

CONTEMPORARY CORRECTIONS IN SOUTH AFRICA AFTER MORE THAN A DECADE OF TRANSFORMATION

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ABSTRACT

South Africa entered its second decade as a democracy. During this period the State was obliged to transform in various areas of Government. The process of transformation was eagerly implemented and executed in the Department of Correctional Services. This Department is a major role-player in the criminal justice system. Responsibilities span over a large front and include the management of persons awaiting trial, sentenced offenders who are imprisoned, those sentenced to community corrections, and offenders who were released on parole. This article investigates that process of transformation. Particular areas of investigation include, inter alia, the reasons for transformation, Constitutional and other legal influences, personnel issues, prison crowding, management philosophies, privatisation of State assets, and dealing with HIV/AIDS. The investigation highlights successes in transformation, but also deals with areas where transformation could have been more successful. The discussion is regarded important for understanding progress and obstacles experienced by societies in transition.

INTRODUCTION

After a history of fifty years of Apartheid rule and oppression of the majority of the population in South Africa the new democracy is now in its second decade. It is well documented that a large portion of the South African population has been criminalised through the use of imprisonment during the reign of Apartheid leaders. The then Department of Prisons, later called the Department of Correctional Services (since 1991) in South Africa formed part of the security services until the very end of the previous regime. Against the backdrop of military custom, South African prisons became warehouses for a large portion of the previously disadvantaged citizens.

True to the custom of Apartheid, even prisons accommodated races separately, but it seized with the racial integration of prisons in 1993. Nonetheless, the South African prison system was rigidly segregated. Details of segregation were specified in the Prisons Act 8 of 1959 (Van Zyl Smit, 1998:1). Even food rations were different, but on death row equality prevailed. Black inmates awaiting execution were entitled to rations of white scale.

By 1990, the arrival of democratic winds of change at South African shores signalled the start of large processes of transformation. Significantly, these changes were typified with the release of Nelson Mandela. While influencing society as a whole, early transformation in a democratic South Africa has had significance for government departments, particularly the Department of Correctional Services. Luyt (1999:296) reported that transformation in criminal justice is normally very slow, but that corrections in South Africa took up this particular challenge rigorously. Correctional authorities faced a daunting task to reform one of the ten largest prison systems in the world to meet international standards, constitutional challenges and democratic expectations.

WHAT TRIGGERED PRISON TRANSFORMATION?

Constitutional law

The primary duty of the first democratic government in South Africa was to create a permanent Constitution, which had a significant influence on Correctional Services. Under the new

Constitution the Department of Correctional Services lost its status as a security services agent and became part of the public service. It now had to be transformed into an effective instrument of public service delivery.

Homelands and self-governing territories established by the Apartheid regime made provision for five additional prison systems within the boundaries of a united South Africa. Section 103 of the Constitution (Republic of South Africa, 1996:60) makes provision for nine provinces. Six different prison systems had no constitutional right of existence. The incorporation of the prison systems operated by Transkei, Ciskei, Venda, Bophuthatswana and Kwazulu into a single Department is reported to be the biggest accomplishment during the first couple of years after Apartheid (Luyt, 2001:26).

The Constitution influenced various areas of prison management directly. Correctional legislation had to be revised, the military character of the Department was influenced, humane conditions of detention came under scrutiny, staff needed to be re-skilled and professionalized, and human rights took centre stage for the first time from a legislative point of view. Some of these challenges will now be discussed in broader detail.

The White Paper(s) on Corrections in South Africa

According to Wikipedia white papers are issued by the government and lay out policy, or proposed action, on a topic of current concern. Although a white paper may occasion consultation as to the details of new legislation, **it does signify a clear intention on the part of a government to pass new law.** The term “White Paper” is an informal name used by the Commonwealth of Nations (to which South Africa belong) for a parliamentary paper.

The first White Paper (October 1994) on the Policy of the Department of Correctional Services in the New South Africa (1994:2) was the initial response from Correctional Services to adapt to new dictates in a democracy. As a White Paper is the front runner for new legislation it was indeed the case with the 1994 White Paper. New legislation was promulgated in the form of the Correctional Services Act 111 of 1998. The 1994 White Paper highlighted two main (and uncontrollable) problems in prisons, namely a shortage of resources and gross overcrowding (Dissel 1995:19). According to Dissel (1995:19-20) the 1994 White Paper hardly mentioned various other problems such as violence in prisons, the lack of rehabilitation programmes, accountability of prisons to prisoners and the public, and appalling prison conditions.

Within the first decade of democracy the Department of Correctional Services had the need for a second White Paper. This was published in February 2005. In the foreword to the 2005 White Paper the Minister of Correctional Services wrote that it “*represents the final fundamental break with the past archaic penal system and ushers in a start to our second decade of freedom where prisons become correctional centres of rehabilitation and offenders are given new hope and encouragement to adopt a lifestyle that will result in a second chance towards becoming the ideal South African citizen.*” The White Paper stated that it “*does reflect a dynamic approach to align with transformation objectives of the country*” (Department of Correctional Services, 2005:7). In the preamble by the Commissioner it is claimed that “*the strategic plans of 2004/05 and 2005/06 are practical manifestations of the ideas contained in the White Paper*” (Department of Correctional Services, 2005:9).

Motivation for a new White Paper was embedded in identified inadequacies of the first White Paper. Firstly, it was argued that the 1994 White Paper was based on the 1993 interim Constitution and did not benefit from subsequent legislation in the form of the 1996 Constitution and the 1998 Correctional Services Act (Department of Correctional Services, 2005:13). Secondly, the first White Paper was not aligned to current Government policies and a broad range of Regulations governing the public service. Thirdly, there was no appropriate basis for the formulation of a departmental policy that fully integrated the unique nature of crime in South Africa. Lastly, it lacked guidance for long-term departmental policy. All

indications were (and still are) that a new legislative process for correctional law is not on the way.

Although this casts a shadow over the need for the new White Paper in terms of the legislative purpose thereof, it at least creates another opportunity to assess anew where the country should be going with imprisonment and the people who are suffering from the system. Notwithstanding, the contents of the 2005 White Paper eagerly attempts to portray rehabilitation as a new discovery, while it is not.

