became known as the Twelve Tables, which marked the beginning of Roman law, and was formally proposed to the citizens for their approval. Although the original Twelve Tables have since been lost, records of sections which were in the original document survived.

The Twelve Tables consisted of a collection of basic rules which were related to family, religion and economic life. They were based on the principle of common and fair practices which were accepted by the early Roman tribes that existed prior to the establishment of the Roman Empire. The following table indicates the set of laws which were included in the Twelve Tables. These include the rights of fathers over the family, land rights and public law.

TABLE 1: THE TWELVE TABLES OF ROMAN LAW

| TABLE | LAWS |
|------------|--|
| TABLE I | Procedure: for courts and trials |
| TABLE II | Trials, continued |
| TABLE III | Debt |
| TABLE IV | Rights of fathers (<i>paterfamilias</i>) over the family |
| TABLE V | Legal guardianship and inheritance laws |
| TABLE VI | Acquisition and possession |
| TABLE VII | Land rights |
| TABLE VIII | Torts and delicts (laws of injury) |
| TABLE IX | Public law |
| TABLE X | Sacred law |
| TABLE XI | Supplement I |
| TABLE XII | Supplement II |

2.3.4 The Middle Ages

Clear and Cole (1994: 31) assert that even though there are people who point to the Code of Hammurabi as the first comprehensive statement which prohibited unacceptable behaviour, it was not until the thirteenth century at the beginning of the European Middle Ages that such a statement existed. Emperor Justinian, who took the throne of the

declining Roman Empire in 527 BC, had the idea to restore the empire to its former glory (Bartollas, 2002: 26). As a result, he reviewed and revised the Roman laws, which had become a huge and confusing mass of laws passed by the Roman senate, imperial edicts, judges' decisions and the opinions of lawyers and legal scholars. Justinian gave orders to collect legal materials of various kinds into several new codes, which became the basis of Roman law in the Middle Ages. The result of this work was *Corpus juris civilis* with the key part known as the Justinian Code.

The Justinian Code consisted of four books, i.e. *Codex constitutionum*; *Digesta or Pandectae*; *institutions* and *novellae constitutiones post codicem*. It had two sets of laws, namely public laws and private laws. Public laws dealt with matters related to the organisation of the Roman state, its senate and government offices, whereas private laws dealt with matters related to contracts, personal possessions, the legal status of various types of people (citizens, free people, slaves, freedmen, guardians, husbands and wives, etc.), and injuries to citizens.

According to Carlson, Hess and Orthmann (1999: 43), the lasting influence of the Justinian Code can be seen in the following provisions:

- No person may suffer a penalty for what they think.
- Anything not permitted the defendant ought not be allowed the plaintiff.
- The burden of proof is upon the party affirming, not on the party denying.
- A father cannot be a competent witness for a son and also a son cannot be a witness for a father.
- When inflicting penalties it is important to consider the age and the experience of the accused.

2.3.5 The Feudal Period

Crimes which were committed prior to the thirteenth century were regarded as harms against all individuals and the punishment was forfeiture of land and property (Carlson, Hess & Orthmann, 1999: 45). During this Feudal Period, there was a rise in a hierarchy

of rank to a predominantly static social structure in which every man knew his place, according to whom it was that he owed service and from whom it was that he received his land. Rights of succession to land were strictly controlled and monitored by various laws or customs in order to avoid conflicts amongst citizens.

Within the feudal society every man was bound to every other by mutual ties of loyalty and services. As opposed to other eras, society in the Feudal Period was not bound together by written laws or a formal bureaucratic system. Instead they were bound together by a network of social relationships. A feudal society was a world where oaths and obligations, vows and promises as well as established expectations and customs provided the only stability amongst the communities. Just being loyal and fulfilling one's oaths were the most important values of a feudal society.

2.3.6 The Renaissance

The Renaissance, which was also known as the Enlightenment or the Age of Reason, took place in the eighteenth century (Clear & Cole, 1994: 38). It was in this era where liberalism, rationality, equality and individualism were emphasised. Because life in Europe was more dominated by social and political thinking, the shift was to ensure that society moved from such a situation.

The writings of philosophers also played a huge role to ensure that the shift took place. Writings of activists such as Martin Luther and John Calve encouraged a new emphasis on individualism and the social contract between government and society. In addition, the writings of John Locke and of Montesquieu and Voltaire also emphasised liberalism. According to Clear and Cole (2000: 29), the scientific revolution played its part too. Sir Isaac Newton urged that the world could be known and reduced to a set of rules. In this revolution, people were encouraged to question established institutions and to use the power that they had to reason in order to remake society. In addition, they were made to believe that a just community could be only brought about by progress.

2.4 HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

The former United Nations General, Koffi Annan (1998: 18) wrote: “It is the universality of human rights that gives them their strength, it endows them with the power to cross any border, climb any wall, defy any force.” The idea of human rights covers thousands of years. It is based on religious, cultural, philosophical and legal developments throughout the history of humankind. The modern concept of human rights has much more history than we can imagine. It emanates from the ancient times which can be taken back to the times of the Old Testament in the Western tradition (Palumbo, 1982: 9). This notion of human rights has over the years been discussed by philosophers, poets and thinkers in antiquity throughout the world, more specifically in Ancient Greece. Hunt (1996: 1), on the other hand, believes that the idea of human rights has its origins in the west and it developed as a result of political conflicts that took place in Great Britain, between Great Britain and its North American colonies and in France.

Religion also made a major contribution to the development of human rights. Reichert (2003: 21) states that all the religions of the world somehow stress that humans must treat each other with dignity and that they must try by all means to help one another when they are in need. Christianity, Buddhism, Confucianism and Islam make reference to what we now call human rights. They are all based on the idea of respecting the dignity of human beings and they spell out the obligations of people towards human beings, nature and God.

After centuries of intense torture and punishment of citizens, social philosophers reacted against this type of treatment in their writings. According to Fox (1985: 11), the list of philosophers who reacted against their governments between the sixteenth and eighteenth centuries include Grotius (1583 – 1645), Hobbes (1588 – 1679) and Locke (1632 – 1755). All these great philosophers opened the way for other philosophers, such as Montesquieu (1689 – 1755) and Rousseau (1712 – 1778), who broke down the principle of the universal human rights into the rights of individual citizens.

Grotius believed in his theory of natural law that the individual human being was the focal point of all the law, including the law of nations (Sunga, 1992: 142). He wrote the famous *de jure belli ac Pacis* which was first published in 1625. This work, which is now referred to as the foundation text in the history of international relation theory of humankind, became a much cited text on sovereignty, natural law and warfare. Grotius rejected the selfish interest of the state as the basis of international relations. It is from this work that natural law was emancipated from theology and placed within the house of jurisprudence. Grotius was committed to “the idea of legalism, liberal, equitable and to human rights” (Kahn, 1983: 10). He gave the earliest statements which now form part of our modern human rights.

Hobbes insisted that it was human nature to love one’s self best and to seek one’s own good. According to Hobbes, men were by nature equal in their body and mental faculties. Harrison (2003: 102) writes that Hobbes made it a precept of the law of nature that every man divested himself of the right that he had to all things by nature. Ryan (1996: 234) labels Hobbes as an anti-pluralist because of his insistence on the sovereign’s unique standing as the source of law, which meant that no subordinate body such as a church or university could claim any independent authority over its members other than what the state might grant it. Hobbes was of the opinion that the state had unlimited power and decided what was wrong and what was right. In terms of rights, he felt that the state had to have as much power as possible so that society could have more and better rights.

Locke was of the opinion that individuals had the right to life, liberty and possessions (Du Plessis, 1999: 29). He argued that all people were free and equal in their natural condition. They could easily govern themselves in terms of natural law as long as they respected the rights of others. According to Locke, each man had the right to acquire property. His idea of civil society was one governed by the law of nature which, according to him, was universal and such society was one governed by civil paramount. Unlike Hobbes who negatively defined liberty, Locke positively valued the aspects of liberty by referring to liberty as the promise or freedom to enjoy the property which the individual was entitled to (Tuckness, 2002: 105). Hobbes argued for the individual to

sacrifice liberty for peace and security, while Locke emphasised the combination of liberty, peace and security.

Montesquieu was the great author who, in his work entitled *The spirit of laws* in 1748, compared republican, despotic and monarchical forms of government (Mays & Winfree, 2005: 35). He insisted that power should be divided equally among judicial, executive and legislative branches. This separation would, according to him, ensure individual freedom. He urged that the best form of government was the one in which citizens had the right to do anything not restricted by the law. Montesquieu stated that “if legislative and executive powers are vested in the same body or in the same individual, there can be no liberty, nor can there be any liberty if the judicial power is wielded by either the legislative or the executive branch of government. If all three powers are in the same hands, all is lost, if a single individual or body exercises two but not three of the powers, the government can be described as moderate though not as promoting liberty, if the three powers are rigidly separated, the constitution can be said to promote liberty” (Shackleton, 1988: 4).

Rousseau, a French philosopher, rejected a state where there is inequality and stated that it was against the law of nature (Du Plessis, 1999: 30). His thoughts and beliefs were aimed at creating a system of freedom, equality and justice. The results of that would be a free and equal society. According to Rousseau, every person has the right to everything that they need.

2.5 THE DEVELOPMENT OF HUMAN RIGHTS IN ENGLAND, AMERICA, CANADA AND FRANCE

Documents such as the Bill of Rights of 1689 (England), the Declaration of Independence of 1776 (America) and the Declaration of the Rights of Man and of Citizens of 1789 (France) opened ways for many human rights instruments that we have nowadays. Many of the rights that are provided for in these documents are based on the writings of philosophers such as Locke, Montesquieu and Rousseau (Baehr, 1996: 5).

With the promotion and respect of offenders' rights by the correctional system, order can be maintained within the correctional centre, thereby enhancing the rehabilitation of offenders mainly because they will respond positively to programmes in a situation where they are treated humanely. The development of offenders' rights varies from country to country. To understand the concept, this section will explore the development of offenders' rights as well as human rights in England, America, Canada and France.

2.5.1 England

The Bill of Rights of 1689, which is also known as An Act Declaring the Rights of the Subject and Setting the Succession of the Crown of 1689, guaranteed the protection of citizens from violations. It was developed by the convention of parliament after King William and Queen Mary took over the throne from King James II. The Bill of Rights of 1689 has paved the way for other important human rights instruments such as the United States constitution, the Universal Declaration of Human Rights and the European Convention of Human Rights. It was the first document to be referred to as a Bill of Rights, although it protected few individual rights (Monk, 2000: 22). The Bill of Rights of 1689 set out the following rights as basics for all individuals:

- Freedom from royal interference with the law. This provision sets out to prove that no one is above the law, not even the Queen herself. As a constitutional monarch, the royal family cannot pass or make legislation, so they are also governed by the provisions set out in the Bill of Rights. The royal family is prohibited from interfering with the application of the provisions in the Bill of Rights whether by an individual or by an organ of the state. In addition, the sovereign cannot establish their own courts or act as judges for themselves and they can be prosecuted like any other citizen.
- Freedom from taxation by royal prerogative, without agreement by parliament. Any payment to the sovereign has to be approved by parliament. The royal family cannot demand tax from citizens whenever they wish to.

- Freedom from petition to the king. As a system of government, the constitutional monarchy has many strengths, but this does not prevent citizens from reaching the king regarding any matter that affects them.
- Freedom from a peace-time standing army, without agreement by parliament. The peace army does not disband even during times of peace. English citizens are protected by having the presence of this kind of army and they do not need approval from parliament.
- Freedom [for Protestants] to have arms for defence, as allowed by law. The Bill of Rights of 1689 provides that citizens have the right to arms during times of war. This will ensure that they protect themselves against any threat.
- Freedom to elect members of parliament without interference from the sovereign. Citizens are allowed to elect members that they want in parliament. The sovereign is prohibited from compelling citizens to elect certain members to parliament. Parliament must be made up of what people want and not what the sovereign wants. The royal family must always remain politically neutral.
- Freedom of speech in parliament. This means that proceedings in parliament are not to be questioned in the courts or in any body outside parliament itself, including the sovereign (the basis of modern privileges). Members of parliament are protected against legal proceedings for things done and said in parliament.
- Freedom from cruel and unusual punishments, and excessive bail. The Bill of Rights 1689 ensures that even if a person has been found guilty of a serious offence, that person should not be subjected to cruel and unusual punishment. After undergoing a fair trial, the person must be given punishment that fits the crime. The same procedure applies to bails when they are imposed: they should be necessary for the offence committed.
- Freedom from fines and forfeitures without trial. As mentioned above, a person who has undergone a fair trial can be punished for the offence that they have committed. However, such a person must be given an opportunity to plead their case in court. Without a fair trial, a person has the right to oppose any punishment imposed.

Between 1822 and 1988 there were just over 40 cases involving prisoners' rights in England and up until 1979 judges and officials in England regarded prisoners as having one right, which was to be released after serving their sentences. Prisoners could only enjoy privileges at the discretion of the Home Secretary official. Even though it has been a subject of amendments, the Prison Act of 1952 remains the major piece of legislation which has addressed the prison system in England for over 50 years (Creighton, King & Annott, 2005: 1). The Home Office is responsible for England penal systems. The Prison Act of 1952 empowers the Home Secretary to make rules for the regulation and running of prisons, which includes the treatment, employment, discipline and control of anyone who is in prison. However, the Act does not specify the day-to-day running of prisons.

Between 1960 and 1970 a combination of liberal majority justice, high prison population and poor prison conditions caused the Supreme Court to assert the supremacy of constitutional individual rights over administrative convenience (Ashman, 1991: 511). Only then were prisoners granted procedural rights in disciplinary hearings and transfers to mental hospitals. Cruel and unusual punishment was also prohibited based on the Eighth Amendment of the Constitution.

In 1964, prison rules were developed to give effect to the decision of the European Court of Human Rights as well as changes in English statute law (Fowles, 1989: 86). These rules prescribe minimum standards, confer rights, impose duties and allocate responsibilities. The most important feature of the rules is that the Home Secretary is responsible for all matters in prison except where prisoners' rights to food, clothes, shelter and medical treatment are affected. Prisoners have the same civil rights as ordinary citizens even though the extent to which they can exercise them depends on the prison authorities. According to Fowles (1989: 63), all prisoners who are held in England prisons have the European Convention on Human Rights and its institutions to protect their human rights and redress their grievances.

2.5.2 America

The continental congress of America met on the 10th of June 1776 and selected five members to draft a declaration of independence and Thomas Jefferson was selected as the principal author (Spaeth & Smith, 1991: 3). By 4 July, the final draft was signed by the president of the congress, John Hancock.

Commanger (1949: 102) states that the language that was used in the preamble to the Declaration of Independence was favourable for human rights and it ensures that everyone is included: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.”

Though the Declaration of Independence included the right to life, liberty and the pursuit of happiness, it did not include the protection of minimum rights such as the freedom of the press and the freedom of religion. These rights were later included in the Virginia Declaration of Rights (Davidson, 1993: 4). The Virginia Declaration of Rights was the first declaration of rights to bind patriot government and it contained a mix of individual rights which were drafted by George Mason in 1776 (Rodgers, 1993: 6).

The Virginia Declaration of Rights consists of 16 articles which guarantee fundamental rights and ensure that everyone is free and equal. As indicated in the first article of the Declaration, “all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely; the enjoyment of life and liberty, with

the means of acquiring and possessing property, and pursuing and obtaining happiness and safety”.

In addition to equality, the Declaration also protects all individuals from cruel and unusual punishment, guarantees justice for all and freedom of religion, among others. Both the Virginia Declaration of Rights and the Declaration of Independence laid the foundation for the American Bill of Rights.

When it comes to the treatment of offenders, Walsh (2001: 264) indicates that criminal offenders used to be treated as slaves and they had no rights up until the middle part of the twentieth century. An example of offenders being regarded as slaves can be found in the well-known case of *Ruffin v Commonwealth* 62 Va (21 Gratt) 790 (1871), where a Virginia court ruled that “the prisoner is for the time being a slave, in a condition of penal servitude to the state, and subject to such laws and regulations as the state may choose to prescribe” (Robbins, 1994: 111).

Silverman (2001: 330) summarises the evolution of offenders’ rights in America from the sixteenth century hands-off approach when offenders were treated as slaves of the government until the current situation. This evolution includes the hands-off approach, the hands-on approach, restrained hands-on approach and the court deference approach.

- **Hands-off approach**

This approach was used by the state and federal judiciary from 1776 until 1961. In this approach offenders were treated as slaves of the state and were only entitled to those rights that jail and prison administrators allowed them. The judiciary had no say in any matters pertaining to offenders’ rights and prison conditions, as they were the responsibilities of the prison and jail administrators. In this approach prisoners were rarely successful in attacking conditions of confinement or procedures followed by the prison personnel. The courts assumed that by being convicted the person lost their rights. According to Champion (2004: 118), this approach went on unchallenged for many years

up until 1941 in the United States Supreme Court in *Ex Parte Hull*, 312 US 546 (1941). In this case offenders were defending their rights to file petitions in court. The court ruled that prison officials could not impose themselves as barriers between prisoners and the court if inmates were seeking access to courts with regard to their criminal convictions.

- **Hands-on approach**

This approach was used by the courts between 1964 and 1979 after the hands-off approach was discarded during the early 1960s. The hands-on approach recognised that inmates were people and they were entitled to basic constitutional rights. In this approach, federal and state courts considered inmates' claims that they were denied constitutional rights. The courts started to intervene where necessary to ensure that inmates' rights were observed.

- **Restrained hands-on approach**

This approach was broadly used between 1980 and 1986. The rights which were enjoyed by inmates were not as broad as the ones enjoyed by non-prisoners. Prison and jail administrators could limit those rights, provided that this restriction was aimed at maintaining prison needs such as order, security and discipline. In this approach federal and state courts left the day-to-day correctional operations to prison officials. Courts would only interfere in an instance where constitutional rights of offenders were violated. These rights included adequate food, medical care and sanitation.

- **Court deference approach**

This approach has been used since 1987. As in the restrained hands-on approach, offenders retain their rights but more focus is on institutional needs for order, security and discipline. Lower courts were given the responsibility to defer the judgments of correctional administrators regarding such institutional needs. The courts attempt to find a mutual accommodation of rights and deference in this approach.

2.5.3 Canada

In order to understand the Canadian legal system, it is necessary to understand English law, as Canada derives its legal system and most of its laws from England (Jennings & Zuber, 1972: 3). The rights, freedom and liberties of people have been of great concern since the end of the Second World War.

The Constitution Act of 1867, which was originally called the British North America Act, distributed the powers of government amongst ten provinces, three territories and the national government (sections 9 to 95). In section 92(13) of the Act provinces were given powers to make laws which were related to property and civil rights in that specific province. There are five key features in the Constitution Act of 1867, i.e. unification of Canadian colonies, establishment of executive, legislative and judicial branches of government, establishment of independent judiciary, guarantee of minority language rights and lastly the establishment of Canada as a federal state.

Even though the Constitution Act of 1867 does not have an actual written bill of rights, it makes specific reference to constitutional rights (Hogg, 2003: 682). The following rights are referred to in the Act:

- Education (section 93)
- Rights for judges to serve until removed by legislature (section 99)
- Democratic rights which allow for the sitting of parliament (sections 20 and 86)
- Rights which allow elections (section 50)
- Language rights (section 133)
- Rights which allow people to carry goods across borders at no charge (section 121)
- Exemption of government from paying land taxes (section 125)

Jennings and Zuber (1972: 57) mention that the federal parliament of Canada passed the Canadian Bill of Rights in 1960. The Bill of Rights Act of 1960 declared and recognised human rights and freedoms for all Canadians. In the Bill of Rights fundamental freedoms

such as the freedom of association, peaceful assembly, conscience and religion, and freedom of thought, belief, opinion and expression are guaranteed.

The ineffectiveness of the Canadian Bill of Rights and the pressures from the movement for human rights and freedoms that emerged after World War II motivated parliament to improve the protection of human rights. This is because the previous Act was not in line with the Universal Declaration of Human Rights. As a result, the Canadian Charter of Rights and Freedoms was developed. This Charter is a bill of rights entrenched in the constitution of Canada. It forms the first part of the Constitution Act of 1982. Within the Charter, political and civil rights of people in Canada are protected. The Charter was designed to unify Canadians around a set of principles that embody those rights. In addition to fundamental freedoms listed in section 2, the Charter also guarantees democratic rights, mobility rights, legal rights, equality rights, minority language rights and educational rights.

The equality of all Canadian citizens is provided for in section 15 of the Charter. Within sections 3, 4 and 5 of the Canadian Charter of Rights and Freedoms, democratic rights are listed. Section 3 specifically protects the individual's right to vote. In terms of this section, all eligible Canadians are allowed to participate in the voting process. Sections 7 to 14 in the Charter list all the legal rights of Canadian citizens. These provisions offer protection of individuals' autonomy and against the actions of the government. Section 7 mentions three types of protection, i.e. the right to life, liberty and the security of a person. With section 8 protecting individuals from unreasonable search and seizure, individuals are guaranteed that their privacy will not be unreasonably violated. Section 9 protects individuals from any unlawful detention or imprisonment. While both sections 10 and 11 specify rights related to arrest or detention in any criminal or penal matter, section 12 protects individuals from any cruel and unusual punishment. Section 11 provides for just administrative action in criminal proceedings.

The correctional system of Canada, like any other correctional system in the world, has taken many forms over the years as it had its own way of dealing with criminals.

Confinement was not used as a method of punishment before 1835, while other parts of Canada used transportation, banishment, fines, corporal punishment, mutilation and death in order to deal with criminal behaviour (Prisonjustice.ca, 2001).

According to Winterdyk (2004: 66) and Goff (1999: 73) there are several commissions that played major roles in the evolution of the Canadian correctional system. These commissions also played a vital role in the recognition of offenders' rights. They can be summarised as follows:

- **The Brown Commission**

After many problems in the Kingston penitentiary, which was built in 1832, a commission was established and was chaired by George Brown, who founded the *Globe newspaper*, in order to investigate the functioning of prisons. The Commission made the following recommendation in their two reports:

- The 1848 report recommended that wardens be removed and suggested that there be changes in the internal operations of the prison after it was discovered that prisoners were being forced to perform hard labour and that corporal punishment was being used in prisons.
- The 1849 report recommended that conditions and the treatment of offenders be improved and the focus be on reforming the offender instead (Goff, 1999: 74).

To acknowledge the Commission's contribution, these recommendations were later included in the Penitentiary Act of 1851 and the Prison Act of 1857.

- **The Archambault Commission**

After unrest and major violence in Canadian prisons, the Archambault Commission was established for the duration 1936-1938 and it filed a report with 88 recommendations which addressed all important aspects of the correctional system. The report included the following recommendations (Goff, 1999: 80):

- The functioning of corrections should focus on crime prevention and not punishment.

- Rehabilitation must be placed at the forefront of all the activities.
- Training for the existing staff and employment of suitably qualified staff must take place.
- Inmates must be provided with better medical services and psychiatric services.
- Inmates must be provided with better educational services and vocational training.
- A new system of classifying inmates must be implemented.
- Federal and provincial correctional systems must be combined and run by the federal government to ensure effectiveness.

Even though the implementation of these recommendations was delayed as a result of World War II, in the end they played a major role in ensuring that Canada became a member of the United Nations in 1945. The recommendations were also included in the Corrections and Conditional Release Act in 1992.

- **The Fauteux report**

The Fauteux report, which was compiled in 1953 with the leadership of Justice Joseph Fauteux, introduced the medical model of corrections within the Canadian federal correctional system (Winterdyk, 2004: 68). In the medical model, medical solutions were believed to be a better cure for all human problems. Above the rest the Fauteux report placed rehabilitation at the forefront of the correctional system, like the Archambault Commission, and it recommended the development of special programmes for addicts, sex offenders and those offenders with psychological problems. According to Goff (1999: 82), the Commission's recommendations led to the construction of new medium security institutions and the creation of the National Parole Board.

In addition to the Brown Commission, Archambault Commission and the Fauteux report, there was also the Cason report which followed in 1984, the Daubney report in 1988, the opportunistic model and the Arbour Commission, which took place in 1996 (Winterdyk, 2004: 68). All the commissions played a major role in the correctional system of Canada and through the commissions the importance of the rights of prisoners was recognised.

The development of human rights within the Canadian correctional system can be summarised from the 1950s to the 1990s as follows:

- 1959 - The Parole Act was introduced, thereby allowing for the creation of the independent National Parole Board.
- 1960 - The Canadian Bill of Rights Act of 1960 which recognises the dignity and other fundamental rights and freedoms came into effect.
- 1972 - Corporal punishment was abolished and Programmes for First Nations Prisoners were introduced.
- 1975 - Canada committed itself to complying with and implementing the provisions of the Standard Minimum Rules for the Treatment of Prisoners.
- 1976 - Capital punishment was abolished within the Canadian correctional system.
- 1977 - An independent chairperson for helping to ensure that all disciplinary hearings and decisions against prisoners are fair and equitable was established.
- 1980 - In the case of *Martineau v Matsqui Institution Disciplinary Board* [1980] 1 S.C.R. 602 (1979), the court ruled that the correctional authorities must act fairly when taking decisions that affect offenders' rights.
- 1982 - The Canadian Charter of Rights and Freedoms, which protected the human rights of every Canadian citizen including offenders, was introduced.
- 1992 - The Corrections and Conditional Release Act was introduced.
- 1995 - Regional facilities specially designed to cater for the needs of female offenders were opened (Prisonjustice.ca, 2001).

2.5.4 France

Thomas Jefferson assisted Marquis De Lafayette with the compilation of the Declaration of the Rights of Man and of Citizens which was approved by the French National Assembly on 26 August 1789. It contains articles setting out the fundamental human rights (Doebbler, 2004: 21). Though the leaders of the French Revolution were inspired by the American Revolution, they came up with the French Declaration. Unlike the American Declaration of Independence which proclaimed the right of 13 colonies to self-

government, the rights in the French Declaration were intended to apply universally and not just in France (Haas, 2008: 44). The rights in the French Declaration went beyond those stated in the American Declaration to even include the right to security and the right to resistance to oppression. According to Robertson and Merrills (1996: 3), the French Declaration sets out a number of entitlements which are now referred to as civil and political rights. They include the basic principle that declares that all men are born free and should remain free and equal in their rights, equality before the law, freedom from arrest except in conformity with the law, presumption of innocence, protection against retroactivity of the law, freedom of opinion, and freedom of expression and liberty. The Declaration has over the years inspired a number of national and international declarations.

The Declaration of the Rights of Man and of Citizens of 1789 has many similarities to other human rights instruments which came before and after it (Jellinek, 1901: 27). Within the next sections some of the similarities will be covered. Like article 1 of the Virginia Declaration of Rights, the French Declaration of the Rights of Man and of Citizens of 1789 makes it clear that all men are born and remain free and that they are equal in rights.

In article 6, the Declaration of the Rights of Man and of Citizens refers to the right of the people to participate in all matters that affect them (Finer, Bogdanor & Rudden, 1995: 209). In addition, section 2 caters for the right to political association. Section 50 of the Canadian Constitution Act of 1867 allows for the free elections of the members of parliament. Also England's Bill of Rights of 1689 states that the election of the members of parliament ought to be free. As in other bills of rights, the Virginia Declaration states in section 6 that all the power is vested in people to participate in the elections of the members of parliament (Jellinek, 1901: 27).

In terms of article 7 of the Declaration of the Rights of Man and of Citizens it is mentioned that no person can be arrested without being given a proper reason for the arrest. According to Jellinek (1901: 27), the same provision is also mentioned in article 7

of the Virginia Declaration of Rights. It is stated that persons who are arrested have the right to face their accusers in court so that such persons can defend their cases. Only a person who has undergone a fair trial can be punished for their offences. England's Bill of Rights of 1689 also mentions that all fines and forfeitures that are granted before convictions are illegal.

Excessive punishments are, in terms of section 8 of the Declaration of the Rights of Man and of Citizens, prohibited. Like its French counterpart, the Virginia Declaration of Rights mentions in article 9 that excessive bail, fines, and cruel and unusual punishment are not required. The same provision is also stated in England's Bill of Rights of 1689.

Section 11 of the French Declaration refers to the principle of free communication of ideas and opinions (Finer, Bogdanor & Rudden, 1995: 209). People are guaranteed the freedom to write, speak and print without any restrictions. The England Bill of Rights also promotes the same freedom of speech amongst its citizens. Section 133 of the Canadian Constitution Act of 1867 promotes the usage of any language of the citizens' choice. The same applies to section 12 of the Virginia Declaration of Rights, which emphasises freedom of the press.

An army can, in terms of section 12 of the French Declaration, be established for the protection of citizens. This army cannot be used for individual benefits but it has to be established for the good of all. Jellinek (1901: 27) also mentions that section 13 of the Virginia Declaration of Rights makes provision for the establishment of an army. The same provision has also been made in England's Bill of Rights of 1689.

The following indicates a short summary of the relevant provisions in the French Declaration of the Rights of Man and of Citizens of 1789:

- Equality (article 1)
- Political association which encompasses the right to liberty, property, security and resistance to oppression (article 2)
- Equality before the law (article 6)

- Prohibition of unlawful arrest and detention (article 7)
- Just administrative action (article 9)
- Freedom of religion and opinion (article 10)
- Freedom of expression (article 11)

2.6 SUMMARY

The aim of this chapter was to examine the concept of the development of human rights. The development of offenders' rights in various countries was also discussed because for rehabilitation to take place, offenders deserve to have their rights respected at all times. Such respect can lead to the effective rehabilitation of the offenders within the correctional system. The provisions of other important documents that paved the way for important human rights instruments, such as the Universal Declaration of Human Rights, include those of the English Bill of Rights of 1689, the American Declaration of Independence of 1776 and the French Declaration of the Rights of Man and of Citizens of 1789. The history of the correctional system has always been related to the punishment of offenders with no respect for their rights. However, since the development of offenders' rights, every correctional system has shifted away from being a punitive institution to an institution that upholds the rights of offenders.

CHAPTER 3

THEORETICAL AND HISTORICAL PHILOSOPHY REGARDING REHABILITATION OF OFFENDERS

3.1 INTRODUCTION

As indicated in chapter 1, the purpose of this research is to determine the impact of rights on the rehabilitation process of offenders. Chapter 3 will attempt to uncover how the concept of rehabilitation became the important part of corrections that it is today. To achieve this purpose, the reader will first be introduced to the concept of punishment. Punishment has evolved through many phases since its inception and it differs from one generation to the next. Imprisonment as a form of punishment was also developed many years ago. The chapter will attempt to uncover the origins of prisons as well.

