

**THE ROLE OF VOLUNTEERS IN THE TRANSFORMATION OF THE
SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM**

by

THAMSANQA ELISHA NXUMALO

submitted in accordance with the requirements for the degree of

DOCTOR OF LITERATURE AND PHILOSOPHY

in the subject

PENOLOGY

at the

UNIVERSITY OF SOUTH AFRICA

DEPARTMENT OF CRIMINOLOGY

PROMOTER: PROF C.H. CILLIERS

SUPERVISOR: DR. W. COETSEE

JUNE 2000

ACKNOWLEDGEMENT

The creation of these writings, or their ideas, could have been a massive task without encouragement and co-operation from many individuals and organisations. I, therefore, owe a debt of gratitude to many colleagues and friends in the South African Police Service, Department of Justice and Correctional Services from whom I learnt so much over the years and during this research. To list them all would be impossible, but the following deserve mentioning for the support and assistance they provided during this study:

Adv. V. Pikoli	:	Department of Justice
Asst. Comm. M. W. Ngobeni	:	South African Police Service
Director J. Ngobeni	:	South African Police Service
Mr. P.O.C. Gillingham	:	Department of Correctional Services
Ms. R.S.T. Mthabela	:	Department of Correctional Services
Ms. J.E. Sishuba	:	Department of Correctional Services
Dr. A.L. Hlongwane	:	Department of Correctional Services
Mr. E.J. Kriek	:	Department of Correctional Services
Ms. T.M. Magoro	:	Department of Correctional Services
Ms. L.B. Bergh	:	Department of Correctional Services
Ms. E.D. Mahlangu	:	Department of Correctional Services
Mr. V. Sibeko	:	Department of Correctional Services
Mr. C. Moriacks	:	Department of Correctional Services
Mr. C.J. du Toit	:	Department of Welfare

The primary driving force and professional support came from Professor Charl Cilliers: Head of Penology at the University of South Africa. My special gratitude to him for sharing with me the necessary experience and expertise that brought this thesis to fruition.

My family, particularly my wife Phumelele, should be acknowledged, not only for allowing me the time it took to produce this writing, but also for the patience and support I enjoyed at all times.

Special acknowledgement should go to my informal editor and typist, Mrs. Elize Novella for her administrative and word processing skills.

Finally, my deepest gratitude to the Almighty God, Who gave me all that I needed to complete this task.

SUMMARY

The history of the criminal justice system in South Africa, in the last decade is a history dominated by the desire for change and transformation. It will be remembered that we are talking of a system which, in the past, formed part of the State apparatus of a minority government which included racist elements and highly restrictive legal regime in dealing with communities, crime and criminals.

The criminal justice system is constituted by four core departments, namely: the South African Police Services; Department of Justice, Correctional Services and Welfare.

The argument is whether the volunteers from the community should be involved at all in the fight against crime or not. Some people feel that a system of justice should be controlled by professionals, who are accountable for their decisions, namely: the Police, Justice, and Correctional Services. However, the research revealed that a system which excludes the community from participating, will render itself ineffective and open to abuse.

This topic should be further researched within each department in the criminal justice system in order to explore possibilities of attracting volunteers in the transformation of their respective departments.

TITLE OF THESIS : The role of volunteers in the transformation of the South African criminal justice system

KEY TERMS : volunteer, police, courts, corrections, probation, monitoring, crime, criminal reintegration, community

CHAPTER 1

GENERAL ORIENTATION TO THE STUDY

<u>CONTENTS</u>	<u>PAGE</u>
1.1 INTRODUCTION.....	1 - 2
1.2 THE RATIONALE FOR CHOOSING THE SUBJECT.....	3 - 4
1.3 AIM AND PURPOSE OF THE STUDY.....	4 - 6
1.4 RESEARCH METHODS USED IN THE RESEARCH.....	6
1.4.1 LITERATURE STUDY.....	6 - 7
1.4.2 INTERVIEWS.....	7
1.4.3 RELIABILITY OF DATA.....	7
1.5 DEFINITION OF KEY CONCEPTS.....	8
1.5.1 VOLUNTEERS.....	8
1.5.2 CRIME.....	8
1.5.3 CRIMINAL.....	9
1.5.4 JUSTICE.....	9
1.5.5 ENFORCEMENT PROCESS OF THE LAW.....	9 - 10
1.6 DELIMITATION OF THE STUDY.....	10 - 11
1.7 SUMMARY.....	12

CHAPTER 2

THE ORIGIN OF VOLUNTEERS IN THE CRIMINAL JUSTICE SYSTEM

	<u>CONTENTS</u>	<u>PAGE</u>
2.1	INTRODUCTION.....	13
2.2	THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM	13 - 16
2.3	A SYSTEM GOING WRONG OR JUST PERCEPTIONS?.....	16 - 18
2.4	COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM AND THEIR FUNCTIONS : AN OVERVIEW.....	18 - 19
2.4.1	POLICE.....	19 - 20
2.4.1.1	EXPECTATIONS VERSUS REALITIES OF A POLICE OFFICER'S WORK.....	20 - 22
2.4.1.2	PRESSURES ON THE POLICE OFFICER.....	22 - 23
2.4.1.2.1	PRESSURES FROM COURTS.....	23
2.4.1.2.2	PRESSURES FROM THE COMMUNITY.....	24
2.4.2	PROSECUTION.....	24 - 25
2.4.3	THE COURTS.....	25 - 26
2.4.3.1	PRESSURES ON JUDGES AND MAGISTRATES.....	26 - 27
2.4.3.1.1	THE PUBLIC'S ROLE EXPECTATIONS OF THE JUDGES OR MAGISTRATES.....	27 - 28
2.4.3.1.2	THE ACTUAL ROLE BEHAVIOUR OF THE JUDGES OR MAGISTRATES.....	28
2.4.3.1.3	PRETRIAL RESPONSIBILITIES OF THE JUDGES OR MAGISTRATES.....	28 - 29
2.4.3.1.4	JUDGE'S ROLE IN CONCLUDING THE TRIAL.....	29
2.4.3.1.5	JUDGE'S ROLE IN SENTENCING.....	29
2.4.4	CORRECTIONAL SERVICES.....	29 - 30
2.4.4.1	PRESSURES FACING CORRECTIONAL SERVICES.....	30 - 31
2.4.4.1.1	OVERCROWDING.....	31 - 32
2.4.4.1.2	LACK OF INMATE'S PROFILE.....	32 - 34
2.4.4.1.3	CRIME RATES.....	35 - 36
2.4.4.1.4	LEGAL AND POLITICAL ENVIRONMENT.....	37
2.4.5	WELFARE.....	37
2.4.5.1	HISTORICAL BACKGROUND.....	37 - 38
2.4.5.2	THE PRIMARY GOALS OF PROBATION.....	38 - 39
2.4.5.3	GRANTING OF PROBATION.....	39 - 41
2.4.5.4	CONDITIONS OF PROBATION.....	42
2.4.5.5	SUPERVISION OF PROBATIONERS.....	43

III

	<u>CONTENTS</u>	<u>PAGE</u>
2.4.5.6	VOLUNTEERS WITHIN THE PROBATION SYSTEM.....	43
2.4.5.6.1	VOLUNTEER INVOLVEMENT.....	43 - 44
2.4.5.6.2	VOLUNTEER SELECTION.....	44
2.4.5.6.3	VOLUNTEER PAYMENTS.....	44
2.5	THE QUESTION OF VOLUNTEERS AND COMMUNITY INVOLVE- MENT IN THE CRIMINAL JUSTICE SYSTEM.....	44 - 45
2.5.1	CITIZENS AS VOLUNTEERS.....	45
2.5.2	SERVICE ROLES FOR THE CRIMINAL JUSTICE VOLUNTEERS.	45 - 46
2.5.3	COMPETENCIES REQUIRED FOR VOLUNTEERS WORKING IN THE CRIMINAL JUSTICE SYSTEM.....	46 - 48
2.5.4	LEGAL ISSUES IN VOLUNTARISM.....	48 - 49
2.5.5	THE BILL OF RIGHTS FOR VOLUNTEERS.....	49 - 50
2.5.6	CATEGORIES OF VOLUNTEERS.....	50
2.5.6.1	SERVICE VOLUNTEERS.....	50
2.5.6.2	PUBLIC ISSUE/ADVOCACY VOLUNTEERS.....	51
2.5.6.3	CONSUMMATORY/SELF EXPRESSIVE VOLUNTEERS.....	51
2.5.6.4	OCCUPATIONAL/ECONOMIC SELF-INTEREST VOLUNTEERS....	51
2.5.6.5	FUND-RAISING VOLUNTEERS.....	52
2.6	ADVANTAGES OF VOLUNTEER INVOLVEMENT IN CRIMINAL JUSTICE SYSTEM.....	52
2.7	SUMMARY.....	52

IV

CHAPTER 3

THE ROLE AND FUNCTIONS OF VOLUNTEERS IN THE SOUTH AFRICAN POLICE SERVICE

	<u>CONTENTS</u>	<u>PAGE</u>
3.1	INTRODUCTION.....	53 - 54
3.2	DEPARTMENTAL STRUCTURES : ROLES AND RESPONSIBILITIES OF THE SOUTH AFRICAN POLICE SERVICE.....	54
3.2.1	MINISTER OF SAFETY AND SECURITY.....	54
3.2.2	SECRETARY OF SAFETY AND SECURITY.....	54 - 55
3.2.3	SOUTH AFRICAN POLICE SERVICE.....	55 - 56
3.2.3.1	DIVISION : DETECTIVE SERVICE.....	56 - 57
3.2.3.2	DIVISION : SUPPORT SERVICES.....	57
3.2.3.3	DIVISION : CRIME PREVENTION AND RESPONSE SERVICES.....	57
3.2.3.4	DIVISION : HUMAN RESOURCE MANAGEMENT.....	58
3.2.3.5	DIVISION : MANAGEMENT SERVICES.....	58 - 59
3.2.4	NATIONAL CRIME PREVENTION STRATEGY CENTRE.....	59 - 60
3.2.5	INDEPENDENT COMPLAINTS DIRECTORATE (ICD).....	60
3.2.6	THE ROLE AND FUNCTIONS OF THE PROVINCIAL STRUCTURES.....	60 - 61
3.2.7	THE ROLE AND FUNCTIONS OF THE LOCAL STRUCTURES.....	61 - 62
3.3	PRINCIPLES OF POLICING.....	62 - 64
3.4	RECRUITMENT, TRAINING AND DEVELOPMENT OF POLICE OFFICERS.....	64
3.4.1	RECRUITMENT AND APPOINTMENT.....	64 - 65
3.4.2	TRAINING OF POLICE.....	65 - 66
3.4.3	DEVELOPMENT OF POLICE.....	66 - 67
3.4.3.1	SUPERVISION.....	67 - 68
3.4.3.2	WORK-ETHICS.....	68 - 69
3.4.3.3	ACCOUNTABILITY.....	69
3.5	REPRESSIVE POLICING.....	69 - 70
3.5.1	DETERMINATION THAT CRIME HAS BEEN COMMITTED.....	70 - 71
3.5.2	CRIME SCENE INVESTIGATION.....	71 - 72
3.5.3	THE PRELIMINARY INVESTIGATION.....	72 - 73
3.5.4	IDENTIFYING THE CULPRIT/S.....	73 - 74
3.5.5	ARRESTING THE CULPRIT/S.....	74
3.5.6	BOOKING THE CULPRIT/S.....	74 - 75
3.5.7	INVESTIGATION AND CASE PREPARATION.....	75 - 78