However, none of the ten strategies identified in the White Paper, (Department of Correctional Services, 2005:16) were new, but have been part of corrections in South Africa for a very long time. Many already formed part of the 1959 legislation and others can even be traced to the 1911 legislation. Most of all, the 1998 legislation obliged the Department of Correctional Services by means of their legal mandate to perform nearly all the strategies that now formed the basis of the 2005 White Paper.

The ten strategies are breaking the cycle of crime, security risk-management, implementation of sentences imposed by the courts, the provision of an environment for controlled and phased rehabilitation interventions, the provision of guidance and support to offenders within the community, the provision of corrective and development opportunities to offenders, reconciliation of offenders with the community, enhancement of the productive capacity of offenders, promotion of healthy family relations, and assertion of discipline within the correctional centre environment.

Although entirely new legislation have not emanated from the 2005 White Paper, the portfolio committee of Parliament for Correctional Services had a sitting on 23 August 2007 to consider motivation why the Correctional Services Act 111 of 1998 had to be amended. The following reasons formed part of the official presentation made by the Department of Correctional Services:

- *“To change specific concepts, definitions and references in order to align the Act to the White Paper on Corrections of South Africa, 2005;*
- *To enact specific practices in respect of administration of Correctional Centres to promote humane treatment of inmates contravening / transgressing matters of security, management of correctional centres, discipline, etc.*
- *To enable public participation in rehabilitation and re-integration of offenders into community.*
- *To legislate a framework in determination of parole in respect of certain categories of offenders.*
- *To introduce compulsory participation in certain programmes for offenders”* (Parliamentary Monitoring Group, 2007(a):329,3).

On 11 September the Correctional Services Amendment Bill [B32-2007] was deliberated and forwarded for finalisation.

New legislation

With the South African Constitution, 1996 taking effect, correctional legislation in South Africa did not provide an appropriate legal framework to give effect to constitutional rights of inmates. November 1995 saw the announcement of a newly developed framework for Correctional Services in South Africa. After submissions have been received the first draft of the Correctional Services Bill has been completed by early 1997. On 19 November 1998 the new Correctional Services Act has been promulgated and was published in Government Gazette Volume 401, Number 19522, dated 27 November 1998.

The biggest problem with the new legislation was that only certain Sections have been implemented by October 2000, which meant that South Africa still relied heavily on the 1959 legislation for proper prison operations. At a symposium on Correctional Services held during August 2000, it was reported that full implementation of the new Act is hampered by the fact that the Department of Correctional Services cannot comply with the requirements of the Act. Nonetheless, all Sections of the Correctional Services Act 111 of 1998 were implemented by 2004, six years after promulgation thereof.

The new legislation posed serious challenges and that became part of the reason why it took so long to implement. In the process various Sections of the Act were amended since 1998. One example of the challenges is embedded in Section 8 (5) of the Act, which states that:

“Food must be well prepared and served at intervals of not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during each 24-hour period.”

The implementation of this particular Section was severely hampered by staff shortages, overtime arrangements, negotiations with labour unions, rostering to have two day shifts and one night shift, and the architectural structures of the majority of South African prisons.

For the mentioned reasons Section 8 of the principal Act was amended by the substitution of subsection (5) with the following subsection:

“Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast during each 24-hour period.”

It is uncertain if this amendment in fact solved the particular problem. More staff members were appointed since 1998. Problems with the implementation of different shifts and a seven-day workweek are still prevailing. From discussions with correctional staff it emanated that overtime payment may have more to do with the latter than the ability of full implementation. Correctional officials stand to forfeit all overtime payments with such an arrangement. This will happen while some correctional officials indicated that their monthly overtime pay is more than their basic salary. However, the Department of Correctional Services continues to pursue this goal in the interest of more humane conditions of imprisonment.

Other areas of concern also turned up after implementation of the new legislation. For example, regulations that needed to be established in terms of the 1998 legislation only took effect after promulgation in the Government Gazette 26626 dated 30 July 2004. It took 6 years to complete these regulations.¹ More examples include placement on parole and completion of sentences that have commenced before the 1998 legislation came into force.

As part of their penal reform project the Lawyers for Human Rights (2008:1) have reported that parole requirements have been applied retrospectively. In other words, where inmates have qualified for release on parole in terms of the 1959 legislation, they were now evaluated for release on parole in terms of the 1998 legislation. Many of them have commenced their sentences before 1998 when the new legislation was promulgated, and many have been sentenced before the relevant sections of the new legislation were implemented on 1 October 2004. Various cases landed in court because of this and rulings were in favour of inmates.

Life imprisonment created challenges of its own. Fagan (2004:1) reported that *“the Criminal Law Amendment Act 105 of 1997 introduced minimum sentences of 5, 7, 10, 15, 20, 25 years and life for a range of offences including categories of theft, corruption, drug dealing, assault, rape and murder. It obliged a magistrate and judge to impose not less than the prescribed minimum sentence unless substantial and compelling circumstances justified a lesser sentence.”* Compacted by minimum sentencing legislation, prisons started to experience a rise in long-term inmates. Before 1987 inmates who served a life sentence may have been

¹ The researcher was a member of a working group (chaired by Prof. D Van Zyl Smit) that compiled draft regulations as long ago as 1999.

considered for placement on parole after they have served 10 years of a sentence. Between 1987 and 1995 inmates could be considered for parole after they have served 15 years of a life sentence. In exceptional cases they may have been considered for parole after ten years.

From 1995 up to the end of September 2004 the minimum period that a lifer had to serve increased to 20 years before parole could be considered. In exceptional cases (for example suffering from ill-health or having reached an advanced age) parole could have been considered after 15 years of a sentence was completed. A dilemma occurred when Section 73 (6) (b) (iv) of the Correctional Services Act 111 of 1998 (Republic of South Africa, 1998:61) came into effect on 1 October 2004. It determined that a person serving a life sentence cannot be placed on parole before serving at least 25 years of the sentence. In exceptional cases as explained above the period could be reduced to 15 years. Additionally, courts must now decide to grant parole, and not the Department of Correctional Services (Fagan, 2004:1).

Demilitarisation

After becoming a public service department, the Department of Correctional Services have been obliged to demilitarise. This has been done to move away from a punitive to a more humane and developmental approach to corrections. Key issues identified by Kgotsisintsi and Esmaraldo (1998:184) were de-skilling and re-skilling of staff, the process of culture change through identified core values, consultation with and buying in of all stakeholders, the performance management system rewarding the new required behaviour, developing a new disciplinary system to deal with staff misconduct, and visible new uniform to strengthen demilitarisation.