The White Paper on Corrections (Department of Correctional Services, 2005b: 18) provides that corrections and rehabilitation are the key concepts in the strategic direction of the Department of Correctional Services; the way in which the Department attempts to achieve this purpose will now be discussed. In addition, the conditions within which the correctional system operates will be discussed in order to determine whether they allow for the rehabilitation of offenders. The uniqueness of the rehabilitation process sets unlimited demands on all the parties involved in ensuring that offenders are rehabilitated. The chapter will cover the various role players in the rehabilitation process which include offenders themselves. Because of their regular contact with offenders, the role of correctional officials as rehabilitators cannot be underestimated and in some instances offenders tend to develop a trust relationship with them. After all the rehabilitation programmes have been successful, the offender is returned to his or her own community and it is there where the effectiveness of rehabilitation programmes can be measured. The role of communities will also be discussed.

3.2 THE CONCEPT OF PUNISHMENT

“In a society without punishment, the suffering imposed by interpersonal violence, for example, will fall entirely on its victims. But this is unjust, since their suffering is no way a result of their own actions and choices, and they do not in any sense deserve to suffer. Those who inflict suffering on them, on the other hand, have made a deliberate choice to inflict suffering” (Hoekema, 1986: 137). The idea of punishment is not only meant to serve as prevention of violence, but also to make the offender realise that what they have done is wrong. Punishment deters the offender and others from committing the same offence. According to Miethe and Lu (2005: 1), different types of punishment can be used for different purposes and methods vary from one society to another.

Even before the building of the large-scale prisons began in Europe in the seventeenth century, wrongdoers were punished (Schmallegger & Smykla, 2005: 421). Punishment was based on the concepts of law and justice which were used to maintain civil order. Hawkins and Alpert (1989: 5) mention that the types of punishment which were used included whipping, execution, banishment, confiscation of property, incarceration to await trial, incarceration after sentence, transportation, being sold into slavery, forced labour (in galleys or military service), mutilation, torture, stocks and pillories and fines, to which could be added more contemporary forms such as probation, parole and work release.

However, the punishment imposed on the offender must be justified regardless of the offence committed. Bartollas (2002: 27) explains that the concept of punishment has been justified in a variety of social contexts. Punishment can be justified on one or more of the following grounds, i.e. retribution, deterrence, incapacitation and rehabilitation. According to Rabie, Strauss and Mare (1994: 19), these justifications of punishment belong to one of two groups, namely absolute theory or relative theory. The distinction between the two theories is that, unlike in the absolute theories where the justification of punishment is found in the past, the justification in the relative theories is found in the future. In the absolute theory, punishment is an end in itself, while in the relative theories

punishment is only means to a purpose. There is only one absolute theory, which is retribution, whereas there are three relative theories, which are deterrence, prevention (incapacitation) and rehabilitation.

- **Retribution**

According to Walker (1991: 67), in the process of retribution the offender gets what he or she deserves. People are punished for the crimes that they have committed and the punishment that they get is somehow believed to be fit for their crimes. Retribution as the oldest justification of punishment can be traced back to biblical times in the Old Testament in Deuteronomy 19:21: “Life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Carlson, Hess & Orthmann, 1999: 15).

It is believed that the punishment that offenders get will prevent other people from committing the same crime because they realise the kind of punishment that they might encounter. Fines, restitution to the victim, community services and all the other methods that lead to the offender paying back to the community for what he or she has done are some of the forms of retribution (Stinchcomb & Fox, 1999: 48).

- **Deterrence**

A person is deterred from doing certain things because he or she knows the severe consequences that he or she might suffer from such actions. Farabee (2005: 58) identifies three components that determine the effectiveness of deterrence, namely certainty, swiftness and severity. If the punishment is more certain, swift and severe for the criminal act, then people will refrain from committing that criminal act.

Deterrence is made up of two types, i.e. general deterrence and specific deterrence. Snarr (1996: 59) explains that general deterrence occurs when individuals other than those who are punished avoid any criminal activity because they are afraid of the actions that might be taken against them, whereas special deterrence applies to the offender who is being

punished for the crimes he or she committed in a sense that the punishment will make him or her stay away from criminal activities because of bad experiences with previous offences.

- **Incapacitation**

Incapacitation can be viewed as the exact means of preventing the community from habitual offenders (Quinn, 2003: 11). In this process all that are guilty of criminal activities are locked up in a sense that some of their freedoms are taken away, and in that way community protection is guaranteed. During the period of incarceration the offender will be unable to commit any crime.

Silverman and Vega (1996: 22) identify three types of incapacitation, i.e. collective incapacitation, selective incapacitation and criminal career incapacitation. Collective incapacitation involves granting the same sentences to those criminals who have committed the same offence. Selective incapacitation involves having career criminals behind bars which will eventually lead to a drop in the crime rate in a community. Criminal career incapacitation involves selecting those criminals who have a high rate of offences.

- **Rehabilitation**

The rehabilitation process implies that offenders must be instilled with the sense of responsibility for their criminal act so that they can deviate from such acts. In the process of rehabilitation offenders are encouraged to learn sound work skills and go through educational programmes that will ensure their effective reintegration into society. All the rehabilitation programmes are made up of activities designed to remove conditions which are in an offender that led to his or her illegal behaviour (Balfour, 2003: 46). The rehabilitation programmes that offenders undergo while they are incarcerated can lead to their successful and effective reintegration.

3.3 THE DEVELOPMENT OF PRISONS

It is difficult to trace the true origins of prisons. This is mainly because over the years various authors have come with different opinions regarding the development of prisons. In England it is believed that King Henry II ordered that the first jail (also known as a gaol) be built in 1166. More gaols followed after it and they continued to operate until the workhouses and poorhouses were established in the fifteenth and the sixteenth centuries (Fagin, 2003: 374). Bartollas (2002: 32), however, mentions that prisons can be traced to the Ancient Greeks when Socrates, who was given a right to propose his sentence in 399 BC, was confined in prison even though he originally chose the death penalty for himself. Pieter Spierenburg, a Dutch historian, is of the opinion that incarceration as a form of punishment emerged around the year 1500 by means of *penal bondage* (Schmallegger & Smykla, 2005: 52). On the other hand, both the Old and the New Testament in the Christian religion and other religious books refer to confinement in rooms and facilities such as old cellars and dens for animals which were not originally constructed for punishment (Stinchcomb & Fox, 1999: 88). But Davies, Croall and Tyrer (1998: 311) conclude that prisons as we know them are relatively recent social experiments because prisons, dungeons and gaols which were previously used were meant to hold debtors and those who were awaiting trial and not those sentenced to imprisonment. Nevertheless, imprisonment as a form of punishment was developed in the United States and has over the years been adopted throughout the world (Carlson & Garrett, 1999: 3).

Prisons have been used to detain offenders for over 250 years (Coetzee, Kruger & Loubser, 1995: 27). Before the establishment of prisons the types of punishments for offenders were often cruel and torturous. History has indicated that the purpose of imprisonment from the Roman times up to the Middle Ages was to detain and torture those offenders who were awaiting trial so that they confessed and those who failed to confess, to pay their obligations (Van Zyl Smit, 1992: 1). The following factors led to the establishment of prisons:

- The emergence of crime as a serious social problem owing to large-scale poverty.

- Large numbers of criminals as a result of shortcomings that resulted from deportation and banning. Countries like England used to deport criminals to the colonies in North America where they worked as slaves. Immediately after the American War of Independence, England had large numbers of criminals and it was decided to detain them in old ships, known as hulks, in England harbours. After these ships became overcrowded, criminals were sent to Australia where they could settle as colonists after serving their sentences.
- Social sciences which developed in the 1600s and 1700s also made a great contribution towards the development of prisons. This is mainly because the contributions made by people like Calcaria Beccaria (1738 - 1794) and Alexander Maconichie (1787 - 1860) influenced the criminal law of that time.
- After Pope Clemens XI built juvenile offenders institutions in 1704 and San Michelle near Rome, they became a huge success. Under these institutions 50 juvenile offenders were subjected to the strict routine of silent association. During this time offenders would be gathered in a hall where the warden would read religious tracts aloud while the offenders were chained (Venter in Neser, 1993:63).

According to Ellis and Sowers (2001: 145), the history of the correctional system indicates that correctional facilities were meant to be beneficial because they were to deter citizens from future criminal activities as a result of severe punishment that offenders received while they were incarcerated. Imprisonment was unusual at the beginning of the eighteenth century as it was used mainly for political and religious offenders and debtors. However, before the middle of the nineteenth century imprisonment was the only method used to punish criminal activities in both Europe and America. Even though there was a facility developed on an underground copper mine in Simsbury, Connecticut, in 1773, historians consider the Walnut Street Jail as the first American prison (Johnson, 1997: 29).

3.3.1 Early prisons in America

Within the next sections early prisons in America will be discussed, including the Walnut Street Jail, which was then followed by the Pennsylvanian system and the Auburn system.

- **The Walnut Street Jail**

The first jail was built in the state of Philadelphia in 1776 (Schmallegger & Smykla, 2005: 205). According to Carlson and Garrett (1999: 9), administrators at Walnut Street Jail were influenced by Dr Benjamin Rush, who believed that punishment served to reform offenders, prevent them from committing future crime as well as remove them from society until they repented. At this prison, offenders were held in individual cells and they were expected to reflect on their criminal life and change their ways. Even though the Walnut Street Jail did not operate for more than half a century, it established the concept of solitary confinement where inmates have time by themselves and they can try to think about their behaviour which led them to being in prison in the first place.

Fagin (2003: 377) points out that a group of people known as The Philadelphia Society to Alleviate the Miseries of Public Prisons (also known as The Quakers), which was formed in 1787, led to many changes in the Walnut Street Jail. It was this group that fought for the humane treatment of offenders. The group's success came when the Pennsylvanian legislature passed a law calling for the renovation of this jail. As a result, prisoners were detained in a humane facility regulated by a set of rules such as the prohibition of the use of alcohol by offenders. In addition, offenders were provided with food and water at the expense of the public. Offenders were also separated on the basis of gender and age. Debtors and mentally ill offenders were separated from the criminal population. However, the prison population kept on increasing throughout the years.

- **The Pennsylvanian system**

Because of overcrowding, the Walnut Street Jail was eventually closed even though it had its own successes. This closure led to a need to establish a new prison. The Eastern State Penitentiary in Cherry Hill was opened in 1829 and it marked the full development of the penitentiary system, which was based on the separation of offenders (Clear & Cole, 1994: 51). At Cherry Hill prisoners were not only separated from the community which they came from, but they were also separated from each other. It was believed that the only way that rehabilitation could be achieved was when prisoners were kept in solitary confinement where they could not interact with one another. This model became known as the Pennsylvanian system and it was based on the following five principles:

- Prisoners should be treated in a manner that can lead them to change their lives and not be abused.
- In order to prevent unwelcome practices amongst prisoners they should be kept in solitary confinement.
- While offenders are alone in their cells they will have time to think about their actions and try to repent.
- Solitary confinement in itself is a punishment because human beings need to socialise with one another.
- By keeping prisoners in solitary confinement, costs for clothing and guarding are reduced and, in addition, prisoners do not need long periods of time for them to benefit from their imprisonment (Clear & Cole, 1994: 52).

Schwartz and Travis (1997: 23) point out two drawbacks of the Pennsylvanian system, i.e. high cost of food, sanitary services and work material that had to be brought to each cell, and the harmful psychological effect of solitary confinement.

- **The Auburn system**

The Auburn prison, which was built in 1816, was a maximum security prison. Like the Walnut Street Jail, the Auburn system also housed its inmates in single cells (Carlson &

Garret, 1999: 326). Prisoners were housed according to the nature of their offences. Those with serious offences were separated from those with less serious offences. Silence and industry were the main focus at Auburn prison. However, the Auburn system differs from the Pennsylvanian one because even though prisoners were kept separate at night, they would at least see each other during the day when they participated in congregated work.

Because prisoners at Auburn worked in groups, unlike at Pennsylvania, their work helped generate income, which in turn reduced the burden on the expenses such as housing and food. Prisoners generated enough funds to sustain themselves. According to Fagin (2003: 379), this economic advantage led to 29 state prisons being developed following the Auburn model between 1825 and 1969.

3.3.2 Models influencing correctional systems

In order to best understand the functions of corrections, various models which had an influence on various programmes within the correctional system must be examined (Champion, 2001: 21). The models include the medical model, the adjustment model, the reintegration model, the justice model and the neo-utilitarian punishment model.

3.3.2.1 The medical model

After the end of World War II, an individual treatment model dominated both public and professional discourse about crime and corrections (Sheley, 1995: 431). This model, which later became known as the medical model, regarded criminal behaviour as the symptom of internal, emotional conflicts or aberrant personality dynamics. According to this model, offenders' criminal behaviour can be treated. As Stinchcomb and Fox (1999: 30) put it, a person who is ill needs a doctor to diagnose the illness and, in turn, prescribe medication that can cure the illness. The doctor is not expected to punish the offender for being ill. This model was prevalent from the 1930s up to the mid-1970s and it viewed offenders' participation in criminal activities as a situation beyond offenders' control.

In this model offenders were treated according to their individual needs. Psychologists, psychiatrists and social workers helped the offenders throughout the process of recovery. To summarise the medical model Allen (1981) mentions that events that happened to a person in the past will have an impact on his or her human behaviour. Knowledge of these events will not only make it possible to control this human behaviour, but scientists will then implement mechanisms that they have. Because of its failure to contribute to the recidivism of offenders, the community lost faith in the model in the late 1960s (Singh, 2004: 52). It was realised that overcrowding and other inhumane conditions made it impossible to change the offenders' behaviour.

3.3.2.2 The adjustment model

Within the adjustment model, it was believed that conditions such as overcrowding in prison and lack of resources only contributed to making a person more of a criminal than before he or she was admitted to prison. According to Du Preez (2003: 8), the adjustment model was based on the following four views:

- Everyone has the possibility of becoming a law-abiding citizen as long as they avoid using their past problems as reasons for them to commit crimes.
- Offenders should see what their negative behaviour has done to the community and try to adjust in order to meet the community's expectations.
- An offender should attempt to learn alternative behaviours other than the negative ones.
- The way in which an offender interacts with other members of the community must be taken into account in order to understand the causes of his or her behaviour.

3.3.2.3 The reintegration model

The reintegration model opposes the medical model's policy of offenders' isolation. The reason is that the isolation of offenders will not address offenders' problem of criminality (Neser, 1993: 62). Instead, any form of treatment taking place in prison must take into account the reintegration of offenders into the community. In this model offenders are

able to renew their ties with their families. It should be noted that offenders will have to return to the community at some stage; hence offenders should be treated and detained in a prison situated within the community in which they are going to be released.

According to Champion (2001: 23), the model encourages the community to be involved in the reintegration of the offender. Community volunteers and other professionals are utilised in assisting offenders when they are needed. In turn, this community support will help offenders to adapt easily in the community.

3.3.2.4 The justice model

This model, which was established in the 1970s, rejects rehabilitation as a major objective of punishment (Champion, 2001: 25). In this model every person is viewed as being capable of making their own choices, and if they choose to engage in any criminal activities, they should be held accountable. Offenders should be punished for the crimes that they have committed and this punishment should vary, depending on the seriousness of the offence.

In the justice model punishment is viewed by society as a good move to ensure their safety. Punishment is also regarded as being good for the offender. Stinchcomb and Fox (1999: 31) confirm this by mentioning that “with sentences that are proportional to the seriousness of the crime, the Justice model maintains that offenders receive their *just desserts*, society obtains *retribution* of criminal acts and the community is protected during the period of their incarceration”. Since the justice model is not based on the goal of rehabilitation, the treatment effectiveness is not determined by the length of the sentence. Treatment can only be offered on a voluntary basis because it is believed that no person can be forced to change.

3.3.2.5 The neo-utilitarian model

This model, which was developed by Bentham and Beccaria in the eighteenth century, was derived from the classical school of criminology (Du Preez, 2003: 40). In this model punishment is justified on the basis that it offers social benefits to society. Because of fear of punishment, people will do anything to stay out of criminal activities. The neo-utilitarian view on rehabilitation is that in the practice of offender rehabilitation, the aims of punishment or the harm caused by the offender are not best achieved. Rather, rehabilitation increases the prison population.

The neo-utilitarian model for punishment is based on the following principles:

- Government must develop and maintain laws which ensure the enjoyment of life by all citizens.
- Punishment aims to ensure that people adhere to the law of society.
- By adhering to the laws, criminal behaviour will also be prevented.
- Because everyone in society is free, offenders are liable for their own actions.
- Crimes which cause more fear to the community are taken more seriously than the ones that do not, for example white-collar crimes.
- Imprisonment for a certain period will deter criminals from reoffending.
- Rehabilitation does not serve the purpose of punishment and its contribution to prevention of recidivism is questionable.
- To ensure that offenders do not reoffend, conditions in prisons should be as unacceptable as possible.
- Habitual criminals should always be kept in prisons even though their sentences have expired (Singh, 2004: 61).

3.4 THE OFFENDER REHABILITATION FRAMEWORK

Sechrest, White and Brown (1979: 4) define rehabilitation as a result of any planned intervention that reduces an offender's criminal activity, whether that reduction is mediated by personality, behaviour, abilities, attitudes, values or other factors. From the

definition, it can be deduced that rehabilitation is aimed at ensuring that offenders stop their offending behaviour. With the difficulties that range from low self-esteem amongst offenders, overcrowding, violence and all other problems related to the correctional system, life can be difficult for anyone who finds themselves in such a situation. The introduction of the concept of rehabilitation offers offenders a sense of personal dignity and also ensures that they are provided with educational skills that will prepare them for society after release. However, an offender cannot be rehabilitated unless he or she wants to be.

The concept of rehabilitation has taken many forms in America, from the 1800s with the imposition of absolute silence among offenders in New York and the solitary confinement of all offenders in Pennsylvania, to the twentieth century with the promotion of literacy among offenders, vocational training provided in correctional centres and the use of psychotherapy (Murphy, 1997: 48). The development of new generation correctional centres promises to eliminate crime by means of reformation of criminals through rehabilitation programmes aimed at ensuring that all offenders participate in all correctional centre activities (O'Brien, 1982: 48).

After centuries of punishment of offenders, it remains difficult to indicate whether such punishment achieves its purpose, which is to deter offenders from reoffending, and whether such punishment has decreased the rate of crime or worsened the situation (McGuire & Priestley, 1995: 4). Beccaria (1963: 30) states that “the severity of punishment itself emboldens men to commit the very wrong it is supposed to prevent. They are driven to commit additional crimes to avoid the punishment...the certainty of punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity”.

In the eighteenth century, Sheriff John Howard of Bedford County in England made the following recommendations, which later became standards for the civilised treatment of offenders (Zupan, 1991: 14):

- Offenders must be segregated by their age, sex and severity of the crime.

- Correctional officials must be paid in order to avoid the extortion of prisoners.
- Medical officers and chaplains must be appointed to ensure the spiritual and the physical wellbeing of the offenders.
- Liquor and other intoxicants must never be sold to offenders.
- Offenders must be provided with adequate clothing and food to keep them in good health.

The concept of rehabilitation of offenders recognises the fact that reoffending can be reduced not only by punitive measures, but by ensuring that offenders go through programmes that will eliminate the problems that led to them offending in the first place.

3.5 THE RELATIONSHIP BETWEEN IMPRISONMENT AND REHABILITATION

“From bad example, idleness, or the indulgence of evil passion, you have been led to the commission of crime, by which you have violated the laws of your country, forfeited your liberty, and offended your God. The consequence is that instead of now enjoying the inestimable privileges of a free citizen...you appear in culprit robes, doomed to the gloomy solitude of a prison...weep not for yourself only but remember the sighs of a father, tears of a mother, the anguish of a wife and children, suffering and disgraced by your crimes. Cherish no malevolent feelings against society or the government for arresting you in your career of criminality but rather be thankful for the mildness of our laws; that instead of forfeiting your life on an ignominious gallows as would have been the case under most other governments, you are only restrained for a time, for the safety of society, and your own good; that the most favourable means are afforded for repentance and reformation by forming temperate and industrious habits, learning a useful trade, yielding obedience to laws, subduing evil passions, and by receiving moral and religious instruction. If you will faithfully improve the opportunities with which you will be thus favoured, your case is far from being hopeless; your suffering during confinement will be greatly mitigated; you will return to your friends and to society with correct views and good resolutions, and then friends and society will receive you again

with open arms and, like the compassionate father to his prodigal son, will say of you, he was dead, and is alive again; and was lost, and is found.” This was Warden Gershom Powers of New York spelling out basic reformers’ themes in his orientation speech to new convicts (Kann, 2005: 138).

From the passage, it is indicated that imprisonment is imposed as a punishment for the crime committed. Offenders are told not to view such imprisonment as the end of it all. Rather, they are encouraged to have a positive attitude towards their sentences and to view it as an opportunity for them to change their behaviour. It is spelled out that an offender is expected to return to society as a complete new person who will have a positive impact on the community. While incarcerated, offenders will not only be helped to acquire the necessary skills for survival, but they will also be offered other means of support that they need, including spiritual and psychological support. The most important part is that offenders are not forced to be part of these programmes, hence such programmes are voluntary. With such skills and knowledge obtainable in prisons, a rehabilitated offender is expected to return to the community and make a positive contribution to his or her surroundings. This is emphasised by the statement – “he was dead, and is alive again; and was lost, and is found”.

The rehabilitation of offenders, as indicated in 3.2, is set out as one of the reasons for sending offenders to prison. Deterrence is another. Within the correctional system positive differences must be instilled in those serving their sentences without considering the nature of their crime and the severity of the sentence. According to Lin (2000: 30), understanding imprisonment gives us an opportunity to discover when rehabilitation will be implemented successfully. Rehabilitation requires the efforts of both the offenders and staff in ensuring that when the former offender is released, he or she must navigate a difficult road to avoid reoffending (Gaes et al., 2004: 18).

The process of rehabilitation forms an important part of humane correctional treatment; therefore it must be ensured that every offender takes part in the rehabilitation programmes that are available within the correctional centre. At the same time the

functioning of the correctional system must be aimed at the rehabilitation of offenders. According to Faugeron (1996: 126), there are four functions that every correctional system must necessarily display: the custodial function, the restorative function, the controlling function and the maintenance function.

- **The custodial function**

When a person is sent to a correctional centre, limits are set regarding his or her freedom which the person has while in society. This limit of freedom carries a strong social message which indicates the state's power over individuals. The state must ensure that an offender is kept safely and must prevent escapes by all means possible.

Placing an offender in custody does not end in him or her being kept away from society, but it also involves methods of ensuring that the offender is rehabilitated and will reintegrate successfully into society. By ensuring that all offenders are safely kept in custody, the implementation of rehabilitation programmes can take place smoothly (Faugeron, 1996: 126). The state will ensure that every offender participates in the programmes that will benefit him or her while in society.

- **The restorative function**

The main objective of incarcerating offenders remains to rehabilitate them. As mentioned above, rehabilitation programmes must be aimed at preparing the offenders for their eventual return to society. "For if one incarcerates, at some time or the other, one will have to de-incarcerate" (Faugeron, 1996: 126). The effectiveness of the correctional system lies in the way it achieves its objectives and the restorative function has made it possible for the effective treatment or rehabilitation of offenders. Because the offender population comprises individuals with low educational levels, a wide range of social, economic and personal problems as well as problems such as addiction, rehabilitation programmes must be aimed at addressing these problems.

- **The controlling function**

It is important to be able to regulate people who are locked up together. Although it is sometimes difficult, correctional officials must have a regulatory relationship with offenders. If offenders are classified effectively, disturbances within the correctional centres can be prevented effectively and forms of collective and individual self-discipline can be established within the correctional centres. Good relationships between officials themselves are important as they all strive for the same objective, which is to rehabilitate offenders.

If there is an effective control mechanism for offenders, rehabilitation programmes can be implemented successfully. This is mainly because an effective classification takes into account offenders' needs. If offenders are classified according to their needs, they will be able to access programmes that are necessary for their rehabilitation (Faugeron, 1996: 126).

- **The maintenance function**

While they are incarcerated, offenders have to be supplied with a wide range of services, including accommodation, food, washing and laundry facilities and other resources which are essential (Faugeron, 1996: 126). In addition, welfare services as well as leisure activities also have to be provided. These services make it possible to manage the offender population and to maintain control within the correctional centres. Delays or disruption of services within the correctional centres can have a negative effect on the day-to-day functioning because maintenance of ordinary services is essential to keep the peace.

3.6 PROGRAMMES AIMED AT THE REHABILITATION OF OFFENDERS

Rehabilitation as one of the objectives of imprisonment must always be considered during the treatment of offenders. By finding and treating those personality aspects which

led an offender to commit crime, the offender can be prevented from committing further crimes. Offenders must be provided with essential programmes aimed at their rehabilitation while they are detained. These correctional programmes must satisfy the following goals of a comprehensive programme designed by Cassella (Kratcoski, 2004: 201):

- The programme should include a complete, individualised assessment and treatment path.
- The treatment should assist an offender to accept responsibility for his or her offences and to understand and be aware of his or her patterns of offending (e.g. sequence of thoughts, feelings, events, circumstances and arousal stimuli).
- The treatment should assist an offender to learn to intervene in or break into his or her offence pattern and to call upon tools, methods and procedures to suppress, control, manage, or stop the behaviour.
- The treatment should provide re-education and resocialisation to replace antisocial thoughts and behaviour with prosocial ones; to acquire a positive self-concept and new attitudes and expectations of himself or herself, as well as to learn new social and sexual skills to help cultivate healthy relationships.
- In residential treatment, an offender needs a prolonged period to safely test his or her newly acquired insights and control mechanisms in the community.
- Each offender needs a post-treatment support group and continued post-release access to therapeutic treatment.

According to Clear and Cole (2000: 323) and Van Voorhis, Braswell and Lester (2004: 12), rehabilitation programmes that are offered to offenders include education, recreation, counselling/casework, psychological programmes, behavioural, social and vocational programmes.

3.6.1 Educational programmes

Educational programmes have always been and will always be the major part of correctional rehabilitation (Brewster, 2002: 30). Because offenders represent a profound record of failure, providing educational programmes that meet all the educational challenges may be beneficial for society in general. This is supported by the fact that inmates who participate in educational programmes have lower recidivism and better community adjustments. Offenders must be provided with programmes that include improving communication skills, general education, basic academic skills, general equivalency diploma preparation, vocational training, post-secondary education and other educational programmes that are required by the offender population (Gowdy, Travis & Sutton, 2003: 14).

It must be ensured that correctional education meets the following standards developed by the United Nations Economic and Social Council so that all offenders can reach their full potential (Van Voorhis, Braswell & Lester, 2004: 13):

- Education should be accessible to all offenders.
- Literacy programmes, basic education, vocational training, creative, religious and cultural activities, recreational education and activities, social education, higher education and library facilities must be available to all offenders.
- There must be a huge support of education by all parties responsible for the functioning of the correctional centre.
- Disincentives to offenders who participate in approved formal educational programmes should be avoided at all costs.
- Not only should offenders be allowed to participate in education inside the correctional centre, but education outside the correctional centre should also be encouraged.
- The community has to be involved in education that takes place inside the correctional centre.
- Vocational training must be aimed at the development of the offender and must adapt to the conditions of the labour market.

- Cultural activities should also be encouraged because of their role in enabling the offender to develop and express themselves.
- Educational programmes should consider the offender's social, economic and cultural background.

3.6.2 Recreational programmes

Recreational programmes have an advantage over other programmes because to participate in them offenders do not need to be able to read or write (Van Voorhis, Braswell & Lester, 2004: 14). They ensure that everyone becomes part of the rehabilitation process through recreation. The most important part is the fact that even the physically disabled offender can participate in activities such as arts and crafts, music and table games. Failure to provide recreational programmes to offenders can lead to conditions such as physical and emotional conflicts amongst offenders, which range from sexual assaults to personal depression. More recreational programmes and activities for offenders will result in a more complex scheduling process. It must be ensured that inmate meals, work assignments, education programmes and other aspects of institutional life operate smoothly and in conjunction with recreational activities. Within the recreational programmes, offenders learn that they are capable of doing more than they think they can do. In the process offenders also learn to trust others. These programmes improve the mental health of offenders as well as the implementation of rehabilitation programmes.

3.6.3 Psychological programmes

Psychological programmes are applied within the correctional system in order to treat the underlying emotional or mental problems that led to the commission of an offence. There are two approaches for implementing psychological programmes, i.e. psychotherapeutic approaches and group treatment.

- Psychotherapeutic approaches imply all kinds of programmes that are aimed at the treatment of mind within the correctional setting. In this approach, therapists determine the need for and the goals of treatment processes even if the client does not agree.
- Group treatment allows offenders to come together in order to discuss mutual problems. Group approaches consist of reality therapy, confrontation therapy, transactional analysis and cognitive skill building (Clear & Cole, 2000: 323).

3.6.3.1 Counselling and case management

These programmes make room for the effective running of the institutional and other programmes aimed at the rehabilitation of offenders (Van Voorhis, Braswell & Lester, 2004: 15). Correctional counsellors undertake group sessions where problems such as drug abuse, sexual offending and suicide prevention are tackled. The role of counsellors is to try by all means necessary to help offenders adjust within the correctional institution with less frustration and deterioration. Counsellors make it possible for these offenders who want to be rehabilitated in relation to many challenges within the correctional centre.

3.6.3.2 Behaviour therapy

Behaviour therapy implies treatment that induces new behaviour through reinforcements (rewards and punishment), role modelling and other active forms of teaching. Behaviour therapy does not only aim to change the criminality of the offenders, but it also targets certain problems that are associated with the criminal lifestyle. These problems include verbal manipulation and rationalisation, lack of social skills such as conversation, inability to control anger and frustration. According to Bartollas (2002: 312), behavioural therapy uses positive and negative reinforcements in order to encourage desirable behaviour and at the same time discourage undesirable behaviour. Positive reinforcers comprise attention, praise, money, food and privileges, whereas negative reinforcers comprise threats, confinement, punishment and ridicule.