<u>CONTENTS</u>	<u>PAGE</u>
3.5.7.1 THE RIGHT TO INTERROGATE SUSPECTS.....	78
3.5.7.2 THE MIRANDA RIGHTS.....	78 - 79
3.5.7.3 THE BURDEN OF PROOF.....	79
3.6 PREVENTATIVE POLICING.....	79
3.6.1 POLICE-COMMUNITY PARTNERSHIP.....	80
3.6.1.1 COMMUNITY POLICING.....	80 - 82
3.6.1.2 BUSINESS IN PARTNERSHIP POLICING.....	82 - 85
3.6.1.3 COMMUNITY POLICE FORUMS.....	85 - 88
3.6.1.4 RESERVE POLICE SERVICE AS A VOLUNTARY DUTY.....	89 - 91
3.6.2 SECTION POLICING.....	91
3.6.3 PATROL OPERATIONS.....	91 - 94
3.7 CAUSATIVE FACTORS OF CRIME AND CRIME PREVENTION	94
3.7.1 UNEMPLOYMENT.....	94 - 95
3.7.2 POOR EDUCATION.....	95
3.7.3 PROPER HOUSING.....	95 - 97
3.7.4 POVERTY.....	97
3.7.5 COMMUNITY STABILITY.....	97 - 98
3.7.6 MOBILITY.....	98
3.7.7 WEATHER AND CLIMATE.....	98 - 99
3.7.8 DRUG ABUSE.....	99
3.7.9 EMOTIONAL DISTURBANCES.....	99 - 100
3.7.10 FAMILY STABILITY.....	100 - 102
3.8 THE COMMUNITY'S ROLE IN CRIME PREVENTION.....	102
3.8.1 THE ROLE OF THE FAMILY.....	102 - 103
3.8.2 THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS.....	103 - 104
3.8.3 THE ROLE OF SOCIETY.....	104 - 107
3.8.4 THE ROLE OF LEGISLATORS.....	107
3.9 SUCCESS FACTORS OF COMMUNITY POLICING PARTNERSHIP	108
3.9.1 POLICING.....	108
3.9.2 CO-ORDINATING GOVERNMENT SERVICES AT LOCAL LEVEL....	108
3.9.3 COMMUNITY AWARENESS AND TRUST.....	108 - 109
3.9.4 CLEAR GOALS AND RESPONSIBILITY.....	109
3.9.5 SHARED OWNERSHIP.....	109
3.9.6 COMMUNICATION.....	109 - 110
3.9.7 SUSTAINABILITY.....	110
3.9.8 MONITORING AND EVALUATION.....	110
3.8 SUMMARY.....	110 - 111

VI

CHAPTER 4

THE ROLE OF VOLUNTEERS IN THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM IN SOUTH AFRICA

<u>CONTENTS</u>		<u>PAGE</u>
4.1	INTRODUCTION.....	112
4.2	THE ORIGIN OF SOUTH AFRICAN COURTS.....	112 - 115
4.3	COMPOSITION OF THE JUDICIAL AUTHORITY.....	115
4.3.1	SUPERIOR COURTS.....	115 - 117
4.3.2	THE CONSTITUTIONAL COURT.....	117
4.3.2.1	POWERS OF THE CONSTITUTIONAL COURT.....	118 - 119
4.3.2.2	ENGAGEMENT OF THE CONSTITUTIONAL COURT.....	119
4.3.3	SUPREME COURT.....	119 - 120
4.3.4	SPECIAL COURTS	121
4.3.5	OTHER COURTS.....	121
4.3.5.1	ORDINARY MAGISTRATES' COURTS.....	122
4.3.5.2	REGIONAL MAGISTRATES' COURTS.....	122
4.3.5.3	COURTS OF SPECIAL JURISDICTION.....	122
4.3.6	PROCEDURAL MATTERS.....	123 - 125
4.4	THE FUNDAMENTAL RIGHTS.....	125 - 127
4.4.1	THE OPERATION OF BILL OF FUNDAMENTAL RIGHTS.....	127 - 128
4.4.1.1	EQUALITY AND PROTECTION.....	128 - 129
4.4.1.2	FREEDOM AND SECURITY OF THE PERSON.....	129
4.4.1.3	THE RIGHT TO PRIVACY.....	129
4.4.1.4	FREEDOM OF RELIGION, BELIEF AND OPINION.....	130
4.4.1.5	HEALTH-CARE, FOOD, WATER, AND SOCIAL SECURITY.....	130 - 131
4.4.1.6	RIGHTS OF ARRESTED AND DETAINED PERSONS.....	131 - 132
4.4.1.7	THE RIGHT TO LIFE AND DIGNITY.....	132
4.5	THE ROLE AND FUNCTIONS OF THE COURTS.....	133
4.5.1	PRE-TRIAL JUDICIAL PROCESS.....	133 - 134
4.5.1.1	THE PRESENTMENT.....	135
4.5.1.2	PRELIMINARY HEARING.....	135 - 136
4.5.1.3	BAIL BEFORE FIRST APPEARANCE OF ACCUSED IN LOWER COURT.....	136
4.5.1.4	BAIL AFTER FIRST APPEARANCE OF ACCUSED IN LOWER COURT.....	136 - 138
4.5.1.5	PRE-TRIAL DIVERSION.....	138 - 139
4.5.2	THE TRIAL PROCESS.....	140
4.5.2.1	THE PLEA.....	140

VII

	<u>CONTENTS</u>	<u>PAGE</u>
4.5.2.2	THE PROSECUTOR'S CASE.....	140 - 141
4.5.2.3	THE DEFENCE'S CASE.....	141
4.5.2.4	PROSECUTOR'S REBUTTAL.....	141
4.5.2.5	DEFENCE'S REBUTTAL.....	142
4.5.2.6	SUMMATIONS BY DEFENCE AND PROSECUTOR.....	142
4.5.2.7	DELIBERATION AND VERDICT.....	142 - 143
4.5.2.8	THE SENTENCE.....	143 - 145
4.6	THE ROLE OF ASSESSORS IN THE JUDICIAL SYSTEM IN SOUTH AFRICA.....	145 - 146
4.7	ASSESSORS IN OTHER JUDICIAL SYSTEMS OF THE WORLD : A COMPARATIVE STUDY.....	146
4.7.1	BOTSWANA.....	146 - 147
4.7.2	NIGERIA.....	147 - 148
4.7.3	ENGLAND.....	148 - 150
4.7.4	FRANCE.....	150 - 153
4.7.5	SWEDEN.....	153 - 155
4.8	SUMMARY.....	155 - 156

VIII

CHAPTER 5

THE HISTORICAL DEVELOPMENT OF CORRECTIONAL INSTITUTIONS, ROLES AND FUNCTIONS OF VOLUNTEERS

	<u>CONTENTS</u>	<u>PAGE</u>
5.1	INTRODUCTION.....	157
5.2	THE HISTORICAL DEVELOPMENT OF THE CORRECTIONAL SYSTEM IN SOUTH AFRICA.....	157
5.2.1	THE CAPE.....	158 - 175
5.2.2	NATAL.....	175 - 177
5.2.3	THE ORANGE FREE STATE AND THE TRANSVAAL.....	177 - 179
5.2.4	SOUTH AFRICA UNITED.....	180 - 185
5.2.4.1	DEVELOPMENTS POST 1959.....	185 - 195
5.2.4.2	DEVELOPMENTS POST 1990.....	195 - 199
5.3	THE RATIONALE FOR IMPOSING PRISON SENTENCES.....	200
5.3.1	RETRIBUTION.....	200
5.3.2	DETERRENCE.....	200 - 201
5.3.2.1	INDIVIDUAL DETERRENCE.....	201
5.3.2.2	GENERAL DETERRENCE.....	201 - 203
5.3.3	INCAPACITATION.....	203 - 204
5.3.4	REHABILITATION.....	204
5.4	VOLUNTEER INVOLVEMENT IN THE PRINCIPAL COALS OF THE DEPARTMENT OF CORRECTIONAL SERVICES.....	204 - 205
5.4.1	SAFE CUSTODY OF PRISONERS.....	205 - 207
5.4.1.1	CAUSES OF OVERCROWDING.....	207
5.4.1.1.1	COURT DELAYS.....	208
5.4.1.1.2	SENTENCING OPTIONS.....	209 - 210
5.4.2	SUPERVISION AND CONTROL OVER PROBATIONERS AND PAROLEES.....	210 - 212
5.4.2.1	DAY PAROLE.....	212
5.4.2.2	ELECTRONIC MONITORING.....	212 - 213
5.4.3	HUMANE DETENTION AND TREATMENT OF PRISONERS.....	213
5.4.3.1	PRIVILEGE SYSTEM.....	213 - 214
5.4.3.2	HEALTH-CARE SERVICES.....	214
5.4.3.3	MOTHER AND CHILD UNITS.....	214 - 25
5.4.3.4	NUTRITION.....	215
5.4.3.5	PERSONAL CARE.....	215

IX

	<u>CONTENTS</u>	<u>PAGE</u>
5.4.3.6	PRISONER'S RIGHT TO LODGE A COMPLAINT.....	216 - 218
5.4.4	PROVISION OF DEVELOPMENT PROGRAMMES TO PRISONERS	218 - 219
5.4.4.1	EDUCATION AND TRAINING.....	219 - 220
5.4.4.2	SOCIAL WORK SERVICES.....	220 - 221
5.4.4.3	PSYCHOLOGICAL SERVICES.....	221 - 222
5.4.4.4	RELIGIOUS CARE.....	222 - 223
5.4.4.5	OCCUPATIONAL SKILLS-TRAINING.....	223 - 224
5.4.5	REINTEGRATION OF PRISONERS TO THE COMMUNITY.....	224 - 225
5.4.6	RESOURCE MANAGEMENT AND UTILISATION.....	225 - 227
5.4.7	SUMMARY.....	227
	RATION.....	242 - 243

CHAPTER 6

THE ROLE OF THE VOLUNTEERS IN THE JUVENILE JUSTICE SYSTEM

	<u>CONTENTS</u>	<u>PAGE</u>
6.1	INTRODUCTION.....	228
6.2	DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM IN SOUTH AFRICA.....	228 - 229
6.2.1	CHANGES IN LEGAL NORMS.....	229 - 230
6.2.2	TRANSFER TO ADULT COURT.....	230
6.2.3	JUDICIAL WAIVER.....	230 - 231
6.3	THE JUVENILE JUSTICE PROCESS.....	231 - 232
6.3.1	ENTRY INTO THE SYSTEM.....	232 - 233
6.3.2	CUSTODY.....	233 - 234
6.3.3	INTAKE HEARING.....	234 - 238
6.3.4	ADJUDICATION.....	238 - 240
6.3.5	DISPOSITIONAL HEARING.....	240 - 242
6.4	JUVENILE CORRECTIONAL INSTITUTIONS.....	242 - 244
6.5	DIVERSION OUT OF THE JUVENILE JUSTICE SYSTEM.....	244 - 246
6.6	THE JUVENILE TRIAL.....	246
6.7	THE VOLUNTEER'S ROLE IN SENTENCING AND CORRECTIONS	246
6.7.1	PARTICIPATION IN PROBATION DECISIONS.....	246 - 247
6.7.2	THE VICTIM'S ROLE IN SENTENCING.....	247
6.7.3	VICTIM'S IN THE PAROLE PROCESS.....	247 - 249
6.7.4	OFFENDER RELEASE OR ESCAPE/VICTIM PROTECTION.....	249 - 250
6.7.5	COMPENSATION AND RESTITUTION.....	250 - 251
6.7.5.1	GOVERNMENT COMPENSATION PROGRAMS.....	251
6.7.5.2	RESTITUTION FROM THE OFFENDER.....	251 - 253
6.7.5.3	VICTIM/OFFENDER MEDIATION.....	253 - 254
6.7.6	VICTIMS AND THE MEDIA.....	254 - 255
6.8	SUMMARY.....	255 - 256

ESTABLISHMENT AND MANAGEMENT OF A VOLUNTEER PROGRAMME IN AN ORGANISATION

	<u>CONTENTS</u>	<u>PAGE</u>
7.1	INTRODUCTION.....	257
7.2	HISTORICAL BACKGROUND.....	257 - 258
7.3	THE DESCRIPTION OF THE VOLUNTEERS.....	258 - 259
7.3.1	THE CHARACTERISTICS OF THE VOLUNTEERS.....	259 - 260
7.3.2	THE MEANING OF VOLUNTEER WORK.....	260 - 261
7.3.3	VOLUNTEER ROLES AND TASKS.....	261 - 262
7.3.4	VOLUNTEERS AND STAFF.....	262 - 264
7.3.5	THE VOLUNTARY WORK WITH THE CORRECTIONAL FIELD.....	264
7.4	THE VOLUNTARY BODIES.....	264 - 265
7.4.1	A TYPOLOGY OF VOLUNTARY ORGANISATIONS.....	265
7.4.2	THE ROLE OF VOLUNTEERS IN SOUTH AFRICA.....	265 - 266
7.4.3	FACTORS WHICH MOTIVATE VOLUNTEERS.....	267
7.4.4	THE NEEDS OF VOLUNTEERS.....	267
7.4.5	EXPECTATIONS AND REWARDS.....	268
7.5	OPERATIONS OF VOLUNTEER PROGRAMMES.....	268 - 270
7.5.1	RECRUITMENT, SELECTION AND TRAINING.....	270
7.5.1.1	RECRUITMENT.....	271
7.5.1.2	SELECTION.....	271 - 273
7.5.1.3	PLACEMENT PROCESS.....	273 - 275
7.5.1.4	ORIENTATION.....	275 - 276
7.5.1.5	TRAINING.....	277 - 279
7.5.1.6	ON-THE-JOB TRAINING.....	279 - 280
7.5.1.7	IN-SERVICE TRAINING.....	280
7.5.1.8	THE REFRESHER COURSES.....	280
7.5.1.9	A VOLUNTEER NEWSLETTER.....	280
7.5.1.10	INTER-AGENCY WORKSHOPS AND SEMINARS.....	281
7.6	MANAGEMENT OF A VOLUNTEER PROGRAMME.....	281 - 282
7.6.1	EVALUATION AS A TRAINING TOOL.....	282 - 283
7.6.2	STATISTICS ON VOLUNTEER INVOLVEMENT.....	283 - 284
7.6.3	SUPERVISION.....	284 - 285
7.6.4	EFFECTIVE SUPERVISION.....	285 - 288
7.6.5	BUILDING CONFIDENCE.....	288
7.6.6	GROUPS AND SUPERVISION.....	288 - 290
7.6.7	EVALUATION.....	290
7.6.8	EVALUATING THE PERFORMANCE OF VOLUNTEERS.....	290
7.6.9	STATISTICS ON VOLUNTEER INVOLVEMENT.....	290 - 291
7.7	SUMMARY.....	291