Demilitarisation entailed the abolition of all military ranks, insignia, etiquette, parades and symbols (Luyt, 2001:27). Staff members who did not have direct contact with inmates needed to wear civilian clothes at first. A total break with old uniform had to take place. According to the 1996 Annual Report of the Department of Correctional Services (1997:37) new corporate dress would have been implemented during 1998. Those officials who are in direct contact with inmates would still be wearing uniform, but it should serve as corporate dress rather than military uniform.

The goalposts have been shifted several times and new corporate dress would have been introduced by the end of 2000 (Huma 2000:8). This did not happen. Ten years after they would supposedly have received new corporate wear correctional officials were still wearing the military type uniform in 2008. The only significant change came when a newly appointed former Commissioner visited some prisons without being recognised and appropriately dealt with as the chief executive of the Department. Shortly afterwards all staff received newly designed insignia for identification. While different in composition, the latter are worn in almost the same fashion as was the case with military rank insignia before demilitarisation. The most obvious difference today is that officers are not saluted in military style. However, the Department of Correctional Services is still experiencing the strong notion of hierarchy that was brought about by the military era, a custom that forms part of most prison systems in Africa.

At first demilitarisation caused turmoil amongst the ranks of correctional officials. There was no proper contingency planning and correctional officials were filled with uncertainty about their roles and responsibilities. In the space of one day all officials have lost their symbols of authority, the military rank insignia. Retraining of staff only started by the end of 1999 (Luyt, 2001), but was never completed. Inmates quickly seized the opportunity to manipulate staff members in terms of their own rights.

The system of disciplinary measures against staff had to be revised, not only to do away with court procedures for transgressors of prison regulations, but also to be in line with new advanced labour legislation. As the negative effects of demilitarisation made way for more

certainty amongst staff about their roles as civil servants, this certainty had to be partly facilitated through the introduction of recognisable insignia. However, for the man in the street the appearance of correctional officials was, and is still remaining one of a military appearance.

ASPECTS OF PARTICULAR IMPORTANCE TO TRANSFORMATION

Transformation in a correctional system cannot be measured at the hand of constitutional, legislative and policy dictates only. The true nature of transformation needs to be measured by the impact that was made at ground level. Since the first signs of democracy have dawned in 1990 with the release of Nelson Mandela and the disbanding of political movements, nearly fifteen years have passed. After inception of the Constitution and the implementation of demilitarisation a period of twelve years has flown by.

The scientific field of corrections has proven itself worldwide to be dynamic. Yet, in many countries it appears to be very stable and even static (from there the saying that prison life is monotonous). Correctional transformation of such magnitude as experienced in South Africa needs to be benchmarked. For this reason this article will critically evaluate the process of transformation in South Africa since the inception of democracy. Aspects to be particularly investigated include retraining, prison crowding, super maximum prisons, prison management philosophies, joint venture prisons (also known as private prisons), HIV/AIDS in prisons, and relevant issues addressed by the Jali Commission of Inquiry.² The latter part of the period under review was fundamentally influenced by the new White Paper on Correctional Services.

Retraining

In 2001 Jacobs-du Preez (2001:57) wrote: *“In an effort to eradicate military thinking patterns and to institute proper public service delivery, correctional managers decided that staff members needed retraining in order to adapt to certain changes in policy and future philosophy”* and continued to state that *“the retraining of correctional officials also had to abide by the rules of the National Qualifications Framework as set by SAQA. In essence, the National Qualifications Framework seeks to avoid that learners have to study and meet the same outcomes over and over again. A further requirement of the Department of Correctional Services was that the retraining course should be accredited at an academic institution. This step would enable correctional officials to receive credit for subjects that form part of formal tertiary qualifications”* (Jacobs-du Preez, 2001:57-58).

According to Kriel (2002:110) eight learning fields have been identified within the correctional environment. They are criminal justice, correctional custody, inmate care and development, professionalism in corrections, correctional resources, applied law in corrections, community corrections, and youth corrections. Jacobs-du Preez (2001:58) reported that the Department of Correctional Services scientifically validated the skills necessitated for retraining and organized for a new training curriculum and the retraining of staff. Luyt (2001:26) mentioned that *“by the middle of 2001 only 400 trainers have been retrained, while some new recruits underwent the training designed for a post-military Department of Correctional Services.”*

Twelve years after demilitarisation and the dire need for retraining of an entire Department, such retraining is still not completed. By its own admission the Department of Correctional Services (2005:115) described in its White Paper that *“perceptions of dissent among members of the DCS management and union activists as well as perceptions of covert interference by union activists in the management of the Department”* deserve attention.

² In addressing the findings of the Jali Commission the abbreviated report tabled in Parliament by the Department of Correctional Services serves as source. The full Jali report was not available to the public at the time of these writings.

The question would be if these interferences are indeed only perceptions, or whether they are real? The answer may be hidden in the term in which the White Paper refers to the unions. Irrespective of detailed legislation that regulates union activities, they are still referred to as “activists” who are responsible for “covert interference.” This could be interpreted that management feels that staff members represented by the unions have not transformed sufficiently.

Yet, management has failed to reinforce new values by neglecting to complete the retraining process they have started. Findings of the Jali Commission may be the single largest confirmation of this neglect. Concerning unionism, the military culture and affirmative action the Jali Commission wrote: “As a result, an impatient work force, which equated the transformation of the Department with affirmative action and ignored the other forms of transformation, embarked on a number of illegal programmes which were meant to render the Department ungovernable and also to enable them to get senior positions within the Department. In doing so, the said work force totally ignored all other facets of the transformation programmes which were anticipated in terms of the Constitution, including, introducing a human rights ethos, a people orientated administration (*Batho Pele*), and an efficient accountable work force within the Department” (Department of Correctional Services, 2007:6-7).