3.6.3.3 Social therapy

Social therapy implies treatment that is aimed at ensuring that the institutional environment is supportive of prosocial attitudes and behaviour. The primary aim is to develop a democratic institution that allows inmates to participate in the decision-making process. The belief is that rehabilitation can only be possible if offenders take control of the conditions within which they must live because in the end all programmes are aimed at changing their behaviour. Clear and Cole (1994: 358) maintain that social therapy requires a significant shift in institutional policy to become supportive of a prosocial institutional climate and should meet the following requirements:

- Institutional practices must be democratic rather than bureaucratic. Offenders will view themselves as less important if they have no say in the rules that govern them or their implementation. Within this approach offenders are offered the opportunity to participate in making rules and maintaining institutional order.
- The programme must focus on treatment rather than custody. Because the aim of the correctional system is not only to take away offenders from their community, but also to attempt to change their behaviour, it must be ensured that they participate in programmes that were designed to promote their growth and emotional maturity.
- Humanitarian purposes have priority over institutional routines. It is important to make sure that the running of the correctional centre does not have a negative impact on the offenders' needs for educational and vocational training.
- Flexibility is valued over rigidity. Inmates must be given enough time to participate in programmes that will lead to their development and they should spend less time doing something that has less or no impact on their development.

3.6.4 Vocational programmes

Within vocational programmes offenders are offered a marketable job skill. Even though offenders often lack the necessary attitude to obtain and keep a job, such as punctuality, accountability, deference to supervisors and cordiality to co-workers, vocational programmes still have an impact on the offender after release. This is mainly because

most offenders have poor job skills when they are released from the correctional system. The income that the offender generates by doing work outside the correctional system can help them sustain their lives, which will in turn reduce crime and recidivism. In order to ensure that offenders can keep their jobs, they should also be taught to handle themselves within an occupation.

3.7 ROLE PLAYERS IN THE REHABILITATION PROCESS

For the correctional system to be able to successfully undertake the process of rehabilitation, there are various role players that are involved in the process. They include offenders themselves, correctional officials as well as the community outside the correctional centres. An offender must be willing to change his or her attitude to become a better person and, if that is not the case, rehabilitation will not be effective. In addition, the people who are responsible for the treatment of offenders while inside the correctional centre, for example correctional officials, must have a clear understanding of the offenders' needs to ensure that they are dealt with in a proper manner. The community role in the rehabilitation of offenders is emphasised in the White Paper on Corrections (Department of Correctional Services, 2005b: 179) which states as follows: "The forging of closer links and cooperation between the Department, the community and other state departments is crucial in the fight against crime, reparation of relationships and the *rehabilitation* of offenders." The roles of the offenders, the correctional staff and the community will now be discussed.

3.7.1 Offenders

As mentioned above, rehabilitation can only be possible if the offender is willing to change his or her behaviour and attitudes. This is mainly because rehabilitation is aimed at addressing the specific history of the individual and as a result full commitment as well as voluntary participation are required from the individual (Department of Correctional Services, 2005b: 128). Offenders must realise that they are responsible for their own lives and it is up to them to change. Bartollas (1985: 33) asserts that unless offenders make an

important decision to walk out of the criminal life and associate themselves with support systems that will help them achieve their goals, they are more likely to spend a large portion of their time incarcerated.

With all the rights that offenders have, the onus lies on them to ensure that they participate in programmes that will empower them. Offenders must take full advantage of all the privileges that they have while they are incarcerated because for some it might be the only chance they have to access certain opportunities that they can hardly reach while they are outside. So offenders must ensure that when they are released they have something that they can lean on, and not find themselves on the wrong side of the law again. Deutschman (2007: 15) mentions three keys to change that can also help change offenders' attitudes as they give new hope, new skills and new thinking, i.e. relate, repeat and reframe.

3.7.1.1 Relate

In their road to rehabilitation offenders can form a new, emotional relationship with a person or a community that it inspires and sustains hope (Deutschman, 2007: 15). If offenders come face to face with a situation that a reasonable person would consider hopeless, they need an influence of seemingly unreasonable people to restore their hope - to make them believe that they can change and expect that they will change.

3.7.1.2 Repeat

The new relationship helps the offenders learn, practise and master the new habits and skills that they will need. It takes a lot of repetition before new patterns of behaviour become permanent - until the offenders can act in a new manner without even thinking about it. Having a good teacher, coach or mentor who will give guidance, encouragement and direction when it is needed will help offenders achieve their dreams (Deutschman, 2007: 15).

3.7.1.3 Reframe

According to Deutschman (2007: 15), the new relationships help the offenders to learn new ways of thinking about their situation and their lives in general. Offenders will be able to look at the world in a way that would have been so foreign before they changed.

Bartollas (1985: 256) further emphasises that there are three major groups of ex-offenders, i.e. those who will ultimately fail, those who will make a marginal adjustment to society and those who will be successful. Bartollas (1985: 261) also gives three reasons why offenders who want to succeed fail at the end, i.e. failure of will, lack of satisfaction from the straight life and the inability to make it in the free world.

- **The failure of will**

Changing a person's criminal behaviour can be regarded in the same way as changing undesirable habits, lifestyles or poor performance in school for the general population. Out of many people who would want to change, only a few manage to do so. In addition, of those people who manage to change, a percentage return to their old habits. Offenders tend to fail because their will to change was not strong in a manner that it could overcome the daily pressures they face. Because they leave the correctional centres with expectations, they find it difficult to adjust in a world that has been progressing without them. Offenders find it difficult to deal with real issues such as finding a job and forming social relationships. With all these difficulties, frustrations and disappointments, an offender might return to the life of crime. Within the rehabilitation perspective, offenders themselves must be willing to shift from their criminal behaviour to lead a normal life and to do that they have to overcome all the difficulties. If they are not willing, rehabilitation programmes will not be effective. Rehabilitation will only work with the full dedication of an offender and the end result will be that a rehabilitated person is released into society (Bartollas, 1985: 261).

- **Dissatisfaction with the straight life**

Another reason why offenders fail to adjust within the community is that they do not accept the straight life which is free from crime (Bartollas, 1985: 261). This is because to them this life is not exciting, fulfilling or satisfying. For example, an offender who used to make more money a day by committing robberies finds it difficult to work in a company where he or she only gets paid once a month. That person will prefer to commit robberies than work. If rehabilitation is going to work, an offender must first understand that the criminal life is not the way to go.

- **The inability to make it in the free world**

According to Bartollas (1985: 262), the fact that some offenders fail to succeed within society leads them to the criminal life. It is a well-known fact that most companies do not accept ex-offenders and this leads to many offenders being unable to get jobs in order to sustain their lives. This causes offenders to resort to crime in order to make the money that they need. In addition, compulsive behaviour leads to offenders failing in the free society.

3.7.2 The correctional staff

“There is reason to believe that the correctional officer role is much more demanding, broad and rich than is generally believed...Correctional staff are engaged in guiding, mentoring, facilitating, developing, and watching prisoners. If a prisoner needs assistance with a job, getting along with others, programming, interacting with staff, or obtaining privileges, then correctional officers are their more likely resource, given their proximity and frequency contact” (Hemmens & Stohr, 2000: 327). The White Paper on Corrections (Department of Correctional Services, 2005b: 114) recognises that every member has a role in the rehabilitation of offenders and to achieve that, it is required that there be a good working relationship among all the members, including social workers,

psychologists, nurses, pharmacologists, health officials, theologians and the entire workforce within the correctional system.

Bartollas (2002: 258) confirms that the work of the correctional officials as well as those people who work within the correctional system is not an easy one as it demands physical and emotional stamina. In just one day a correctional official can play the role of supervisor, custodian, disciplinarian, peacekeeper, administrator, observer, manager, facilitator, mentor, provider, classifier and diplomat (Liebling & Price, 2001: 43). Officials are responsible for the offenders from the day of admission until they are released to society. They have significance in the daily lives of offenders in general as offenders look up to them.

Seiter (2002: 383) indicates that officials have the following roles to play with regard to the rehabilitation of offenders and these roles are based on the manner in which the officials conduct themselves, irrespective of whether they are counsellors or treatment specialists:

- Contributing to an environment of control without threats and tension. Effective control not only ensures that offenders are maintained at all times within the correctional centre, but also promotes a good working relationship between officials and the offenders. Where there is effective control, the correctional system is guaranteed of a peaceful offender population. There will not be any unrest or rioting by offenders, which will in turn lead to them focusing on changing their lives and participating in the rehabilitation programmes.
- Communicating with inmates on a professional basis. Officials must always bear in mind that offenders are people too, who, like them, deserve to be respected. Officials must behave in a manner that is acceptable when they are around the offenders and they should never under any circumstances insult offenders as this might hamper their relationship.
- Focusing on providing human services. As it is officials' duty to ensure that offenders are treated in an adequate manner, officials should meet offenders' needs at all times. As part of humane treatment, they must provide for basic needs of offenders such as

food and clothing. The provision of these services will lead to offenders focusing more on their rehabilitation programmes.

The correctional staff are the most valuable resource of a correctional system as they are responsible for accomplishing the mission of that system. Officials are responsible for supervising offenders by carrying out sentence orders of the courts. This makes corrections a people business since work cannot be accomplished by bars and fences, prison cells or use of electronic monitoring (Seiter, 2002: 375).

3.7.3 The community

The Department of Correctional Services takes offenders into custody with the aim of rehabilitating them so that they can become good citizens to their community. Birzer and Roberson (2004: 37) write that within a rehabilitation approach, offenders are assigned to programmes which were designed to prepare them for readjustment or reintegration into the community. The fact that after everything else that an offender goes through while incarcerated he or she has to return to the community makes the community an important part of the rehabilitation process.

According to the South African Yearbook (2003/04: 451), the Sub-directorate of Community Involvement facilitates the involvement of community members in correctional matters. The Sub-directorate aims to promote co-responsibility for offender management and crime prevention, share responsibility for offender rehabilitation and reintegration of offenders into the community as well as maximise the use of public and private forums. Where there is an open relationship between the community and corrections, offenders stand a better chance of integrating well into society. The public will be able to understand the conditions of the offender and they will try by all means necessary to help him or her. The community can offer work, income assistance, spiritual and emotional support, amongst other things, to offenders to ensure their rehabilitation.

The Department of Correctional Services supports community participation in correctional matters through the following means (Bailey & Ekiyor, 2006: 27):

- The Department drafted a community participation policy that outlines the guidelines for community involvement, which are in line with the departmental rehabilitation strategy.
- The Department encourages greater community participation as a means of reducing crime, thereby promoting good relationships amongst community members.
- It offers support to both offenders and the victim.
- It offers support in all activities aimed at integrating offenders into the community.
- The Department ensures active involvement in the definition of offender obligations.
- It offers offenders opportunities for remorse, forgiveness, reconciliation and for offenders to make amends.
- The Department aims to ensure that relationships are restored for successful reintegration of offenders.

3.8 SUMMARY

Rehabilitation remains one of the most important purposes of sending a person to a correctional centre. This is mainly attributable to all the programmes that are available to the offenders while they are incarcerated so that they can redeem themselves and return to their communities. As the Department of Correctional Services (2007b: 10) states, “... rehabilitation comprises of education, skills training, sport, recreation, arts and culture opportunities, health care and psychological treatment, maintenance of family and community links, a safe and healthy detention environment and post release support to ensure that the offender is rehabilitated to prevent him or her from going outside worse than he or she was when he or she first came into detention”. This chapter outlined the various programmes aimed at rehabilitation which are offered to offenders. The roles of the offender, the correctional staff and the community were also covered.

CHAPTER 4

INTERNATIONAL AND OTHER RELEVANT STANDARDS REGARDING OFFENDERS' RIGHTS TO REHABILITATION

4.1 INTRODUCTION

The correctional services system of every country has to be in line with the international standards for the treatment of offenders. This comes after the involvement of international bodies such as the United Nations in the issue of the upliftment of human rights, which have been undermined for centuries. This chapter will outline the issue of human rights, what they entail, what they mean to everyone and why everyone deserves these human rights.

The focus will also be on the acceptable international human rights standards developed by the United Nations with a view to protecting citizens against violations of their rights by individuals, groups or nations. To ensure this protection the United Nations drew up the Universal Declarations of Human Rights and other documents which prevent any violation of human rights. It was not by accident that these important documents included the rights of offenders (Stern, 1998: 191). Since the focus of the study is on those rights that make the rehabilitation of the offenders possible and because the rehabilitation of offenders is viewed as the only way to prevent them from returning to crime, the chapter will only include the rights in the Universal Declaration of Human Rights that affect the rehabilitation process of offenders. In addition to the Universal Declaration of Human Rights, there are some other important documents that promote the issue of human rights that will also be discussed.

Since everyone is equal and deserves to have his or her rights respected, including those people behind bars, in order to ensure an understanding of the United Nations' approach towards the treatment of offenders, the chapter will cover the Standard Minimum Rules for the Treatment of Prisoners and explore the importance of those rights to offenders themselves and how those rights contribute to the rehabilitation of offenders.

4.2 THE INTERNATIONAL BILL OF HUMAN RIGHTS

The primary basis of United Nations activities, which are to promote, protect and monitor human rights and fundamental freedoms, forms part of the International Bill of Human Rights. The Bill comprises three texts, i.e. the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights (Buergenthal, 1995: 28). When the United Nations started to raise the issue of human rights, many international human rights instruments were drawn up. The Universal Declaration of Human Rights, which guarantees fundamental human rights and freedoms, was the first one to be drawn up. It was followed by the International Covenant on Civil and Political Rights and then the International Covenant on Economic, Social and Cultural Rights.

According to the United Nations and Human Rights (1968: 17), declarations and covenants are best suited for explaining the principles and rights that are generally applied. Over the years these instruments have influenced many human rights conventions, declarations and bodies of international minimum rules and other universally recognised principles. A few examples are the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Inhuman or Degrading Treatment, as well as the Convention on the Rights of the Child.

4.2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights, which came into effect in 1948, was viewed as the first step towards the formulation of an international bill of rights (De Villiers, Van Vuuren & Wiechers, 1992: 1). It came after it was realised how the dehumanisation of particular groups such as Jews, gypsies and homosexuals, and the sanction of the state for their degrading and abuse could lead to the institutionalised abuse of human rights. The uniqueness of the Declaration lies in the fact that, unlike other documents such as the Magna Carta, the French Declaration of the Rights of Man and of Citizens and the American Declaration of Independence, which only protect the people in their own

regions, it is concerned with the rights and freedoms of people everywhere. Patman (2000: 2) emphasises that everyone is entitled to all the rights and freedoms set forth in the Declaration, without any distinction based on race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The Declaration defines the concept of human rights in an authoritative code by setting out 30 articles dealing with fundamental human rights (Henkin, 2000: 11). The 30 articles in the Declaration can be viewed as an essential foundation for building a world in which all citizens can live in dignity and peace. The Declaration not only helped to convert a discredited natural idea into a dominant political idea, but it also internationalised the issue of human rights in a sense that it allows for the co-operation and co-ordination of all countries in the issue of human rights. Because of the Declaration, the concept of human rights became universal and it was also adopted by all nations. The core values of the Universal Declaration of Human Rights which include non-discrimination, equality, fairness and universality apply equally to everyone.

4.2.1.1 Preamble to the Declaration

In developing the Universal Declaration of Human Rights, the United Nations realised the following (Totten & Kleg, 1989: 222):

- The recognition of human dignity based on equality for everyone leads to freedom, justice and peace in the world.
- Non-recognition of human rights have led to victimisation of people and they have been robbed their freedom of speech, belief and security which are of the utmost importance.
- Human rights can never be limited by anything else so they should be protected by the law.
- Positive relations between different countries should be promoted.
- A better standard of living and development can only be achieved through the promotion of fundamental human rights, which ensures equality.
- Everyone should understand the implications of these human rights.

4.2.1.2 The articles in the Universal Declaration of Human Rights

Because the Universal Declaration of Human Rights is recognised as a primary building block of customary international law, all governments abide by its principles and they should in turn uphold its principles. Van Dijk (1998: 108) confirms this statement by writing that “the normative values the Universal Declaration embodies and the normative effects it generates do not depend solely – nor even primarily – on its legal status, but rather on its authority within the international community and within the countries of the world. This authority, in turn, does not depend solely – nor even primarily – on legal institutions and legal procedures but rather on people’s shared expectations that its norms will be respected and enforced, and on the willingness of the authorities to respect them, and to enforce them where breaches occur”. The following articles in the Universal Declaration of Human Rights make rehabilitation of offenders possible because they have a major impact on the offenders’ daily lives. These rights can never be compromised for anything else.

- **Article 1**

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

The dignity of all people should at all times and under any circumstances be respected (Coetzee & Gericke, 1997: 90). Everyone has the right to respect of their dignity and that is why all international human rights instruments are based on the concept of human dignity.

Sergio Vieira de Mello, the former United Nations High Commissioner, wrote:

“...human rights are about dignity, equality and security for all human beings everywhere....Dignity which reflects both autonomy and responsibility, concerns individuals. Equality is the cornerstone of effective and harmonious relationships between people; it underpins our common systems of ethics and rights, whether we are talking about equality before the law or the need for equality in how states and

international systems conduct their affairs. Neither dignity nor equality of course, can take root in the absence of basic security” (United Nations Economic and Social Commissioner for West Africa, 2002: 01).

To ensure the rehabilitation of offenders, they are all entitled to be treated with humanity and with respect for their inherent dignity as human beings. Recognition of human dignity is regarded as the driving force behind an effective correctional practice (Coetzee, Kruger & Loubser, 1995: 108). Just because a person is in a correctional centre does not mean that he or she should not have his or her dignity respected, and if a person is treated in a humane manner, he or she might change the offending behaviour.

- **Article 2**

“Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Because we are all born equal we can never discriminate against any person. We should enjoy all the rights included in the Declaration equally simply because the rights were set out for everyone to be prevented from any sort of discrimination and not for some citizens to have more advantages than others. The successful development of any country and the welfare of the world can only be achieved when everyone is equally involved in the process (Wallace, 1997: 15).

For offenders to participate in the rehabilitation programmes they should all get equal opportunity. For example, in the implementation of programmes all races should be included simply because the exclusion of one race will lead to that race losing faith in the system and responding negatively towards rehabilitation. To avoid that kind of situation and to make a success of the rehabilitation programmes, there should be no discrimination on the grounds of race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status when applying the rules (Strydom, Pretorius & Klinck, 1997: 122).

- **Article 3**

“Everyone has the right to life, liberty and the security of person.”

Everyone has the right to live the way they want to and no one can deprive them of their right to live. In addition, everyone must live in a safe environment that allows for the enjoyment of freedom. It is the responsibility of the state to ensure that there are no killings and to ensure that the right to life is protected by being strict on anyone who ignores this right.

The right to liberty includes the following:

- No one can be deprived of their liberty unless it is justifiable.
- No one can be subjected to arbitrary arrest, detention or exile.
- No one can be searched unreasonably and have their belongings seized without any reason.
- Everyone who is arrested should have access to legal advice.
- Everyone should be brought before a judge.
- Detention of awaiting trial prisoners should be avoided.
- Everyone who is detained should test the lawfulness of their detention.
- Everyone has to be treated with respect and humanity.
- No one can be subjected to torture and cruel, inhumane and degrading treatment.

Not only is it the responsibility of the state to ensure the protection of the right to security, but individuals themselves should ensure that they do not abuse the physical integrity of other individuals. In that way we will all enjoy living in a free and secured world. In the execution of the sentence, the offenders’ right to life, liberty and security must be protected by the law. It is the duty of the state to ensure that the liberty and the security of the person under detention are protected all the time. If the deprivation of liberty occurs, it must be lawful.

According to Coyle (2002: 59), to ensure safe and effective correctional control there has to be a well-ordered environment which permits the following:

- The environment has to be safe for both offenders and the staff, meaning that staff should not abuse the power that they have over offenders.
- All the offenders must accept that they are treated fairly and in a manner that promotes justice.
- All the offenders must have the opportunity to participate in programmes that will prepare them for their release.

- **Article 4**

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

According to the Declaration, no individual or state can make another person a slave and no one can be allowed to perform forced or compulsory labour either. The Declaration aims to prevent any person from working for another person if they do not want to do so.

Since offenders are human beings, like anybody else, and have been sentenced by the court already, it is not necessary for the correctional system to increase the punishment. Simon (1999: 114) reports that the work that offenders do has to be based on three elements, i.e. a sense of achievement, having some interest in the work and feeling some sense of power or control over events.

To ensure effectiveness in the work that offenders do, the following conditions have to be met (Coyle, 2002: 87):

- All work that offenders do must have a purpose.
- Through the work offenders must acquire the skills that will help them become productive citizens after release.
- There should be payment in all work that offenders do.
- It must be ensured that the place of work is safe for offenders.
- The hours of work should not disturb the other activities that offenders have to participate in to ensure their rehabilitation while they are in the correctional centre.

To ensure the effective rehabilitation of offenders the kind of labour that offenders perform should not be harmful to them and should not be performed as additional punishment of the sentence imposed by the court (Coetzee, Kruger & Loubser, 1995: 100). The work within the correctional centres should not be dangerous, life-threatening or a danger to the health of offenders and it should be regulated in a manner that is not punitive. The work should consider the offender's age, health, skills, abilities and length of the sentence, offender's attitude and the offender's ambition of making it after release (Van Zyl Smit & Dunkel, 1999: 16).

- **Article 5**

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Wallace (1997: 507) describes torture as one of the major violations of human dignity which makes it difficult for the person to lead a normal life. It should be ensured that those who torture others are dealt with by the law because no person in this world has the right to do so. Torture and other cruel, inhuman or degrading treatment or punishment can never be justified.

As the Declaration restricts any human being from being subjected to unacceptable conditions such as torture or any sort of punishment that is unwanted, offenders are also human beings who deserve to be treated in a humane manner. According to Morris (1995: 62), punishment is the strongest desire that everyone lives to avoid and can never accept. It is associated with pain, suffering, shame, strict restraint or loss, for some fault, offence or violation.

Instead of changing the offenders' attitude to become better people, torture can only make things worse. So to ensure the effective rehabilitation of offenders, it is the duty of each correctional system to ensure that each offender is dealt with in an acceptable manner which encourages them to live positively and not for them to become monsters.

Correctional officials are prohibited from using force against offenders. When the use of force is necessary they can only do so under the following circumstances (Silverman, 2001: 363):

- To defend themselves against attack or to defend another officer, inmate or visitor
- In order to prevent a crime
- To arrest or detain inmates
- To maintain discipline within the correctional centre
- In order to protect correctional property or to prevent self-destruction by offenders

- **Article 7**

“All are equal before the law and are entitled without any discrimination to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

By virtue of being human beings, we are all equal and we all deserve to be protected by the law. The very same laws which have to be protected have to be applied equally and fairly to everyone without any form of discrimination. The Declaration makes it clear that all the rights of all members of the human family should be protected at all times.

To ensure the rehabilitation of offenders, they should be treated equally and live in a manner that is not unfair to other offenders. According to Palmer (1991: 825), any treatment of offenders should be in a way that prepares them to become law-abiding citizens and become productive after they have been released regardless of the length of their sentence. In order to develop a sense of respect and responsibility amongst offenders, it is important to keep them within the context of their rights.

- **Article 9**

“No one shall be subjected to arbitrary arrest, detention or exile.”

It is common knowledge that a person cannot simply be detained without a good reason for doing so. In order to put someone behind bars, there must be a good reason, otherwise the detention will be illegal. Everyone who is detained should be informed of the reason for their detention in a language that they understand (Coetzee, Kruger & Loubser, 1995: 107).

In order to put in place effective rehabilitation programmes, it is important to know the reason why a person has been arrested. It is important to understand the kind of crime committed by the offender, so if a person has been arrested without any reason, it will be difficult to deal with that person in the correctional centre.

- **Article 11**

“1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”

In terms of this article, for someone to be assumed guilty of any offence they have to undergo a trial where they can also plead their case. The act that they have committed should constitute an offence in terms of national or international law. When offenders are admitted to correctional institutions, it must be ensured that the sentence imposed on them fits the crime that they have committed. As mentioned in article 9, understanding the crime committed by a person can make rehabilitation easier, unlike in a situation where a person has been detained for a crime he or she never committed.

- **Article 12**

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

We all have things that we do not want people to know about or to see, not because there is anything wrong with them, but simply because they are private. This article of the Declaration serves to prevent any infringement of privacy. If anyone gains access to somebody else’s personal information by force, they will be violating the other person’s right to privacy.

The privacy of offenders must be infringed as little as possible and they are allowed to keep their personal information to themselves. Encouraging offenders to maintain their contact with the outside world without being disturbed by the correctional system can have a positive effect on the rehabilitation of offenders.

- **Article 18**

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Every person has the right to follow what he or she believes in and no one can stop them from doing so.

According to Schmallegger (2001: 513), the right to religion includes the following activities:

- Writing religious materials
- Using articles and other materials which are part of the religion
- Attending religious ceremonies or observing religious holidays
- Preaching religion or belief at suitable places

- In case of non-availability of a leader, people have the right to train, appoint, elect or designate a leader
- People have the right to network with other members of the religion
- Establishing places of worship
- Producing religious materials
- Establishing humanitarian institutions

Religion plays its role in reducing the alienating effects that come with life in the correctional centre (Van Zyl Smit, 1992: 213). When practising religion within correctional centres, the concept of “multifaith”, which refers to the diversity of faith, and the concept of “multicultural”, which refers to the existence of different cultures in the same society, must be considered (Beckford & Gilliat, 1998: 4-5).

So it is important to allow offenders to practise their religion and their moral beliefs and they should be made aware of such arrangements. The correctional system cannot restrict the practice of any religion unless it can be presented that the teaching and practice of that religion is a threat to the day-to-day running of the institution. The practice of all religions should be equal for all religions and no preference should be given to other religions to ensure that there is no overrepresentation.

- **Article 19**

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The right to freedom of expression allows everyone to say whatever it is that they want. In order to protect all the other human rights we must first promote and protect the right to freedom of expression. The right embraces the power of free speech, it ensures the recognition of individuals’ opinions, allows free press and the sharing of information and ideas, the ability to get ideas from different sources and the right to silence.

Offenders, like any other human being, also have the right to say what they want and share ideas with other people. The right to be heard is of the utmost importance to ensure that offenders can make suggestions, requests and even complaints. It is important that whatever it is that offenders suggest or request is attended to, to ensure the effective running of any correctional institutions, thereby ensuring the effectiveness of the rehabilitation programmes.

- **Article 20**

“1. Everyone has the right to freedom of peaceful assembly and association.”

“2. No one may be compelled to belong to an association.”

The freedom of association goes hand in hand with the freedom of religion as well as the freedom of expression simply because they allow a person to make their own choices without anyone choosing for them or being forced by anyone to do so. This article allows anyone to associate with whomever they want, whether it is a political party or religious group, among others, without being forced by anyone to be part of that group. This article aims to protect innocent people from being manipulated to be part of something they do not even want to be associated with.

Because offenders are powerless while they are in the correctional centre, the only way they can gain power is when they form groups. Mostly those groups are based on race or ethnicity and they should be afforded an opportunity to promote their pride and identity (Mays & Winfree, 2005: 371). It is important to allow offenders to choose whom they want to associate with because refusing them or forcing them constitutes a violation of their human rights, so they should voluntarily choose which group they want to be part of. Whatever the event is that the offenders want to participate in to promote their pride and identity, it should be ensured that it is not disruptive.

- **Article 21**

“1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

This article provides that all eligible citizens are allowed to take part in the day-to-day administration of their country. The only way of achieving this is through electing representatives. Because everyone has the right to equal access of public services, offenders too must have such equal access. They should also be allowed to vote for representatives that they want to be represented by. The fact that they are incarcerated should not stand in their way of participating in their government.

- **Article 25**

“1. Everyone has the right to a standard of living adequate for health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Every individual deserves to have a good life and this article serves to ensure that everyone has the necessities which can contribute to a decent life. The state should provide appropriate and timely health care to its citizens and ensure that everyone lives in better conditions with food and shelter. It should also ensure the security of each person.

To ensure the rehabilitation of offenders they should be detained in conditions that ensure that adequate food, clothing and medical treatment are offered at all times. Improper medical care, denying offenders access to medical care, inadequate provision of medical

care and negative attitude by officials to the provision of medical care can never be allowed when it comes to dealing with offenders. It is the duty of every correctional system to provide the most suitable medical treatment available.

Prado and Goff (1989: 42) highlight problems such as alcoholism, drug addiction, mental or emotional disorders, diabetes and epilepsy, among others, as common within the correctional environment. The following are the conditions within correctional centres which may contribute to the health problems of offenders and they should be dealt with to ensure efficient and effective rehabilitation programmes (Schwartz & Travis, 1997: 334):

- Lack of food
- Lack of adequate sanitation
- Lack of physical exercise for offenders
- High risk of accidents and violence in the correctional centre

- **Article 26**

“1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

The aim of this article is to ensure that all children, youth and adults are provided with basic education by the state. Each state also has the responsibility to promote and improve the quality of its educational system and ensure that all citizens participate in the learning process without the exclusion of others. According to Wallace (1997: 242), gender stereotyping should be eliminated from education systems so that all genders of society are able to participate. Basic education is the cornerstone for lifelong learning and human development on which every state may rely and it is the best financial investment that a state can make in its citizens.

Offenders, like anybody else, should be given an opportunity to learn. On release, offenders have to go back to society. To ensure that they reintegrate very well into society, it is important that they learn sound work skills and be given training and development opportunities for them to become productive citizens. Treatment services, such as substance abuse classes, living skills, victim awareness as well as health training, should be provided to offenders in addition to sound work and training opportunities.

- **Article 27**

“1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Every community is bound together by certain a culture and morals. As a result the Declaration grants citizens the right to participate in the cultural life of their community. Offenders too are guaranteed the right to participate in their cultural activities. The positive impact that cultural life has on offenders can be related to that of religion. As with religion, offenders will come into contact with each other and guide each other positively.

- **Article 30**

“Nothing in this declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

This article guarantees the fact that no one can take the rights in the Declaration away from us. We can all enjoy the provisions made in this Declaration without being destroyed by anyone.

Offenders must be able to enjoy the rights in this Declaration and the state can never take away those rights. So to ensure the effectiveness of the rehabilitation programmes, everything mentioned in this article, such as the right to equality and dignity, non-discrimination, the right to life, liberty and security, freedom from forced labour, freedom from torture and other inhumane treatment, the right to education, religion, health and privacy, among others, should be guaranteed to offenders and they should never be compromised for anything else.

4.2.2 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights came into force in 1976 as a legal binding human rights instrument which ensures maximum protection of human rights without intervention by the state. According to Davidson (1993: 76), the Covenant was designed to solve problems related to the protection of human rights and indicates the degree to which certain rights can be limited if the need arises. Unlike the Universal Declaration of Human Rights, which recommends that the state observe the issue of human rights, the International Covenant on Civil and Political Rights binds all states to observe its guarantees of human rights (Edge, 2006: 47). In addition, the Human Rights Committee (HRC) was developed as an institution which supports the values of the rights in the Covenant. One of the most outstanding features in the International Covenant on Civil and Political Rights is that the rights are more detailed than those in the Universal Declaration.