CHAPTER 8

CONCLUSION AND RECOMMENDATIONS

	<u>CONTENTS</u>	<u>PAGE</u>
8.1	CONCLUSION.....	292 - 293
8.2	RECOMMENDATIONS FOR THE ESTABLISHMENT OF AN EFFECTIVE AND EFFICIENT CRIMINAL JUSTICE SYSTEM IN SOUTH AFRICA.....	293 - 296
8.3	BIBLIOGRAPHY.....	297 - 313

XIII

<u>FIGURES</u>		<u>PAGE</u>
FIGURE 1	: ACCOMMODATION VERSUS DAILY AVERAGE PRISONER POPULATION (DAPP).....	31
FIGURE 2	: STATISTICS OF PRISONERS AS AT 31 DECEMBER 1999.....	32 - 34
FIGURE 3	: CRIMES REPORTED PER DAY 1994 - 1998 : CRIME RATIO PER 100,000.....	35
FIGURE 4	: PERCENTAGE OF HOUSE HOLDS WHICH HAD EXPERIENCED SPECIFIC CRIMES, AND AT LEAST ONE CRIME DURING THE FIVE YEARS PERIOD 1993 - 1997.....	36
FIGURE 5	: JUVENILES SENTENCED TO PROBATION DURING 1999.....	40 - 41
FIGURE 6	: COMMUNITY POLICE FORUM : WORKING GROUPS.....	87
FIGURE 7	: COMMUNITY POLICE : SUB-FORUMS.....	87
FIGURE 8	: CELL ACCOMMODATION VERSUS PRISONER POPULATION INDICATING PERCENTAGE OVERCROWDING OF SOUTH AFRICAN PRISONS.....	206

CHAPTER 1

GENERAL ORIENTATION TO THE STUDY1.1 INTRODUCTION

Crime is one of the most complex problems which society have to face, and there is no country or community in the world which is crime free (*Naudé, and Stevens, 1988 : 1*).

Statistical data on crime reported to the police and published in the media, consistently represent South Africa country as engulfed in rising crime, especially crimes involving violence.

To state this current escalation of crime in South Africa, the following alarming signs and statistics must be highlighted in order to pave the way for thorough penological discussion. The comparison between the statistics of serious crimes reported to the South African Police Services (*SAPS Monthly Crime Bulletin, 12/1999*), between the periods January 1998 up to November 1999 revealed the following, namely:

- ▶ The increase by 28.1% in crimes of aggravated and common robbery, which could be attributed to bank robbery (cash heast) and car-hijacking in the Gauteng Province at that time
- ▶ Indecent assault and common assault increased by 17.0% and 9.7% respectively
- ▶ Rape, including attempted rape, increased by 4.2% during the same period
- ▶ However, the decrease by 2.8% in cases of murder during the same period, came as a surprise when the killings of police officers and that of farmers dominated the media.

As ordinary citizens of South Africa become more and more terrified by fear for crime, they start blaming the police and perceive the whole criminal justice system as ineffective and helpless in dealing with crime and criminal offenders.

The society's anger is often expressed in "slogans" such as:

- Lock them up and throw the keys away!
- Bring back death penalty!
- Stop abusing innocent children!
- Another tourist raped and murdered!

Clearly, the overarching issue is making the criminal justice system in South Africa responsive to the public's concerns with crime, by becoming more effective. The question that arises is what can be done to stop the crime wave, protect lives and property in South Africa (*Olivier, 1997 : 4*).

This thesis, therefore, attempts to answer the above question by identifying and exploring issues that must be addressed if the future of the law enforcement in South Africa is to be managed successfully. However, the issues examined are not exhaustive as some matters are left out that some readers will consider vital.

In order to balance the judicial scale in the South African criminal justice system again, the different role players in the criminal justice system the South African Police Service, along with the prosecutors, the courts, correctional services and welfare's probation services must operate as a stable process in the system (*Whisenand and Cline, 1971 : 1 - 2*). However, in the operation of the criminal justice system, the volunteers and the community must also be fully involved.

1.2 THE RATIONALE FOR CHOOSING THE SUBJECT

As a society of approximately 42 million people, South Africa has an established system of Law, procedures and punishments designed to provide the social order. Like other societies, South Africa has a criminal justice system to enforce the laws deemed necessary to protect individuals, and the community. This system operates by identifying, apprehending, prosecuting, convicting, and sentencing those who violate the laws of the nation. But the irony is that the nation does not seem to be interested in getting involved in reporting crime, identifying criminals, giving evidence in court, let alone the involvement in crime prevention strategies.

The researcher is convinced that crime prevention as a strategy cannot be the task of the South African Police alone, or even the components of the criminal justice system alone, but of the total community (*Naudé, and Stevens, 1988: 158*). The government and its structures cannot deal with the social problems, including crime, without the help of the community.

According to *Neser (1980 : 4)* and *Johnson (1987 : 15)*, the choice of the subject is a very important part of the research. Therefore, the researcher must be influenced by the following factors, namely:

- ▶ The necessity and desirability of such investigation
- ▶ The availability of details
- ▶ The interest of the researcher to the subject

In my capacity as Provincial Commissioner, I had to do with overcrowding of prisons caused by the inefficient functioning of the criminal justice system in South Africa.

The deficiencies identified within the criminal justice system has prompted the researcher to make a theoretical study of the role of volunteers in the transformation of the criminal justice system in South Africa.

This study is based upon the preclusive theoretical approach as illustrated by Gorrel (*Ovens, 1998 : 12*). Gorrel states that this approach simplifies and systemises the domain under investigation by the acceptance of certain assumptions about the structural, causative or functional nature of the system under discussion, and in this case the criminal justice system.

This study is not only based upon a theoretical point of departure, but the researcher also strives towards the practical application of the theory. Therefore, a study of this nature must be able to be of benefit to academics, legislators, students in criminology and penology, as well as functionaries within the criminal justice system.

As the title denotes, this thesis attempts to highlight major problems facing the role players within the criminal justice system, not only in terms of coping with the escalating crime rates, but also in transforming the core departments in the criminal justice system in South Africa to meet the expectations of the citizens.

1.3 AIM AND PURPOSE OF THE STUDY

According to *Cilliers (1980 : 4)*, the main objective behind a penological investigation is "inter alia knowledge of and insight into the phenomenon of punishment with a view to the application of such acquired knowledge." The researcher's primary objective is to acquire knowledge of the processes

utilized by various criminal justice systems, with special emphasis on the role played by the volunteers within the system.

By the same token *Lea (1991 : 9)*, contends, the main purpose of the research is to find a new, as yet unconsidered direction for the criminal justice system in South Africa, whereby the functionaries, and community volunteers, become professionally involved in addressing the problem of crime in South Africa.

Societies world-wide are faced with the problem of crime, and South Africa is no exception. Therefore, the study of the criminal justice system does not involve only the description and explanation of the criminal justice processes. But the most important objective of this study is to encourage each and every citizen of South Africa to start doing something about crime than talking about it. It is the responsibility of every member of the community to eliminate factors that lead people to commit criminal deeds, and that through community cooperation and involvement it is possible to prevent and control criminality and criminal activities in our societies in the long term.

From the discussions above, the following aims are identified:

AIM 1

To propose and describe the importance of volunteer involvement in the criminal justice system.

AIM 2

To delineate the core functions of the departments constituting the criminal justice system in South Africa in order to determine each ones opportunities,

effectiveness, strategies, organisation and accountability in crime prevention strategies.

AIM 3

To make recommendations based on the findings, with regard to the ability and capacity of the criminal justice system to deal with the crime effectively.

1.4 RESEARCH METHODS USED IN THE RESEARCH

The nature of the research, namely an investigation into the role of volunteers in the criminal justice system, was the principal determinant of the methods chosen by the researcher.

The methods used in this research were manifold, given the different aspects that needed to be discussed before describing the role of volunteers, these were:

- ▶ Literature surveys.
- ▶ Interviews with the functionaries and professionals in the criminal justice system
- ▶ Utilisation of statutes.

1.4.1 LITERATURE STUDY

Written sources included books, periodicals, journals, government reports and Internet sources which debated crime as an international phenomenon. However, there is little available in literature on the criminal justice system in South Africa, the functionaries within it and more specifically about the role of volunteers in the system.

For that reason, much overseas material was utilised in trying to ascertain the role of the volunteers in other countries overseas, and to glean as much information as possible which could be translated into the South African system. Whilst there was no comparison of systems, within the research, this not being the purpose thereof, ideas and methods were utilised in practice to start the project. From this, the researcher was able to devise his own *modus operandi* for his case studies.

The South African legal system differs from many other countries. Nevertheless, many basic concepts are shared. To the extent that it was possible, the researcher used literature from other countries to assist him in his task.

1.4.2 INTERVIEWS

Interviews, but only informally, were held with the functionaries within the criminal justice system, academics and researchers. This means was used to gather information about the practicalities of the criminal justice system, the role of volunteers, as well as, the community in general.

1.4.3 RELIABILITY OF DATA

The researcher is aware that one of the major pitfalls is the possibility of unreliable data. The information, wherever possible and certainly for the study purposes, was gleaned from initial sources. The researcher, therefore, assumes that the information received is true and correct. The danger of subjective interpretation by the researcher was minimized. The researcher is therefore, of the opinion that the information can be deemed objective and reliable.

1.5 DEFINITION OF KEY CONCEPTS

The following terms utilised and referred to in this study need to be defined and discussed to clarify their meaning contextually. In a scientific evaluation of this nature two types of concepts are used. The first being known, established and widely accepted terminology. Secondly, there are operational terms developed by the researcher to have special meaning and emphasis within the particular study (*Ovens, 1998 : 24*). As there are no operational terms been developed, the following terms will be clarified for the purpose of this study.

1.5.1 VOLUNTEERS

Volunteers are people who give their services without pay to public and private agencies, organisations, and institutions in the fields of health, education, welfare, civic and cultural endeavours. They do not replace paid staff but they supplement and complement them (*Stone, 1982 : 3*). By the same token, *Johnson (1987 : 94)*, contends that volunteers are people who receive no payment for what they do, although out-of-pocket expenses may be reimbursed. The most important point that defines a volunteer better, is that the unpaid direct service is provided to one or more persons to whom the volunteer is not related (*Darvil and Munday, 1984 : 3*).

1.5.2 CRIME

Crime can be briefly described as an act or omission which is forbidden by the judiciary (*Naudé, and Stevens, 1988 : 1*). According to *Rabie and Strauss (1981 : 6)*, crime include criminalised conduct, declared as such by the legislature.

1.5.3 CRIMINAL

A criminal is someone who is arrested, prosecuted and found guilty (*Naudé, and Stevens, 1988 : 1*).

1.5.4 JUSTICE

There is no universal definition of Justice. But to dispense absolute justice requires the presence of the following four elements:

- ▶ The absolute ability to identify law violators
- ▶ The absolute ability to apprehend law violators
- ▶ The absolute ability to punish law violators
- ▶ The absolute ability to identify the intent of law violators (*Eskridge, 1996: 12*).

1.5.5 ENFORCEMENT PROCESS OF THE LAW

The sentiments expressed by scholars such as Aristotle and Cicero, concerning divine right and punishment, and the possibility of punishment in the hereafter, are no longer sufficient to ensure obedience to the rules of society.

Enforcement of rules or law by religious, social and economic communities is not sufficient to ensure the adherence to the rules of the political community, by whom law is usually made. It is the enforcement of these rules that ensures the continued existence and longevity of a society.

The political community, embodied in the "State" as opposed to the family, church, or social group, exercises procedures of enforcement. Once it has

been established that there has been a violation of a law, there are rigidly structured court processes, specifically designated for the adjudication of transgressors, whereby the law is interpreted, its enforcement directed and appropriate sanctions imposed. These sanctions include social stigma, loss of status, freedom and even, on occasion, one's life, in other countries (*Lea, 1991 : 36 - 7*).