Prison crowding

Inmate population growth became one of the major obstacles in the South African Criminal Justice System. In 1985 South Africa maintained a daily average of 108 955 incarcerated inmates. This number increased to a daily average of only 110 069 during 1995 (Department of Correctional Services 1997:51). Since the end of 1995 prisons experienced a population explosion, as illustrated below:

Year	Design Capacity	Population on 31/12	% overcrowding ³
1995	94 381	112 572	19.3%
1996	96 329	125 750	30.5%
1997	99 407	142 410	43.3%
1998	99 294	146 287	47.3%
1999	99 834	162 638	62.9%
2006	115 344	160 198	38.9%
2007 ⁴	115 327	163 049	42.35%

Source for 1996-1999: Department of Correctional Services (2000:6)

Source for 2006: Adapted from Prison Brief for South Africa: <http://www.kcl.ac.uk>

Source for 2007: <http://www.dcs.gov.za/WebStatistics>

In 1993 the ratio of inmates to 100 000 of the general population stood at 282. It has risen to 336 by the end of 2006. Luyt (2001:29) reported that the paramount problem in overcrowding used to be the rapid rise in the number of unsentenced inmates. At the end of June 2000 South Africa incarcerated 12 900 inmates who could not afford to pay bail of up to R 1000.00, and who could theoretically be outside prison. Due to various interventions, in particular from the side of the office of the Judicial Inspectorate, this problem has now declined to more manageable levels.

As indicated under the heading of new legislation above, minimum sentencing emerged as a new challenge that threatens to dominate overcrowding. The increase in sentence length (from 1998 to 2004) shows that sentences of more than 10 years have doubled over the period. By the end of November 2007 the length of prison sentences appeared to have stabilised at 2004 levels. Out of 114 226 sentenced inmates on this date, 60 677 (53.12%) served a sentence of

³ Overcrowding refers to that amount of the population that exceeds design capacity.

⁴ At the end of October 2007

up to ten years. The rest (46.87%) served a sentence of more than ten years. Of the latter, 7 793 were serving life sentences.

The compounding effect of longer sentences has not yet taken full effect, but South Africa is heading for stormy waters in future. Apart from rising inmate numbers the increase in sentence length would show to be counterproductive in the long run when compared to all good rehabilitative intentions set out in the 2005 White Paper. Sadly, control over this phenomenon is not entirely in the hands of correctional authorities.

Super maximum prisons

Philosophies change over time and the continuum of crime and punishment is not immune to these shifts in emphasis. Where the emphasis was placed on shorter periods of incarceration and draconian sentences after guilt was determined in ancient times, we now find the draconian part of sentencing in extremely long periods of incarceration. Traditionally, in the field of correctional services the approach varied between the extremes of punishment and treatment. Mostly correctional systems would shift emphasis from one extreme to the other, while new approaches are few and far between.

In the view of Luyt (2001:29) correctional interventions in South Africa have reached the crossroads of the above extremes. Humane, dignified treatment of inmates and rehabilitation became important milestones in future prison developments. However, as stated by Van Swaaningen (1997:179), democracy implies first and foremost a public space for deviant interpretations. Deviant interpretations of democracy in South Africa manifested in escalating serious crime, very long sentences and alternative forms of incarceration to manage these deviant interpretations. For South Africa this would mean more secure prisons. Firstly, it would give birth to super maximum structures, and secondly it would result in maximum security private prisons, a topic to be discussed separately.

South Africa opened its first Closed Maximum Security (C-MAX) unit in a section of the Pretoria Maximum Prison in September 1997. It was meant to detain only the most dangerous sentenced inmates (Ramafoko 1997:7). The unit boasted a design capacity of 281 beds, of which 252 beds are used for super maximum purposes. In April 2000 the unit had an average inmate population of 226 per day and was maintained with a staff compliment of 139.

During 2001 the State President of South Africa appointed the Jali Commission of Inquiry to investigate and report on incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services (Luyt, 2007:182). The Commission reported that *“having considered the abuse of segregated isolated detention the Commission is of the view that it would be failing the number of prisoners who testified on its impact if centres such as C-Max prison are not dealt with. The Commission found that super maximum prisons such as C-Max and others are institutions of solitary confinement and torture and cannot assist in efforts to rehabilitate prisoners and correct their behaviour”* (Department of Correctional Services, 2007:17).

During the past five years the Pretoria C-MAX prison was plagued by scandal. Personnel died at the hand of a firearm inside the prison and political tensions run high between different groups of inmates. During 2006, an awaiting trial inmate escaped from inside the secure prison. Although C-MAX was initially utilised for sentenced inmates, it is today home to both sentenced inmates and perceived dangerous awaiting trial inmates. The latter is not a healthy situation and may even give origin to extreme human rights abuses. The Jali Commission (Department of Correctional Services, 2007:17) confirmed this by stating that these type of prisons *“cannot be justified in terms of the Constitution, the Correctional Services Act, the Regulations or Departmental Policies.”*

During April 1999 it was reported that South Africa would erect a new super maximum prison in Kokstad, Kwazulu-Natal. According to the Project Manager of the Kokstad Supermax, the

prison would become the first of its kind in the southern Hemisphere. It is also reported to be the largest super maximum prison in the world (Ramafoko 1999:8) with a design capacity of 1440 beds (Republic of South Africa, Schedule 1, 1999:6 of 30). A total of 516 staff members would ensure operations. Pelican Bay State Prison in California provides 1578 beds of the same nature, which contradicts the statement that the Kokstad Super Maximum Prison is the largest super maximum prison in the world (National Institute of Corrections 1997:4).

The prison in Kokstad may claim to be the biggest of its kind in terms of design capacity. However, a visit to the prison during 2005 unveiled that it is not utilised fully. In fact, some sections are not in use at all and will have to be made functional at great expense before being fit to accommodate inmates. In addition, the lack of on-site food preparation facilities is further disabling the prison to function at full design capacity. Moreover, each active small section of the prison accommodates ten inmates who have to be provided with one hour open air exercise per day. Each day shift is only eight hours long and night shifts are performed with what could be called “skeleton” staff due to a reduction in numbers. It is impossible to uphold one hour exercise for each inmate, and therefore also impossible to uphold basic human rights.

The super maximum prison at Kokstad largely turned into a white elephant. The first problem occurred when the prison was completed in August 2000, but it was only officially opened in May 2002. According to Davis (2003:102) the reason for this delay was the competition for water between the prison and a low-cost housing development in the same area. Davis (2003:102) is of opinion that South African prisons are “*becoming more oppressive.*” The fact remains that the Kokstad supermax is not, and may never be a success in its present form. It is perhaps time to reconsider the aim of the prison and adapt it to enable full utilisation of the structure.