Robertson and Merrills (1996: 36) point out some of the rights which are guaranteed by the Covenant: equality (article 3), liberty (article 10), equality before the courts {just administrative action} (article 14), language and culture (article 27) and privacy (article 17). In addition, freedom of expression (article 19), freedom of assembly (article 21), freedom of association (article 22) and freedom of thought, conscience and religion (article 18) are guaranteed. The Covenant also protects citizens from torture, cruel, inhuman or degrading treatment (article 7), slavery (article 8) and unlawful detention (article 14). It ensures equal protection of all and it also gives citizens the right to join the

political party of their choice in article 25 (Steiner & Alston, 2000: 136). It ensures that everyone is treated in a humane manner which promotes their dignity (article 10).

4.2.3 International Covenant on Economic, Social and Cultural Rights

After it was decided in 1952 that the Universal Declaration of Human Rights should be given effect by means of two documents, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights came into effect in 1976 (Edge, 2006: 47). The economic, social and cultural rights were developed to take care of those vulnerable people who cannot take care of themselves. They ensure that the state provides essential means for survival to its citizens, for example everybody needs water in order to survive and it is the responsibility of the state to provide water to its citizens.

According to Steiner and Alston (2000: 246), the International Covenant on Economic, Social and Cultural Rights consists of five parts with part 3 upholding the citizens' right to work and working under acceptable conditions, citizens' right to rest and some leisure time, the right to be a member of a trade union and to strike if unsatisfied and the right to social security. Most importantly, the Covenant upholds the fact that every citizen deserves an adequate standard of living that provides food, clothing and housing, suitable health care services, education and cultural life.

4.3 REGIONAL HUMAN RIGHTS INSTRUMENTS

In addition to the major international human rights instruments, there are also regional human rights instruments such as the Inter-American system, the European system and the African system. This section will cover the regional systems and their implications on the issue of promoting and protecting human rights.

4.3.1 The European system

The European system is made up of the Convention on Human Rights. The Convention, which came into effect on 3 September 1953, focuses on the protection of both civil and political rights of citizens (Buerghenthal, 1995: 103). It has over the years been followed by a number of additional protocols that enforce the rights and freedoms of individuals which are not included in the Convention, European Social Charter and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, amongst others. Signatories to this Convention undertake to secure rights and freedoms stated in the Convention to everyone within their jurisdiction. In order to ensure the observance of the engagements undertaken by the signatories, the European Court of Human Rights has been established. It deals with individual and interstate petitions. All alleged human rights violations are referred directly to the Court. At the request of the Committee of Ministers of the Council of Europe, the Court may also give advisory opinions concerning the interpretation of the Conventions and its protocols. It is because of the establishment of the Court that this Convention stands out amongst other conventions as it offers a high degree of individual protection from human rights violations. Adler and Longhurst (1994: 189) refer to a number of articles that are set out in the European Convention on Human Rights and that are relevant to imprisonment and as a result, those people who are under detention must have their rights protected at all times.

The European Convention on Human Rights sets forth a number of fundamental rights and freedoms. The right to life (article 2), freedom from torture and inhuman or degrading treatment (article 3), freedom from slavery and forced and compulsory labour (article 4), the right to liberty and security of the person (article 5), the right to a fair and public trial within a reasonable time {just administrative action} (article 6), the right to privacy, family life, home and correspondence (article 8), freedom of thought, conscience and religion (article 9), freedom of expression (article 10), freedom of assembly and association (article 11) are amongst the rights included in the Convention.

4.3.2 Inter-American system

The Inter-American system is made up of the American Convention and the American Declaration of the Rights and Duties of Man. The rights in these two instruments are promoted by the Inter-American Commission on Human Rights, which was created by the General Assembly of the Organization of American States (OAS) in 1959 (Mendez, 2000: 112). The American Declaration of the Rights and Duties of Man was adopted by the ninth conference of the OAS in Bogota on 2 May 1948 and it precedes the United Nations Universal Declaration of Human Rights by six months. This Declaration covers civil, political, economic, social and cultural rights such as the ones covered in the Universal Declaration of Human Rights and it consists of 27 articles. The American Convention, which came into force on 18 July 1978, covers a broad category of civil and political rights (Buergethal, 1987: 58).

Although the two instruments cover a number of similar provisions, some provisions are not included in both instruments. The American Convention makes provision for the humane treatment of individuals, which encompasses the right to dignity, and prohibits torture, cruel, inhuman or degrading punishment (article 5) and freedom from slavery, servitude and forced labour (article 6). The American Declaration does not cover such provisions. However, the American Declaration provides for the right to health care, food, water and social security (article 11), the right to education (article 13) as well as the right to language (article 13), which are not covered in the American Convention. Nevertheless, the following table indicates the relevant articles included in both the Convention and the Declaration:

TABLE 2: ARTICLES IN THE AMERICAN CONVENTION AND THE AMERICAN DECLARATION

| HUMAN RIGHTS | ARTICLE IN THE AMERICAN CONVENTION | ARTICLE IN THE AMERICAN DECLARATION |
|--|---|--|
| Right to equality | 1 | 2 |
| Freedom and security of the person | 7 | 1 |
| Right to privacy | 11 | 5 and 10 |
| Freedom of religion, belief and opinion | 12 | 3 |
| Freedom of expression | 14 | 4 |
| Political rights | 23 | 20 |
| Freedom of association | 16 | 22 |
| Freedom of assembly, demonstration, picket and opinion | 15 | 21 |
| Just administrative action | 8 | 26 |

Whenever all these human rights are violated, the Inter-American Commission on Human Rights has to intervene to ensure the promotion and the protection of the said rights, as the tasks of the Commission include educating, investigating, advising, administrating and supervising human rights (Davidson, 1993: 136).

4.3.3 African system

The African system is made up of the African Charter on Human and People's Rights and the African Commission. It is the youngest of all the regional instruments and has similarities with other regional instruments but this one was meant for the African continent (Murray, 2000: 9). The African Charter includes civil, political, economic, social and cultural rights. It is divided into 68 articles which are grouped into four chapters, i.e. human and people's rights, duties, procedures of the Commission and applicable principles (Mutua, 2000: 145).

Martin et al. (1997: 517) identify the following rights in the Charter:

- Prohibition of discrimination (article 2)
- Equality before the law (article 3)
- Right to respect of life and integrity (article 4)
- Dignity (article 5)
- Liberty and security of the person as well as the prohibition of slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment (article 6)
- Just administrative action (article 7)
- Freedom of conscience and religion (article 8)
- Access to information and freedom of expression (article 9)
- Freedom of association (article 10)
- Freedom of assembly (article 11)
- Right to participate in any governmental activities including elections (article 13)
- Right to physical and mental health (article 16)
- Right to education and culture (article 17)
- Right to equality (article 19)

It is the responsibility of each state that is part of the African Charter to submit a two-year report of all the steps taken to promote the rights in the Charter. This is not only to exchange the information with other countries, but also to ensure that the public is fully involved when it comes to national and international constitutions (Alston, 1991: 13). Each member state must ensure effective monitoring that will lead to effective steps being taken when problems arise. A policy should be formulated which will ensure that all the state parties set out domestic policies that are in line with the Charter. In addition, each country must ensure evaluation and benchmarking to accommodate changes. All the state parties must follow the same standards and by submitting a two-year report, domestic laws can be reviewed in order to eliminate problems.

4.4 STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

The correctional system was never intended to become a homeless shelter, a medical care centre, a mental health hospital, a dialysis unit, a prenatal care hospice or the other responsibilities that it now assumes. But this was not the case until the United Nations developed the Standard Minimum Rules for the Treatment of Prisoners, which was adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955 (Palmer, 1991: 815). The United Nations Standard Minimum Rules for the Treatment of Prisoners is the most comprehensive human rights instrument addressing the treatment and rights of offenders.

The document consist of two parts with part 1 being the rules of general application and part 2 covering the rules that are applicable to the special categories of offenders. This section will only cover part 1, as they apply to everyone within the correctional environment.

4.4.1 Basic principles

The Standard Minimum Rules for the Treatment of Prisoners apply to everyone regardless of race, colour, gender, language, religion, political affiliation, national or social origin, property, birth or other status (United Nations, 1984: 3). The religious beliefs of offenders should also be respected at all times when applying the rules because they may help to curb the negative behaviour amongst offenders.

To ensure the effectiveness of rehabilitation programmes, every offender must participate. Discriminating offenders on grounds such as race, for example, will only lead to offenders of certain races benefiting from the rehabilitation programmes. It should always be considered that all the offenders at some stage will have to return to society. To prevent them from re-entering the correctional system, they should all be rehabilitated in a way that they no longer resort to crime in order to maintain their lives.

4.4.2 Separation of prisoners

Under no circumstances may men and women be detained in the same facilities. The same applies to sentenced and unsentenced prisoners, youth and adults. The status of the offence must also be considered (Fields, 2005: 577).

Rehabilitation requires every offender to participate in programmes that best suit his or her requirements. Separation of offenders will not only prevent certain categories from victimisation, but it ensures that they access programmes that were specifically designed for them. This separation cannot be viewed as discrimination since it best suits the objectives of the correctional system, which includes the rehabilitation of offenders.

4.4.3 Accommodation

Sharing of cells must be avoided as far as possible and offenders should be detained in single cells if circumstances allow them to do so (Fields, 2005: 577). Offenders may only share their cells under circumstances such as overcrowding and which are beyond institution control.

McManus (1995: 56) says that “the prison cells must have enough space, [be] lighted, ventilated, heated and must be in the conditions which protect the health and safety of the offender”. It is important to provide all of this to avoid phenomena such as rapes, gang activities, escapes and drug abuse and to ensure the effectiveness of the rehabilitation programmes. In addition, for offenders to give their full commitment to the rehabilitation programmes, they need to be healthy and safe. Offenders pay less attention to rehabilitation programmes if they are detained in conditions that are unacceptable.

4.4.4 Personal hygiene

In the fulfilment of the need for good personal hygiene of offenders, adequate water and toiletries must be provided at all times. If the institution wants to meet the basic needs for

accommodation, food, clothing and the provision of better medical care, it is important to first maintain the minimum conditions of hygiene (Van Zyl Smit, 1992: 164).

Offenders' clothes must be washed, offenders should be given an opportunity to take a shower and they should clean their own cells in an effort to promote a good appearance. As part of their rehabilitation, offenders must be taught to stay clean. To ensure cleanliness, the necessary means must be provided at state expense. Failure to provide soap, water, towels, toilet paper, a toothbrush and clean clothing will be a violation of offenders' rights (Mushlin, 1998).

4.4.5 Clothing and bedding

Offenders must be provided with presentable clothes if they are not allowed to wear their own clothes and the clothes must be washed and changed more often. According to Van Zyl Smit (1992: 150), offenders' clothes must be clean and warm and it should be ensured that the health of the offender is maintained by considering climatic changes when providing clothes. Offenders should be checked regularly to ensure that they are clean.

When offenders leave the correctional centre, they should be allowed to put on their own clothes. Offenders should sleep separately and it should be ensured that they are provided with clean sheets, which should also be cleaned and washed and changed more often.

4.4.6 Food

Rule 20(1) of the Standard Minimum Rules for the Treatment of Prisoners states as follows: "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served" (United Nations, 1984: 5).

Not only should offenders be provided with healthy and nutritious food at all times, they should also be provided with drinking water. No offender will pay his or her full attention to rehabilitation on an empty stomach.

4.4.7 Exercise and sport

To ensure that offenders stay fit and healthy and to take their mind off the hardships of prison life, they must be given an opportunity to exercise under acceptable conditions (Fairchild & Dammer, 2001: 337). Young offenders should also get enough opportunity to exercise.

Ensuring physical and recreational training of offenders is an important part of the rehabilitation process. Offenders tend to forget the difficulties that they face while they are in the correctional centre and focus on the positive aspects of their sentence. Every offender must be given an opportunity to participate in exercises and other recreational activities. To emphasise the importance of sports in the rehabilitation process, certain offenders can go as far as becoming champions. These achievements contribute to lifting the morale of other offenders too and also help them realise that they too can achieve certain positive things in life.

4.4.8 Medical services

Kendig (2006: 8) feels that “correctional medicines now more than ever need the best and the brightest clinicians to meet today’s health care challenges”.

Within the correctional institution there must be a medical officer who has psychiatric knowledge.

Those offenders in need of special treatment must be transferred to a hospital that can provide that special treatment. Every offender must have access to a qualified dental

officer. A nursery must be provided for those offenders who want to stay with their children, and suitably qualified staff must be available all the time.

Offenders must be checked by a medical practitioner after they have been admitted to prison and those with infectious diseases must be separated to ensure that they do not infect other offenders.

Ill offenders must be seen by the medical practitioner daily and those offenders whose health is deteriorating as a result of incarceration must be reported to the director. Information regarding the quality of food, hygiene, bedding, clothing and physical conditions of the offender must also be reported.

A healthy inmate population can be viewed as the best investment a correctional institution can make with regard to security (Kendig, 2006: 8). Kendig gives an example of an inmate with infectious TB who is coughing violently. He or she can be stabilised if he or she can get effective treatment and in that way other offenders will be prevented from being infected with TB.

Coyle (2002: 52) lists reasons why offenders should be offered medical examinations when they first arrive at the correctional centre where possible:

- It makes it possible for the correctional staff to identify the medical conditions of each offender and treatment will be provided where it is needed.
- Drug addicts may be identified and therefore treatment that will help them go through the recovery process can be offered.
- Injuries which might have been sustained while the offender was still awaiting trial may be identified.
- Those offenders with mental problems can be identified and then support can be given.

A healthy offender has the ability to participate in the rehabilitation programmes offered within the institution without any problems. By identifying the medical needs of offenders, correctional practitioners will be able to identify programmes that are suitable for these offenders. Medical practitioners have a huge role to play in the rehabilitation of offenders. This role also extends to determining the progress of the offender and whether the rehabilitation programmes are making an impact on changing the offenders' behaviour. For example, for his or her recovery, a drug addict can be easily assessed by the medical practitioner from admission up until release. In addition, the importance of medical services cannot be underestimated because not only do they help ill offenders, but they also prevent other offenders from catching these illnesses.

4.4.9 Information to and complaints by prisoners

According to the United Nations (1984: 7), when offenders are admitted to a correctional centre they should be informed of the rules and regulations that they have to live by. They should also be informed of the right channel of communication so that when they want something they know where to go.

If offenders encounter any problems while incarcerated, they have the right to inform the director of the correctional centre or any person whom they think can help them, including the correctional inspector. They have this right without any restrictions by the official members of the correctional centre.

It is the duty of the responsible person to always follow up on the offenders' complaints because if these complaints are not attended to, this could result in major problems, such as strikes. This will have a negative effect on the running of a correctional system.

On their way to recovery, offenders deserve to be supplied with the necessary information that will make their rehabilitation possible. Offenders should know what is expected from them since rehabilitation requires their full commitment. They are also entitled to request any information that will be beneficial to their rehabilitation. It is

important to ensure that offenders' needs are met at all times if rehabilitation is going to be achieved. Offenders are also entitled to complain or make suggestions whenever they are dissatisfied.

4.4.10 Contact with the outside world

Offenders must be encouraged to have regular and yet meaningful contact with their families and friends either by correspondence or personal visits. The disruption of the prisoner's position within the family unit is one of the most distressing aspects of imprisonment, but enabling prisoners to stay in close and meaningful contact with the family as far as possible is an essential part of humane treatment. Foreign nationals are also encouraged to maintain meaningful communication with diplomatic and consular representatives of their own country (United Nations, 1984: 7).

To ensure that offenders are kept up to date with the latest developments from the outside, the use of newspapers and other mediums of communication must be encouraged. Non-governmental organisations (NGOs), which include religious groups and other groups that offer offenders training, education, cultural activities and which prepare offenders for release, offer another opportunity for offenders to make contact with the outside world.

Because offenders come from society and they are eventually going to return to it, they should be allowed to maintain contact with the outside world. An offender will be motivated to participate in the rehabilitation programmes, knowing that there is a community waiting for him or her outside the correctional centre. This offender will work hard to ensure that he or she no longer returns to the correctional centre.

4.4.11 Books

Offenders must be encouraged to read and that is why every institution must have library facilities to be used by offenders (Fields, 2005: 577).

“Educated inmates are better behaved, less likely to engage in violence, more likely to have a positive effect on the general population. Thus, these inmates can be a stabilizing influence in an often chaotic environment, enhancing the safety and security of all who live in correctional facilities” (Centre on Crime Communities and Culture, 1997: 8).

As indicated above, offenders who participate in educational activities have a positive impact on the whole correctional population. Just like every individual, there are lots of things offenders can learn from reading than just sitting in their cells for the whole day. Rehabilitation requires that offenders obtain as much new knowledge as possible – more than what they had before they were admitted to the correctional centre.

4.4.12 Religion

Religion plays a vital role in the daily lives of almost every individual and it can limit the negative behaviour amongst offenders. The correctional system must therefore never discriminate when it comes to religion. So if there are a sufficient number of offenders from the same religion, a qualified representative from that religion must be selected (United Nations, 1984: 7). Since all religions are equal, all offenders must be afforded an opportunity to see a religious representative of his or her choice without being forced by anyone.

All offenders must be allowed to satisfy their religious needs by, for example, studying their religion’s literature, worshipping together and wearing clothing or other items that are associated with their faith on special occasions. They can never be denied this by the correctional authority unless it threatens the security of the system.

Religion plays a positive role in changing offenders’ behaviour. Such a change in human behaviour makes it easier to implement rehabilitation programmes as offenders will be motivated to change. Even destructive offenders who previously paid less attention to rehabilitation programmes can be changed by being involved in religious activities. For rehabilitation to be effective, offenders must never be denied opportunities to participate

in their religious activities as these help them come together and guide each other positively.

4.4.13 Institution personnel

All correctional personnel must be placed on a grade where he or she will be productive and provide better service. Personnel must be paid the salaries that they deserve considering the nature of the job that they do.

Personnel should have the necessary educational background to ensure that they perform well in their designated jobs and they should keep on empowering themselves with the necessary skills.

Among the personnel of the correctional institution there should be psychiatrists, psychologists, social workers, teachers and trade instructors to offer such services to offenders when needed.

A director with all suitable qualifications, experience and abilities should be appointed to take care of the day-to-day running of the correctional centre on a full-time basis and, if possible, must reside in that institution.

Staff and offenders must communicate in a language that they both understand.

A medical practitioner must live within the correctional centre or closer to the correctional centre if he or she is responsible for a larger complex. In other centres he or she must visit at least every day or be available in cases of emergencies.

Female officials must be responsible for female offenders and should have full control of the keys to facilities. Men can never be allowed into the women's facilities without the supervision of the female officials. The same applies to doctors and teachers who perform professional duties.

Officers are prohibited from using force unless such use of force is justifiable for security reasons. If force has been necessary, a full report should be provided.

Correctional officials have a major impact in the rehabilitation of offenders. This is mainly because of the regular contact between them and offenders. A satisfied correctional official population can lead to a satisfied offender population (Fairchild & Dammer, 2001: 338).

4.5 CATEGORIES WITH SPECIAL REQUIREMENTS

Female offenders, offenders with mental illness, offenders with disabilities, offenders with infectious diseases such as HIV/AIDS, children and elderly offenders require special treatment from the correctional system in addition to those minimum requirements referred to in 4.4. Although all offenders should be treated equally, the condition of prisoners in the said categories justifies the special treatment that they must get from the system. This section will cover the above categories and explore the kinds of demands they impose on the correctional system and what can be done to ensure their rehabilitation.

4.5.1 Female offenders

The history of the penal system indicates that female offenders have not been fully recognised as a result of the population of female offenders not being as large as that of males and as a result of the way in which the correctional system operates (Salomone, 2004: 34). Because of the growth in the female offender population over the years, certain adjustments had to be made to ensure the effective rehabilitation of women. Female offenders encompass all the socio-economic classes, races and backgrounds and it is important that while they are in prison they are prepared to reintegrate successfully into their community. In addition, they should also learn some sound work skills that will prepare them for occupation after their release, like their male counterparts (Pollock, 1998: 143). In order to come up with programmes that will ensure the effective rehabilitation of female offenders, the demographics and the history of the female

population as well as different life factors that have an impact on their offending have to be understood.

Freedman (1981: 53) makes the following recommendations regarding the treatment of female offenders:

- Men and women offenders can never be detained in the same facilities, so separate facilities must be built for female offenders. As indicated in the Standard Minimum Rules for the Treatment of Prisoners, men and women should never be detained in the same facilities, and women require special accommodation from the correctional system. Rehabilitation programmes developed for women will be implemented successfully if female offenders are detained in facilities that suit their requirements. Female offenders will find it comfortable to be detained in a situation where they are not disrupted by males.
- Only female correctional officers must be responsible for the day-to-day running of the female facilities because men are regarded as a 'disruptive influence'. Only females will best understand the needs of other females. In implementing the rehabilitation programmes, female officials will ensure that these programmes are fit for females. Men should never be allowed to have access to the female facilities, in order to avoid complications in the rehabilitation process.
- Women's sentences must be imposed in a manner that enables them to undergo programmes that will allow them to become productive citizens after their release. Only rehabilitation programmes that are guaranteed to be effective in the rehabilitation of female offenders must be applied. When sentencing a female offender, rehabilitation must be the main purpose of the sentencing. Female offenders must be treated in a manner that will prevent them from committing further crime. They should gain as much knowledge and acquire as many skills as will help them after their release.

- Because of differences in physical appearance and physiological make-up, men and women should be treated differently. Rehabilitation programmes must be designed in a manner that female offenders will not find it difficult to participate in them. Programmes that are believed to be too hard for females should never be used; rather, female offenders should have their own programmes developed for them.
- Special training programmes have to be designed for women in every institution. As mentioned above, female offenders must have different programmes from male offenders. The same applies to training programmes. The state must ensure that female offenders participate in training programmes that will ensure their rehabilitation. Female offenders must be provided with the special skills that will ensure that they reintegrate successfully into the community, for example knitting and sewing.

Even if women have committed their crimes and they have to pay for them, the correctional system has to consider certain aspects that are unique to women when dealing with them behind bars. Even though female offenders represent a smaller number, the correctional system must provide equal services and programmes for them like they do for men (Dale, 1991: 56). Because some female offenders are detained with their children, it is the responsibility of the state to provide all the essentials for the children ranging from clothes to study materials.

As indicated in the Universal Declaration of Human Rights and the Standard Minimum Rules for the Treatment of Prisoners, discrimination on the basis of gender is prohibited. Female offenders therefore also have the full protection of their human rights and the correctional system can never violate them.

According to Bloom (1999: 23), the following are the guiding principles to be followed when designing female programmes within the correctional institution:

- When it comes to equality of women it does not mean that they should have access to those rehabilitation programmes designed for men; rather, they should have programmes that are relevant to their gender.
- These kinds of rehabilitation programmes must not be 'women only' programmes designed for men.
- Female offenders must be empowered through the promotion of their self-esteem.
- All the issues that are specifically related to females must be addressed in safer situations which are supportive and confidential.
- The level of security for female offenders must depend on rehabilitation programmes for such offenders, must ensure public safety and also offer the required rehabilitation programmes.
- The culture amongst female offenders must be promoted and all the cultural resources must be used.

4.5.2 Offenders with HIV/AIDS and other illnesses

Because of the diversity of the offender population of every country, it is obvious that there is a high risk of dangerous diseases such as HIV/AIDS, TB and diabetes which can hamper the process of rehabilitation. In order to ensure effective control of these diseases, the correctional system has to find ways to avoid the spread of these diseases because they create problems for the administration of the correctional system.

To ensure the effective management of inmates affected by or infected with HIV/AIDS, the following should happen (Schmallegger & Smykla, 2005: 430):

- All new offenders should undergo screening upon admission to find out about their status. Because of the high risk of homosexuality amongst offenders, the issue of HIV/AIDS demands special attention from the correctional system. If an infected offender can be identified as soon as possible, rehabilitative measures which are effective for that offender will be applied. For example, the offender can be provided with the necessary medication or the nutritional requirements which will keep him or

her healthy. Not only will rehabilitation programmes help the offender, but other offenders will also be protected from being infected.

- Health specialists should be available for treatment and regular medical checkups. Because of the huge demand imposed by HIV/AIDS on medication and treatment, the services of the medical practitioners must always be available when needed. Offenders should always be checked in order to monitor whether their treatment is being effective and to identify new methods that can be used to ensure their rehabilitation.
- Classification of offenders should be in a way that can separate terminally ill offenders from others and in a way that prevents homosexuality. The issue of homosexuality within correctional centres is a reality, as mentioned above. Offenders' progress towards their rehabilitation can be monitored easily if they are grouped together according to the demands that they impose on the correctional system. The needs for medication will also be identified easily, which is not the case when there is no effective classification system.
- All issues related to HIV/AIDS should be made known to staff and inmates. Offenders as well as officials must be provided with enough information regarding HIV/AIDS so they know how to approach the issue. This information will empower them as to how to prevent it and how to deal with infected offenders. Understanding the disease by staff members will also ensure that they do not discriminate against those affected when it comes to the implementation of the rehabilitation programmes and they will treat them like other offenders.
- Funds should be provided for the treatment of offenders infected with HIV/AIDS. Because offenders have no way of generating income while they are in the correctional centre, the state must pay their medical costs. All the demands posed by the offenders regarding treatment must always be met in order to ensure a healthy correctional environment.

Cooke, Baldwin and Howison (1990: 76) maintain that prisons “are ideal situations for educating people who may well come into contact with the virus. Not only can the information be made available on a large scale but also facilities exist, through education units, for example, to talk to inmates alone or in small groups about how AIDS does or could affect them”.

Offenders with HIV/AIDS or other infectious diseases retain all their rights, like any other offenders, and they can never be discriminated against. It is the duty of the state to provide them with better medical treatment. The state must see to it that all these offenders get effective treatment because chances are that if the infected offender cannot get the medication in time, the diseases might spread throughout the correctional centre.

To ensure effective control over HIV/AIDS, the correctional system must provide a special programme that includes the following (De Groot, Leibel & Zierier, 1998: 139):

- Offenders should take an HIV/AIDS test voluntarily.
- Those that are infected should be given care by professionals.
- Medication should be made available and all the offenders should be taught about all the prevention methods.
- There should be education and counselling of all the dangers related to AIDS.
- Offenders should be taught to make the right sexual choices.
- Offenders should be allowed to form support groups that will help them in the treatment and counselling of AIDS.

4.5.3 Offenders with mental illness

It is a known fact that people with mental illness can never be admitted to a correctional centre (Department of Correctional Services, 2005b: 166). However, because these people are difficult to identify during their trial or before they go to the correctional centre, some of them are only identified when they are inside as being mentally unstable. There has to be a way to deal with these offenders in a special manner, which might mean

sending them to a mental institution. Offenders with mental health problems require special treatment from the correctional system and they should be able to have access to that treatment whenever they want it.

According to Cohen (1998), the correctional system must provide the following to ensure the effective rehabilitation of mental health problems:

- All offenders should be screened in order to identify those who might need treatment. It is important to keep track of the older offenders' progress because of their unstable health conditions. This will help those responsible for the development of rehabilitation programmes to develop programmes that are effective for this group of offenders. Problems that they encounter can also be identified.
- Separation and direct supervision of mentally ill offenders is not the only solution; there should be more effective rehabilitation programmes. As for offenders infected with HIV/AIDS and female offenders, offenders with mental illness are required to have special rehabilitation programmes designed for them. Those rehabilitation programmes have to pay attention to what seems to be effective ways to deal with these offenders.
- Professionals with a knowledge of mental health must be made available. Only psychologists must be used for the treatment of offenders with mental illness because of their broad knowledge. They will be able to identify efficient ways in which such an offender can be dealt with and they will determine which rehabilitation programmes will be effective.
- It must be assured that the treatment programmes are accurate, complete and confidential. In order to avoid additional problems regarding the offenders' illness, only the required treatment must be provided. Also, the rehabilitation of offenders with mental illness has to be confidential in order to avoid victimisation.

- Appropriate medication must be provided under the supervision of professionals. In addition, the professionals have to identify offenders with suicide tendencies so that they can be monitored regularly. Professionals must oversee the programmes designed for mentally ill offenders on a daily basis to avoid further complications.

As the provision of better medical care is the obligation that every correctional institution must comply with, mentally insane offenders must receive treatment with no problems. It must also be acknowledged that sometimes a person's criminal behaviour might be the consequence of his or her mental status, so it is important for the correctional officials to have a broad knowledge of the signs and symptoms of mental problems.

4.5.4 Young offenders

Coyle (2002: 126) explains that if ever a young person is detained, there has to be special treatment for that person, opportunities for training and development must be used to the maximum and family relationships must be promoted. The rehabilitation of a young offender is of the utmost importance. To ensure the effective implementation of rehabilitation programmes and to avoid victimisation, young offenders can never be detained with adult offenders. Because young offenders have been victims of intimidation, sexual assaults, physical and emotional abuse, it is required that they be treated in a different manner from adults (Silverman, 2001: 447).

The manner in which young offenders must be treated includes the following:

- Separation: Young offenders should be kept as far as possible from adults and every correctional institution must house them separately and must provide education and recreational facilities that are separate from those of adults. Young offenders will have easy access to all rehabilitation programmes in a situation where they do not have to share with adult offenders. At the same time, young offenders will not be intimidated by adult offenders who are often bad influences.

- Judicial review and authorisation: The placement of young offenders must be avoided and it can be possible only if the court has authorised it. When authorising the incarceration of a young offender, the aim must be to change the behaviour of that offender. A young offender must be exposed to as many rehabilitation programmes as possible while detained. This will ensure that when he or she walks out of the correctional centre, he or she starts a whole new life free from offending.
- Nutrition: Because young offenders require different nutritional standards, the correctional system must provide food that is adequate for them. Failure to supply offenders with food that they require will cause them to be aggressive towards the rehabilitation programmes. If the correctional system wants to meet its rehabilitation objectives, it should first meet the requirements of offenders.

The correctional system must ensure the following differences in the treatment of young offenders compared to adult offenders (Schmallegger, 2001: 562):

- The system should focus on the best interests of a young offender rather than on whether the person is guilty or innocent.
- The treatment should be emphasised as the most important thing, rather than punishment.
- Young offenders should be protected from the public.
- Young offenders must not receive long-term sentences.
- They should be detained in separate institutions.
- Alternatives must be considered for young offenders rather than sentencing.
- Rather than imposing sentences with the aim of punishment, there are social techniques that can be used.