1.6 DELIMITATION OF THE STUDY

This study aims to explore the criminal justice process in its procedural and legal aspects and to analyse its dynamic qualities in its day to day operations and its social significance, as well as the role of volunteers in this complex system.

In chapter one a methodological account is provided and such basic issues as the domain that is to be researched, the desirability of such research, the choice of the research and how the research is undertaken and dealt with. Chapter one also reveals the foundation upon which the research is based.

Chapter two intends not simply to outline the basic structure of the criminal justice system, but to introduce some ethical, political, constitutional and economic pressures that affect the criminal justice system in South Africa. Special focus is given to the role and competencies required for volunteers working in the criminal justice system.

Chapter three provides an overview of the law enforcement field. This chapter covers the functions of the police which can be described as reactive and proactive; the causative factors of crime and the role of volunteers in crime

prevention. There is a sub-section dealing with community policing and other current issues.

Chapter four is devoted to the origin, role and functions of courts within the society. The adjudication process is discussed fully, starting from the pretrial indictment to the sentencing of the criminal offenders.

Chapter five deals briefly with the historical development of the correctional institutions in South Africa. Apart from the historical evolution of the correctional system, an attempt is made to determine if rehabilitation, probation and parole can lead to social protection against crime. The discussion includes the intermediate sanctions of house arrest, intensive supervision and electronic monitoring.

Chapter six deals with the juvenile justice system, its development and process. This chapter also focuses on the victims of crime, their role in sentencing and corrections of juvenile criminal offenders.

In essence the study, therefore, assumes the form of a theoretical and practical research, impossible to be undertaken without a delimitation being made of the scope of the research. The content of the research is presented in seven chapters. The ordering of the sequence is designed to promote the unfolding of the research in logical sequence, from the broadest possible aspect to the narrowest.

1.7 SUMMARY

Crime is a problem for the whole society, young and the old, rich and the poor and it does not discriminate in terms of colour, race, religion and political affiliation. Crime creates fear; it destroys life and property; and it is especially costly. Therefore, crime must be controlled.

Law is supposed to protect citizens and punish criminals. But that is not always the case. The question that arises is what can be done to stop the crime wave in South Africa. The government introduced the National Crime Prevention Strategy in the mid-nineties', but the presence thereof is not yet felt by the ordinary man in the street.

The fact of the matter is that, there is no single step that can be taken to prevent crime in South Africa but partnership between the criminal justice system as an organ of State and the rest of the community will ensure that South Africa is a safe and pleasant place for all.

The next chapter examines the origin of volunteers in the criminal justice system.

CHAPTER 2

THE ORIGIN OF VOLUNTEERS IN THE CRIMINAL JUSTICE**2.1 INTRODUCTION**

Crime and justice are concepts that have been a part of human history for many millennia (*Inciardi, 1991 : 1*). But discussions about the community involvement in resolving the problems in the criminal justice process still raise mixed emotions. Some people feel that a system of justice, subject to the rule of law, should be controlled by professionals who are accountable for their decisions, but others perhaps wonder if a system which excludes the community from participating will not render itself ineffective and open to abuse (*Gill and Mawby, 1990 : 1*). This statement is confirmed by *Pontell (1984 : 1)* who states that it is hardly possible for any legal machinery to do all which penal legislation expects of it, without public involvement.

Although there has been very little attention given to the role played by volunteers in the justice system in South Africa, the fact remains that the public do participate in a variety of ways alongside with the police, probation, courts and correctional services. The role of volunteers in the police service, will be discussed at length in chapter three, whereas, chapters four and five will focus in more details in the role of the volunteers in courts and correctional services, respectively.

2.2 THE PURPOSE OF THE CRIMINAL JUSTICE SYSTEM

An influential group of criminal justice thinkers has argued that just as society must maintain armed forces to defend itself against the foreign aggressors, it

must also maintain a force of internal peace-keepers to defend itself against aggression from within. "Social defence" demands a criminal justice system, whose purpose, goal, or end is to defend society (*Adler, Mueller, and Laufer, 1994 : 104*). The criminal justice system is therefore about state interference with people's criminal behaviour. Regulating behaviour is necessary because individuals striving for survival and other needs, tend to jeopardize each other's personal safety (*Eldefonso, Coffey, and Grace, 1982 : 5*). By the same token *Uglow (1995 : 8 - 9)*, contends that the concept of crime is used to justify our collective interference with and control of the actions of others, seeking that justification in such ideas as preventing harm of exploitation, as well as to the objectives of deterring or reforming "criminal". Therefore, the prevention of crime and of repeated crime - has been presented as an end or goal of all criminal justice systems around the world (*Adler, Mueller, and Laufer, 1994 : 104*).

The other major goal or end is said to be criminal justice itself. That sounds a bit like the chicken and the egg: The end of criminal justice is criminal justice. In other words, the criminal justice system can do no more than deliver criminal justice. Therefore, the end product must be justice (done justice, perceived justice, etc.), and at each stage of the process justice must also be applied and delivered. Of course, we do not want to increase crime; crime prevention and control are a primary goal. But we also do not want our criminal justice system to promote or deliver injustice. Obviously, the two goals may come into conflict, especially when it comes to prevention of repeated crime by sentencing more individuals to prison (*Adler, Mueller, and Laufer, 1994 : 104 - 5*).

Other scholars of the criminal justice, such as Wayne R. Lafave and Jerold H. Israel, have articulated the following eight principles for the ideal criminal justice system:

- ▶ **Establishing an adversarial system of adjudication.** Neutral decision makers must make decisions in a forum where opponents present interpretations of facts and law in a light most favourable to their case.
- ▶ **Establishing an accusatorial system of prosecution.** In such a system the State bears the burden of proving the guilt of the accused.
- ▶ **Minimizing erroneous convictions.** Protecting an accused from erroneous conviction is an important goal of the process.
- ▶ **Providing lay participation.** The criminal justice process must not be left entirely to government officials. Lay participation can ensure objectivity and independence.
- ▶ **Respecting the dignity of the individual.** The criminal justice process must ensure respect for privacy and autonomy, as well as freedom from physical and emotional abuse.
- ▶ **Maintaining the appearance of fairness.** Ensuring fairness in the process is not enough. There must be also an appearance of justice to the participants and the public.
- ▶ **Achieving equality in the application of the process.** Ensuring the just treatment of an accused is not enough. The criminal justice process must also ensure that like cases are treated alike (*Adler, Mueller, and Laufer, 1994 : 105 - 6*).

By the same token *Pursley (1994 : 7)*, contends that within these two major goals, namely: **to protect society** and **to maintain law and order**, there are

several other important sub-goals for which the three major components of the criminal justice system are responsible; that is:

- ▶ the prevention of crime
- ▶ the suppression of criminal conduct by apprehending offenders for whom prevention is ineffective
- ▶ the review of the legality of our preventive and suppressive measures
- ▶ the judicial determination of guilt or innocence of those apprehended
- ▶ the proper disposition of those who have been legally found guilty; and
- ▶ the correction by socially approved means of the behaviour of those who violate the Criminal Law.

2.3 A SYSTEM GOING WRONG OR JUST PERCEPTIONS?

The early 1990s has seen the criminal justice system come under unprecedented public scrutiny and criticism (*Bartollas, Miller, and Wice, 1983: 21*). There may be many other reasons, but *Uglow (1995 : 5 - 7)*, found the following:

- ▶ The public have become aware that there are serious flaws in the criminal justice system, such as poor investigative procedures; oppressive interrogation by the police; failure to disclose evidence by the prosecution; the trial court's failure to assess properly the weight of evidence and unwillingness of the Appeal Court to admit that things had gone wrong.
- ▶ Awareness that prisons are also failing to deal with inmates humanely
- ▶ Soaring crime rates. The first element of popular commonsense about crime is assumption that we are currently afflicted by crime, problems of unprecedented size and seriousness. The news media repeatedly depict crime as a monolithic entity which is constantly and inexorably rising. Such

claims are often made on the basis of an unquestioned reliance on the statements and data such as crime statistics provided by police, opinion polls, and surveys which seek to produce some general measure of popular fears and concerns over crime (*Hogg and Brown, 1998 : 22*). By the same token *Uglow (1995 : 6)*, contends that crime levels have risen consistently since the 1950s with sharp rises in the early 1990s. Significantly, fear about crime has also risen both general, as well as, in specific categories such as drug-related crimes, the use of firearms and juvenile offences.

- ▶ The courts have also been criticised especially when sentencing has been regarded as too lenient or for occasions when confessions have been excluded from evidence and the defendant has been acquitted (*Uglow, 1995 : 7*). Therefore, another popular commonsense on crime is the view that the criminal justice system offers citizens little in the way of protection, because it is “too soft on crime”. This is invariably coupled with the view that our criminal justice system pays too much heed to the civil liberties and rights of criminal suspects and too little to those of victims. Release on bail and acquittal rates are too high. The justice courts are irrational, because the convicted offenders are given sentences which are too lenient and put in prisons which are too luxurious (*Hogg and Brown, 1998 : 29 - 30*).
- ▶ The growth of victim support groups has increased awareness of the poor treatment that victims receive at all stages of the process: the initial interview by the police (especially of sexual assault victims); the failure of the prosecution to keep the victim in touch with the course of proceedings; the witness’s treatment while testifying, especially where cross

examination involves allegations of lying; the lack of legal advice and representation leading to lack of awareness of compensation orders or the criminal injuries compensation scheme; the lack of any requirements for the court to take into account "victim-impact" statements in sentencing (*Uglow, 1995 : 7*).

A corollary assumption in this commonsense discourse on the need for harsher penalties is that the welfare of victims depends on the harshness of the criminal justice system. The tendency is for the "rights of victims" to be invoked in a nebulous way so that it is not clear what is meant other than a code for increased punitiveness towards suspects and offenders, statuses that are often conflated (*Hogg and Brown, 1998 : 39 - 4*).

2.4 COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM AND THEIR FUNCTIONS : AN OVERVIEW

The criminal justice system has three separately organised parts - the police, the courts and corrections - and each has distinct tasks. However, these parts are by no means independent of each other. What each one does and how it does it, has a direct effect on the work of the others.

The courts must deal, and can only deal with those whom the police arrest the business of corrections is with those delivered to it by the courts. How successfully corrections performs and rehabilitate convicts determines whether they will once again become police business and influences the sentences the judges pass; police activities are subject to court scrutiny and are often determined by court decisions (*Inciardi, 1987 : 23*). Therefore, the police,

prosecution, the courts, correctional services and welfare constitute the major components of the criminal justice system (*Reid, 1981 : 1*). But that is not all, there is another agency in the criminal justice system, known as probation services, the lead department being the Department of Social Welfare in South Africa. For the sake of this chapter, an overview of each of these components will be provided very briefly. The components of the criminal justice system are further discussed in chapters three, four and five.

2.4.1 POLICE

No society is capable of ensuring an orderly, secure life for its members unless it polices itself (*Adler, Mueller, and Laufer, 1994 : 130*). Therefore, there should be no doubt in anyone's mind that the police play an extremely important role in society (*Van Heerden, 1986 : 1*).

In most countries around the world, one will find that the police are the largest and most visible segment of the criminal justice process. As organised agents of law enforcement, police officers are charged with the prevention and detection of crime, the apprehension of criminal offenders, the defence of constitutional guarantees, the resolution of community conflict, the protection of society and the promotion and preservation of civil order (*Reid, 1987 : 156*).

Therefore, the system and the process of criminal justice depend on effective and efficient police work, particularly when it comes to preventing and detecting crime and apprehending and arresting criminal offenders (*Senna and Siegel, 1998 : 11*).

Greenfeld (1993 : 1), describes **effectiveness** as the carrying out of justice system activities with proper regard for equity, proportionality, constitutional protections afforded defendants and convicted offenders and public safety, and **efficiency** as economically applying available resources to accomplish statutory goals, as well as to improve public safety. The police roles and functions within the community are further discussed in chapter three.

2.4.1.1 EXPECTATIONS VERSUS REALITIES OF A POLICE OFFICER'S WORK

The following is a summary of how the realities of police work come into conflict with the expectations of the public:

- ◆ The expectation : Statutes usually require - and much of public, in theory, expects the police to enforce all of the laws all time.
- ▶ The reality : The public would not tolerate full enforcement of many laws, and the police would be held up to ridicule were they to attempt full enforcement.
- ◆ The expectation : The public holds the police responsible for preventing crime and apprehending all criminals, and expect the police to endeavour to live up to this expectation.
- ▶ The reality : But the police, omnipotent as they may seem, are in reality extremely limited in their ability to cope with crime.
- ◆ The expectation : The police are expected and equipped to act in a coercive authoritarian manner in some situations.
- ▶ The reality : The same officers, however, must also be capable

of being supportive and friendly in the vast majority of circumstances in which they become involved.