Prison management philosophies

Transformation in corrections did not only influence the normal hard issues of imprisonment. It necessitated a broadening of the human paradigm to ensure that emphasis is placed on the offender, rather than on safe custody *per se* (Luyt, 2001:30). Unit management in prisons became the elected management philosophy to ensure that crime and criminal activities could be reduced.

According to Luyt (2000:8) the philosophy of unit management comprises four pillars. These include case management, architecture, security management through direct supervision, and risk management. These four pillars are solidly placed on the foundation of human rights and local and international legal principles. As a new democracy with a legacy of violence and the abuse of inmate’s rights, unit management creates an innovative framework within which these rights could be upheld, protected and even fostered.

Within the unit management concept, correctional officials should become actively involved in the management of the sentence of each individual offender in the correctional system. South Africa can no longer neglect this duty, as legislation in the form of the Correctional Services Act 111 of 1998 makes it mandatory to execute a sentence plan for identified individual inmates. Unlike in the past, the approach to crime prevention and inmate development interventions could no longer be done with a gunshot approach. Individual case management ensures that every offender receives individual attention. This individual attention is underpinned by individual needs-assessment, after which programmes should become tailor-made in line with the needs-assessment.

However, unit management as such was not referred to in the 1998 legislation. In line with the 2005 White Paper it was envisaged to change the 1998 legislation to incorporate more than only sentence plans and case management. Legal amendments had to make provision for it. Certain new clauses of the Correctional Services Amendment Bill claimed to introduce principles of unit management into the Act. According to the Department of Correctional

Services (Parliamentary Monitoring Group, 2007:8) “*the current Act does not clearly provide for the rehabilitation path needed for the development of the offender whilst incarcerated. The Bill introduces the following concepts in order to close the gap in the current Act - Unit management; Correctional sentence plan; and Personal development of the offender.*”

Unit management, as a management approach, contributes largely to facilitate substantial changes in the way inmates are managed. Luyt (1999a:159) reported that South Africa had decided that there will be a shift away from safe custody in its purest form to more dignified treatment and rehabilitation of prisoners. The scene was set to implement unit management. The unit management approach was growing in popularity all over the world. South Africa operated two prisons as pilot projects, but started to implement unit management in another 25 prisons in all nine provinces (Luyt, 2001:31).

However, there are some doubts over the inability of correctional managers to fully implement policy decisions. These doubts come from the analysis of the transformation process. In a briefing in Parliament on 16 June 2003 the implementation was (once again) tabled as a new management approach to be implemented. The minutes of this meeting, *inter alia* reported this fact by stating that:

- Unit management is accepted as a vehicle to enhance rehabilitation
- Severe Overcrowding hamper implementation
- Implementation is part of restructuring process of DCS
- Basic training curriculum brought in line with Unit Management concept
- Re-training of staff in Unit Management
- Implementation by March 2005

Before the Malmesbury Correctional Centre was opened in December 1997, the architecture was already according to new-generation dictates. In other words, it was designed to implement unit management. Other similar developments were erected at Goodwood, Baviaanspoort, Emphanjeni and Baviaanspoort. More have followed and even the two existing private prisons epitomise the unit management philosophy. In fact they have been instructed in their contracts to implement the said management approach. Therefore, it was strange to discover that legislation had to be altered for the re-launch (2008) of the re-launch (2005) of the launch (1999) of unit management in South African prisons.

Case management, as a pillar of unit management (Luyt, 2000:8) places emphasis and focus on every individual offender. The role of the correctional official in case management is of particular importance. It becomes much more comprehensive and integrated with the routines of offenders. High on the agenda is professionalism in the case management approach. Each inmate with a sentence of more than 12 months must have a sentence plan, which should be executed meticulously and reviewed regularly.

The ways in which people deal with inmates lack the management of risks and more particularly the needs of the offender. Instead, security is over-emphasised. By exploring risk and needs management to its full potential, security in the broad sense of the word becomes a positive outflow of the incarceration process. Canada, for example, implemented unit management successfully in old prison structure and called it hybrid prisons. Levinson (1999:54) stated that architecture can either help or hinder unit management, but it cannot make or break it.

The problem in South African prisons concerning the implementation of unit management is not in legislation or the concept, or even the design of the prison itself, but needs to be found elsewhere. Perhaps the answer may come from the words of Osman at the office of the Judicial Inspectorate of Prisons, who reported “*general systemic problems found during audit, which suggested that the infrastructure of prisons was not conducive for rehabilitation, there was an over emphasis on security in medium prisons, accommodation was not adequate and*

admissions of prisoners had not been administered appropriately.” Osman (Parliamentary Monitoring Group, 2007:1) further stated that 11% of prisoners in public prisons participated in the rehabilitation programme, but the rest spent 23 hours in their cells.

Joint venture prisons

Privatisation of state assets appears to be high on the agenda of certain sections of the South African government. Chapter XIV of Act 111 of 1998 (Republic of South Africa, 1998:82) was promulgated to make provision for the erection and management of private prisons. As far as the Department of Correctional Services is concerned, this option was initially explored as an option to alleviate the problem of overcrowding. The Department of Correctional Services initiated a programme of building new prisons in collaboration with the private sector. The process, called the Asset Procurement and Partnership System, or APOPS, was intended to provide for the construction of prisons faster than it is usually done (Department of Correctional Services 1999:19).

Two contracts for the so-called joint venture prisons have already been awarded. Sadly, however, both prisons were maximum security prisons. In doing so, South Africa forfeited an ideal opportunity to utilise foreign money and expertise in new generation structures to break the cycle of crime for first offenders or even those with shorter sentences and a better prognosis in general. In addition, what should have been a less expensive alternative to erect accommodation turned out so expensive that the development of two more joint venture prisons has been discontinued by 2003.

After the Department of Correctional Services encountered enormous problems to erect new prisons at Kimberley, Nigel, Klerksdorp and Leeuwkop themselves, they have decided to explore the joint venture prisons route again. During March 2008 efforts were under way to appoint interested parties to tender for the erection and management of a further five joint venture prisons. Once again, all these prisons are meant to be maximum security prisons. This shows that the Department of Correctional Services would transfer their greatest risks to private prisons, rather than being serious about rehabilitation efforts. Existing private prisons have demonstrated far greater effectiveness concerning rehabilitation programme delivery⁵ than is the case with state prisons.