The staff of every correctional institution that deals with young offenders must know what can lead to their rehabilitation and must instil a sense of pride in them. Also, they should ensure that young offenders are treated in a manner that they get everything they need without being discriminated against. This includes food, adequate accommodation, exercise, medical care and clothing and bedding.

4.5.5 Older inmates

The issue of older inmates can never be overlooked because it has a major impact on the functioning of the correctional system. They carry heavy costs when it comes to their rehabilitation and that creates problems for the correctional institutions. In addition, their physical, mental and medical health care has implications for prison policymakers, administrators and staff (Schmallegger & Smykla, 2005: 437). Older offenders suffer from disabilities, physical impairments and illnesses that are not usually encountered among the youth.

Few correctional centres are equipped to deal with the medical needs of ageing offenders. It is also difficult to implement rehabilitation programmes aimed at older prisoners, such as education and training, simply because it might not be useful to them after their release. Health care, depression amongst older offenders, special nutrition required by older offenders and limited knowledge by staff about the rehabilitation of older prisoners are major problems that the correctional system is facing (Silverman, 2001: 181).

Like any other offender, older offenders must be provided with all their requirements by the correctional system and their rights also have to be protected at all times. Older offenders cannot be discriminated against because of their age and they should have access to all the rehabilitation programmes that are effective for them. Like their younger counterparts, older offenders deserve to be treated with dignity.

4.6 SUMMARY

The chapter focused on the issue of international human rights and, more specifically, prisoners' rights. All the human rights instruments mentioned in this chapter consider and uphold the rights of every individual, whether offenders or not, because they are also human beings. They do not discriminate on the basis of race, colour, sex, language, religion, political affiliation, nationality and marital status.

Until the development of the Universal Declaration of Human Rights by the United Nations in 1948, the issue of human rights was not even recognised as important. The Declaration made it possible for every individual to be recognised as a human being and all the articles in the Declaration set out what is due to every individual without any discrimination. The Declaration values the dignity of every individual as important and it has to be recognised at all times. The introduction of the Universal Declaration paved the way for the development of other important international human rights instruments, such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. All the instruments have nothing but the upliftment and the protection of human dignity as a point of departure. They outline the kinds of rights that can never be violated by an individual or even the state.

The Standard Minimum Rules for the Treatment of Prisoners developed by the United Nations in 1955 guarantee that all people who are under detention have to be treated with humanity and their dignity has to be recognised because they are also human beings. They set out all the necessities that have to be provided to the offender by the correctional system, and failure to provide them will be a violation of their rights. In addition to the minimum rules there are also certain categories of offenders that require special treatment from the correctional system and they include female offenders, mentally ill offenders, offenders under the age of 18 and older offenders.

CHAPTER 5

OFFENDERS' RIGHTS REGARDING REHABILITATION WITHIN THE SOUTH AFRICAN CORRECTIONAL SYSTEM

5.1 INTRODUCTION

South Africa as a country has seen so many changes recently mainly because of the young democracy that the country has, with still a long way to go. Lots of changes have also occurred within the criminal justice system and the prison system, indicating that the last link in the chain of the criminal justice system has not been left out. The prison system in South Africa was characterised by discrimination against offenders and personnel of different races. The system has been transforming towards a new correctional system which respects the dignity of everyone involved in the system.

The correctional system within the new democracy, as indicated by the Constitution of 1996, will be examined in this chapter. The emphasis is on Chapter 2 (Bill of Rights), which is aimed at outlining the rights of every individual. As a result, this chapter deals with the rights in the Bill of Rights that have an influence on the rehabilitation of offenders while they are within the correctional system and that affect their rehabilitation process, such as freedom of expression, freedom of association, right to opinion, religion and belief, and right to equality.

The Department of Correctional Services is guided by the Correctional Services Act 111 of 1998 and the White Paper on Corrections of 2005, which outlines the way ahead for the Department. In order to stay in line with the implications of the Constitution and to shift towards the rehabilitation of offenders instead of just keeping offenders out of society and then returning them to society after the sentence without being rehabilitated, the Department has embraced these provisions. So the provisions of the Act and the implications of the White Paper on Corrections will be discussed.

The formation of major organisations such as the South African Prisoners' Organisation for Human Rights (SAPOHR), which promotes offenders' rights, has had a positive effect on the functioning of the correctional services. The functioning of SAPOHR and other role players in the promotion of offenders' rights in South Africa will be dealt with in this chapter.

5.2 HISTORICAL OVERVIEW OF THE SOUTH AFRICAN CORRECTIONAL SYSTEM

The current status of correctional services in South Africa is a result of many changes that have occurred in the past. During the 1600s most sentences were aimed mainly at deterring other citizens from offending; hence the punishment was carried out in public (Coetzee, Kruger & Loubser, 1995: 28). It is believed that the first prison to be established in South Africa was Robben Island, which was characterised by severe punishment. The first prison in the Cape was established in 1781 and by 1848, 22 prisons had already been developed around the Cape. In Natal the first prison was established between 1838 and 1842 in Pietermaritzburg and after 1854, the Orange Free State and Bloemfontein also built their own prisons. The first prison in Pretoria was established in 1865. By 1873, there were already 33 prisons in the Transvaal (Neser, 1993: 66).

5.2.1 South African prisons in the early 1900s

According to Van Zyl Smit (1992: 20), the unification of South Africa that took place on 30 May 1910 led to many changes regarding the operations of prisons. Many changes started after Jacob de Villiers Roos, who had at the time been working as the Director of Prisons for the Transvaal since 1908, was appointed as the Secretary of Justice and Director of Prisons for the Union. His first major role was to come up with legislation that would regulate the operations of prisons. The outcome of his work was the Prisons and Reformatories Act 13 of 1911.

The 1911 Act had many shortcomings when it came to the administration of prisons, as described by Coetzee, Kruger and Loubser (1995: 29). A few of the weaknesses of the Act include the lack of clarity with regard to the aims of imprisonment. This led to prisons focusing more on safe custody and prisoners were detained under harsh conditions. Punishment and forced labour were the order of the day within the prisons. In addition, section 9(1) of the Act made specific provision for racial segregation, which on its own was a problem.

5.2.2 The 1947 Lansdowne Commission on Penal and Prisons Reform

Owing to the high level of recidivism amongst prisoners, there was a need to investigate the operations of the prisons so that changes could be made where necessary. The Lansdowne Commission was appointed in 1941 and only released its findings in 1947. One of the major findings of the report was the problems that were associated with the Prison and Reformatories Act 13 of 1911. It emerged that, instead of introducing a whole new era of the operation of prisons, the Act continued to support the previously used harsh sentences and inequitable prison system (Van Zyl Smit, 1992: 28).

Coetzee, Kruger and Loubser (1995: 31) also mention that the Commission had the mandate to investigate the following:

- The whole structure of the Department of Prisons
- Methods of recruitment used by the Department as well as the qualifications of the prison officials
- Classification and control of prisons
- Methods of punishment which were being used in various prisons
- Various forms of programmes aimed at educating and training offenders in various skills
- The remuneration of offenders for the work that they did
- The use of prisoners for labour by private institutions or individuals
- The transfer of prisoners from prison to society

After a few years of investigating, the Commission finally released its findings and recommendations. Amongst others, the Commission made the following recommendations: It did not support the hiring of prisoners to private institutions or individuals, it emphasised the rehabilitation of prisoners and the provision of education and training and it discouraged the military approach to management followed by the Department, as this was not conducive to the rehabilitation efforts (Department of Correctional Services, 2005: 44).

5.2.3 The era of South African prisons from 1959 and beyond

In 1959, the Prisons Act 8 of 1959 replaced the Prison and Reformatories Act 13 of 1911, which was believed to be a failure since it did not even state the aims of imprisonment to begin with. This Act was influenced by the Standard Minimum Rules for the Treatment of Prisoners developed by the United Nations in 1955. The Act did manage to set out the responsibilities of the Department as follows: safe custody of offenders, development and rehabilitation of offenders, efficient management of the Department and the performance of other duties that can be assigned by the Minister.

However, the Prisons Act, later called the Correctional Services Act 8 of 1959, also had its own shortfalls. Even though it attempted to be in line with the Standard Minimum Rules, some provisions were in conflict with these rules (Human Rights Watch, 1994: 1). For example, Rule 6(1) of the Standard Minimum Rules states that all the provisions should be applied impartially without any discrimination on one or more of the following grounds, i.e. race, colour, gender, language, religion or other opinion, national or social origin, property or other status. However, the Correctional Services Act 8 of 1959 itself stated in section 23(1) that:

“(b) as far as possible, white and non-white prisoners shall be detained in separate parts thereof and in such manner as to prevent white and non-white prisoners from being within view of each other; and
(c) wherever practicable, non-white prisoners of different races shall be separated”

Van Zyl Smit (1992: 31) mentions that the racial segregation of offenders continued even after the introduction of the 1959 Act, which was supposed to be a replacement of the 1911 Act. In addition, corporal punishment was retained as a means of punishment for disciplinary offences committed by male prisoners, even though the Standard Minimum Rules strictly opposed this type of punishment. The Act did not promote the principle of transformation in the prison system either.

Throughout the years there have been many changes in South Africa, be they political, economic, social or technological. These changes influenced the day-to-day running of prisons. For example, political control of the past as characterised by the rule of apartheid also extended to the operations of prisons because prisons are government institutions. The separation of white offenders from non-white offenders and the dominance of white people in the management of prisons are some of the examples of the apartheid rule. However, the reversal of racial segregation which had been part of South African prisons for more than a century began in 1988 owing to amendments to a number of regulations that referred to race (Van Zyl Smit, 1992: 39). In 1990, a national peace accord that led to the end of all discriminatory laws was signed. The end of discriminatory laws also extended to prisons, where racial discrimination was abolished.

5.2.4 The correctional system in South Africa since 1994

According to Coetzee and Gericke (1997: 14), the history of the South African correctional system as represented by the apartheid regime led to the mistreatment of offenders and staff members in general. Important developments occurred in South Africa immediately after the 1994 elections. After the elections there was a need to develop a new set of laws that would regulate a non-racial South Africa not only within the correctional service, but in every government unit. The Constitution of South Africa 108 of 1996 was then implemented, and it introduced a culture of human rights for everyone, including offenders. The first step taken by the National Cabinet was to remove Correctional Services from the Department of Justice to become an independent department with its own Minister (Gxilishe, 2004: 68). Correctional Services also had to

make changes in its legislation so that its operations were in line with the Constitution and, more specifically, to meet international standards. As a result the Correctional Services Act 111 of 1998 was drafted.

The changes that occurred in 1996 with the appointment of a Minister of Correctional Services led to a whole new phase in the correctional system of South Africa. In the mission to do away with the past, the Department of Correctional Services has redeveloped itself into a whole new system which pays attention to the rehabilitation of offenders. In addition, the establishment of major organisations such as the Police and Prison Officers Civil Rights Union (POPCRU) and the Correctional Officers Union of South Africa (COUSA), which protects the interests of correctional officials, as well as SAPOHR, which promotes offenders' rights, has played a significant role in revolutionising the correctional system of South Africa.

The mandate of the Department is currently drawn from the 1996 Constitution of South Africa (incorporating the Bill of Rights), the Correctional Services Act 111 of 1998, and regulations, subordinate policy and institutional orders, the National Crime Prevention Strategy and the White Paper on Corrections in South Africa. The introduction of both the Constitution of South Africa of 1996 and the adoption of the Correctional Services Act 111 of 1998 saw the Department of Correctional Services moving away from the old methods of operation. New policies and procedures were introduced which recognise the rights of inmates, thereby ensuring the effective functioning of the Department. In his foreword to the White Paper on Corrections in South Africa (Department of Correctional Services, 2005b: 7), the Minister of Correctional Services Mr BMN Balfour (at the time of writing) confirmed that "it took the political metamorphosis of 1994 to introduce the first steps along the path of respect for human life and human dignity. The transformation programme of this country's first democratic government necessitated that prisons shift from institutions of derision to places of new beginnings".

As indicated in the annual report of the Department of Correctional Services (Judicial Inspectorate of Prisons, 2006: 12) the Department aims to achieve the following: "To

contribute towards maintaining and protecting a just, peaceful and safe society, by enforcing court-imposed sentences, detaining offenders in safe custody whilst upholding their human dignity and promoting the social responsibility and human development of all offenders and persons subject to community corrections.” As mentioned, not only does the Department aim to detain offenders in safe custody, but also to respect the offenders’ dignity at all times to ensure that they take responsibility for their actions.

The Department currently offers the following programmes (Judicial Inspectorate of Prisons, 2006: 58):

- **Programme 1: Administration**

The purpose of this programme is to ensure the provision of all administrative, management, financial, information communication technology, service evaluation, investigative and the necessary support functions that are important to the delivery of service by the Department.

- **Programme 2: Security**

This programme is to ensure the safety of everyone affected by the activities of Correctional Services from offenders, personnel and the community at large without hampering the human dignity of offenders.

- **Programme 3: Corrections**

The purpose of this programme is to ensure that offenders’ sentences are planned in relation to their needs and also that the programmes related to their development are planned in consideration of their needs. Factors such as criminal profile, security risk and the nature of the offence committed by the offender must be considered.

- **Programme 4: Care**

The purpose of correctional services is to provide the necessary care to all offenders with the provision of better nutrition, psychological services and better health care services, among others.

- **Programme 5: Development**

The purpose of this programme is to offer services necessary for personal development to all offenders.

- **Programme 6: Social Reintegration**

As offenders are provided with personal development services, the aim is to prepare them so that they can lead a normal life after their release. The Department aims to ensure this by monitoring their reintegration into society.

- **Programme 7: Facilities**

The purpose is to ensure that all correctional facilities are in conditions that provide for the safe custody of offenders, and that are humane, and that care and development are provided for offenders as well as administration of the prison.

From the above one can conclude that the Department has shifted from the top to bottom hierarchical structure which was characterised by instructions from top management which had to be obeyed by the staff at the bottom levels. Now it believes that there should be interaction between levels and the system now also considers the rehabilitation of offenders and the upliftment of their rights as of the utmost importance.

5.3 PROVISIONS OF THE CONSTITUTION OF 1996 IN RELATION TO THE REHABILITATION OF OFFENDERS

5.3.1 Purpose of the Constitution

The preamble to the South African Constitution is based on four cognitive themes which indicate its purpose (Devenish, 1998: 28):

- It is concerned with undoing the separations of the past, thereby leading to a new society which is based on democratic values, social justice and fundamental rights. Even though the theme is related to history, its implications are here to stay.
- The creation of a new democratic order where every citizen has the right to participate.
- Improving the quality of all citizens, thereby ensuring social and economic justice to all.
- Working towards building a united and democratic South Africa.

5.3.2 Specific rights contained in the Constitution

As indicated in section 7 of Chapter 2 of the Constitution, all the rights that are included in the Constitution are meant for every citizen of the country and they strive to uplift the human dignity, equality and freedom of everyone. Because this study is based on the rights that have a direct impact on the rehabilitation of offenders, only those rights in the Bill of Rights that have such an impact will be discussed. How the rights in the Bill of Rights influence the way in which offenders should be treated within the correctional system will be explored.

5.3.2.1 Equality

Section 9 of the Bill of Rights states as follows:

“(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”

It is clear from the Constitution that every citizen of South Africa should be treated equally and they should never be discriminated against on the grounds mentioned in subsection (3). Mubangizi (2004: 72) cautions that equality does not necessarily mean that all people should be treated in the same manner; rather, it requires those things that are alike to be treated alike and those things that are unlike to be treated unlike. The Constitution of South Africa, like the Universal Declaration of Human Rights (articles 2 and 7), guarantees equality to everyone including offenders and this equality should also prevail within the correctional system when implementing rehabilitation programmes for offenders.

The rehabilitation programmes of offenders must be developed in a manner in which every offender can participate without difficulty. Everyone in prison should have equal

access to facilities, including jobs, education, library services, exercise and accommodation.

In addition, failure to provide equal opportunities for rehabilitation will lead to the ineffectiveness of the correctional system. Hence it is important to ensure that every offender is fully rehabilitated when leaving the correctional centre. Unless it can be proved that such discrimination is fair, for example separation of juveniles and adult offenders, no offender in South Africa can be discriminated against on the basis of the aforementioned grounds, as everyone is equal before the law.

5.3.2.2 Human dignity

Section 10 of the Bill of Rights states as follows:

“Everyone has inherent dignity and the right to have their dignity respected and protected.”

The dignity of every person is viewed as important, which is why the Constitution states that it should be respected and protected at all times. Because South Africa is a country which in the past was clouded by the rule of apartheid, which paid little or no attention at all to the dignity of citizens, the right to dignity is important in ensuring that everyone gets the respect that they always deserved (Devenish, 1998: 51).

Given the country’s history, the dignity of offenders was never considered when it came to the way they should be treated while incarcerated and they were treated like slaves. But given the changes in the country, offenders’ dignity is considered important and every activity that takes place within the correctional centre must never violate the dignity of offenders. The dignity of offenders must never be sacrificed even when implementing the rehabilitation programmes. This section of the Constitution reinforces article 1 of the Universal Declaration of Human Rights which prohibits any violation of human dignity.

5.3.2.3 Freedom and security of the person

Section 12 of the Bill of Rights provides as follows:

“(1) Everyone has the right to freedom and security of the person, which includes the right-

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

(2) Everyone has the right to bodily and psychological integrity, which includes the right-

- (a) to make decisions concerning reproduction;
- (b) to security in and control over their body;
- (c) not to be subjected to medical or scientific experiments without their informed

consent”

The Constitution, as indicated in section 12(1), guarantees the freedom and security of every person and it prohibits anyone from depriving the freedom of another person without any reason. It also ensures that every person is protected from any cruel, inhuman or degrading punishment, which is in line with the provisions of article 5 of the Universal Declaration of Human Rights.

Within the correctional context the section implies that Correctional Services is obliged to ensure the safety of offenders because it is supposed to rehabilitate offenders so that they can change their offending behaviour. A safe environment will motivate the offenders to participate in the rehabilitation programmes designed for them, unlike in a situation where the offenders’ security is always under threat. The Department must also ensure that the road to maintaining discipline does not constitute cruel, inhuman or degrading treatment of offenders because that kind of treatment hampers offenders’ will to participate in the rehabilitation programmes.

5.3.2.4 Slavery, servitude and forced labour

Section 13 of the Bill of Rights provides as follows:

“No one may be subjected to slavery, servitude or forced labour.”

Section 13 protects any person from being slaves or performing forced labour. This means that everyone will be able to perform the kind of labour that is comfortable for them and that provides favourable working conditions. This provision is in line with article 4 of the Universal Declaration of Human Rights.

The correctional system must provide offenders with meaningful labour that will ensure that they are successfully rehabilitated when returning to society. This labour must provide offenders with the necessary skills that will ensure their successful reintegration. Offenders will be fully focused on the kind of labour that they perform in the correctional centre if it has meaning and can help them sustain their lives. From the Constitution it is clear that forced labour is no means of punishment; hence the Department cannot force offenders to perform labour unless it is for a good cause and will eventually lead to their rehabilitation.

5.3.2.5 Privacy

In terms of section 14 of the Bill of Rights:

“Everyone has the right to privacy, which includes the right not to have-

- (a) their person or home searched;
- (b) their property searched;
- (c) their possessions seized; or
- (d) the privacy of their communications infringed.”

From the Constitution the privacy of anyone has to be respected and no one can search or seize other people’s property without their consent. “Privacy is a basic human need, essential for the development and maintenance both of a free society and of a mature and

stable personality for an individual. It is profoundly cherished as a right by persons; both in relation to intrusion by state and as far as other people in the community are concerned” (Devenish, 1999: 135). The violation of privacy is twofold, namely the unauthorised invasion of someone else’s private life and disclosing someone else’s information without their authorisation (Devenish, 2005:81). The implications of section 14 of the Constitution are also in line with article 12 of the Universal Declaration of Human Rights.

The privacy of the offender must be considered at all times when a search is conducted. Infringements of the right to privacy must be minimal and offenders should be allowed to communicate with whomever they want to without their privacy being infringed, whether by mail, telephone, etc. The correspondence between offenders and their family members is important and can sometimes motivate the offender to participate in the rehabilitation programmes. For this reason, it should always be respected. An offender will focus on programmes that will change his or her behaviour, knowing the status in his or her family, and will try by all means necessary not to disappoint them again. However, the correctional officials may, if necessary, restrict any personal correspondence of offenders if the purpose is to ensure the security as well as the rehabilitation of such offenders (Fisher, 1990: 1064).

5.3.2.6 Freedom of religion, belief and opinion

Section 15 of the Bill of Rights states the following:

“(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Religious observances may be conducted at state or state-aided institutions, provided that-

- (a) those observances follow rules made by the appropriate public authorities;
- (b) they are conducted on an equitable basis; and
- (c) attendance at them is free and voluntary.

(3) (a) This section does not prevent legislation recognising

- (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.”

Every South African citizen is protected by section 15 of the Constitution to practise their own religion without any interference from anyone or without being compelled by anyone. Any person is also allowed to attend religious services of their choice and no religion has to be regarded as better than another because all religions are equal. As in article 18 of the Universal Declaration of Human Rights, everyone is also allowed to worship according to their religion or to teach it.

For the rehabilitation of offenders, they should be encouraged to follow a religion of their choice and be granted equal and enough time to practise it, as religion plays a significant psychological role in the rehabilitation of offenders. The fact that religion forms an important part of personal identity such as “political affiliation, racial or ethnic background, profession, occupation or marital status” is confirmed by Smith in Ahdar and Leigh (2005: 60). Through religion offenders have time to come together and in that instance they teach each other positive things that can change their behaviour. Religion and rehabilitation can never be separated as they both attempt to change human behaviour for the better.

5.3.2.7 Freedom of expression

Section 16 of the Bill of Rights states as follows:

“(1) Everyone has the right to freedom of expression, which includes

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and

- (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to-
 - (a) propaganda for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

As long as it does not promote hatred amongst other races, ethnicity, genders or religions, section 16 of the Constitution guarantees freedom of expression for every citizen. It gives everyone the power of free speech and the following are the reasons why this should be given constitutional protection (Mubangizi, 2004: 87):

- It is an instrument of democracy in a sense that it promotes free political speech which comes with any parliamentary democracy and ensures the participation of the public.
- It is an instrument of truth in a sense that it promotes open discussion which ensures that the society participates in finding the true facts and judgements.
- It is an instrument of personal fulfilment in a sense that there are no boundaries as to what a person should or should not say.

The implications of the section are in line with those of article 19 of the Universal Declaration of Human Rights. Within a correctional system, as long as the application of this right does not lead to what is mentioned in subsection 2(a) of section 16, such freedom has to be promoted. Offenders will therefore be able to have a say in what works for them and what they require from rehabilitation programmes. Rehabilitation requires offenders to be trusted enough to make suggestions about what they regard as important in their lives.

5.3.2.8 Assembly, demonstration, picketing and petition

Section 17 of the Bill of Rights provides as follows:

“Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.”

As long as it does not result in violence or disturb other people in the enjoyment of their rights, section 17 provides every citizen with the right to assemble, demonstrate, picket and to hand over petitions in order to express their opinion. This section is in line with article 20 of the Universal Declaration of Human Rights. In addition, offenders, like anybody else, are allowed to express their dissatisfaction as long as it does not lead to problems within the correctional centre. Rehabilitation programmes will only work if offenders are satisfied with the services they get from the correctional system. Because the offenders are the most important clients of the correctional system and they have to be rehabilitated to be able to go back to society, it is important that they be listened to. The procedure regarding the handling of offenders’ complaints is discussed in 5.4.13.

5.3.2.9 Freedom of association

In terms of section 18 of the Bill of Rights:

“Everyone has the right to freedom of association.”

Like article 20 of the Universal Declaration of Human Rights, section 18 guarantees the right to freedom of association, which entitles everyone, including offenders, to fall under, for example, a political party and religion of their choice without being restricted by anyone or anything. According to Palmer (2001: 53), freedom of association does not extend to offenders becoming members of gangs, as gang activities threaten the running of the correctional centre from a security perspective. Offenders must be allowed to associate with anything that will have a positive influence in their rehabilitation process. Denying offenders such an opportunity will not only be a violation of their rights, but it will demoralise them, which can lead to them paying less attention to the rehabilitation programmes.

5.3.2.10 Political rights

Section 19 of the Bill of Rights states the following:

- “(1) Every citizen is free to make political choices, which includes the right
- (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - (b) to stand for public office and, if elected, to hold office.”

This section provides that every citizen of South Africa is entitled to make their own political choices, which includes the right to vote as well as the right to be elected to hold office. “The right to vote is the essence of a democratic society - by voting, each eligible person has the power to contribute to the composition of parliament and indirectly, their government” (Rishworth et al., 2003: 262). According to Devenish (2005: 112), every South African citizen is entitled to political rights irrespective of their race, colour, gender, creed or origin. As mentioned earlier, political rights offer offenders the power to participate in the political activities of their country. If attempts are made to rehabilitate offenders, there is no need to exclude them from their country’s political activities because at the end of the day they are going to return to that society that they have voted for. Section 19(3) of the Constitution states that every South African citizen over 18 years is eligible to vote and this includes offenders. Since 1999 South African offenders have been allowed to vote. In the case of *August and another V Electoral Commission and others* 1999 (3) SA 1 (CC) the Constitutional Court made the following rulings in favour of offenders:

- Offenders who were incarcerated during the period of registration are allowed to register.

- All those offenders who appear on the voters' roll are allowed to vote and the Electoral Commission is obligated to make sure that it happens (Mbodla, 2002: 92).

5.3.2.11 Health care, food, water and social security

Section 27 of the Bill of Rights states as follows:

- “(1) Everyone has the right to have access to
- (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and
 - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.”

As indicated in article 25 of the Universal Declaration of Human Rights, everyone is entitled to adequate health care, food, clothing, housing as well as medical care. The Constitution of South Africa also guarantees these services to every South African citizen. It is the responsibility of the state to ensure that every citizen has full access to all essential services and Correctional Services as an organ of the state has to provide for its offenders. To ensure the effectiveness of rehabilitation programmes, the above needs have to be met first. A healthy offender who has enough food and enough water to drink is more likely to participate fully in the rehabilitation programmes than any offender who does not have the aforementioned. Failure to supply effective health care services and food will have a negative impact on the effectiveness of rehabilitation programmes.

5.3.2.12 Education

Section 29 of the Bill of Rights states as follows:

- “(1) Everyone has the right
- (a) to a basic education, including adult basic education; and

- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
 - (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.”

Dlamini (1994: 581) sees both education and culture as being closely related because to ensure that culture is transmitted from one generation to the other, education has to be provided. It is the responsibility of the state to provide sufficient education to its citizens in the language that they understand. All the educational activities should not discriminate against other citizens since they are all equal, as indicated in article 26 of the Universal Declaration of Human Rights. Plaatjies (2005: 202) emphasises that educators within Correctional Services can play an important role in teaching offenders alternative life skills, since the ones they had led them to the correctional centres. Education alone can lead to a complete rehabilitation of an offender because it helps to instil new knowledge that can be used by the offender after release. When offering education, it is important that the educators do not discriminate against other offenders. Programmes

offered by the Department of Correctional Services with regard to the right to education will be discussed in 5.7.4.

5.3.2.13 Language and culture

Section 30 of the Bill of Rights provides that:

“Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.”

This section provides that every South African citizen must be able to use his or her language and perform his or her cultural activities without being restricted by any other person. All cultures and languages should be treated equally. Within the correctional context it should be accepted that people have different cultures and those cultures have to be respected as they are. Different cultures have different meanings and influences on the lives of offenders. As long as their culture has positive influences in the lives and the rehabilitation of offenders, they should never be denied an opportunity to participate in it.

5.3.2.14 Cultural, religious and linguistic communities

In terms of section 31 of the Bill of Rights:

“(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community

- (a) to enjoy their culture, practise their religion and use their language, and
- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

(2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.”

The cultural and religious diversity in South Africa has led to the country being referred to as a “multi-lingual, multi-faith, multi-cultural and multi-political” country (Sachs in

Dlamini, 1994: 573). This section aims to cover all the cultures and religions of the country as well as all the languages. Dlamini (1994: 592) also states that religious right is a negative right in a sense that the state cannot impose any religious belief on people but rather has to accept whatever religions the individuals practise. Considering Dlamini's statement within a correctional context, Correctional Services has to make room for all the religious beliefs of the general population of the offenders and all the religions should be treated as equal.

5.3.2.15 Access to information

Section 32 of the Bill of Rights states that:

“(1) Everyone has the right of access to

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

The importance of the right to access information led to the drafting of the Promotion of Access to Information Act 2 of 2000, which guarantees access to any information that is held by the state or any other person in order to protect or exercise other rights. Offenders are therefore also entitled to this right (Palmer, 2001: 56). According to Maheshwari and Mustafa (1998: 10), the right to information leads to maximum participation by citizens in the governance of the country and without it “people are playing the role in shaping the nation's destiny ineffectively, inefficiently and inadequately”. As long as there is any information that offenders believe to be important, they should never be denied access to that information. Offenders must have access to any information that can lead to their rehabilitation. The right to information enables the offender to have a participatory role in any decision-making that affects his or her rehabilitation process.

5.3.2.16 Just administrative action

Section 33 of the Bill of Rights provides that:

“(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
- (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
- (c) promote an efficient administration.”

Like the right to access information, the importance of the right to just administrative action also led to the drafting of the Promotion of Administrative Justice Act 3 of 2000. Burns (1998: 7) explains that with section 33 of the Bill of Rights, individuals are protected from the abuse of power since every action has to be reasonable and fair. She further emphasises that the administrative justice clause has the following significant implications (Burns, 1998: 135):

- It promotes the principle of lawfulness, the principle of procedural fairness as well as the principle of justifiability and reasonableness.
- It gives the power to challenge any violation of the right in the Constitution.
- It requires that significant reasons for any action have to be furnished.
- When performing the action, the section requires that the principle of legality be applied all the time.

It is important for Correctional Services to ensure that when taking decisions, they are not in conflict with the provisions of this section, which means that they should be fair and reasonable. For offenders to come to terms with their detention, there should be a valid reason. This will enable them to focus on rehabilitation programmes that will change the

behaviour that led to their detention. Offenders should also be given an opportunity to come to the fore in situations where their right to just administrative action has been violated and they should be given an acceptable reason for this violation.