- ◆ The expectation : The image the police seek to project is one of complete neutrality, achieved by uniform objective application of their authority.
- ▶ The reality : The incredible array of circumstances with which they must deal demands great flexibility in their day-to-day operations.

- ◆ The expectation : The police have come to be viewed as capable of handling every emergency.
- ▶ The reality : In reality they have neither the authority nor the resources to deal effectively with much of the business that comes their way.

- ◆ The expectation : Policing is grounded on the existence of a system of criminal justice that operates with reasonable effectiveness in adjudicating guilt and in imposing sanctions upon those found guilty.
- ▶ The reality : The system as it exists in many communities today - and especially in the large urban areas - is so overcrowded and disorganised that it is incapable of achieving justice or administering punishment.

- ◆ The expectation : Finally, there is the basic pervasive conflict between crime fighting and constitutional due process that is

inherent in the police function in a free society. The police are expected to deal aggressively with criminal conduct.

- ▶ The reality : They must do so in accordance with procedures that prohibit them from engaging in practices that - from the standpoint of the poorly informed citizen - appear to be most expeditious and most effective (*Bartollas, Miller, and Wice, 1983 : 108*).

Therefore, the above mentioned realities of the police work should serve as a wake-up call for all communities to start asking the questions about crime as a social problem and what the community can do to produce for itself, an effective and efficient criminal justice system. Hence, chapter three is put aside to discuss the role that can be played by volunteers and community in the policing work.

2.4.1.2 PRESSURES ON THE POLICE OFFICER

The police are expected to uphold the values and laws of a changing democratic society; yet they, like many other citizens, do not always find themselves in agreement with old laws and values or new ones. Pressure groups, both within and outside of police organisations, all demand that police enforce the law and play their roles in particular ways. Some of these groups have the legal authority to demand police conformity to legal dictates, whereas other groups do not; the latter have only the weight of their convictions about how the police should perform. The net result of all the differing views of police work is that officers are under pressure from courts, police departments

and ordinary citizens. Police officers also experience considerable personal pressure, so much that stress management has become an important issue in police work (*Bartollas, Miller, and Wice, 1998 : 106 - 7*). Furthermore, the subject of complaints against the police is one which arouses strong emotions, and it is not uncommon for such debates to be conducted in a polemical and hostile atmosphere - as anyone who has spoken on the topic to mixed police and non-police audiences can testify (*Bottomley, Fowles, and Reiner, 1992 : 76*). The fact of the matter is that most police officers do their job in a fair and reasonable manner, save a few "bad apples", and most complaints are petty, undeserved or downright false and malicious. One area that need to be born in mind is the fact that policing streets expose the police officers in an environment of uncertainty, where they have no clear rules to help them deal with every situation that confronts them (*Bottomley, Fowles, and Reiner, 1992: 78 - 9*).

2.4.1.2.1 PRESSURES FROM COURTS

Courts at all levels complicate the lives of police officers. For an example, the Supreme Courts review not only what laws are passed, but also the way these laws are enforced. They render decisions that determine how police officers are to guarantee citizen's rights, assure them of due process, and accord them equal protection under the law. The courts further determine how police will proceed in making arrests, conducting searches and seizures, and obtaining confessions (*Bartollas, Miller, and Wice, 1983 : 107*). Nevertheless the police have become more and more conscious of their role in the community (*Raine, and Willson, 1993 : 32*).

2.4.1.2.2 PRESSURES FROM THE COMMUNITY

Community expectations create subtle, yet pervasive, pressures on the police. Community leaders and citizens all have ideas about how the police should perform their duties, and they let the police know what these are. Furthermore, the major community pressures include demands for particular styles of police work and the results of the negative attitudes of citizens. Police officers are frustrated by a lack of appreciation and respect on the part of the general public (*Bartollas, Miller, and Wice, 1983 : 109 - 110*).

2.4.2 PROSECUTION

Prosecutors are government lawyers, public officials, who represent the people of a particular jurisdiction in a criminal case (*Adler, Mueller, and Laufer, 1994: 282*). Prosecution in England and Wales was a police function until the mid 1980s and prosecution rates varied widely as different police forces all exercised discretion in their own way. The National Crown Prosecution Service (CPS) was therefore, established in 1986 with a brief to conduct prosecutions in the Lower Courts and to commission and brief barristers to conduct cases in the Higher Courts (*Raine, and Willson, 1993 : 30*).

Prosecutors have many duties. Once an arrest has been made, the Prosecutor:

- ▶ Screen cases to determine which should be accepted for further processing
- ▶ Decides with what specific offences to charge a suspect
- ▶ Coordinates the investigation of a case, including the gathering of evidence and interviewing of witnesses

- ▶ Issues an information - charging the defendant with a crime - when the law allows initiation of a criminal case by information
- ▶ Presents the facts to the grand jury when so required by law, acting as the grand jury's counsel, in order to obtain an indictment against a defendant
- ▶ Makes recommendations about whether a defendant should be released on bail and how much the amount of bail should be
- ▶ Responds to any pretrial motions filed by the defence
- ▶ Decides which cases might be amenable to a plea bargain and then negotiates the settlement with the defence attorney
- ▶ Prepares the case for trial, if necessary
- ▶ Participates in the selection of a Jury for those cases that go to trial
- ▶ Argues the case on behalf of the government at trial
- ▶ Makes recommendations about sentencing (*Adler, Mueller, and Laufer, 1994: 282 - 3*).

However, it is important to note that the duties and roles sighted above vary with the organization of each prosecutorial office and the jurisdiction as well as, from country to country.

2.4.3 THE COURTS

Throughout history, emperors, kings, dukes, and other nobles had estates or castles that were referred to as "Courts" - the Court of the King of England, the Court of the Queen of Spain, and so on. Important is that there was a business conducted at the court room, including the business of resolving disputes and adjudging the guilt or innocence of persons, accused of crime by means of a trial (*Adler, Mueller, and Laufer, 1994 : 356*). Even today, the

criminal court is considered by many to be the core element in the administration of criminal justice. It is the part of the system that is the most venerable, the most formally organised, and the most elaborated circumscribed by law and tradition. It is the institution around which the rest of the system has developed, and to which the rest of the system is in large measure responsible. It regulates the flow of the criminal process under governance of the law.

The courts are expected to articulate the community's most deeply held, most cherished views about the relationship of individuals and society (*Senna and Siegel, 1998 : 11*).

Therefore, it is expected of the criminal courts to assure equal treatment in handling of like offenders and to give equal weight to legally relevant factors in sentencing, as this represent the types of concerns generally expressed about the fairness of the criminal justice system (*Greenfeld, 1993 : 1*). The Courts and their functions are further discussed in chapter four.

2.4.3.1 PRESSURES ON JUDGES AND MAGISTRATES

The fundamental contract between the ruler and citizens is that, in return for the citizen's consent to be governed and pay taxes, the ruler will provide external security and internal lawful peace and order (*Raine, and Willson, 1993 : 34*). In order to live up to the expectations of both the government and citizens, criminal justice agencies that is, the police, courts, and correctional services must work together to restrain lawlessness. There is, therefore, a profound tension between a government's desire to ensure that the work of the

courts, namely adjudication and sentencing, contributes in reducing the crime problem in our country, and realities in courts today. *Punke (1978 : 48)*, contends that the courts shall merit public confidence and good reputation by the manner in which each judge or magistrate copes with those ideals.

2.4.3.1.1 THE PUBLIC'S ROLE EXPECTATIONS OF THE JUDGES OR MAGISTRATES

- ▶ There is on the part of the public, a belief that the roles of all judicial officers are similar, which is a major obstacle in the public's ability to appreciate the complexity of the system (*Bartollas, Miller, and Wice, 1983 : 134*)
- ▶ The public believes that all judges possess certain personality traits that are guaranteed by their elevated position - patience, wisdom, sensitivity, and a keen sense of fairness
- ▶ The public believes that despite their political appointment, popular election, and public exposure, judges will still act above worldly influences, and their decision making will totally be unaffected by outside influences
- ▶ The public believes that a judge is always a neutral arbiter of the facts and that his or her strong moral character is supposed to steer him or her past the perils of bias and favouritism
- ▶ Most of the public also assumes that the judge is dominant in the criminal justice system, from arrest through sentencing
- ▶ Judges are thought to control the behaviour of police, the prosecutors, the defence attorneys, the court administrators and the probation officers, thereby ensuring that all work is in ideal harmony towards the common goal of a safe and just society
- ▶ As the heads of the criminal justice team, judges are charged with the

responsibility of overriding both constraints imposed by the other actors in the system and any outside influences, such as media and community pressure

- ▶ A final common belief, a slight variation on the previous one, is that judges are primarily concerned with trials and not bothered by the tedious administrative details of overseeing the massive bureaucratic machine (*Bartollas, Miller, and Wice, 1983 : 134 - 5*).

2.4.3.1.2 THE ACTUAL ROLE BEHAVIOUR OF THE JUDGES OR MAGISTRATES

The judge's actual role behaviour represents a blend of the duties they are expected to perform, the public's expectations and influence, tradition, political pressure and the realities and pressures of their jobs (*Bartollas, Miller, and Wice, 1983 : 135*). *Senna and Siegel (1998 : 284)*, contend that the judges have critically important tasks to perform between the offender's arrest and trial. These include arraignments, bail hearings, plea-bargaining negotiations, and predisposition treatment efforts.

2.4.3.1.3 PRETRIAL RESPONSIBILITIES OF THE JUDGES OR MAGISTRATES

Although there will be a thorough discussion on this heading in chapter four, the researcher wants to highlight some of the judges responsibilities at this stage of the court procedures.

- The defendant is constitutionally guaranteed the right for an immediate appearance before a judicial officer. Therefore, a judge or magistrate should inform or notify the defendant of the following:
 - ▶ the right to remain silent
 - ▶ specify charges against the defendant
 - ▶ set bail option; and

- the time for the preliminary hearing (*Bartollas, Miller, and Wice, 1983: 135 - 6*).
- In addition, it is at this stage where the prosecution and the defence almost always meet to try to arrange a non-judicial settlement for the case (*Senna and Siegel, 1998 : 284*).

2.4.3.1.4 JUDGE'S ROLE IN CONCLUDING THE TRIAL

When the judge or magistrate serves as a trier of the fact on issues such as search and seizure and confessions, a trial judge has almost absolute power to assess the credibility of witnesses and to resolve conflicting testimony. A trial judge's decision to acquit in the face of strong evidence of guilt may not be appealed and bars further prosecution. Through his/her attitude or facial expressions he/she may influence the jury's determination of factual issues in a way that will not be reflected in the records before the appellate record (*Bartollas, Miller, and Wice, 1983 : 138 - 9*).

2.4.3.1.5 JUDGE'S ROLE IN SENTENCING

The sentencing decision is the primary example of the autonomy of trial judges. However, this is not to imply that the decision is made in total isolation. Judges receive presentence report from probation officers that provide information on the criminal and social background of the defendant. They are pressured by sentencing recommendations from the prosecution office and pleas for leniency from the defendant's counsel and family (*Bartollas, Miller, and Wice, 1983 : 139*).

2.4.4 CORRECTIONAL SERVICES

Correctional Institutions has a long history, from the Workhouses of Holland,

England, and Colonial Pennsylvania through the Penitentiary Movement, the Reformatory Movement, and the medical Model of Confinement to the contemporary prisons and jails (*Adler, Mueller, and Laufer, 1994 : 376*). Following a criminal trial resulting in conviction and sentencing, the offender enters the correctional system (*Senna and Siegel, 1998 : 14*). But in South Africa, the same prisons are used to hold people awaiting trial for offences ranging from minor up to very serious crimes, including murder and rape. The correctional services is therefore responsible for the following functions:

▶ ***To maintain institutions:***

These institutions include various categories of prisons, halfway houses and other institutional facilities such as female and juvenile centres.

▶ ***To protect law-abiding members of society:***

Corrections is responsible for providing custody and security to keep both sentenced and unsentenced offenders removed from the “free world” so that they cannot commit further crimes on society.

▶ ***To reform offenders:***

During the incarceration of offenders, corrections is given the function of developing and providing services to assist incarcerated offenders to reform.

▶ ***To deter crime:***

Corrections is responsible for encouraging incarcerated and potential offenders to lead law-abiding lives through the experience of incarceration and the denial of freedom to live in society (*Pursley, 1994 : 9*).

The role of functions of the correctional services is thoroughly dealt with in chapter six.