The single most significant positive outcome regarding private prisons in South Africa is the fact that they are contractually not allowed to exceed design capacity. In the absence of overcrowding one can clearly understand why programme delivery is more successful at these prisons. It is therefore even sadder that inmates with better prognosis and prospects for rehabilitation cannot tap into this extremely valuable resource, particularly because it comes at a higher financial premium.

HIV/AIDS in prisons

Luyt (2005:71) mentioned that the Dublin Declaration on HIV/AIDS in prisons originated in February 2004 because HIV/AIDS has become a serious problem within prisons across Europe and Central Asia. The problem is not confined to the mentioned geographical regions. South Africa faces its own challenges in terms HIV/AIDS in prisons.

The Jali Commission (Department of Correctional Services, 2007:29), for example, found that sex in male prisons in South Africa is rampant and that sexual abuse of, and violence against vulnerable young, gay and transsexual inmates is continuously ignored by correctional authorities. The Jali Commission further stated that there is an extreme likelihood that violent

⁵ The researcher has visited both private prisons on several occasions and has experienced the methodological and practical success of rehabilitation efforts first-hand, compared to public prisons visited during the last decade.

unprotected sex may lead to HIV infection, thus imposing a death sentence on exposed inmates. The Commission heard evidence in Pretoria about the shocking lack of empathy and sensitivity by some members of the Department of Correctional Services. At Grootvlei prison a staff member sodomised⁶ an inmate who complained that he was sodomised by two co-inmates (Department of Correctional Services, 2007:30).

In South Africa, the Judicial Inspectorate estimated HIV prevalence as high as 60%, based on research by the University of Natal at the Westville prison (Goyer, 2003). The Department of Correctional Services disputed these estimates as being unrealistic and unreliable.

HIV testing inside prisons is done on a voluntary basis. According to Knight (2006:3) 2006 estimates were that 5.84% of the 110,000 sentenced inmates, or 6 400 were HIV positive, while no estimates were available for the 48,000 awaiting-trial inmates.

In the recent past South African prisons were not accredited to dispense anti-retroviral therapy. Therefore, inmates who were already suffering from AIDS did not have the same direct access to anti-retroviral therapy inside South African prisons as was the case in the general population. Also, those who entered prison on medication had no continuation in treatment (Luyt, 2007(a):2).

In the majority of countries HIV infection rates are many times higher amongst inmates than amongst the general population. This situation is exacerbated by high rates of Hepatitis C and tuberculosis. In most cases high rates of HIV infection could be linked to the sharing of injection and tattoo equipment, as well as unprotected and often coerced sex (Jürgens, 2004:39). Non-prevention places people in prison at increased risk of HIV infection. Those living with HIV/AIDS are at increased risk of health decline, co-infections and even early death (Jürgens, 2004:40).

Since 2001 the South African Department of Correctional Services followed an HIV/AIDS policy aligned to strategies of UNAIDS, the World Health Organization, and the HIV/AIDS and STD Strategic Plan for South Africa: 2000-2005 (Department of Health, 2000), and later to the 2007-2011 plan. The increased impact of HIV/AIDS related diseases and chronic conditions remained one of the largest challenges on health service delivery, the Department of Correctional Services reported (2002:76-77).

Statistics regarding HIV infection rates amongst the general population in South Africa mostly originates from antenatal clinics. According to Goyer (2003:29) the prevalence of sexually transmitted infections (normally associated with HIV infection) in the general community is very high. For example, whereas the prevalence of syphilis in the United States or United Kingdom is not higher than 15 cases per 100 000 of the general population, South Africa reflects between 5 000 and 15 000 cases per 100 000.

Goyer (2003:29) further stated that in rural areas of the KwaZulu-Natal province, about 25% of women have at least one sexually transmitted disease at any moment in time. Fifty percent of women who have attended antenatal clinics in the same area had at least one sexually transmitted disease, and 18% had more than one. A 2006 Department of Health study unveiled that Kwazulu-Natal antenatal clinics show the highest provincial HIV prevalence at 39.1% (Avert, 2007:1). Incidentally, a significant number of the prison population is also situated in Kwazulu-Natal, with at least ten large prisons and several smaller ones scattered all over the province.

While antenatal clinic statistics became an objective and reliable source of information in most respects, statistics about HIV prevalence in South African prisons can only be described as

⁶ At the time of the incident it was legally only possible to sodomise a male person. Today, however, such an occurrence would be regarded as rape.

underreported. In fact, to obtain accurate statistics is impossible, although one has to admit that the availability of accurate HIV statistics is a problem in various prison systems around Africa.

Various factors play a role in this regard. Firstly, known statistics derived predominantly from self-reported cases and testing occurred on request from the inmate. Secondly, HIV infection is still very much stigmatized and not a general item for discussion. This allows for maltreatment and labeling from correctional officials and inmates alike. Thirdly, HIV prevalence has become a prickly pear for prison authorities, both in terms of various aspects of harm reduction as well as the roll-out of the national health anti-retroviral therapy policy. The 32 448 annual complaints (2005/06) to the independent Judicial Inspectorate regarding health care in prison is one of the highest, compared to other types of complaints and does not include the 1 458 requests for medical release (Fagan, 2006:11). These complaints are living evidence of the large need for medical treatment in general and HIV-related treatment in particular.

Nonetheless, accurate HIV statistics within the South African prison fraternity remains an enormous problem. There are some indicators as to the magnitude of infection. One indicator is natural deaths in custody, while another is the number of self-reported and tested cases. The Judicial Inspectorate (Fagan, 2004(a):16) reported that since 1995 the number of natural deaths has escalated at a rate much higher than that of inmate numbers.