5.3.2.17 Rights of detained persons

Section 35(2) of the Bill of Rights states that:

“(2) Everyone who is detained, including every sentenced prisoner, has the right

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) 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; and
- (f) to communicate with, and be visited by, that person’s
 - i. spouse or partner
 - ii. next of kin
 - iii. chosen religious counsellor; and
 - iv. chosen medical practitioner.”

This section aims to do away with illegal detention of citizens in a sense that those who are detained must be given sufficient reasons for their detention and this detention should be lawful. A person cannot be detained without the representation of a legal practitioner. Furthermore it should be emphasised that the offender is detained under conditions that take into account his or her human dignity. The offender must also be allowed to communicate with his or her family members constantly. Everything that an offender

needs in order to be rehabilitated has to be made available. Cachalia et al. (1994:77) report that general acceptable knowledge is that an offender's rights to adequate nutrition, reading materials and medical treatment as well as the rights to proper clothing, housing, adequate food and medical care, protection against assault, religious right and legal rights have a positive impact on the offender's physical, mental and psychological wellbeing.

When it comes to offenders communicating with the outside world, Livingstone and Owen (1993: 143) write that "with the decline of faith in the rehabilitative capacity of prison itself, contact with the outside world as a means of reducing the debilitating effects of institutionalization has come to be seen as perhaps the most important rehabilitative strategy in the prison context".

5.4 IMPLICATIONS OF THE CORRECTIONAL SERVICES ACT 111 OF 1998 FOR THE REHABILITATION OF OFFENDERS

The Correctional Services Act 111 of 1998 can be easily identified because of the following most important features which are different from those of preceding Acts (Department of Correctional Services, 2005b: 52):

- The inclusion of offenders' rights
- Specific recognition of the rights of women and children
- Clear policy regarding the use of force and separation of offenders
- Programmes for the development, treatment and support of offenders
- Promotion of community involvement in correctional matters
- Programmes for monitoring offenders after their release
- Promotion of partnership between the public and the private sector towards the development of correctional centres

Chapter 3 of the Act sets out the general requirements which ensure that all the offenders are detained under conditions that recognise their human dignity. The most important aspect of the set requirements is the fact that they meet the standard required by the United Nations as set out in the United Nations Standard Minimum Rules for the

Treatment of Prisoners. This section will cover the standards developed in the Act compared to those set out by the United Nations.

5.4.1 Approach to safe custody (section 4)

The rules of general requirements with regard to the treatment of offenders start with section 4 which deals with the approach to safe custody of offenders. The section describes the offender as the responsibility of the Commissioner and all the officials of the Department; hence the offender should accept their authority at all times. While offenders have to follow the authority of the Department, the Department itself must ensure that the security and the safe custody of the offenders are maintained at all times. This security must be maintained in a lawful manner which does not violate all the rights which offenders have while they are in the correctional centre.

If offenders are safe they will be motivated to participate in rehabilitation programmes designed for them. This is unlikely to happen when they are always concerned about their safety. The Department has a duty to provide safe custody for all offenders without discrimination. By ensuring safe custody of all the offenders, the Department is guaranteed to have offenders who will not hesitate to participate in rehabilitation programmes that will change their lives for the better.

5.4.2 Admission (section 6)

The Commissioner is authorised to detain any offender by means of a warrant and without it, this detention will be unlawful. During the process, offenders' personal particulars as well as the nature of the offence and the day and hour of admission and release should be recorded in a register. While in the correctional centre an offender has the right to consult a legal practitioner of his or her choice and if he or she is not able to afford a legal practitioner, the state must provide one.

All the rules that are applicable to the offenders must be explained in a language which they understand or an interpreter must be used. The offenders must be notified of the formal channels of communication where they can raise their complaints or requests. After admission, offenders must bath or shower and undergo a health status examination to ensure that their health is maintained while incarcerated.

To ensure the rehabilitation of offenders, the Department must determine the security classification, health needs, educational needs, social and psychological needs, religious needs, specific development needs, work allocation as well as offenders' needs regarding rehabilitation. Obtaining this information about the offender will enable the Department to know how to deal with him or her. For example, if the Department is aware of the type of crime committed by the offender as well as the length of his or her sentence, it will be able to place him or her in rehabilitation programmes that are suitable for that offence and for that length of sentence. Rehabilitation programmes will also be designed in a manner that will ensure that, after serving the sentence, the offender's behaviour has been fully changed.

5.4.3 Accommodation (section 7)

The accommodation of offenders must meet all the requirements which are adequate for offenders to be detained under conditions maintaining their human dignity. As indicated in the Standard Minimum Rules for the Treatment of Prisoners, the detention cell must have enough space, lighting, ventilation and sanitary installations and must be in conditions which promote the health and safety of the offender.

To avoid victimisation of certain categories of offenders or to ensure security, the Act stipulates that offenders must be separated, for example sentenced and unsentenced, male and female, adult and children.

Failure to provide enough space for accommodation not only hampers the offender's wellbeing, but it also has a significant impact in the implementation of rehabilitation

programmes. This is mainly because instead of focusing on programmes that will work for them, the offenders will be worried about their health and pay less attention to rehabilitation. But if offenders have been provided with enough space which meets all their requirements, there is no doubt that they will find it comfortable and focus on the positive aspects of their lives. To avoid such problems, the Department must ensure that accommodation meets all the offenders' needs.

5.4.4 Nutrition (section 8)

This section provides that offenders must be supplied with adequate food and those with specific nutritional requirements, such as children and pregnant women, must also be provided with whatever it is that they require. In addition, religious requirements and cultural preferences when it comes to diet must be considered where possible. Well-prepared food as well as clean drinking water must be made available to all offenders within the acceptable intervals.

The Act requires that offenders be provided with healthy food all the time. Females and children offenders' special requirements when it comes to nutrition also have to be met. The provision of well-balanced nutrition plays a role in the rehabilitation of offenders. Failure to provide sufficient food will have a major impact on the rehabilitation process because no starving offender will be able to dedicate himself or herself to the programmes. If the Department wants to ensure the effective implementation of the rehabilitation programmes, it should first meet, amongst others, the nutritional requirements of offenders. The differences in nutritional requirements amongst offenders also have to be considered. For example, a Christian offender and an Islamic offender will have different nutritional requirements because of religious as well as cultural differences. The Department has to cater for all cultures and all religions.

5.4.5 Hygiene (section 9)

The Department of Correctional Services must provide the necessary means which will ensure that offenders, as well as their clothing, bedding and cells, are clean at all times.

Cleanliness must be encouraged amongst all offenders. In the process of rehabilitating offenders, it is essential to provide them with the necessary products such as soap, towels and extra clothes in order to ensure that they are always clean. Failure to provide these products will lead to the rehabilitation attempts looking rather unworthy. This is mainly because the community will find it difficult to accept that an untidy person has been rehabilitated, but will be more open to this idea when he or she is tidy.

5.4.6 Clothing and bedding (section 10)

As indicated in section 9, clean and tidy clothing and bedding must be provided to offenders whether sentenced or unsentenced and they should meet the hygienic and climatic conditions of the time.

The Standard Minimum Rules for the Treatment of Prisoners state that the clothing and bedding of offenders may by no means be degrading or humiliating. Officials should be able to keep offenders in good health. Offenders must be provided with clothes that are clean and can stand the climatic conditions of that time. For example, offenders have to be provided with warm clothes in winter. Failure to do so may lead to diseases related to the cold, which can lead to an unhealthy offender population. An unhealthy offender population hampers the departmental programmes aimed at rehabilitation. The Department must avoid this by all means possible to ensure the success of rehabilitation programmes.

5.4.7 Exercise (section 11)

Every offender is entitled to at least one hour of exercise per day for them to stay healthy if the weather permits.

All offenders must be given enough time to exercise because it gives them enough access to light and fresh air. By exercising offenders keep themselves healthy and stay away from unwelcome practices such as drugs as they find a new way of taking the stress away. To strengthen the rehabilitation opportunities of offenders, they must be encouraged to take part in various activities such as sports, music and a wide range of physical exercise available to them. Failure to provide offenders with enough exercise time will hamper the rehabilitation process because it is during this time that offenders come together and exchange ideas that can help one another. Exercising not only helps to improve offenders' mental and physical health, but it also develops interpersonal relationships amongst offenders. By participating in recreational activities, offenders will be able to develop high self-esteem and their faith will improve through winning.

5.4.8 Health care (section 12)

Every offender has the right to adequate medical treatment which will lead to a healthy life at state expense. Unless a prisoner requests the services of his or her preferred medical practitioner, only the certified medical practitioner of the institution may offer medical treatment when the need arises.

Offenders must be encouraged to voluntarily undergo medical treatment which leads to them maintaining a healthy life. No prisoner can be forced to do so. In addition, offenders must give their consent so that surgery can be performed on them unless he or she is in a condition where he or she is unable to give such consent and the practitioner is of the opinion that the surgery is necessary for the prisoner's health.

A healthy inmate population will have a positive impact on the rehabilitation process. If the Department ensures that all the medical requirements of the offenders are met at all times, this can help to prevent infectious diseases such as TB and HIV/AIDS. Failure to provide adequate medical care to offenders equals an unhealthy population with widespread dangerous diseases. The spreading of diseases may even lead to certain offenders losing their lives because of something that could have been prevented. In order to avoid these problems and focus on the implementation of rehabilitation programmes, the Department must meet all the offenders' medical demands.

5.4.9 Contact with the community (section 13)

Contact with the community must be encouraged and enough opportunities provided for visits by family members, friends, religious leaders and authorised medical practitioners. If an offender cannot receive visits from his or her family members, anyone else can visit the offender each month. In addition, an offender from a foreign country must be allowed to maintain contact with his or her country's embassy or any member of his or her country who has the responsibility to protect the interest of that offender.

The necessary steps should be taken to inform the offender's next-of-kin when an offender is admitted to a place of detention. If they are not known, any other relative can be informed and where an offender does not wish to notify them, he or she must indicate the matter to the head of the correctional centre. In a situation where a child is detained, parents and even legal guardians as well as the Departments of Education and Welfare should be notified and that child cannot refuse to allow notification.

The road towards the rehabilitation of an offender also extends to the community outside the correctional centre. The community has a vital role in the rehabilitation of offenders because the offender comes from the community and at the end of it all has to return to that community. The strong relationship between the offender and the community strengthens the opportunities for successful reintegration into society. If the community does not accept that the offender has been rehabilitated, he or she might resort to actions

that will lead him or her back to the correctional centre. But if the community accepts the offender, he or she might reintegrate successfully; hence it is important to allow the offender to have regular contact with the community. Offenders will also dedicate themselves to rehabilitation programmes that will prepare them for positive things such as work after release so that the community does not reject them. The Department must encourage not only the offender, but also his or her community to have regular contact.

The White Paper on Corrections (Department of Correctional Services, 2005b: 178) emphasises the role of the community by stating that “the relationships between the Department of Correctional Services and the community, community-based organizations, Non-Governmental Organisations and faith-based organizations are inherent to the successful achievement of the *rehabilitation* and reintegration of offenders”.

5.4.10 Religion, belief and opinion (section 14)

An offender is allowed to practise his or her freedom of religion, conscience, thought, belief and opinion, which includes him or her being allowed to attend religious services or meetings within the correctional centre without being disturbed or even forced by anyone. It is the responsibility of the Department of Correctional Services to provide at every centre a place of worship for all religions.

Religion has important meaning to every human being. Offenders, like all human beings, need their religious beliefs to be respected. Because of the positive influence that religion has, the Department might have less to do in maintaining discipline and focus on the implementation of rehabilitation programmes. Religious offenders are more likely to focus on their rehabilitation than ones that are, for example, gang members. They also have the ability to encourage other offenders to change their behaviour. With religion, offenders can change the behaviour that led them to the prison in the first place and lead a new life. The interaction of offenders of the same religious beliefs can lead to positive thoughts being shared with other offenders and this will lead to their rehabilitation.

The Department of Correctional Services has at its disposal the services of various religious leaders who, amongst other things, are responsible for offering spiritual leadership for offenders. The Directorate of Spiritual Care is responsible for promoting the religious beliefs of offenders. Various churches and faiths offer spiritual care to their own followers within correctional centres. In addition, faith-based organisations, spiritual workers and volunteers are allowed to render spiritual care to offenders. The use of religious programmes within the correctional institutions presents a unique opportunity to offenders so that they can channel their energies in meaningful and beneficial ways. The religion that is practised in prison is eventually carried over to the community when the offender is released. The religious programmes can help to reduce recidivism and bring reconciliation to victim, community and inmate through personal transformation of the offender using the participant's faith commitment

5.4.11 Development and support services (section 16)

All the development and support services that are available must be made known to offenders and those who request these services must be provided with them. Aspects such as disabilities and gender of offenders must be considered in terms of planning, policy and infrastructure in the services that are available.

Because it is the aim of the Department to rehabilitate offenders, it is important to provide every means that will lead to this rehabilitation. Offenders must be encouraged to participate in the development and support programmes that will lead them to acquiring new skills and knowledge. These skills will help the offenders to reintegrate successfully into the community.

The Directorate of Skills Development is responsible for overseeing the whole process of offenders' development. The Directorate offers skills that are relevant in the lives of the offenders after release. Offenders participate in various programmes which are aimed at empowering them for the future. More on skills development in 5.7.4.

5.4.12 Reading material (section 18)

Offenders can receive study materials of their choice from outside the correctional centre or access those in the centre library unless this hampers the rehabilitation process of the offender or the material constitutes a security risk.

Since the motive behind the implementation of the rehabilitation programmes is to help offenders acquire new skills and knowledge, offenders have to be given enough time to access reading materials. Reading materials help them to gain new knowledge and skills. Offenders should not be denied access to newspapers, radios and televisions as they keep them up to date with what is happening in the country.

Studying and reading while in prison promotes skills development and transfers knowledge amongst offenders. Because the educational level of offenders is usually lower than the national average, educating offenders is crucial when it comes to their rehabilitation. The Directorate of Education is responsible for monitoring education to offenders within the Department of Correctional Services. The Directorate currently offers both formal and non-formal educational opportunities which are in line with the South African Qualifications Authority and National Qualifications Framework.

5.4.13 Complaints and requests (section 21)

Every offender is entitled to make complaints and requests to the head of the correctional centre or any official who is acting on behalf of the head of the prison. This official will take the necessary steps to deal with the requests or complaints and communicate the outcome with the offender.

If the offender is still not satisfied with the outcome, he or she might take the matter to the area manager and must provide substantive reasons for his or her dissatisfaction. The area manager will try to tackle the issue and if the solution is still not found, the problem can be referred to an independent prison visitor.

Every offender has to be allowed to raise his or her complaint if the Department aims to achieve rehabilitation. An offender who is not satisfied will not pay attention to the rehabilitation programmes undertaken in the correctional centre. But if an offender is listened to every time he or she has a problem, he or she will adhere more easily to the rules of the correctional centre. In addition, an offender is entitled to make requests regarding anything that concerns his or her detention. Failure to attend to offenders' requests and complaints will hamper the rehabilitation attempts, as this might lead to negative actions such as hunger strikes by offenders. Coyle (2002: 107) writes that one of the main objectives of the prison administration in this area "should be to prevent a simple request developing into a complaint, or a complaint developing into a formal grievance, or a grievance developing into an appeal to a higher body".

5.5 THE WHITE PAPER ON CORRECTIONS WITH REGARD TO REHABILITATION

In 2005, the Department of Correctional Services drafted the White Paper on Corrections. This replaced the 1994 White Paper, which had the following shortcomings, amongst others (Department of Correctional Services, 2005b: 13):

- It did not focus on corrections and rehabilitation in South Africa, and in particular the role of the Department in them.
- It lacked a positive approach to the erection and procurement of facilities to ensure alignment with the objectives of rehabilitation.
- It lacked a long-term vision on policy with regard to issues such as public-private partnership policy.
- The 1994 White Paper did not include important issues relating to human resources that are critical to the implementation of the Department's new rehabilitation centre system.
- It did not set out a clear departmental role in contemporary government initiatives, including corrections in the African Union, the Moral Regeneration Movement, sustained growth and development, and the National Crime Prevention Strategy.

- It lacked consistency in the use and understanding of key terminology and definitions in the way that is user-friendly and consistent with the philosophy of corrections.

In his article entitled “First things first: Rehabilitation starts with alternatives to prison” Makabetse Sekhonyane (2004) wrote that the White Paper of 2005 focuses on the correction of offending behaviour, the development of the offenders, security (for both offenders and officials), care of offenders (health, physical and psychological needs), facilities and after care. According to the South African Yearbook (2006/07: 415), the White Paper is based on the concept of rehabilitation and the fact that rehabilitation as well as social reintegration remain the responsibility of society.

The White Paper is underpinned by the following values and rights which are entrenched in the Constitution. Amongst other things, they ensure that every offender is treated in a humane manner that makes his or her rehabilitation possible (Department of Correctional Services, 2005b: 12):

- Section 9: equality
- Section 10: human dignity
- Section 35: rights of detained persons
- Section 27: right to health care services, food, water, etc.
- Section 12: freedom and security of the person
- Section 28: rights of children
- Section 29: religious freedom
- Section 41: intergovernmental relations
- Section 195: values and principles governing public administration

The following is part of a table released by the Centre for the Study of Violence and Reconciliation {CSVR} (03/02/2004) which appeared in the submission to the Parliamentary Portfolio Committee on Correctional Services on the Draft White Paper on Corrections in South Africa:

TABLE 3: CSVR SUBMISSION TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON CORRECTIONAL SERVICES

| FACTOR | PRISON SENTENCE CAN HELP |
|--------------------------------------|--|
| Education | Education and training programmes can give offenders the skills needed to gain employment. |
| Employment | Opportunity to gain valuable practical experience of paid work. Opportunity to make contact with employers prior to release. |
| Drugs and alcohol | The correctional centre can be an effective place to get drug treatment, helping many who have had no help before. Can make valuable links to community treatment. |
| Mental and physical health | Access to proper diagnosis and treatment, often for the first time. Ensuring that ex-offenders able to take up opportunities such as employment and training on release. |
| Attitudes and self-control | Opportunity to take part in programmes to improve thinking skills, anger management. Opportunity to learn from past experiences, separated from some peer pressures. |
| Institutionalisation and life skills | The correctional system can provide a safe place for offenders to develop positive life skills. |
| Housing | Opportunity to save tenancies, reduce housing benefits, mortgage and housing arrears. Repaying rent arrears, assessing housing needs and beginning a move to stable, supported accommodation. Opportunity to gain skills in managing tenancies. |
| Benefits and debt | The correctional system can provide access to debt advice and can improve the chances of accessing financial support on release via the setting up of benefits interviews. Offers the chance of earning and saving money. |
| Families | The correctional system can give offenders' families the opportunity to have an input into an offender's rehabilitation needs. It can separate an offender from a criminal background, or give a family respite from a difficult or dangerous family member. |

From table 3 factors can be identified as having an important influence on every individual's daily life. These factors include education and employment. Only the positive impact that the correctional system has on the offender's life with regard to those factors has been indicated. What an offender can gain from the correctional centre has been indicated. One can conclude that sending an offender to the correctional centre is not only a means of removing him or her out of the community, but also of helping that offender to acquire certain skills. All the skills that an offender can learn will ensure that he or she returns to the community fully rehabilitated and becomes an important member of the community.

In addition to the above, the White Paper on Corrections (Department of Correctional Services, 2005b: 21) states that the Department must assess the following needs of offenders after admission:

- The security needs of offenders while taking into consideration their human rights: By determining the security needs of the offender, that offender can be placed under the classification where he or she can cope. For example, if an offender who is suitable for placement in the maximum security classification is placed in the minimum security classification, it can lead to him or her undergoing rehabilitation programmes that are ineffective for him or her. Determining the security needs of the offender also involves determining rehabilitation programmes suitable for an offender.
- The physical and emotional wellbeing of offenders: Assessing these needs ensures that the Department determines the types of services that have to be provided to an offender to ensure his or her rehabilitation. For example, programmes designed for older inmates will be made available to older offenders, and rehabilitation programmes which include psychological services will be made available for mentally ill offenders.

- Educational and training needs of offenders: The educational capabilities of the offender can be determined and that offender can be placed on a level that is suitable for him or her. When it comes to training, the potential of the offender can be identified and an offender will be encouraged to undergo the type of training that is suitable for him or her. In this manner rehabilitation needs of offenders when it comes to education and training can be met. This will not happen when offenders are placed under programmes that are ineffective for them.
- Accommodation needs: Because the state has an obligation to supply suitable accommodation for offenders, assessing them will help determine what is suitable for them. Those with special requirements for accommodation, such as offenders with disabilities, will also be identified. Rehabilitation requires that every accommodation need, such as bedding, be met so that offenders can focus on rehabilitation programmes.
- The need for support after the offender has been released: It is the duty of the Department to ensure that the offender is successfully reintegrated into the community. In ensuring that, the Department offers a variety of rehabilitation programmes for offenders that will help them after their release. By thoroughly assessing the offender, it will be determined whether the offenders require further support to ensure that they reintegrate successfully.
- Offenders' needs which are related to specific information programmes that deal with offending behaviour: Offenders' behaviour which may be problematic in the rehabilitation process may be identified in the assessment stage.

The White Paper also emphasises the fact that in order to ensure the successful reintegration of offenders, Correctional Services should try and rebuild the lost relationship between the offender, the community and society (Department of Correctional Services, 2005b: 21):

- Written and telephone communication: For offenders to successfully reintegrate successfully into the community of their origin, they should be encouraged to regularly interact with members of that community. Mail and telephone conversations between offenders and the community outside correctional institutions have a positive contribution towards the reintegration of offenders. Through them offenders are kept up to date with developments within their families or in their community as a whole.
- Physical and emotional wellbeing: Offenders must be well prepared both physically and emotionally to return to their community. Service providers such as social workers, psychologists and doctors must monitor the integration of offenders into the community. If an offender is not emotionally prepared to return to the community, chances are that he or she will return to the prison sooner than expected.
- Visits with family, friends and loved ones: “Visits give inmates something to look forward to, an incentive to participate in rehabilitative programs, and a mechanism with which to cope with prison life” (Carlson & Garrett, 1999: 281). All offenders who receive enough support from their families and friends will adapt positively within the rehabilitation programmes that are offered in the prison. Visits can lead to offenders’ good behaviour, amongst other things. Offenders will try everything possible to change the behaviour that led them to prison in the first place so that they do not disappoint their families again.
- Access to information about the world outside through newspapers, television and radio: Newspaper, televisions and radios, like telephones and mail, also keep offenders up to date with the latest developments within their community. They ensure that offenders are not left out of normal community life. Through these mediums offenders are updated with political, economic and technological developments, amongst others. This knowledge will help offenders when returning to their community since they will not need anyone to fill them in on what has happened since their incarceration.

- Contact with social institutions from his or her community of origin: Whether the person is an offender or not, social institutions have a positive impact on every individual's life. Through these institutions offenders can be helped to find employment that will sustain their lives after release. In addition, they can provide guidance to the offenders when needed.

To be in line with section 13 of the Constitution, which restricts anyone from being subjected to slavery, servitude or forced labour, the type of work that offenders do has to be aimed at their rehabilitation. The work must give offenders enough experience to ensure that they are fully rehabilitated and can be productive after release. The White Paper on Corrections (Department of Correctional Services, 2005b: 27) states that inmates must be provided with productive work which is based on the following principles:

- It should form part of the sentence plan of the offender.
- The work must consider the nature of the offence as well as the characteristics of the offender.
- The work should contribute towards the human development of the inmate.
- The work must meet all the general requirements of the labour legislations and departmental policy regarding the remuneration system for labour performed by offenders.
- All offenders should benefit from prison work irrespective of their race, class or gender so that they can all become productive citizens of society after release.
- All offenders who have done some work should be provided with proof so that it can increase their chances of being employed after they have been released.

5.6 LIMITATION OF OFFENDERS' RIGHTS

All the rights that are entrenched in the Bill of Rights can be limited in some way or another if there is a reasonable reason for the limitation. According to Rautenbach (in Van der Schyff, 2005: 22), it is understandable that the rights that are guaranteed in the Bill of Rights for every citizen are not guaranteed in an "illimitable fashion"; rather, they

can be limited in order to protect the rights of others and the wellbeing of society in general. This implies that when a person exercises his or her rights, he or she also has to consider the impact of this on other people's rights. The limitation of rights also has an impact on the rehabilitation process of offenders. As long as the limitation is applied to positively enhance the process of rehabilitating an offender, the limitation is acceptable.

The extent to which the rights of individuals, including offenders, can be limited is set out in section 36 of the Bill of Rights:

“(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

- (a) the nature of the right;
- (b) the importance of the purpose of limitation;
- (c) the nature and the extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

Because offenders have to rehabilitate and return to society, it is the duty of Correctional Services to ensure that this purpose is achieved by all means possible. If the correctional officials believe that the granting of certain rights will hamper the rehabilitation of an offender, they may be forced to limit these rights. For example, if a seriously ill offender is refusing to see a medical practitioner because it is his or her right whether to see a medical practitioner or not, the officials might be forced to take that offender to the medical practitioner. This will not only benefit the offender, but it will also help to prevent the spread of illness amongst offenders. Du Plessis (1994: 125) points out that the limitation of rights must meet the following requirements:

“(1) The law of general application must apply for any limitation of rights in order to ensure equality because a right cannot be limited by mere administrative actions which are not authorized or necessary by means of law of general application.

(2) The limitation of rights is limited when it is reasonable and justifiable and the test for reasonableness has to meet the following standards:

- the justification of the limitation of the right must be so important that it leads to such limitation,
- the means of the limitation of a right must be related to the objective to be achieved through such limitation and this will later require the following:
 - that there should be a connection between a rationale and the objective
 - that the limited right must be affected as little as possible
 - the limitation must be able to sustain the proportionality between its effects and its objectives

(3) The limitation of the rights has to be justifiable in an open and democratic society.

(4) The essential component must not be negated through its limitation.”

If it is necessary for Correctional Services to limit certain rights of offenders, it is important to consider all the above requirements, otherwise the limitation will be considered unlawful. Because offenders, like any other people of society, deserve full protection of their rights, it is important to provide sufficient reasons for the limitation. As indicated in section 36(d), there should be a relationship between a limitation and its purpose. Schmallegger and Smykla (2001: 275) add that institutional needs that justify the restriction of constitutional rights of offenders include maintenance of institutional order, maintenance of institutional security, the safety of staff and offenders as well as the rehabilitation of offenders. The rehabilitation of offenders can only be achieved if offenders are able to retain all their rights. Only when offenders start abusing their rights can those rights be limited on grounds that are reasonable and justifiable in an open and democratic society. Hiebert (1996: 5) confirms this by mentioning that “the significance of the limitation clause goes well beyond the symbolic recognition that the rights are not absolute and will have to be limited when in conflict with other rights”.

5.7 PROGRAMMES FOR REHABILITATION OFFERED BY THE DEPARTMENT OF CORRECTIONAL SERVICES

The Department offers various programmes aimed at the rehabilitation of offenders. These programmes include social work services, psychological services, health services, skills development, and spiritual care. “Within the departmental environment, rehabilitation is best facilitated through a holistic sentence planning process that engages the offenders at all levels – social, moral, spiritual, physical, work, education/intellectual and mental. It is premised on the approach that every human being is capable of change and transformation if offered the opportunity and resources” (Department of Correctional Services, 2005b: 72). In 2004, South Africa had 184 871 prisoners, 47 778 of whom were awaiting trial. The Department of Correctional Services’ annual report listed 18 126 prisoners participating in educational programmes, 19 851 in training programmes, 103 380 in social work sessions, 156 457 in spiritual care sessions and 9 352 in psychological sessions (Bhengu, 2005: 1).

5.7.1 Psychological services

Psychological services are offered by the Directorate of Psychological Services, which aims to offer professional services to offenders, probationers as well as parolees with a view to promoting their mental health and their emotional wellbeing. Most importantly, these services ensure that offenders are rehabilitated for them to reintegrate successfully into society. Psychologists within the Directorate ensure that offenders are diagnosed as soon as they are admitted in order to make sure that they are treated according to their needs (Department of Correctional Services, undated). During the first stage, offenders are evaluated by means of interviewing, psychometric tests and observations within a group situation, feedback from functional personnel and consultation with any person who knows the offender. Programmes will then be designed based on the information obtained from applying any of the said methods. Individual therapy, group therapy and family therapy are the methods used by psychologists to ensure the effective treatment of offenders, which will in turn strengthen their rehabilitation. These methods are applied to

various forms of offenders, ranging from ones with suicide tendencies to ones who request these services themselves.

With a view to the rehabilitation of offenders, the psychological services programmes offered by the Department of Correctional Services aim to achieve the following major objectives (Department of Correctional Services, undated):

- Render psychological services to sentenced offenders, probationers and parolees and promote care, emotional wellbeing, the development of personality, mental and social functioning, that will facilitate correcting of offending behaviour.
- Create an environment and/or climate that is conducive for therapeutic interventions and care programmes/services.
- Facilitate the restructuring of prison correctional systems and general environment in order to become more synonymous with and reflective of the culture, values, characteristics and needs of the external community.
- Facilitate transformation and personal change by recognising the uniqueness of the individual at all times.
- Create a desire within offenders to lead productive and law-abiding lives upon release into the community.
- Strive towards a flexible psychological approach that is sensitive to indigenous and diverse cultures and that incorporates strategies that not only address psychopathology, but that also facilitate healthy functioning proactively and are directed at the development of positive personality attributes and skills.

The provision of psychological treatment to offenders counters the negative effects of imprisonment. It is stated in the White Paper on Corrections (Department of Correctional Services, 2005b: 132) that for the Department to develop and support the offenders through the promotion of their social functioning and mental health, it should provide both social and psychological services. Psychologists within the Department of Correctional Services can, among other things, help cure the causes of criminal behaviour such as alcohol and substance abuse. They contribute to the aim of reducing reoffending by addressing the problems of those individuals who are highly likely to reoffend.

According to Towl (2003: 3), there are two key drivers of the work of a psychologist within the correctional system. They are organisational needs, meaning that they should meet organisational aims and objectives, as well as psychological expertise, meaning that they should offer the knowledge and skills required of psychologists.

The Department of Correctional Services is committed to offering psychological services to all offenders with the aim of improving their mental and emotional wellbeing. This commitment is shown in section 2(c) of the Correctional Services Act 111 of 1998 which states, among other things, “the purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by promoting the social responsibility and human development of all prisoners and persons subject to community corrections”. All offenders have equal access to these services, but their participation is voluntary. The Department has in its service psychologists who are registered with the Health Professions Council of South Africa. They target all suicide-risk offenders, all court referrals, offenders with emotional problems, mental disturbances or who are receiving psychiatric treatment, sexual and violent offenders and those offenders who request these services.