2.4.4.1 PRESSURES FACING CORRECTIONAL SERVICES

The pressures facing the Department of Correctional Services are the

following:

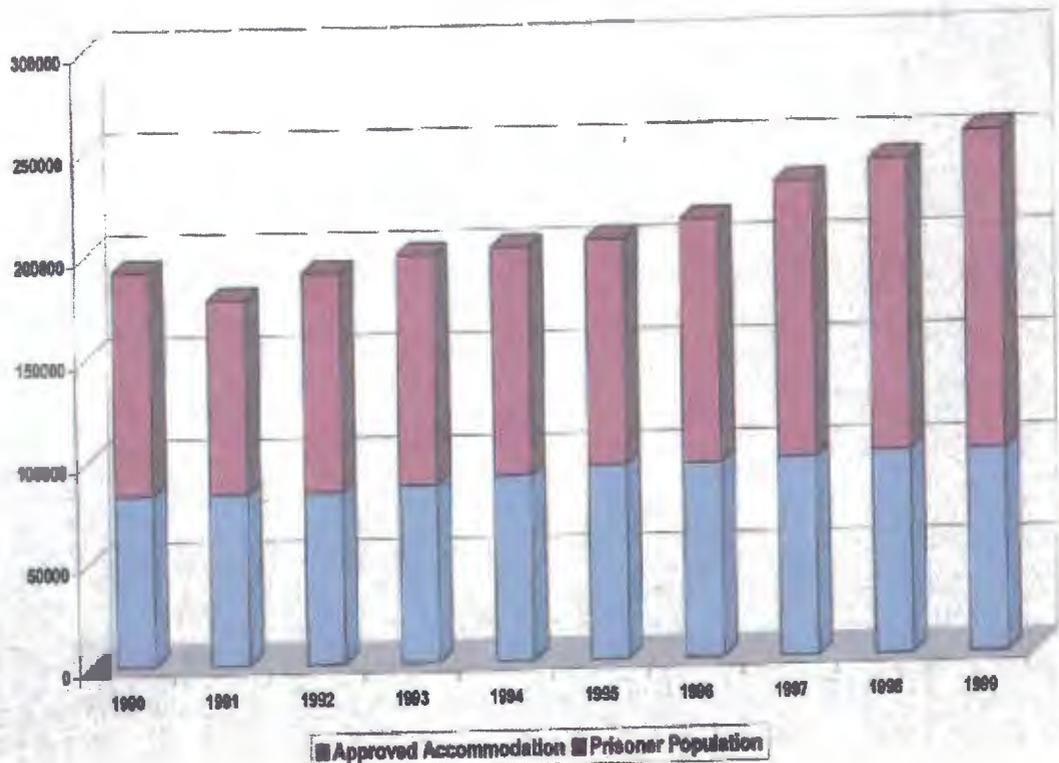
2.4.4.1.1 OVERCROWDING

The courts, which traditionally have experienced overloaded dockets, felt the pressure from the increased arrests in recent years. Judges and magistrates reacted to the law-and-order backlash by relying more on incapacitation and, therefore, prison population in nearly every province in South Africa has skyrocketed as will be indicated below.

FIGURE 1

COUNTED COUNTRY WIDE

Accommodation versus Daily Average Prisoner Population (DAPP)



Legislatures also responded to the public mood by creating the determinate sentencing structures and mandatory sentencing acts and by placing pressures on juvenile courts to wave more violent juvenile offenders to adult courts (*Bartollas, Miller, and Wice, 1983 : 22*). Although determinate sentences provide a single term of years to be served without benefit of parole, the actual time spent in prison is reduced by the implementation of "a credit system" for good behaviour (*Senna and Siegel, 1998 : 343*).

The criminal justice process in South Africa is such that there is an inevitable lapse of time between the arrests of the offender and his/her subsequent trial and that state of affairs is responsible for the overcrowded prisons in our country (*Van der Berg, 1986 : 1*). South Africa is the second to the United States, the world's leader in the number of persons it holds in prisons and in third place is the Soviet Union (*Roberts, 1994 : 254*).

2.4.4.1.2 LACK OF INMATE'S PROFILE

In an attempt to answer the question "who goes to prison" let us examine the following findings from the most recent (1999) profile survey conducted in all prisons in South Africa.

FIGURE 2

STATISTICS OF PRISONERS AS AT 31 DECEMBER 1999			
SEX	TOTAL	SENTENCE	TOTAL
FEMALE	3 893	SENTENCED	2 557
		UNSENTENCED	1 336
MALE	157 957	SENTENCED	100 799
		UNSENTENCED	57 158

RACE	TOTAL	SENTENCE	TOTAL
ASIAN	637	SENTENCED	491
		UNSENTENCED	146
BLACK	125 640	SENTENCED	76 585
		UNSENTENCED	49 055
COLOURED	31 691	SENTENCED	23 292
		UNSENTENCED	8 399
WHITE	3 857	SENTENCED	2 972
		UNSENTENCED	885
OTHER	25	SENTENCED	16
		UNSENTENCED	9

AGE GROUP	TOTAL	SENTENCE	TOTAL
17 & UNDER	2 042	SENTENCED	625
		UNSENTENCED	1 417
18 - 24	48 671	SENTENCED	26 307
		UNSENTENCED	22 364
25 - 34	68 965	SENTENCED	46 052
		UNSENTENCED	22 913
35 - 44	30 922	SENTENCED	22 154
		UNSENTENCED	8 768
45 - 54	8 984	SENTENCED	6 540
		UNSENTENCED	2 444
55 & OLDER	2 266	SENTENCED	1 678
		UNSENTENCED	588

STATUS	TOTAL	SENTENCE	TOTAL
DIVORCED	719	SENTENCED	580
		UNSENTENCED	139
ESTRANGED	23	SENTENCED	13
		UNSENTENCED	10
LIVING TOGETHER	722	SENTENCED	581
		UNSENTENCED	141
MARRIED	21 690	SENTENCED	15 392
		UNSENTENCED	6 298

STATUS	TOTAL	SENTENCE	TOTAL
SINGLE	138 371	SENTENCED	86 544
		UNSENTENCED	51 827
WIDOW	104	SENTENCED	81
		UNSENTENCED	23
WIDOWER	221	SENTENCED	165
		UNSENTENCED	56

QUALIFICATION	TOTAL	SENTENCE	TOTAL
B-DEGREES	1	SENTENCED	1
		UNSENTENCED	0
ILLITERATE	5 143	SENTENCED	5 012
		UNSENTENCED	131
MATRIC	5 959	SENTENCED	5 800
		UNSENTENCED	159
NO QUALIFICATION	91 848	SENTENCED	36 108
		UNSENTENCED	55 740
PRIMARY/ELEMENTARY	25 144	SENTENCED	24 160
		UNSENTENCED	984
STD 6	17 574	SENTENCED	16 680
		UNSENTENCED	894
STD 8	16 177	SENTENCED	15 591
		UNSENTENCED	586
TERTIARY DIPL/CERT	4	SENTENCED	4
		UNSENTENCED	0

The aforementioned survey findings on the profile of prison inmates provide us with ample evidence indicating that prison populations are disproportionately, young, black, uneducated, unskilled and single persons who reside in the lower class neighbourhoods of our nation's major cities.

2.4.4.1.3 CRIME RATES

Overcrowding is identified by criminal justice practitioners as one of the most serious problems facing the criminal justice systems in the world. Like most social problems, prison overcrowding require careful analysis of the causes and scope of the problem (*Muraskin and Roberts, 1996 : 201*). It is important to start by finding out to what degree, if any, did increases in crime over the last five years explain prison overcrowding. This can be better explained by using the following graphs:

FIGURE 3

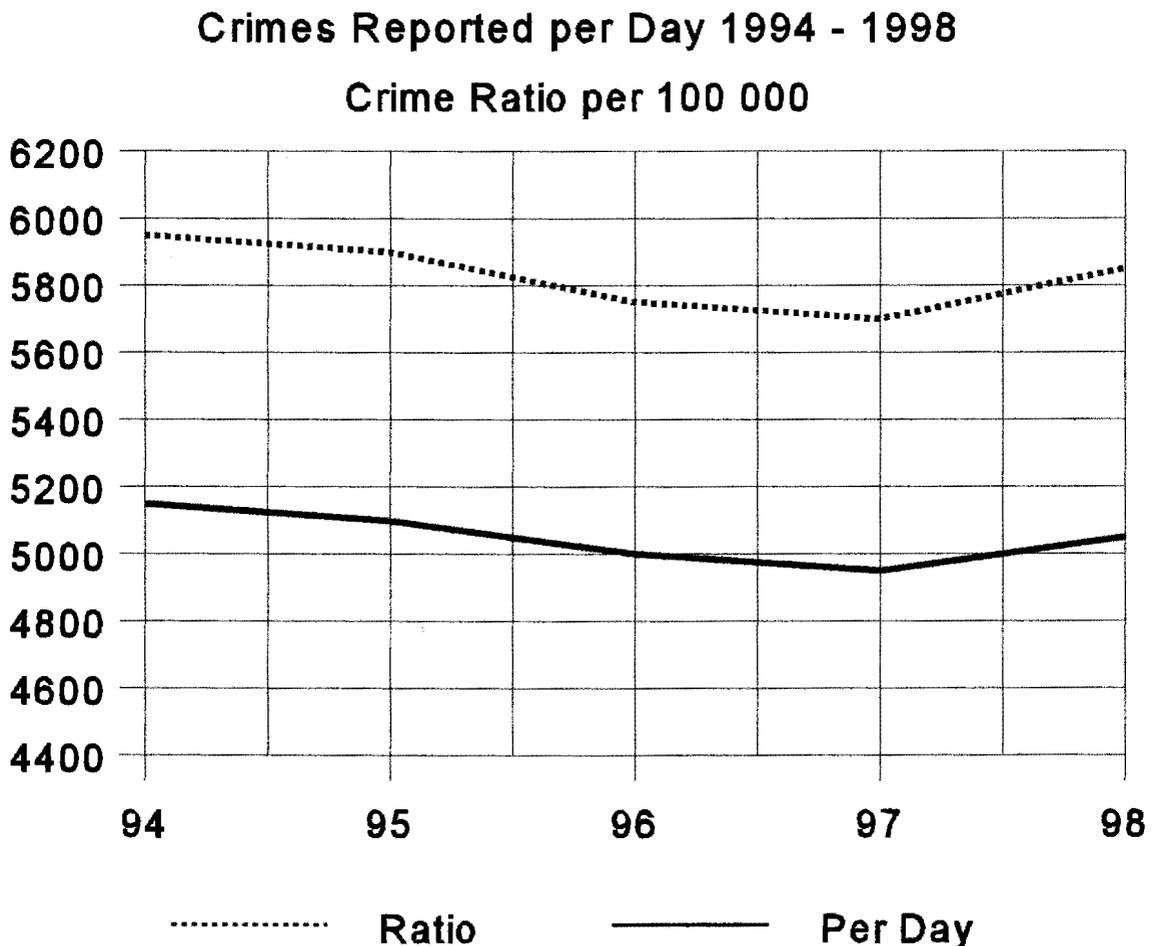
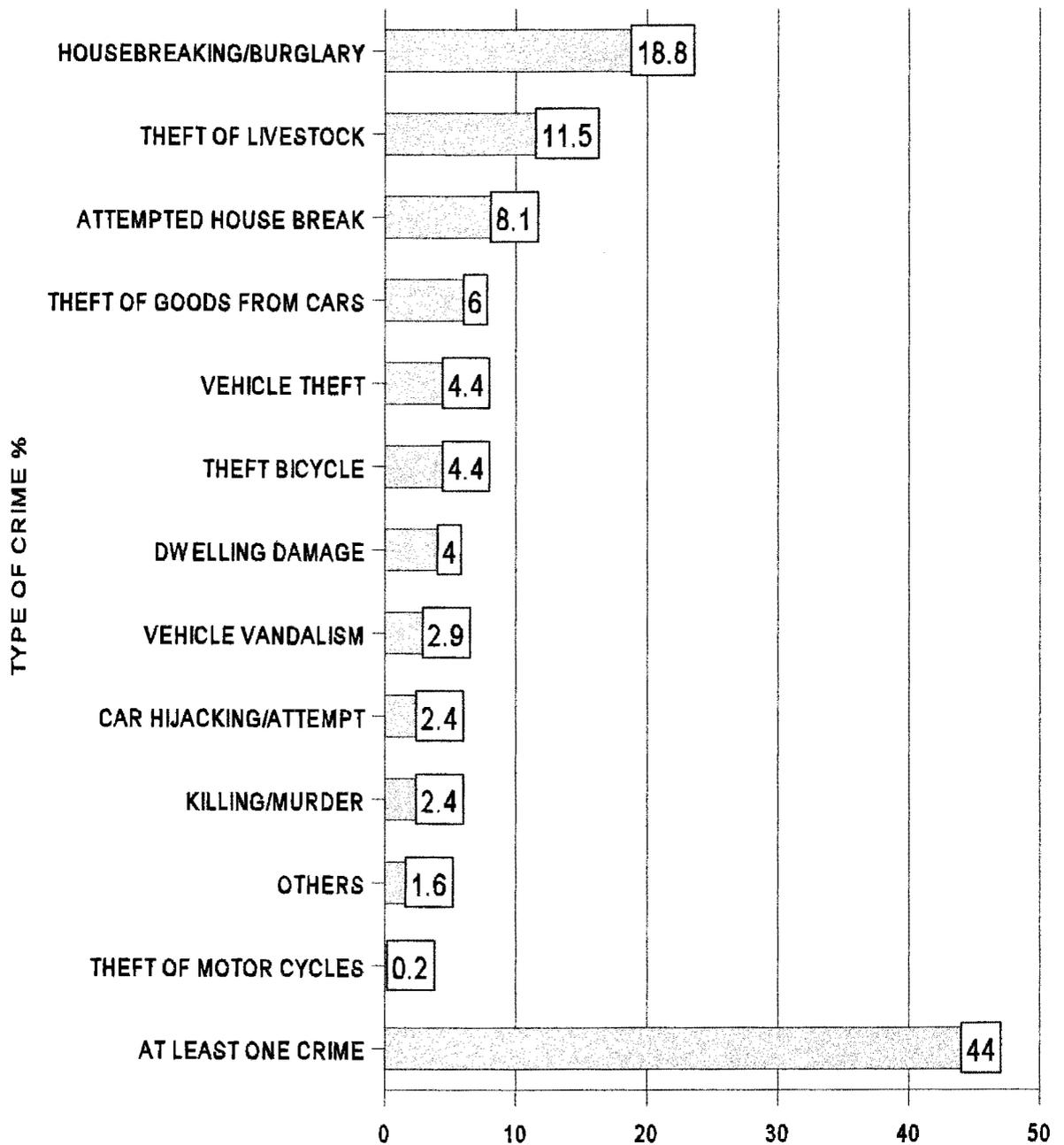