Keep in mind that all natural deaths could not be contributed to HIV infection, but post mortem investigations from the Judicial Inspectorate into the cause of death suggested that in the majority of cases the illnesses that caused death were HIV/AIDS related. The figures indicated an escalation of 584% during the period 1995 to 2000, bringing the number of natural deaths in 2000 to 1 087. This trend continued and in 2003 a total of 1 683 natural deaths were recorded. Of these, 389 were awaiting-trial inmates. During 1995 the natural death rate was 1.65 deaths per 1 000 prisoners. This rate stood at 9.1 deaths per 1 000 prisoners in 2004 (at 1 689). However, by the end of 2005 it increased to 9.2 deaths per 1 000 inmates, despite the fact that the prison population decreased by 30 000, from 187 456 to 157 402 over the same period (Fagan, 2006:13;34).

A further potential indicator of HIV infection in prisons could be the number of terminally ill inmates released, as advanced illness due to AIDS is sufficient grounds for medical release from a South African prison. One has to caution though, that all medical releases could not be contributed to AIDS. Nevertheless, the causes of terminal illness could provide an indication of possible HIV infection.

To be released on medical grounds is not easy. Awaiting trial inmates are in the hands of the judge or magistrate, while sentenced inmates could receive parole on medical grounds from the Commissioner of Correctional Services. Should the health status of people on parole show advanced improvement, they may be re-imprisoned. During 2003, a total of 117 or 7% of terminally ill prisoners were placed on medical parole. Although it has increased from the 88 inmates released in 2002, it is still much lower than the 23% of terminally ill inmates released on medical grounds during 1996 (Fagan, 2004(a):17). In 2004, 76 inmates received medical parole. This number declined to 64 in 2005 (Fagan, 2006:13).

During his 2004 budget vote speech before Parliament, the Minister of Correctional Services, Honourable Ngconde Balfour (2004) indicated that a HIV/AIDS Prevalence and Attitude Survey is a key priority for 2004/05. There was a serious urge to get to the root of the growing HIV problem in prisons. With the estimated HIV/AIDS prevalence in South African prisons at 4.02% of the total prison population in 2006 (based on the statistics of Knight), the number of HIV infected cases in prison grew at an alarming pace in the last decade. The 2005/06 annual report of the Department of Correctional Services (2006:52) indicated that the tender for prevalence survey was finalized in August 2005 and that results were expected in the 2006/07 financial year.

In a presentation to the Parliamentary Portfolio Committee for Correctional Services on September 12, 2006, feedback was provided concerning the pilot study that was completed in Gauteng on May 24. The aim of the study was widened to HIV and syphilis prevalence. The findings from the pilot study, from an HIV/AIDS perspective were cause for concern. Of the seven findings, four dealt with poor participation rates. The other three reported (1) that there was a prevalence of both HIV and syphilis, (2) that there was no correlation between the two, and (3) that the prevalence of the one was not significantly associated with the presence of the other (Correctional Services Portfolio Committee, 2006).

Why the cause for concern? My first observations were that the current study may fall pray to efforts to nullify a former study of Goyer (2003), therefore the specific incorporation of syphilis. Instead, the current study should first and foremost aim at determining the magnitude of HIV infection in the current prison population. With the most sincerity I hope my observations are incorrect. The re-launch of the research was presented as one of the major achievements to the portfolio committee on March, 13, 2007 (Correctional Services Portfolio Committee, 2007). Results are eagerly awaited with anticipation that more light would be shed on HIV prevalence as such.

In 1994 the Department of Correctional Services (1994:7) reported that confirmed HIV/AIDS cases in prisons implied that one out of every 255 sentenced inmates (population 111 802) was infected with HIV, while one out of every 80 persons in the community (irrespective of age) was HIV positive. This would mean that the HIV infection rate was reported to be much lower inside prisons during that time. The table below provides details of the fluctuation in the known number of HIV/AIDS cases in prison for the period 1991 to 1993 and again since 1998 (Department of Correctional Services, 1994(a):7; Department of Correctional Services, 2002:68 and 77).

Regrettably, the Department of Correctional Services is not including HIV/AIDS statistics in the annual report anymore (with specific reference to the 2004/05 and 2005/06 reports). Therefore, comparisons not only become difficult, but the omission of the information could be interpreted as a lack of complete transparency. Notwithstanding, the escalation is clear from the provided table.

Number of known HIV/AIDS cases in South African prisons			
Year	Prison Population	HIV/AIDS cases	% of Prison Population
1990/91 ⁷	101 775	94 ⁸	0.09%
1992	102 268	237 ⁹	0.23%
1993	114 047	483	0.42%
1998	146 435	1 865	1.27%
1999	154 574	2 536	1.64%
2000	171 462	3 397	1.98%
2001	170 959	4 720	2.76%
2002	178 998	Not published in Annual Report of DCS	
2003/04 ¹⁰	187 640	7 000 (rounded)	3.73%
2006 ¹¹	158 858 ¹² (110 000)	6 400	4.02% (5.84%)

People in prison are part of our communities. They come from our communities and 95% returns to communities. On the surface one does not realize how much public life and prison

⁷ Figures for 1990/91 and 1992 show average daily populations and may cause some distortion due to overview periods that overlapped from one year to the other.

⁸ Figure on 31 December 1991. No AIDS cases were reported.

⁹ Figure on 31 December 1992. No AIDS cases were reported.

¹⁰ See DCS Annual Report for 2003/2004.

¹¹ Statistics provided by Knight (2006:3).

¹² According to Knight (2006:3) the number of inmates should only be 110 000, as prevalence under the 48000 awaiting-trial inmates is unknown.

life is integrated. Fagan (2006:13) indicated that there is a high turnover rate of people admitted to and released from prison. In 2003, during any month, more than 25 000 inmates were released from prison. Nearly the same number of inmates was admitted from the courts and police (Fagan, 2004(a):18).

As far as HIV/AIDS is concerned, South African prisons were not accredited to dispense anti-retroviral therapy. Therefore, good prison health could not be delivered regarding HIV treatment. The inevitable outcome regarding HIV in prison was that it could only contribute to bad public health. During September 2006, prison authorities finally outlined a plan to treat 15 HIV positive inmates at the Westville prison in the Durban High Court. This plan only realised after inmates obtained a court order that instructed the Department to do so, followed by an unsuccessful appeal from the side of the Department and a contempt of court order against the Department (Business Day, 2006:1).

All the inmates involved showed a CD4 count of less than 200.¹³ Policies of the South African Department of Health makes provision for free antiretroviral (ARV) treatment once the CD4 count goes below 200 (Department of Health, 2006). Yet, it required the initiative of 242 inmates to start a hunger strike in March 2006 as well as a court application to obtain the right to good health in prison. Since the court ruling, four prisons¹⁴ were accredited as ARV treatment sites. Efforts to increase the number are still continuing.