5.7.2 Social work services

The Directorate of Social Work Services offers professional services to offenders by means of professional social workers. These services include therapeutic, informative, supportive, crisis intervention, development, administrative, assessment and evaluation services (Department of Correctional Services, undated). Social work services empower offenders with social functioning skills and help them solve their own problems. Offenders are also helped to reintegrate successfully into society. Casework, group work and community work are the methods used to implement social work services. The broad objectives of the social work services are:

- To strengthen offenders’ support systems
- To link offenders with systems that provide them with resources, services and opportunities

- To address situations that influence behaviour change
- To enhance offenders' capacity to deal with the demands in their social environment
- To ensure goal-oriented services to special categories of offenders in terms of their accommodation, custodial programmes, development and treatment programmes with a view to the empowerment and enhancement of their total functioning within the family and community
- To ensure care and stimulation programmes to young children incarcerated with their mothers in an environment conducive to their normal development
- To co-ordinate the development of distinctive and comprehensive policies for these categories regarding accommodation, custodial development and treatment in consultation with relevant directorates and other parties
- To develop and design needs-based care programmes for targeted offenders and probationers

Like psychologists, social workers also have the responsibility to determine the needs of offenders and to ensure that they are placed under programmes which are suitable for their needs. Social workers ensure that offenders are provided with programmes that help them deal with substance abuse, marriage and family, life skills and sexual offending, amongst other things. These programmes contribute positively to the lives of the offenders as they ensure that they move away from their old habits and develop a new life, thereby ensuring their complete rehabilitation.

Only qualified social workers who are registered with the South African Council of Social Workers and Professions are utilised by the Department of Correctional Services. Programmes that they offer include orientation of offenders to social work services, substance abuse programmes, life skills, marriage and family care, aggressive offender programmes, sexual offender programmes, trauma counselling, pre-release and needs-based programmes for special categories of offenders. It is the responsibility of the offender to stay committed to all programmes that are offered by the social workers.

5.7.3 Health care services

Health care services offered by the Directorate of Health Care Services are aimed at promoting the health of the offender population in general. In this process, those offenders with health problems are identified so that their needs can be assessed for them to be given the necessary treatment. This treatment is offered for free to all offenders.

The Directorate has the following mandate by the Department of Correctional Services (Department of Correctional Services, undated):

- To provide legislative policy guidelines regarding the provision of health care, nutrition, personal and environmental hygiene services in correctional centres (policies, standards and procedures formulation, monitoring and evaluation)
- To design the minimum health care package for correctional centres guided by the principles of primary health care and the district health model
- To establish correctional clinics, in-patient facilities and kitchens
- To ensure the delivery of a comprehensive package of primary health care services
- Resource management and mobilisation
- To liaise with relevant internal and external stakeholders regarding health care provision, nutrition, personal and environmental hygiene issues
- To advise the Department on health care, nutrition, personal and environmental hygiene matters

It is the responsibility of the Directorate to ensure that offenders are provided with three nutritious meals per day and that their religious and cultural dietary requirements are met. Health Care Services also aim to emphasise section 10 of the Correctional Services Act, which states that offenders must be provided with clothing and bedding on admission. Offenders must be issued with the necessary toiletries in order to meet their basic health needs.

To promote the health of inmates sections 7, 8, 9, 10 and 11 of the Correctional Services Act 111 of 1998 prescribe that Correctional Services must provide accommodation,

nutrition, hygiene, clothing and bedding as well as exercise. Evans and Morgan (1998: 446) confirm this by mentioning that “it lies with prison health care service - as appropriate acting in conjunction with other authorities – to supervise catering requirements (quantity, quality, preparation and distribution of food) and conditions of hygiene (cleanliness of clothing and bedding, access to running water, sanitary installation) as well as the heating, lighting and ventilation of cells. Work and other outdoor exercise arrangements should also be taken into account”.

5.7.4 Skills development and education

Skills development programmes form part of the rehabilitation services that are offered by the Department of Correctional Services. The Directorate of Skills Development offers programmes that are in line with the Constitution of the country. The Constitution states in section 29 that every citizen is entitled to education. In these skills development programmes offenders’ labour market potential is developed as they undergo activities that improve their knowledge, skills and attributes and thus enhance their social functioning.

Skills development programmes which are offered to offenders are aimed at achieving the following objectives (Department of Correctional Services, undated):

- To improve the quality of life of the offenders, their prospects of work and mobility and skills innovation
- To raise the skills levels of offenders
- To promote self-employment
- To encourage offenders to participate in learnerships and other skills development programmes
- To recognise previous learning experience of offenders in order to know their skills level
- To contribute towards the personal development of offenders
- To use skills development as a foundation for further development of offenders and promotion of lifelong learning

- To promote an integrated approach to life skills development with the components of formal education, sport, recreation, arts and culture, production workshops and agriculture
- To provide diverse skills development opportunities
- To promote community participation in order to strengthen and enhance the rehabilitation efforts of the Department and the reintegration of offenders back into the communities
- To cater for the skills development needs of special groups such as youth, females and people with disabilities

The Directorate of Formal Education offers offenders educational skills which are in line with the educational system of the country. The White Paper on Corrections (Department of Correctional Services, 2005b: 136) states that in order to improve the levels of offenders' literacy, the Department offers literacy classes and basic schooling to offenders. Within the development programmes, offenders are empowered with skills which include education and training, communication, employability, health awareness, recreation and sport.

The Truth and Reconciliation Commission's final report (1998: 314), which was submitted to the President, recommended the following with regard to the rehabilitation of offenders:

- Skills training for all the offenders has to become a priority for every correctional centre.
- All correctional officials have to receive training regarding the rehabilitation of offenders for them to be able to recognise the basic needs of such rehabilitation.
- Offenders must receive training in human rights and be trained in non-violent methods of resolving conflict.
- Counselling should be made available to all offenders.

- Offenders must have access to literacy classes and skills training. Work that is performed by offenders should be designed to promote rehabilitation, rather than simply being punitive hard labour.

The Department of Correctional Services offers three programmes of education and training, i.e. general education and training (GET), further education and training (FET) as well as higher education and training (HET) (Department of Correctional Services, undated). Within GET, education is offered under pre-ABET literacy tuition and ABET levels 1 - 4. In this regard the Department adheres to the guidelines set out by the Department of Education regarding ABET training. FET offers offenders free education from Grades 10 to 12 as well as N1 – N3 of business studies. Like GET, FET is offered in line with the requirements of the Department of Education for further education and training. Offenders can also receive training through distance learning. Lastly, HET incorporates certificates, diplomas, higher diplomas, degrees, higher degrees, doctorates and professional qualifications which are offered through correspondence. To obtain these qualifications, offenders have to fund their own studies.

5.8 VARIOUS ROLE PLAYERS IN THE PROMOTION OF OFFENDERS' RIGHTS AND REHABILITATION

Since the offender population comprises various kinds of people from different backgrounds, some of them are illiterate or have little or no knowledge of the issue of human rights and there is a high possibility of them falling victims of human rights abuses. To prevent such abuses, there are institutions that have been established in order to ensure the protection as well as the promotion of human rights amongst offenders. Not only do these institutions prevent human rights violations amongst offenders, but they also empower offenders through education concerning their rights. Within the next sections institutions that play a vital role in the promotion of offenders' rights and offender rehabilitation will be discussed.

5.8.1 South African Human Rights Commission (SAHRC)

The SAHRC is one of the Chapter 9 institutions which are intended to offer support to the constitutional democracy. These institutions include the Public Protector, the Commission on Gender Equity, the Electoral Commission and the Commission for the Promotion and Protection of the Rights of Culture, Religious and Linguistic Communities. According to the South African Yearbook (2006/07: 406) the SAHRC has the responsibility to request annual reports from various government departments with regard to the progress they have made to promote economic and social rights.

Section 184 of the Constitution states that the SAHRC must:

- “(a) promote respect for human rights and develop a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights”

The section further provides the Commission with the power to “investigate and to report on the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; carry out research; to educate; ... require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment”.

In its mission statement, it is indicated that the Commission not only aims to monitor the violations of human rights in the country, but also focuses on educating and training citizens on the issue of human rights, thereby raising awareness. Through education everyone can know what their rights are and know when they have been violated, which will ensure that they take the necessary steps (South African Human Rights Commission, 2006: v).

Offenders can approach the SAHRC because every citizen has the right to approach it when their rights have been violated. The following chart indicates the top 10 complaints

received nationally for various categories of rights in the year 2004/2005 (South African Human Rights Commission, 2005: 28):

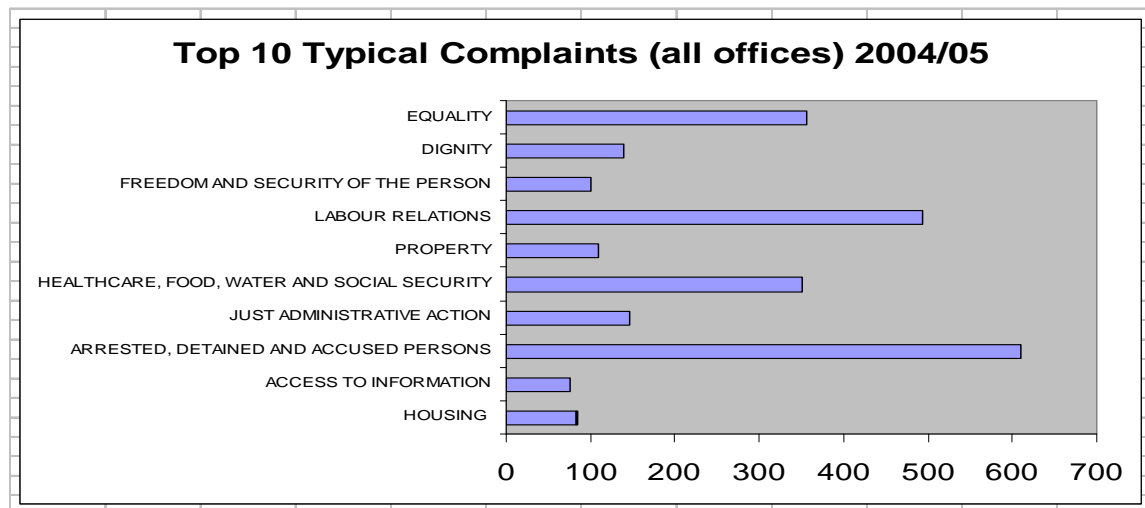


FIGURE 1: TOP 10 TYPICAL COMPLAINTS SUBMITTED TO THE SAHRC IN THE FINANCIAL YEAR 2004/ 2005

As indicated in the above figure, the number of complaints concerning the rights of the arrested, detained and accused persons was over 600, which makes them top of the list. This number of complaints for a specific right indicates that those individuals who find themselves arrested, detained or even as accused rely on the SAHRC to protect them whenever their rights have been violated.

5.8.2 South African Prisoners' Organisation for Human Rights (SAPOHR)

SAPOHR was formed by political and other prisoners in 1988 at Modderbee prison. The main aim of the organisation was to get rid of the apartheid tendencies within the criminal justice system and, most importantly, within the prison system, and to promote a culture of human rights and social justice in a non-racial, non-sexist and democratic South Africa.

The most important functions of the organisation are as follows: “To act as a watch-dog of the prison services; to be a representative and a voice of prisoners; to provide Para-legal services to prisoners and to reform as well as to democratize the correctional services and criminal justice service in South Africa” (South African Prisoners’ Organisation for Human Rights, 1994a). According to Anderson (2000: 32), in order to communicate human rights problems and to promote the value of human rights within the prison system, offenders are welcome to join the organisation as it also offers legal representation to those who might need it.

In order to make its functioning clear, SAPOHR sets out the following objectives (South Africa Prisoners’ Organisation for Human Rights, 1994a):

- Reforming and democratising the correctional services and the criminal justice system in general
- Protecting human as well as civil rights of suspects, offenders, ex-offenders and next-of-kin and to address human rights abuses which resulted from the apartheid system
- Acting as a voice of the suspects, detainees, offenders, ex-offenders and their next-of-kin in order to protect their needs, which include the need for reform, justice, reintegration, education and development
- Identifying and targeting specific needs for the previously disadvantaged such as women, youth, the ill and disabled
- Promoting the relationship between community-based organisations and NGOs to ensure effective programmes for reform

In order to ensure the complete rehabilitation of offenders and their successful reintegration into the community, ex-offenders must be provided with sufficient employment because unemployment can only lead them back to jail. Both the public and the private sector should contribute to sustainable job creation projects for ex-offenders as they do for the people who have never been imprisoned.

5.8.3 Judicial Inspectorate of Prisons (JIOP)

The JIOP, led by the Inspecting Judge, is an independent office which inspects the operations of prisons with regard to the treatment of offenders and the conditions within which they are detained. It also has the responsibility to investigate any unlawful and unacceptable conduct in prisons.

The Inspectorate aims to ensure that all the offenders are detained under conditions that are humane, recognises their dignity and strives to achieve the following objectives (Judicial Inspectorate of Prisons, 2005: 7):

- Ensuring humane treatment of offenders
- Attending to offenders' as well as families' complaints
- Contributing towards improving prison conditions in the country
- Providing reliable information with regard to the conditions in which offenders are detained and the way they are treated
- Ensuring community participation in correctional matters

The Inspectorate receives the complaints from the offenders and ensures that they are attended to as soon as possible. According to the annual report (Judicial Inspectorate of Prisons, 2007: 11), the following are the top 10 complaints received nationally from offenders in 2005:

TABLE 4: TOP 10 COMPLAINTS SUBMITTED TO THE JIOP IN THE 2005 FINANCIAL YEAR

| | |
|-----------------------------|--------|
| Transfers | 51 436 |
| Communication with families | 43 835 |
| Appeals | 33 033 |
| Health care | 32 448 |
| Legal representation | 22 615 |
| Parole | 21 435 |
| Bail | 19 852 |
| Conditions of detention | 18 799 |
| Food | 16 897 |
| Rehabilitation programmes | 12 065 |

Section 90 of the Correctional Services Act 111 of 1998 sets out the powers, functions and the duties of the Inspecting Judge. These include inspecting prisons and checking the treatment of offenders around the country as well as any dishonest practices in prisons. The use of independent prison visitors ensures that offenders are interviewed and any complaints that may arise are dealt with accordingly.

5.8.4 National Institute for Crime Prevention and the Reintegration of Offenders (NICRO)

NICRO, which was formed in 1910, is an NGO that provides crime reduction and prevention services. It offers its services throughout all nine provinces of the country. NICRO's services are divided into four manageable programmes, namely offender rehabilitation programmes, community victim support programmes, diversion and youth development programmes and economic opportunities programmes.

Within the offender rehabilitation programmes, effective programmes are designed to ensure the successful reintegration of offenders into society and to prevent further

criminal pursuit. According to NICRO's annual report (2006: 29), the objectives of the offender rehabilitation programmes are met by "challenging, equipping and supporting offenders to acknowledge and take responsibility for their actions and take steps to repair the damage that resulted because of the offence that was committed". Within these programmes financial, economic, developmental and emotional needs of offenders are addressed so that they reintegrate successfully and stay away from the criminal lifestyle.

The following services are offered to motivate offenders to reintegrate successfully (National Initiative for Crime Prevention and the Reintegration of Offenders, undated):

- **Tough Enough Programme (TEP):** This programme challenges offenders if they are tough enough to lead a constructive life after their release. In that way they are encouraged to take responsibility for their actions. Through this programme, NICRO works hand in hand with the offender and their families as well as their community so that they can resolve their differences.
- **Esther Lategan Study Fund for Prisoners and their Children:** Within this programme offenders are offered an opportunity to study while they are incarcerated. The very same bursary is also made available to children of offenders so that they can further their studies while their parents are serving their sentences.
- **NICRO Creative Arts Awards for Prison Art:** Through these annual awards, offenders are welcome to reveal their creativity in the field of arts. The competition is open with various categories which include painting, fabric painting, matchstick art, construction, recycling, calligraphy, wood crafting, leatherwork, needlework and poetry and prose. The main aim of the creative awards is, according to the Executive Director of NICRO, Ms Soraya Solomon, "to motivate and encourage offenders from all walks of life throughout South Africa to make constructive use of their time, to take a journey of discovery, and to harness their artistic skills. The purpose is partly to heal, partly to promote self-expression and creative talent, and partly to instil in the offender a keen desire to embark on a constructive life" (National Initiative for Crime Prevention and the Reintegration of Offenders, undated).

5.8.5 Khulisa

Khulisa is a non-profit organisation that was established in 1997 and that functions nationally. Its vision is “to contribute to building a healthy and crime free South Africa through the delivery of interventions aimed at both communities and individuals” (Khulisa Services, undated). Its mission is to rehabilitate, educate and reintegrate offenders within the community. The programmes that are offered by Khulisa offer support to offenders before sentencing, while in correctional facilities and before and after their release.

The following programmes are offered to offenders while incarcerated:

- **Discovery/My path:** This is a self-help programme which is aimed at ensuring that offenders discover themselves and understand the situation within which they found themselves. Through this programme offenders are able to understand their emotional, social, physical and psychological being.
- **Silence the Violence:** This is a 12-day programme that is aimed at challenging the violent behaviour of an offender. Within this programme, offenders are made to understand the consequences of their violent behaviour and in that manner they will choose a life which is free from violence.
- **Restorative Justice:** This is aimed at ensuring that offenders are accountable for their crimes and are able to come face-to-face with their victims and their families so that they can solve their problems and get on with their lives.

In addition to the above programmes, Khulisa offers a variety of programmes which includes peer educator training for HIV/AIDS and drug addiction, music, drama, games and recreation to offenders (Gibbs, Haldenby & Demetriou, 2006: 15).

5.9 SUMMARY

Changes that have occurred in South Africa as a whole since the early 1990s have led to new developments in the functioning of the correctional services and the entire justice

system. This chapter gave an overview of the new trends within Correctional Services which came with the introduction of the Correctional Services Act 111 of 1998. The implications of the White Paper on Corrections of 2005 were dealt with. The main aim of introducing these provisions was to overcome the problems that came with apartheid where the rights of offenders were not even recognised and the focus was on punishment.

From the discussion, it is clear that offenders' rights are an important factor that contributes to their development. Where the rights of offenders are always respected, they are more likely to pay attention to all the programmes that were designed to prepare them for life after imprisonment. With organisations such as the South African Human Rights Commission and the South African Prisoners' Organisation for Human Rights on the lookout for any human rights violations in correctional centres, any discrimination or inequality that may arise can be easily be overcome.

CHAPTER 6

FINDINGS AND CONCLUSIONS

6.1 INTRODUCTION

The aim of this chapter is to provide the comprehensive findings of the research project. After the discussion of the major findings of the research project, relevant conclusions will be highlighted. The extent to which the primary and secondary objectives of the research were achieved will also be indicated. Since the primary aim of the research was to determine the impact of offenders' rights on rehabilitation within the South African correctional system, recommendations based on the findings will be made.

6.2 FINDINGS

As mentioned in chapter 1 (see 1.7.2.4), only the rights that have an impact on the rehabilitation process of offenders were discussed, and the findings will therefore be presented on those grounds. These rights include the right to equality, human dignity, privacy, assembly, demonstration, picket and petition, education, language and culture, access to information, just administrative action, health care, food, water and social security, freedom and security of the person, slavery, servitude and forced labour, freedom of religion, belief and opinion, freedom of expression, political rights as well as freedom of association. The historical development of the said provisions up to the current situation will be indicated. The findings from the relevant international human rights instruments will also be discussed. Those related to offenders' rights and rehabilitation from the provisions of the statutes that are currently governing the day-to-day operations of the Department of Correctional Services in South Africa will be outlined. In addition, findings with regard to programmes for rehabilitation that are offered within the correctional system will be discussed.

6.2.1 The right to equality

From as early as the Old Testament, the equality of all people has always been of great concern. This issue was also raised by philosophers such as John Locke and Hobbes (see 2.4). In addition, Rousseau made it clear that the state that does not respect the equality of its citizens is unacceptable. England's Bill of Rights of 1689 stipulates that everyone, including the sovereign, is governed by the provisions of the Bill, thereby ensuring the equality of everyone. Like in England, both the Declaration of Independence and the Virginia Declaration of Rights in America state that all men are created equal and they deserve equal enjoyment of their rights (see 2.5.2). Because the Constitution Act of 1867 in Canada did not have an actual Bill of Rights, the Bill of Rights passed in 1960 guaranteed fundamental freedoms and human rights. The right to equality is provided for under section 15 of the Bill of Rights. The French Declaration of the Rights of Man and of Citizens of 1789, which has many similarities with other historical human rights instruments, also made it clear in terms of article 1 that all citizens are free and equal in their rights.

The first article of the Universal Declaration of Human Rights refers to the equality of all human beings (see 4.2.1.2). The basis of this equality is also extended to article 2 which prohibits discrimination. The grounds of non-discrimination, which include gender, race, colour, religion and birth, are also listed. Article 2 of the International Covenant on Civil and Political Rights also provides for the right to equality without discrimination. Regional human rights instruments emphasise the importance of the right to equality. With article 4 of the European Convention prohibiting discrimination based on the above grounds, article 1 guarantees the right to equality of all citizens. Both articles 1 and 2 of the American Convention and the American Declaration of the Rights and Duties of Man refer to the right to equality, respectively. Within the African Charter, the right to equality is provided for in article 19.

South Africa has managed to overcome a state that was characterised by lack of equality amongst its citizens to a state that respects the equality of its citizens. This can be viewed

from the guarantee of equality that came with important human rights instruments developed in the democratic South Africa. The Constitution 108 of 1996 prohibits discrimination based on gender, race, pregnancy, marital status, colour and language, amongst other things (see 5.3.2.1). Both the Correctional Services Act 111 of 1998 and the White Paper on Corrections of 2005, which were developed in line with the Standard Minimum Rules for the Treatment of Prisoners developed by the United Nations, aim to uphold section 9 of the Constitution when dealing with offenders.

6.2.2 The right to human dignity

Human rights are generally characterised by the recognition of human dignity. Since the earliest times religious scriptures from Christianity to Islam refer to the idea of respecting the dignity of all human beings. From the Code of Hammurabi through to Roman law up to the Renaissance, the dignity of everyone has always been outlined as of the utmost importance (see 2.3). Philosophers also argued for the upliftment of everyone's dignity. Historical human rights instruments such as the Virginia Declaration of Rights prohibited a state where there was no respect amongst individuals. The Universal Declaration of Human Rights sets out 30 articles which are aimed at ensuring that every individual can live in a dignified manner. In its preamble it states that the recognition of human dignity will lead not only to freedom, but also to justice and peace in the world. It is further emphasised in article 1 that all humans are free and equal in dignity.

Both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights further support the Universal Declaration of Human Rights by providing for the respect of inherent dignity for every human being. The right to dignity is also protected by the regional instruments. Article 5 of the American Convention provides for the right to humane treatment, which further encompasses the respect of inherent dignity of the human person (see 4.3.2). Like the American Convention, article 5 of the African Charter also provides for the dignity of all persons. According to these regional instruments, all groups of humans deserve justice, fairness, dignity and respect.

Historically there was considerable criticism against the recognition of human dignity in South Africa. The Constitution of South Africa that came into effect in 1996 turned things around for society, which was previously divided. It is based on the recognition of human rights for all South Africans irrespective of colour, race, gender or religion. As indicated in section 10 of the Bill of Rights, every South African citizen has inherent dignity and this dignity should be respected and protected at all times (see 5.3.2.2). Like the Standard Minimum Rules for the Treatment of Prisoners, the Correctional Services Act 111 of 1998 provides for conditions that are consistent with maintaining human dignity within the correctional system. These include proper provision of medical treatment, clothing and bedding, nutrition, accommodation and reading material.

6.2.3 Freedom and security of the person

The right to freedom and security of the person protects individuals from being victimised by others. With this protection, physical integrity is thus guaranteed. In the earliest theories of human rights, both Hobbes and Locke referred to the security of the person (see 2.4). Even though they had different opinions, they both viewed the security of the person as an important part of every individual.

The 1960 Bill of Rights in Canada, section 4, provides that every citizen has the right to freedom and security. In terms of article 2 of the French Declaration of the Rights of Man and of Citizens of 1789 the right to security is provided together with the right to liberty, property and resistance to oppression (see 2.5.4). Article 3 of the Universal Declaration of Human Rights makes provision not only for the right to life and liberty, but also for the right to security of the person. The International Covenant on Civil and Political Rights refers to the right to liberty and security of the person in terms of article 9 (see 4.2.2). Even the regional human rights instruments emphasise the right to freedom and security. Article 5 of the European Convention provides for the right to liberty and security. The two human rights instruments in the Inter-American system also make provision for the right to personal security. In the American Convention the right to security is provided for in article 7, while in the American Declaration of the Rights and Duties of Man the

right to life, liberty and security is provided for in article 1. Like other regional instruments, the African Charter also refers to the right to life and the security of a person in article 6 (see 4.3.3).

Section 12 of the South African Constitution 108 of 1996 deals with the right to freedom of security of the person as well as the right to bodily and psychological integrity (see 5.3.2.3). This section protects citizens from being detained without trial, from violence, from being tortured and from being subjected to any cruel, inhuman or degrading punishment or treatment. In addition, people are free to make choices regarding reproduction. Privacy of any person cannot be infringed as they have full control over their body.

Offenders, like any other citizens of the country, have the right to security. According to both the United Nations Standard Minimum Rules for the Treatment of Prisoners and the South African Correctional Services Act 111 of 1998, while offenders are incarcerated any ill treatment directed against them is regarded as a violation of the right to freedom and security. The South African White Paper on Corrections of 2005 is also underpinned by section 12 of the Constitution in order to ensure that offenders are treated in a humane manner.

6.2.4 Slavery, servitude and forced labour

Like the right to freedom and security of a person, freedom from slavery, servitude and forced labour forms part of the civil rights which are aimed at protecting citizens from any ill treatment (see 2.2.2.2). Although the Code of Hammurabi made reference to slavery, the prevention of slavery amongst citizens was made clear in the Mosaic Code. The Mosaic Code was based on the fact that everyone deserves equal protection from government and no citizen is superior to another.

Historically, the 1689 Bill of Rights in England not only granted the English citizens freedom from excessive bail, fines and forfeitures without trial, but it also protected them

from any cruel and unusual punishment (see 2.5.1). The Virginia Declaration of Rights also protected American citizens from any cruel and unusual punishment. Section 12 of the Canadian Bill of Rights provides freedom from slavery and forced labour as one of the fundamental freedoms. Like the Virginia Declaration of Rights, the French Declaration of the Rights of Man and of Citizens of 1789 mentions in section 8 that excessive punishments are prohibited.

Both articles 4 and 5 of the Universal Declaration of Human Rights prohibit any ill treatment directed at individuals. Article 4 prohibits slavery and slave trade of any kind and article 5 prohibits any cruel, inhuman or degrading treatment of individuals (see 4.2.1.2). Cruel, inhuman or any degrading treatment and slavery are also prohibited under articles 7 and 8 of the International Covenant on Civil and Political Rights, respectively. All the regional human rights instruments discussed in this project emphasise the fact that any form of ill treatment is prohibited. While article 3 of the European Convention on Human Rights prohibits any form of torture and inhuman or degrading treatment, article 4 states that no citizen can be subjected to slavery or any form of forced labour (see 4.3.1). Though the Inter-American system is made up of two instruments, only the American Convention refers to the prohibition of torture, cruel or any inhuman or degrading treatment, slavery and forced labour in articles 5 and 6, respectively. In addition to the right to liberty and security of the person, article 6 of the African Charter prohibits slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment.

In South Africa, section 13 of the Constitution of 1996 protects any person from being subjected to slavery or being forced to perform any kind of labour. Within the prison context, offenders are protected from performing forced labour. Because the United Nations Standard Minimum Rules for the Treatment of Prisoners prohibit the correctional system from mistreating offenders, any work given to offenders must take into account their dignity and their physical or intellectual capacity. Any kind of labour that they do should not be aimed at punishment but rather at the development of the offenders (see 5.3.2.4). As stated in the White Paper on Corrections, offenders should be provided with

productive work, which amongst other things, contributes towards their human development.

6.2.5 Privacy

In the Justinian Code, public laws and private laws were mentioned as two sets of laws, with private laws dealing with matters related to contracts and personal possessions, amongst other things (see 2.3). The right to security of a person is provided for in section 8 of the Canadian Charter of Rights and Freedoms of 1982. It was established in this project that article 12 of the Universal Declaration of Human Rights protects the individuals' right to privacy. The right also extends to family, home and correspondence, and also protects the individual's reputation. Article 17 of the International Covenant on Civil and Political Rights provides for the right to privacy too. Like the Universal Declaration of Human Rights, the European Convention includes the right to privacy with the right to family life, home and correspondence. Both the Inter-American human rights instruments mentioned in the project protect the individual's right to privacy, i.e. article 11 of the American Convention and both articles 5 and 10 of the American Declaration (see 4.3.2).

The research project uncovered that South African citizens are guaranteed the right to privacy in terms of section 14 of the Constitution of 1996 (see 5.3.2.5). The section provides that no person should be or should have their property unreasonably searched. In addition, the section prevents anyone from taking another person's property without a reason. Privacy of communication is also protected by the Constitution. Since the Standard Minimum Rules for the Treatment of Prisoners protect offenders' correspondence with their families and friends without being limited by the correctional system, the Correctional Services Act 111 of 1998 also encourages correspondence with the outside community. It was mentioned in the South African White Paper on Corrections that the Department of Correctional Services aims to rebuild the lost relationships between the offenders and society, and the means of achieving this include

encouraging written communication as well as visits by family, friends and loved ones (see 5.5). The privacy of contacts and visits should be respected as far as possible.

6.2.6 Freedom of religion, belief and opinion

Religion as one of the contributors towards the development of human rights has over the years laid a foundation for dignity amongst individuals. From the era of the Mosaic Code, religion has played a huge role in regulating the behaviour of people. In the Mosaic Code, civil and spiritual laws were set out to ensure a republic of equally free men. When the Declaration of Independence was formulated in America, it did not include minimum rights such as the freedom of religion. The Virginia Declaration of Rights, which was introduced at a later stage, guaranteed the freedom of religion. In Canada, the Bill of Rights Act of 1960 provides for the freedom of conscience, religion as well as the freedom of thought, opinion and belief (see 2.5.3). The freedom of religion and opinion is also provided for in article 10 of the French Declaration of Rights of Man and of Citizens of 1789.