FIGURE 4

PERCENTAGE OF HOUSE HOLDS WHICH HAD EXPERIENCED SPECIFIC CRIMES, AND AT LEAST ONE CRIME, DURING THE FIVE YEARS PERIOD 1993 - 1997



2.4.4.1.4 LEGAL AND POLITICAL ENVIRONMENT

Experience has taught that where high incarceration rates are accompanied by low rates of prisoner expenditures, it becomes less likely that constitutionally acceptable standards of conditions, such as adequate medical care, food services, clothing, sanitation, and inmate safety will be met, and prisoner lawsuits become more likely. Further more, inadequate correctional spending may reflect a punitive political climate, a fiscally strapped institution, or both, but the net effect is that prison conditions deteriorate and judicial intervention becomes more likely (*Muraskin and Roberts, 1996 : 202*).

2.4.5 WELFARE

The Department of Welfare and Social Services is the sole custodian of juvenile probation in South Africa. Their special focus is on juvenile offenders, hence, the juvenile justice system as discussed in more detail in chapter six.

2.4.5.1 HISTORICAL BACKGROUND

The end of the nineteenth and beginning of the twentieth century brought a change of attitude towards the responsibility of the State for social welfare generally and the reformation of juvenile offenders in particular (*King, 1958: 71*). The legal underpinnings of juvenile probation was established in England during the early Middle Ages, under the principle of *Parens Patriae*: "The King, being the father of his country, must protect the welfare of the children" (*Latessa and Allen, 1997 : 122*).

In South Africa, the principle of *Parens Patriae* was adopted and the government thus accepted the responsibility to protect the welfare of all

children in South Africa. Therefore, from its origin, the statutory probation in South Africa was limited to juveniles character, antecedents, age, health, and mental conditions of the juvenile offender, the trivial nature of the offence and extenuating circumstances might be taken into consideration by the juvenile court before probation is granted (*King, 1969 : 6*).

As with adult probation, John August is viewed as the father of juvenile probation. His work contributed to the development of the first visiting probation agent system in Massachusetts (1869) and passage of the first enabling legislation establishing probation for juveniles (1878). In the same era, the Society for the Prevention of Cruelty to Children (1875) was established. Their proposed policies and activism directly contributed to the first juvenile court in America, specifically set up to address the care, treatment and welfare of juvenile offenders : the Cook County (Chicago), Illinois Juvenile Court in 1899 (*Latessa and Allen, 1997 : 122*).

2.4.5.2 THE PRIMARY GOALS OF PROBATION

The primary goals of probation is to assist juveniles in dealing with their individual problems and social environments. It is believed that, resolving underlying causes of the youthful offenders would permit their reintegration into the community. It is further argued that probation, rather than incarceration, should be the disposition of choice, because:

- ⇒ Probation provides for community safety while permitting the youthful offender to remain in the community for reintegration purposes (*Latessa and Allen, 1997 : 125*). By the same token, *Hamaj, Villé, Harris, Hough, and Zvekic (1995 : 78)* state, the purpose of probation is to put in place a management plan under which financial, addictive, psychiatric, psychological, health, interpersonal or other problems relating to the offending behaviour are addressed.
- ⇒ Institutionalization leads to prisonization, the process of learning the norms and culture of institutional living. This decreases the ability of the

juvenile to function as a law abiding citizen when released, and thus leads to further involvement as an adult offender (*Latessa and Allen, 1997 : 123*).

- ⇒ The stigma of incarceration is avoided (*Latessa and Allen, 1997 : 124*).
- ⇒ The negative labelling effects of being treated as a criminal are avoided (*Latessa and Allen, 1997 : 124*).
- ⇒ Reintegration is more likely if existing community resources are used and the youth continues to engage in social and familial support systems (family, school, peers, extra-curricular activities, employment, friends, etcetera) (*Latessa and Allen, 1997 : 124*). *Hamai, Villé, Harris, Hough and Zvekic (1995 : 78)*, contend that probation enables the offender to demonstrate that he / she will not re-offend and the payments of restitution in appropriate cases can be supervised.
- ⇒ Probation is less expensive than incarceration, arguably more humanitarian, and is at least as effective in reducing further delinquent behaviour as in institutionalization (*Latessa and Allen, 1997 : 124*).

2.4.5.3 GRANTING OF PROBATION

Currently, probation in South Africa is a privilege, not a right. It is therefore an "act of grace" extended by the sentencing judge or magistrate over the trial (*Latessa and Allen, 1997 : 163*).

Although it is said that probation is a matter of grace and whether it is granted is within the discretion of the judge, as in other situations (e.g. parole) the grace and the discretion mean that the possibility shall be considered and that the consideration shall be in accord with the philosophy and purpose of the statute. In other words, the judge may not refuse to go through the procedure provided by law for determining whether to place the defendant on probation, and consideration must be given on the merits (*Rubin, 1973 : 219 - 220*).

The South African criminal justice statistics revealed that 32 percent of all

convicted juvenile offenders were on probation, 41 percent were on parole, 59 percent were in prison, and 68 percent were awaiting trial.

Figure 4 illustrates the frequency with which probation was imposed at sentencing by crime conviction.

FIGURE 5

JUVENILES SENTENCED TO PROBATION DURING 1999

STATUS	TOTAL	AVERAGE %	CRIME CATEGORY	TOTAL	AVERAGE %
SECTION 276 A(3)	14	0.27	AGGRAVATED ASSAULT	5	0.10
			LARCENY	4	0.08
			OTHER CRIMES	4	0.08
			ROBBERY	1	0.02
SECTION 276(1)(h)	1 695	32.64	AGGRAVATED ASSAULT	178	3.43
			BURGLARY	114	2.20
			DRUG TRAFFICKING	59	1.14
			HOMICIDE	42	0.81
			LARCENY	575	11.07
			MURDER	19	0.37
			OTHER CRIMES	491	9.46
			RAPE	68	1.31
			ROBBERY	149	2.87
SECTION 276(1)(l)	541	10.42	AGGRAVATED ASSAULT	48	0.92
			BURGLARY	43	0.83
			DRUG TRAFFICKING	7	0.13
			HOMICIDE	24	0.46
			LARCENY	139	2.68
			MURDER	13	0.25
			OTHER CRIMES	196	3.77
			RAPE	26	0.50
			ROBBERY	45	0.87

STATUS	TOTAL	AVERAGE %	CRIME CATEGORY	TOTAL	AVERAGE %
SECTION 2874(4)(a)	2 874	55.34	AGGRAVATED ASSAULT	730	14.06
			BURGLARY	34	0.65
			DRUG TRAFFICKING	356	6.86
			HOMICIDE	3	0.06
			LARCENY	1 006	19.37
			MURDER	3	0.06
			OTHER CRIMES	686	13.21
			RAPE	12	0.23
			ROBBERY	44	0.85
SECTION 287(4)(b)	15	0.29	AGGRAVATED ASSAULT	2	0.04
			BURGLARY	1	0.02
			DRUG TRAFFICKING	2	0.04
			LARCENY	4	0.08
			OTHER CRIMES	5	0.10
			ROBBERY	1	0.02
SECTION 290	5	0.10	AGGRAVATED ASSAULT	1	0.02
			BURGLARY	1	0.02
			MURDER	1	0.02
			OTHER CRIMES	1	0.02
			ROBBERY	1	0.02
SECTION 297	21	0.40	DRUG TRAFFICKING	3	0.06
			LARCENY	9	0.17
			OTHER CRIMES	8	0.15
			ROBBERY	1	0.02
			DRUG TRAFFICKING	5	0.10
			LARCENY	5	0.10
			MURDER	4	0.08
			OTHER CRIMES	11	0.21
			ROBBERY	3	0.06

2.4.5.4 CONDITIONS OF PROBATION

Probation is intended to reform probationers, to make them more law-abiding (*Champion, 1999 : 127*). Therefore, when probation is granted, the court may impose certain reasonable conditions on the offender, which the probation officer is expected to monitor in the supervision process (*Latessa and Allen, 1997 : 182*).

General conditions include obeying laws, submitting to searchers, reporting regularly to the supervising officer, notifying the officer of any change in job or residence, and not being in possession of a firearm, associating with known criminals, refraining from excessive use of alcohol, or not leaving the court's jurisdiction for long periods of time without prior authorization (*Champion, 1999: 130; Latessa and Allen, 1997 : 182*).

It is essential to mention that specific conditions are generally tailored to the needs of the offender or philosophy of the court. For reintegration or other such purposes, the court may impose conditions of medical or psychiatric treatment; residence in a halfway house or residential centre; intensive probation supervision, electronic surveillance, house arrest, community service, active involvement in Alcoholics Anonymous; participation in a drug abuse program; restitution or victim compensation; no use of psychotropic drugs (such as cocaine or marijuana); observing a reasonable curfew; no hitchhiking; staying out of bars and poolrooms (particularly if the probationer is a prostitute); group counselling; vocational training; or other court-ordered requirements (*Latessa and Allen, 1997 : 182 - 5*).

2.4.5.5 SUPERVISION OF PROBATIONERS

All the statutes make clear that the probationer remains legally subject to the jurisdiction of the court that placed him or her on probation (*Rubin, 1973 : 19*). Once placed on probation, offenders are supervised and assisted by probation officers who are increasingly using existing community agencies and services to provide individualised treatment based on the offender's needs (*Latessa and Allen, 1997 : 192*). Offenders are assigned probation officers who arrange frequent contacts with their clients on a face-to-face basis. These contacts may be weekly, a few times a week, or daily (*Champion, 1999 : 129*). However, there is considerable variation in intensive supervised probation programs among jurisdictions, since probation officer caseloads vary. These caseloads depend on the financial resources of the jurisdiction and local definitions of the maximum number of clients probation officers must supervise (*Champion, 1999 : 129*).

2.4.5.6 VOLUNTEERS WITHIN THE PROBATION SYSTEM

In some countries volunteers play an important role in the probation service, not only in relieving the pressure of work on probation officers, but also in stimulating community participation in criminal justice and facilitating the reintegration of offenders in the community (*Hamai, Villé, Harris, Hough, and Zvekic, 1995 : 174*).

2.4.5.6.1 VOLUNTEER INVOLVEMENT

Volunteers are involved in work with individual clients, group work, programme work and providing to offenders and their families in prison and the community in areas such as literacy, social skills, transport, general support for clients and

their families, art and craft courses, driver training, basic mechanics, sewing, cooking, aboriginal culture craft and recreational activities (*Hamai et al., 1995: 176*).

2.4.5.6.2 VOLUNTEER SELECTION

Volunteers are selected on the basis of the experience and skills they bring into the department. To be selected, volunteers need to be reliable, realistic and at the same time have empathy for clients and to be good communicators (*Hamai et al., 1995 : 177*).