The Mangaung maximum security prison outside Bloemfontein is a private prison, but ARV treatment is also available there. During a visit in November 2006 it was discovered that, in a proactive step, leaders at the Mangaung private maximum security prison have decided to provide all inmates with a high protein diet and multivitamin supplements. The benefit lies in an increased immune system. They argued that the expenses of a long-term high protein diet and vitamin supplements, compared to a long-term medical treatment bill, is much lower, while inmates enjoy better health at the same time (Luyt, 2007(a):10).

Compared to difficulty to obtain medical release in public prisons, the Mangaung prison ensures weekly visits from family for inmates who are terminally ill with AIDS. Apart from clear benefits for family ties, the latter are also permitted to organise the funeral of those who have passed away.

Transformation barriers identified from the Jali Commission of Inquiry

The final report of the Jali Commission was divided into five volumes. It addressed problematic areas of a wide range. These included *inter alia* abuse of power, sexual harassment, -violence and -abuse, logistics, procurement, and stock control deficiencies. Other issues included misconduct, corruption, unionism, and ill-discipline.

Instead of utilising previously disadvantaged persons who gained skills through further studies and qualifications, re-training and previous experience, it emanated from the Jali report (Department of Correctional Services, 2007:11) that new managers were rather appointed “*on the strength of their influence within the union and those in management who did not have union protection were intimidated.*” Through trade unionism, one form of radicalism (militarism) had to make way for another, thus preventing the essence of transformation needed at the time.

The transformation process or lack thereof, empowered prison gangs to a level never experienced before and the Jali report (Department of Correctional Services, 2007:14) reported

¹³ A CD4 count indicates the strength of the immune system in humans. Normal counts in adults range from 500 to 1500 cells per cubic millimetre of blood. The American based Centre for Disease Control regards HIV + persons to have AIDS once CD4 counts go below 200, regardless whether the person is sick or well.

¹⁴ Grootvlei in Bloemfontein, Pietermaritzburg, Qalakabusha in Empangeni and St Albans outside Port Elizabeth.

that “gangs are a very powerful force in prisons.” According to Steinberg (2004:69) inmates at Pollsmoor prison have given testimony that staff members are not in control of prisons. It was reported that personnel were even too scared to provide daily exercise to inmates. The power surrendered to inmates was further compounded by a decision to allow inmates the privilege of carrying money on their person. This decision was later changed, but damage was too great to restore. Today, many inmates are still in possession of large sums of money that was not paid into their accounts.

In prison, money is power. In South African prisons the kept received this power from the keepers. The Jali report bears evidence that inmates could “disappear” from prison for a fee (Department of Correctional Services, 2007:49). In Johannesburg prison 75 inmates “disappeared” from the awaiting trial section alone, while one inmate “escaped” from Eastern Cape prisons at least six times (Department of Correctional Services, 2007:50-51).

Recruitment of new staff members was also highlighted as a barrier to successful transformation. Without recruitment and promotion of personnel with integrity, qualifications and expertise, problems of performance and discipline will continue (Department of Correctional Services, 2007:18). It is therefore very strange that persons with graduate and even postgraduate university qualifications continuously fail to make it onto shortlists of the Department of Correctional Services. In some instances candidates may even have gained up to three years of practical experience through contract appointments at the office of the Judicial Inspectorate.

One area where the Department of Correctional Services has lost credibility is parole. Not only was the parole system in shambles over the last ten years, but ineffective functioning also contributed to overcrowding, successful claims against the state and many complaints from inmates and their families. The parole system also allowed for incidences of corruption. Credibility of the Department of Correctional Services has suffered at large due to ineffective management of parole.

Control over staff during working hours also created problems of extreme proportions. Efforts to curb this included the installation of an access control system through personal electronic identification cards at various prisons. Sondolo IT, a company in the Bosasa group, was allocated the R237m contract to install access control systems at 66 prisons countrywide (Basson & Du Plessis, 2007:1). However, during several visits to the Johannesburg female prison the researcher found that the system was functioning well at first, but was later deactivated by manually opening a gate next to the electronic system. This action not only undermined the efforts of control, but is also a waste of taxpayer money.

SUMMARY

The scope of this article cannot do justice to a full report on the transformation process that has commenced in the 1990’s. However, South Africa adapted to some international practices in a short space of time. One thing is certain; the battle of transformation is far from over. The Department of Correctional Services still have to go a long way to execute their own policies and dreams concerning rehabilitation. It seems easy to talk the talk, while walking the talk is much harder.

What is needed is political will to transform in words and deeds. Instead of the concentration of notorious criminals in new generation super maximum structures, it remains an open question if one should not disperse these inmates in the general prison population, or utilise old structures to warehouse them. New generation structures should be put at work to assist those offenders who really want to eliminate crime from their lives.

The route of more maximum prisons could certainly become detrimental, even more so now that it is apparent that more private maximum security prisons will emerge. Vivian Stern

(1998:337) wrote: “*After a spell in prison the young man involved in petty crime has become a person who rejects society’s values as society has rejected him.*” The problem *per se* is not in the “private” part of prisons, but in the “maximum” thereof. South Africa needs a more flexible and varied system, in which punishments are deserved, but rehabilitation efforts are tailored for the individual offender. This is, however not only the responsibility of the Department of Correctional Services alone, but should start with a reconsidered integrated approach to justice. From the outset, courts (in their approach to sentencing) should take as much responsibility for what will happen at the rear end of justice, namely the correctional system.

South Africa is by far not on par concerning genuine efforts to rehabilitate offenders. Although there is no single solution to the crisis surrounding imprisonment, much more could be done to transform than re-launching unit management more than once and pretending to have discovered the rehabilitative idea. We need to get people out of our Universities of Crime and take co-responsibility as a nation for the future of our country. Only a mixed and flexible package of humane penal institutions and alternatives to imprisonment will contribute to the reduction of crime in the long-term. Talking about alternatives! Why do we always refer to alternatives to imprisonment? Against the background of ever growing global prison populations and the legacies it carries, has the time not arrived to make imprisonment an alternative to other sentences?

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