When the United Nations developed the Universal Declaration of Human Rights, religion and opinion were set forth as one of the grounds of non-discrimination. Article 18 of the Declaration further emphasises the freedom of thought, conscience and religion. In addition, the Declaration protects the individuals in respect of changing, practising, teaching, worshiping and observing their religions. Like article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights also guarantees freedom of thought, conscience and religion (see 4.2.2). While article 9 of the European Convention guarantees the freedom of conscience and religion in the European system, article 12 and article 3 of the American Convention and the American Declaration, respectively, also provide for this freedom in the Inter-American system. In the African system, article 8 of the African Charter provides for the freedom of conscience and religion (see 4.3.3).

Like article 18 of the Universal Declaration of Human Rights, section 15 of the Constitution of 1996 of South Africa provides for the freedom of conscience, religion and belief. The section further states that religious observances may be conducted at state institutions. The correctional system as one of the organs of the state cannot prevent offenders from practising their religions as long as such religion is practised equally and voluntarily. Religion is recognised in the Standard Minimum Rules for the Treatment of Prisoners because of the positive impact it has on individuals (see 4.4). If all the religions amongst offenders are equally recognised, offenders can positively guide each other. Section 14 of the Correctional Services Act 111 of 1998 also recognises the freedom of religion, belief and opinion.

6.2.7 Freedom of expression

In the Justinian Code, it was stated that no person may suffer a penalty for saying what they think. With this provision, freedom of expression was guaranteed. The French Declaration of the Rights of Man and of Citizens of 1789 provides in article 11 the principles of communicating ideas and opinions. In this article every citizen may write, speak and print material without any restrictions.

As indicated in the preamble to the Universal Declaration of Human Rights, the non-recognition of human rights, which include the right to freedom of speech and security, has led to the victimisation of people. To prevent this, article 19 of the Declaration provides for the right to freedom of opinion and expression. The International Covenant on Civil and Political Rights also supports article 19 of the Universal Declaration of Human Rights in its article 19. All the regional human rights instruments mentioned in the research project also protect the freedom of expression. Article 10 of the European Convention protects the freedom of expression of all Europeans. In the Inter-American system, article 14 of the American Convention and article 4 of the American Declaration protect the right to freedom of expression (see 4.3.2). Within the African system the freedom of expression is guaranteed in terms of article 9.

The freedom of expression guaranteed in section 16 of the South African Constitution of 1996 comprises two sections (see 5.3.2.7). The first subsection encompasses the freedom of the press, freedom to receive information, freedom of artistic creativity and academic or scientific research freedom, while the second subsection provides limitations. Section 21 of the Correctional Services Act 111 of 1998 is in line with the provision of the Standard Minimum Rules for the Treatment of Prisoners, which allows for offenders to make complaints whenever they are dissatisfied. Offenders cannot be restricted from lodging any complaint.

6.2.8 Political rights

As debated in this project, political rights not only offer individuals the opportunity to participate in the political activities of this country, but also to be part of any political party of their choice (see 2.2.2.2). As argued by Montesquieu, the best form of government is the one in which individuals have the right to make choices. The English Bill of Rights of 1689 makes it clear that all suitable English citizens have the right to elect members of parliament without interference, not even from the sovereign. Within the democratic rights listed in the Canadian Charter of Human Rights, section 3 provides that all suitable Canadians are allowed to vote. On the other hand, the French Declaration makes provision for freedom of political association.

Article 21 of the Universal Declaration of Human Rights not only provides for the right to equal access to public services, but also allows all eligible citizens to take part in the elections of the government (see 4.2.1.2). Article 25 of the International Covenant on Civil and Political Rights allows individuals to take part in public affairs, including voting. Though the European Convention does not make provision for the right to vote or participate in government activities, other regional human rights instruments contain such provisions. Both the American Convention and the American Declaration make provision for the right to participate in government and, most importantly, the right to vote. These rights are provided for in article 23 of the Convention and article 20 of the Declaration.

The right to participate in government activities is also provided for in article 13 of the African Charter within the African system.

On top of being free to participate in the election process of the country, South African citizens are also protected in making their political choices. This includes forming a political party, participating in activities of a political party and campaigning for a political party. These rights are provided for in section 19 of the Constitution of 1996. Because every South African citizen is entitled to political rights regardless of gender, origin and race, amongst other things, offenders too are entitled to these political rights.

6.2.9 Health care, food, water and social security

As part of classic and social rights, individuals need adequate health care, food, water and social security (see 2.2.2.1). The rights are mentioned as non-derogable as citizens can never live without them being provided. In some instances the provision of these rights remains the responsibility of the state. The state is obliged to try by all means necessary to provide health care services, food, work and social security, amongst other things, to its citizens. Though there was not much concern regarding these rights historically, these rights form the basic need of every human being.

Article 25 of the Universal Declaration of Human Rights provides for the right to a standard of living that is adequate for health and physical wellbeing, which includes provision of medical care, food, clothing and social security. Like the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights is based mostly on the upholding of citizens' right to an adequate standard of living that meets the above needs. Within the regional human rights instruments, the American Declaration provides for this right in article 11. Though the African Charter does not specifically make provision for the right to food and water, article 13 makes provision for the right to equal access to the public service of the country, while article 16 refers to the rights to enjoy the best attainable state of both physical and mental health.

The South African Constitution of 1996 provides for the right to health care, food, water and social security in section 27. In terms of this section, if any citizen is unable to meet these basic needs, the state must take reasonable measures to provide for them. The standard required with regard to the provision of medical treatment, which includes examination of offenders by medical practitioners after admission and paying special attention to those requiring special treatment, is mentioned in the Standard Minimum Rules for the Treatment of Prisoners (see 4.4). The Rules also provide for the right to food of nutritional value which meets offenders' health and wellbeing. Similarly, both section 8 and section 12 of the Correctional Services Act 111 of 1998 make provision for the right to food and health care, respectively. The White Paper on Corrections outlines that the Department of Correctional Services is committed to ensuring the physical and emotional wellbeing of offenders by upholding section 27 of the Constitution of 1996.

6.2.10 Freedom of association

The freedom of association also encompasses other rights such as political rights and the freedom of religion, belief and opinion. A person granted the freedom of association is a person who can make their own choices without being compelled by anyone. Article 20 of the Universal Declaration of Human Rights provides for the freedom of association (see 4.2.1.2). It further emphasises that no one may be compelled to belong to any association. Unlike article 20 of the Declaration which is very brief, article 22 of the International Covenant on Civil and Political Rights is broad. In addition to the association between individuals, the article further provides for individuals to form or join trade unions as long as such associations are lawful.

All the regional human rights instruments mentioned in the research project provide for the freedom of association. Article 11 of the European Convention provides not only for freedom of assembly, but also for freedom of association. Article 16 and article 22 of the American Convention and the American Declaration, respectively, make provision for the freedom of association (see 4.3.2). The African Charter makes it clear that as long as

the individual citizen abides by the law, that person has the right to freedom of association.

Though it is very brief, section 18 of the Constitution of 1996 of South Africa makes provision for the right to freedom of association (see 5.3.2.9). Offenders, like other citizens, are also entitled to freedom of association. As supported by the Standard Minimum Rules for the Treatment of Prisoners, offenders are allowed to be part of any group that they want - be it religious or political without being forced by anyone. The Correctional Services Act 111 of 1998 also accommodates offenders' freedom of association as long as this freedom is protected equally.

6.2.11 Freedom of assembly, demonstration, picket and opinion

The freedom of assembly can be used as an effective tool of communication for those who believe that their demands are not being met. In a free state, assemblies, pickets, demonstrations and petitions are regarded as powerful means of getting the message across. Because the Constitution Act of 1867 in Canada did not have an actual Bill of Rights, Canada passed the Bill of Rights Act of 1960 which recognised fundamental freedoms and rights of all Canadians (see 2.5.3). One of the fundamental freedoms included was the freedom of peaceful assembly.

In the Universal Declaration of Human Rights, the freedom of peaceful assembly is combined with the freedom of association in terms of article 20. The freedom of assembly is also provided for in article 21 of the International Covenant on Civil and Political Rights as one of the fundamental freedoms. Like in the Universal Declaration of Human Rights, in the European Convention the freedom of assembly was combined with the freedom of association under article 11. Both human rights instruments in the Inter-American system refer to the right to assembly. In the American Convention, the right to assembly is provided for in article 15, while in the American Declaration, the right is provided for in article 21. Within the African system, the freedom of assembly is listed in article 11 of the African Charter.

Like section 18 which provides for the freedom of association, section 17 of the Constitution of 1996 in South Africa is also very brief. The section states that as long as citizens are unarmed and peaceful, they have the right to assemble, demonstrate, picket and present petitions. As mentioned in both the Standard Minimum Rules for the Treatment of Prisoners and the Correctional Services 111 of 1998 (section 21), every offender has the right to make complaints and requests. If they are still not satisfied, they have full protection of the right to assembly, demonstration, picketing and petition until their grievances are resolved.

6.2.12 Right to education

Like the right to health care, food, water and social security, the right to education forms part of the classic and social rights that are necessary for human development (see 2.2.2). Although education can be provided by private institutions, the state is obliged to provide access to education to its citizens. Historically, not many statutes recognised education as a basic human right. In this research project, the first comprehensive document to make reference to education is the Canadian Constitution Act of 1867 in section 93. However, the rights in the Canadian Charter only focused on minority language educational rights.

Article 26 of the Universal Declaration of Human Rights not only states that everyone has the right to education, but it further emphasises that this education must be free at certain levels. In addition to basic education, technical, professional and higher education should be equally accessible. As mentioned in the Declaration, basic education should be compulsory. Education was referred to in the International Covenant on Economic, Social and Cultural Rights as one of the contributors to maintaining citizens' adequate standard of living.

Though the European system does not refer to the right to education in the European Convention, both the Inter-American system and the African system recognise the right to education. In the Inter-American system only the American Declaration refers to the

right to education in article 13, while in the African Charter the right to education is mentioned in article 17.

Section 29 of the Constitution of South Africa provides a broad description of the right to education. Similar to the Universal Declaration of Human Rights, section 29 also states that basic and further education, amongst other things, should be equally available and accessible. The section also makes provision for the development of private institutions. The most outstanding feature of the section is that education should consider equity, practicality and elimination of discrimination (see 5.3.2.12). The Standard Minimum Rules for the Treatment of Prisoners provide for the right to books in order to develop offenders' level of education. To ensure that offenders have access to books, the Standard Minimum Rules state that every institution must have a library. Section 18 of the Correctional Services Act 111 of 1998 further provides that offenders can even receive study materials from outside in addition to accessing the library available at their centre of detention.

6.2.13 Right to language and culture

Cultural rights were discussed in this project because they offer individuals protection of their cultural practices and morale. Language is mentioned as one of the grounds of non-discrimination throughout the project. The equality of everyone extends to language and culture as they differ from one person to the next.

As with educational rights, the Constitution Act of 1867 of Canada was also the first comprehensive document to refer to language rights in this research project. The rights were provided in section 133 of the Act. However, the section only makes provision for English and French as the official languages in Canada. The same provision was later included in the Canadian Charter of Rights and Freedoms from sections 16 to 20. Minority languages were also catered for in terms of section 23 of the Charter.

Article 27 of the Universal Declaration of Human Rights provides for the right to freely participate in the cultural life of the community. The same right to language and culture is also provided in article 27 of the International Covenant on Civil and Political Rights. However, more emphasis on cultural rights is outlined in the International Covenant on Economic, Social and Cultural Rights.

The European system not only provides for the right to language in a society, but it also provides for languages in criminal proceedings (see 4.3.1). Article 6 of the European Convention states that everyone should be informed in a language that they understand about their criminal charges. Though the American Declaration and the American Convention do not provide for language rights, article 13 of the American Declaration provides for the right to culture. The right to culture is combined with the right to education in article 17 of the African Charter.

In the South African Constitution, section 30 and section 31 provide for both the right to language and culture. It is stated that the usage of language or participation in cultural activities should not be in conflict with other provisions in the Bill of Rights. Furthermore, no one can be denied such rights. Both the Correctional Services Act 111 of 1998 and the Standard Minimum Rules for the Treatment of Prisoners allow for the equal usage of languages and cultural practices amongst offenders.

6.2.14 The right to access information

The right of access to information can be used to protect or give effect to other rights. History indicates that the right of access to information has over the years not been recognised by the law. To prove this, major human rights instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights do not refer to the right to access information held by the state or any other party. In addition, only one of the regional human rights instruments discussed refers to this right. The European

Convention, the American Declaration as well as the American Convention do not make provision for the right to access information.

In article 9 of the African Charter the individual's right to receive information is combined with the right to express and disseminate opinions (see 4.3.3). However, the article does not refer to accessing information held by the state or any other part, but rather it focuses on receiving information.

The right to access information is provided for in terms of section 32 of the Bill of Rights in South Africa. The section not only provides for the right to access information in possession of the state, but to any information that is held by any person as long as it is required for exercising other rights in the Bill (see 5.3.2.15). Within the context of the correctional system, when offenders are admitted they should be given any information that has an impact on their incarceration. Both the Standard Minimum Rules for the Treatment of Prisoners and the Correctional Services Act in section 6 provide that offenders should be informed of all the right channels of communication so that they know who to approach when the need arises. The White Paper on Corrections also emphasises offenders accessing information about the world outside.

6.2.15 Just administrative action

Because any person has the right to liberty, no person can be deprived of this right unless under conditions established by the law. From as early as the Code of Hammurabi techniques for legal procedures were set out to ensure fair trial for offenders. Even in the Twelve Tables of the Roman Law, procedures for fair courts and trials were established.

Historical human rights instruments such as England's Bill of Rights of 1689 mention that every individual is guaranteed freedom from forfeitures and fines without trial. Any person must be brought before the judge to plead their case (see 2.5.1). The Virginia Declaration of Rights in America guarantees the enjoyment of life and liberty and equal justice for all. Though the Constitution Act of 1867 of Canada did not accommodate the

right to just administrative action, this was later included in section 11 of the Canadian Charter of Rights and Freedoms. Even the French Declaration of the Rights of Man and of Citizens of 1789 states in article 9 that all persons are held innocent until they are proven guilty (see 2.5.4). The article provides that no person can be punished without any reason.

Both article 9 and article 11 of the Universal Declaration of Human Rights protect individuals' right to a fair trial. Article 14 of the International Covenant on Civil and Political Rights prevents individuals from unequal treatment before the courts (see 4.2.2). As broad as the article is, it ensures that a person undergoes a fair and public trial before a judge. All the regional human rights instruments also make provision for a fair trial. In the European Convention, the right to a fair trial is mentioned in article 6. Both the American Convention and the American Declaration provide for the right to a fair trial in terms of articles 8 and 17, respectively. Like other regional instruments, article 7 of the African Charter also makes provision for a fair and public trial.

Section 33 of the South African Constitution of 1996 states that every South African citizen has the right to lawful administrative action that is reasonable and fair. In the day-to-day operations of the correctional system, every decision that affects offenders should be fair and reasonable.

6.2.16 Psychological services

As provided by the Standard Minimum Rules for the Treatment of Prisoners, emotional and mental problems that led to the commission of an offence must be treated. The Standard Minimum Rules further provide that psychologists employed within the correctional centres and with the necessary expertise should be used to deal with these problems (see 4.4). Behavioural therapy aimed at changing the criminal lifestyle of the offender and social therapy aimed at ensuring offenders' participation in the decision-making process are offered (see 3.6.3).

Within the South African correctional system, psychological services are offered by the Directorate of Psychological Services to ensure the emotional wellbeing of offenders (see 5.7.1). Various programmes are designed considering the needs of offenders. Three methods are used to ensure the effective treatment of offenders, i.e. individual therapy, group therapy and family therapy. One of the said aims of psychological services programmes is to create a desire within offenders to lead productive lives as law-abiding citizens after their release. Not only are psychologists aiming to curb the causes of criminal behaviour such as alcohol and substance abuse, but also to reduce reoffending amongst offenders who are likely to reoffend.

6.2.17 Social work services

Among the personnel of the correctional institution mentioned in the Standard Minimum Rules for the Treatment of Prisoners, there should also be social workers (see 4.4). Social workers try by all means necessary to ensure that offenders adjust within the correctional institutions with less frustration and deterioration.

The Directorate of Social Work Services offers services such as therapeutic, informative, supportive, crisis intervention, development, administrative, assessment and evaluative services (see 5.7.2). Social workers apply casework, group work and community work in order to empower offenders' social functioning skills. Problems such as substance abuse, marriage and family, life skills and sexual offending are addressed by social workers. It was uncovered in this research project that the Department of Correctional Services only employs qualified social workers who are registered with the South African Council of Social Workers and Professions.

6.2.18 Health care services

In the Universal Declaration of Human Rights, everyone has the right to a standard of living that ensures that they have access to adequate medical care, amongst other things (see 4.2.1.2). Most of the human rights instruments in this research project are concerned

with the provision of adequate health care. The Standard Minimum Rules for the Treatment of Prisoners state that the health and wellbeing of offenders should always be a priority of every correctional system. They also provide for the availability of health practitioners in correctional centres who will be able to respond when the need arises.

To be in line with international standards such as the Standard Minimum Rules for the Treatment of Prisoners and to meet the provisions of section 27 of the South African Constitution of 1996 as well as section 12 of the Correctional Services Act 111 of 1998, the Department of Correctional Services provides health care services under the Directorate of Health Care Services (see 5.7.3). The Directorate not only provides for offenders' medical care, but also ensures that offenders' needs for accommodation, nutrition, hygiene, clothing and bedding are met.

6.2.19 Skills development and educational services

Skills development as well as education can help offenders acquire enough skills and knowledge that can be useful after their release. In order to ensure that offenders become productive citizens in their societies, they should be provided with basic education, vocational training, post-secondary and other educational programmes. This is also supported by the Universal Declaration of Human Rights in article 26. The Standard Minimum Rules for the Treatment of Prisoners also provide for the right to education.

Two separate directorates are responsible for the provision of skills development and education programmes for offenders in South Africa (see 5.7.4). The Directorate of Skills Development offers offenders knowledge, skills and attributes that prepare them for the labour market. The Directorate of Formal Education not only ensures that the educational skills offered are in line with the educational system of the country, but also that the level of literacy amongst offenders is improved. Three programmes of education are offered by the Directorate and they include general education and training, further education and training as well as higher education and training. The skills development and educational

services are offered in accordance with the provisions of the Correctional Services Act 111 of 1998 and the Constitution of 1996.

6.3 RECOMMENDATIONS

6.3.1 Fill the number of vacancies for professional staff

Professional staff comprise educationists, nurses, social workers and psychologists, amongst others. These people have an important role to play within the day-to-day operations of the correctional services in their respective fields. In 2006 the Department of Correctional Services had 51% vacant positions for professional staff (Department of Correctional Services, undated). When comparing the two most recent annual reports, i.e. the 2006/08 and the 2007/08, there has been continuity in the increase of professionals' vacancy rate. According to the Department of Correctional Services' annual report of 2006/07 (2007a: 134), the Department had a 16.9% vacancy rate for educationists, 69.2% for medical practitioners, 33.9% for professional nurses, 64.4% for psychologists and vocational counsellors as well as 27.5% for social workers and other related professionals. Except for the vacancy rate for medical practitioners which decreased, others increased during the financial year 2007/08. In the Department of Correctional Services' annual report for 2007/08 (2008: 152) it is indicated that there was a 21.6% vacancy rate for educationists, 34.6% for professional nurses, 70.7% for psychologists and 36.2% for social workers and other related professionals.

The Department of Correctional Services, with the high number of offenders it has to deal with, needs the undivided services of these professional staff because they are the core of offenders' rehabilitation. Filling these positions should be the Department's main priority because leaving them vacant means that the available staff have more work than they are able to cope with. This leads to many offenders not being able to access services. Rehabilitation requires offenders to have equal access to education, medical services, psychological services, social work services, etc. If these services are not offered to offenders, the process of rehabilitation will be negatively affected.

6.3.2 Adopt the methods currently being used by NGOs

As proven in this research project, organisations such as Khulisa and NICRO offer comprehensive programmes to offenders. Over the years, these programmes have proven to be successful both in the rehabilitation and the reintegration of offenders. Though not proven, the recidivism rate in South African correctional centres is estimated to be as high as 80%, but those who participate in programmes offered by these organisations are less likely to reoffend. According to Van Selm (2007: 2), less than 30% of offenders who participate in Khulisa programmes are likely to reoffend. The NICRO annual report (National Institute for Crime Prevention and the Reintegration of Offenders, 2007: 10) indicates that for those offenders who participate in the Tough Enough Programme, which offers intensive in-prison and post-release intervention services to participants as well as comprehensive family support services, the reoffending rate has been reduced to between 0 and 20%.

Compared to the high recidivism rate in South Africa, such achievements indicate the effectiveness of programmes that are being offered by these organisations. Programmes such as Discovery/My path and Silence the violence offered by Khulisa as well as the Tough Enough Programme offered by NICRO have undoubtedly been effective throughout the years. The only problem is that only the minority of the large offender population are able to access these programmes. But if they can be made available to the larger population in partnership with the Department of Correctional Services, their results will be tremendous. It is recommended that the Department of Correctional Services attempt to expand its partnership with these organisations and introduce their programmes countrywide. If these methods are applied successfully by these organisations, it means that there is a good chance of them being effective in all correctional centres.

6.3.3 Develop facilities that cater for the needs of special categories of offenders

The majority of the structures of correctional centres in South Africa are old and they do not cater for the latest developments in corrections. As proven in this research, history indicates that there are not many female offenders in correctional centres. The increasing number of HIV/AIDS-infected offenders is one of the challenges that the Department also has to deal with. The same can be said about the increasing number of disabled offenders and offenders with mental illness. The growing number of these categories of offenders cannot go ignored.

The Department of Correctional Services must develop facilities that specially cater for the needs of these categories of offenders. The chances of these offenders being successfully rehabilitated within the current conditions are questionable. But if they are treated differently from other offenders, they can easily have access to educational and training programmes, medical services, social work services and psychological services, amongst others, that are specially made available to suit their needs. For example, though separation might be viewed by many as discrimination, detaining an HIV/AIDS-infected offender with other offenders, whether terminally ill or not, poses a threat not only to other offenders of being infected given the high level of sexual intercourse in correctional centres, but also to his or her own health. It is difficult for these offenders to receive relevant medical attention. The same applies to other categories of offenders. From this research it was proven that the demand posed by these special categories of offenders is far more than the ordinary offenders. Since the Department of Correctional Services is in the process of developing new centres, it is recommended that the needs of these types of offenders be considered.

6.3.4 Ensure compulsory participation in the rehabilitation programmes

Currently all the said rehabilitation programmes are offered voluntarily. With the offender population approaching 200 000 in South Africa, it is difficult to undertake these programmes. This is mainly because many offenders, particularly those who are willing

to participate in rehabilitation programmes, are less likely to have access to these programmes. Within the correctional centres, everything that could be done for the benefit of the offender and the community is important.

It was proven in this research that offenders are not only incarcerated to serve their sentences, but to be given a second chance to have a positive impact in their communities through participation in rehabilitation programmes. Whether educational, psychological, social work or health care, these programmes are provided by the Department of Correctional Services not only for the benefit of the offender, but for the benefit of the community. So if a person has done wrong in the community and the Department of Correctional Services, which is mandated to ensure the safety of the community, tries its best to provide the necessary means for rehabilitation, the offender owes it to the community to participate in these programmes. Hence it is recommended that participation in rehabilitation programmes be compulsory. If it is not, the same alcoholic, drug addict, illiterate, aggressive, violent, suicidal, sexual offender will be released back to the community, regardless of the amount of time spent in the correctional centre.

6.3.5 Develop a mechanism for post-supervision of offenders

Given the opportunities offered to prepare offenders for future employment, offenders are expected to use the necessary skills that he or she acquired while incarcerated to make a successful living without resorting to crime. Not only are offenders offered education and training programmes that can make them stay away from criminal life, but they are given opportunities to serve their sentences in a constructive manner. While incarcerated, offenders are encouraged to take responsibility for their own lives. If they are offered education and skills, it should be ensured that they are using them in their communities. Hence it is recommended that a mechanism for post-supervision of offenders with the aim of ensuring their successful reintegration be developed. As discussed in this research project, the correctional authorities should work together with the external role players to ensure the effective reintegration of offenders.

In addition to education, which includes primary up to tertiary education and computer training courses, amongst others, offenders are offered on-the-job training in various fields. These fields include bricklaying, carpentry, painting, plumbing, farming and welding, which are available in the community so that they can make a living. To ensure that offenders are indeed benefiting from these programmes, a system should be in place to determine whether they are using the skills they acquired while in the correctional centres.

6.3.6 Develop an effective tracking system to monitor the recidivism rate

As mentioned in 6.3.2 the recidivism rate is estimated to be as high as 80% and that is just an estimate. In the Department of Correctional Services' annual report for 2006/07 (2007a: 47), a service delivery indicator for the reduction of recidivism is the "implementation of other quality assured correctional programmes by internal and external services providers". The fact remains that only the reoffending rates of those offenders participating in programmes offered by external service providers can be traced because of the low number of offenders involved. The Department of Correctional Services, which is supposed to be a major role player, does not have a system in place.

A high number of recidivists negatively impact the process of rehabilitation. It does not only indicate failure of the rehabilitation programmes that are offered, but it also contributes to overcrowding. If a system is in place, the Department of Correctional Services will be able to determine whether the rehabilitation programmes offered are effective or not for the specific group of offenders. If the programmes are not effective, the Department can determine the necessary programmes by focusing on the most needy offenders. Most of all, by having a tracking system the Department will identify the factors that lead to recidivism.

6.4 RECOMMENDATIONS FOR FURTHER RESEARCH

Further research is needed on other rehabilitation programmes offered by various countries. Countries such as America, Canada and England have over the years introduced various effective means of reforming offenders. One of the programmes that stands out is the Educational Release Program offered in America. In this programme offenders are allowed to leave correctional facilities to attend educational programmes in academic and training institutions. Though it might seem costly or to be putting the community at risk, the benefits of releasing offenders for only few hours to attend classes and return to the institutions later are unquestionable if the aim is to reform the offender. Within this programme offenders gain access to practical programmes which cannot be offered within the correctional environment. Hence further research is needed on more programmes such as this for them to be introduced in South Africa.

6.5 CONCLUSIONS

History indicates that human rights have always been an important aspect in every human's life. Because human rights were derived from laws, they are also protected by such laws. From as early as the Old Testament human rights have always been a subject of protection.

Prisons as we know them today have been part of our lives for over 250 years. Although there were methods which were used for punishment before the development of prisons, it is clear that prisons are currently the most common method of punishment. The most important reason for sending offenders to prisons is not only to remove them from society, but to ensure that they are rehabilitated. Rehabilitation as one of the aims of punishment, amongst retribution, deterrence and incapacitation, is aimed at ensuring that offenders can change their criminal behaviour. Though the concept of rehabilitation has taken many forms throughout the world over the years, its aims of reforming offenders have remain unchanged.

Incarcerated offenders are provided with the most favourable means for them to repent. Through educational, psychological, vocational and recreational programmes, offenders are offered opportunities for constructive and socially useful self-improvement. These opportunities can enhance their prospects for securing honest employment and succeeding as law-abiding citizens after their release to their communities. Even though rehabilitation programmes are offered within the correctional system, the responsibility lies with the offenders themselves whether they participate in these programmes since they are not compulsory. Although the correctional staff have to closely evaluate each inmate and place them in suitable programmes, the offender remains an important role player in the process of rehabilitation. Furthermore, the community must also provide the necessary means of support when required by the offender. The support must continue even after the offender has been released back to the community. Nevertheless, achieving the objectives of rehabilitation requires team effort.

The Universal Declaration of Human Rights was introduced with the aim of protecting the rights of every individual in the world. The provisions in the Declaration cannot be separated from the functioning of the correctional system as they provide protection for offenders. The fact that 16 out of 30 articles in the Universal Declaration of Human Rights were discussed in this project as having an impact on the rehabilitation of offenders indicates that the Declaration is indeed an instrument that has a valuable contribution to every human's life, whether a criminal or not. In addition, provisions set out in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights are in line with those of the Universal Declaration of Human Rights. As proven in this research project, they also have an impact on the rehabilitation of offenders, like the Universal Declaration of Human Rights. Furthermore, each regional human rights instrument discussed has more provisions that have an impact on the rehabilitation of offenders than the ones that do not. Whether civil, political, economic, social or cultural, the rights that are listed in the said international human rights instruments have a valuable contribution to the rehabilitation of offenders.

South Africa as a country in general has been through many changes. Its correctional system has also undergone many changes since the 1600s. The current status of the correctional system reflects the current status of the nation as a whole. After the first democratic elections in 1994 changes were bound to take place in almost every sphere of government. The Constitution of South Africa 108 of 1996 led to a whole new culture of human rights which was previously ignored. Amongst its purposes, the Act is committed to undoing the separation of the past which will in turn lead to a society that is based on democratic values, social justice and, most importantly, fundamental rights. Relevant provisions from the Bill of Rights and the impact they have on rehabilitation have been discussed in this project. They include equality (section 9), human dignity (section 10) and freedom from slavery, servitude and forced labour (section 13). The results show that the Constitution of South Africa should always be upheld within the correctional system as a guide for offender rehabilitation.

Because the correctional system was previously governed by the provisions of the Correctional Services Act of 1959, after the 1994 elections and the introduction of the Constitution of South Africa 108 of 1996, the correctional system also had to adjust. The aim was to meet not only the standards set out in the Constitution, but also other relevant international standards, such as the Standard Minimum Rules for the Treatment of Prisoners developed by the United Nations to regulate the treatment of offenders internationally. It is clear from the project that the Standard Minimum Rules serve as a core for dignified and acceptable offender treatment. They set out the most basic requirements which every correctional system worldwide should meet when dealing with offenders. These requirements include adequate accommodation, nutrition and provision of reading materials. Because the previous Correctional Services Act did not meet these expectations, a need arose for the introduction of the new Act. Through its clear directives, the Correctional Services Act 111 of 1998 has by far met the required standards both nationally and internationally. Each provision in the Act is set out in a manner that will ensure that offenders are treated in a dignified manner which does not violate their rights.

In addition to the Correctional Services Act 111 of 1998, the Department of Correctional Services drafted the White Paper on Corrections in 2005. Like the Act, the White Paper is also based on the concept of offender rehabilitation. It upholds the rights in the Constitution as well as the requirements set out in the Correctional Services Act.

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