2.4.5.6.3 VOLUNTEER PAYMENTS

Volunteers are only paid out-of-pocket expenses. This is usually payment for use of private car, mileage and fares for public transport. They are provided with accreditation and an identification card which provides them with access to all departmental facilities. Certificates of recognition are presented to volunteers who have completed five, ten and fifteen years' continuous service. Training is provided for probation officers to ensure appropriate use and support of volunteers. There are bi-monthly meetings with staff and volunteers, who also attend staff meetings at community correctional centres (*Hamai et al., 1995 : 177*).

2.5 THE QUESTION OF VOLUNTEERS AND COMMUNITY INVOLVEMENT IN THE CRIMINAL JUSTICE SYSTEM

The volunteers have been part of society's effort to help others in trouble, whether economically, in matters of health, in conflict with the law, or in any type of debilitating circumstance. The familiar legend of the Good Samaritan suggests the value that people have long placed on assisting fellow human

beings in trouble, without expecting compensation (*Fox, 1985 : 234*).

Throughout history, there have been individuals willing to give of themselves in time, effort, resources, and money to help their fellow man. Society is sufficiently complex, and the need for services so great on the part of many people, that it becomes necessary formally to recruit, train, and supervise those individuals willing to extend a helping hand to those needing help (*Routh, 1972: 3*). The establishment and management of volunteer program is discussed in details in chapter seven.

2.5.1 CITIZENS AS VOLUNTEERS

Few persons would dispute the need for community participation in the criminal justice system efforts. In a democracy, the nature, quality, and objectives of a criminal justice system should reflect community sentiments. An involved and informed public is essential for conscientious, intelligent decision making; otherwise, criminal justice system will be shaped only by political and bureaucratic interests (*McCarthy and McCarthy, 1991 : 371*). Traditionally, the function of volunteers in private endeavours has been to fill gaps between governmental social services and actual need. In other words, the private individuals and groups have provided service to people in need when governmental agencies did not (*Callison, 1983 : 165*).

2.5.2 SERVICE ROLES FOR THE CRIMINAL JUSTICE VOLUNTEERS

There seems to be no limit to the roles for today's volunteers in the criminal justice systems. *Schier and Berry* have identified ten general roles that volunteers may fill:

- Support, friendship, someone who cares and will listen
- Mediator, facilitator of social-physical environment (get jobs, intercede with teacher, open up opportunities, run interference with system)
- Behaviour model, just be a good example
- Limit setting, social control, conscience
- Teacher-tutor in academic, vocational, or social skills
- Observation, information, diagnosis, understanding, extra eyes and ears on the criminals, on the community, or even on the agencies on behalf of the community
- Training rather than trainer; intern preparing for a career in the criminal justice system
- Advisory or even decision-making participation in formulating policy
- Administrative support, office work, and related facilitation
- Help recruit, train, advise, supervise other volunteers (*McCarthy and McCarthy, 1991 : 376*).

2.5.3 COMPETENCIES REQUIRED FOR VOLUNTEERS WORKING IN THE CRIMINAL JUSTICE SYSTEM

It appears that the diversity of roles volunteers have to play in the criminal justice processes, require specific competencies. The following competencies are listed by *McCarthy and McCarthy (1991 : 37)*, as essential for any successful volunteer programme:

- Ability to understand and withstand provocative behaviour without becoming punitive
- Development of objectivity in accepting relationships with all clients in a non-judgemental manner, without either punitive or emotional involvement

- Ability to accept a person without personal involvement, with neither punitive nor sentimental views, much the same as a physician views a patient - this does not mean complete detachment, but rather an empathic relationship
- Knowledge of on-the-job counselling techniques
- Ability to say no, with reasons when necessary, and the ability to say yes, with equal reason
- Sensitivity to pathological behaviour as compared with normal random behaviour sufficient to permit intelligent referral to professional staff and/or agencies
- Ability to assess strengths of an individual to determine what there is to build on in the treatment of an offender
- Ability to make referrals to all staff, community resources and other specialists with some understanding and sophistication
- Ability to use tact to avoid creating or aggravating problem situation
- Ability to use tact to ameliorate developing problem situations
- Willingness to augment and support the staff of the agency or institution
- Ability to observe and accurately record:
 - ⇒ Individual behaviour as pathological or manipulative and which consequently might need referral to professional staff
 - ⇒ Group behaviour signalling the beginning of a potentially dangerous association.
 - ⇒ Miscellaneous behaviour that may be part of illegal activity or regression to earlier behavioural patterns.
- Ability to assess community and family attitudes toward the offender
- Ability to interpret constructively agency or community attitudes and

behaviour toward the person on the volunteer's case load

- Ability to serve as an upward communicator from the offender to the agency or institution with a view toward improving services and policies
- Ability to exert external controls by persuasion on individuals who need containment
- Knowledge of specific procedures that might be modified or elaborated in training programs, consultations or other ways by which the agency or institutional staff can assist the volunteer in understanding situations and desirable policy
- Knowledge of the constitutional and civil rights of persons on the case load and ability to incorporate that knowledge into the supervisory process
- Ability to interpret the system of justice,, including the laws of arrest, judicial procedure, and a total correctional process, in order to answer correctly questions put by the offender (*McCarthy and McCarthy, 1991: 377*).

2.5.4 LEGAL ISSUES IN VOLUNTARISM

There are a number of legal questions surrounding the administration of volunteer programmes:

- ▶ Should the volunteer have access to confidential case material, and will his communications be protected by the same degree of privilege as accorded his professional colleague?
- ▶ Should the volunteer be required to sign waivers granting immunity to the agency from his negligent actions?
- ▶ What happens if the volunteer is an ex-offender?

- ▶ What about situations requiring the arrest of a client? (*McCarthy and McCarthy, 1991 : 383*).

Problems can also arise concerning the insurance coverage required for volunteers and their use of such government property as automobiles. *McCarthy and McCarthy (1991 : 384)*, contend that a good program planning includes a reassessment of agency insurance needs, efforts to clearly identify volunteer roles and their relation to agency staff and an examination of existing statutes and their potential impact on the volunteer program. These steps are essential if volunteers, agency clients, and staff members are to achieve the full benefit of volunteer efforts. These topics are further discussed in chapter seven in more details.

2.5.5 THE BILL OF RIGHTS FOR VOLUNTEERS

These rights were prepared by the American Red Cross, they are the following:

- The right to be treated as a co-worker - not just as free help, not as a prima donna
- The right to a suitable assignment with consideration for personal preference, temperament, life experience, education, and employment background
- The right to know as much about the organization as possible - its policies, its people, its program
- The right to training for the job - thoughtfully planned and effectively presented training
- The right to continuing education on the job as follow-up to initial training, information about the new developments, training for greater responsibility

- The right to sound guidance and direction by someone who is experienced, well informed, patient and thoughtful and who has the time to invest in giving guidance
- The right to a place to work, an orderly, designated place, conducive to work and worthy of the job being done
- The right to promotion and variety of experiences, through advancement to assignments of more responsibility, through transfer from one activity to another, through special assignments
- The right to be heard, to have a part in planning, to feel free to make suggestions, to have respect shown for and honest opinion
- The right to recognition in the form of promotion and awards, through day-to-day expressions of appreciation, and by being treated as a bonafide co-worker (*McCarthy and McCarthy, 1991 : 384*)

2.5.6 CATEGORIES OF VOLUNTEERS

Manser and Cass (1976 : 51 - 2), defined five main categories (types) of volunteers, as follows:

2.5.6.1 SERVICE VOLUNTEERS

Service volunteers are considered to be the traditional people helping group who attempt to help others directly and who, in terms of the organizational context in which they work, may be sub-defined into three, namely:

- Those in institutional programmes, for example, churches, prisons and schools
- Those in autonomous service groups, for example, Red-Cross
- Those in self-help groups, for example, drug programmes, and welfare rights programmes.

2.5.6.2 PUBLIC ISSUE/ADVOCACY VOLUNTEERS

Public issue/advocacy volunteers are those persons whose concern is with the social, economic and political roots of problems for large groups of people, and who, depending on their primary interest, may be either:

- Public information volunteers
- Political campaign workers
- Public issue volunteers; or
- rights advocacy volunteers.

2.5.6.3 CONSUMMATORY/SELF-EXPRESSIVE VOLUNTEERS

Consummatory / self-expressive volunteers are those who generally appeal not to altruistic motivation, but to some self-interest usually emphasizing fellowship, employment, and which may be sub-divided into:

- Cultural/aesthetics volunteers
- Social club members
- Recreational club members; or
- Hobby and games club members.

2.5.6.4 OCCUPATIONAL/ECONOMIC SELF-INTEREST VOLUNTEERS

Occupational/economic self-interest volunteers, again like the third category, are self-orientated by which they seek to protect and enhance their occupational and/or economic interests, they may at the same time engage in programmes beneficial to the community as a whole, among these are:

- Professional association members
- Businessmen
- Civic association members; and
- Labour union members.

2.5.6.5 FUND-RAISING VOLUNTEERS

Fund-raising volunteers are primarily involved in the process of raising funds and who may be either:

- General fund raising volunteers, for example, United fund Workers; or
- Specific fund raising volunteers.

2.6 ADVANTAGES OF VOLUNTEER INVOLVEMENT IN CRIMINAL JUSTICE SYSTEM

- ▶ Volunteers can bring new energy, ideas, talents, and resources, such as community goodwill and influence to the agency
- ▶ They can augment the jobs of the agency personnel by providing support services, such as clerical and reception services
- ▶ Volunteers can be used to compile presentence reports for the courts.

2.7 SUMMARY

Although this chapter focussed upon the key components of the criminal justice process, an overview of their operation functions and critical pressures, the readers are challenged to find solutions to the conflict between what the public expect of the criminal justice system and the realities facing the justice system in South Africa.

The question whether or not the community volunteers should be involved in the criminal justice system is actually an essential one. The following chapter will be focussing on the role that volunteers can play in the police officer's work, the courts and correctional service. When discussing these roles, the researcher will focus on lessons learnt in South Africa and abroad.

CHAPTER 3

THE ROLE AND FUNCTIONS OF VOLUNTEERS IN THE SOUTH AFRICAN POLICE SERVICE3.1 INTRODUCTION

The vision of the Department of Safety and Security is that the people of South Africa enjoy greatly improved levels of safety through, firstly, more effective and efficient policing as part of an effective justice system and, secondly, through a greater ability to prevent crime (*White Paper on Safety and Security, 1998 : 1*).

In recent years national and international attention has been directed to the police and the nature of policing (*Petersen, 1979 : 9*). It is a matter of common knowledge that policing in the Republic of South Africa (RSA), as is the case in the United States of America, is under constant attack. It is furthermore beyond doubt that the crisis is multipolar in nature. Policing is under pressure from many segments of the community, as indicated in our previous chapter, owing to the expectations that are often diverse and sometimes even in conflict (*Mathews, et al., 1993 : 21*).

Therefore, this chapter discusses the need and the importance of strengthening police relationships with the communities they are serving. This is critical because poor police-community relations will adversely affect the ability of the police to prevent crime and apprehend criminals (*US Commission on Law Enforcement Report, 1967 : 144*). The emphasis here is that the police is in fact not separate from the people. They draw their authority from the will and consent of the people, and they recruit their officers from them. The police

are, therefore, the instrument of the people to achieve and maintain order; their efforts are founded on principles of public service and ultimate responsibility to the public. Finally, this chapter describes the ways in which productive relationship between the people and their police can be established.

3.2 DEPARTMENTAL STRUCTURE : ROLES AND RESPONSIBILITIES OF THE SOUTH AFRICAN POLICE SERVICE

The Department of Safety and Security at the national level is informed by the following outline of broad roles and responsibilities. They are presented below:

3.2.1 MINISTER OF SAFETY AND SECURITY

The minister's role and responsibilities are inter alia:

- ▶ To account to the President, Cabinet and Parliament for the management and delivery of safety and security services.
- ▶ To provide, with support of the Secretary of Safety and Security, the national policing policy which directs the South African Police Service and to be accountable for the implementation of this policy.
- ▶ To provide direction for implementing the National Crime Prevention Strategy and facilitating targeted social crime prevention.
- ▶ To appropriate from Parliament, with the support of the Secretary of Safety and Security, the single budget vote for the department and to direct the use of the budget which would consist of separate expenditure allocations for crime prevention and for policing (*White Paper on Safety and Security, 1998: 26*).

3.2.2 SECRETARY OF SAFETY AND SECURITY

The Secretary of Safety and Security is a public servant, directed by the

minister to function as Head of Department and Accounting Officer for the Department of Safety and Security. On behalf of the minister, the secretary takes responsibility for the following functions which constitute the activities of the department:

- ▶ Policy, strategy and budgeting
- ▶ Auditing
- ▶ The negotiation, development, implementation and control of performance contracts
- ▶ To provide ministerial support
- ▶ To provide a communications capacity
- ▶ To account to the minister and to Parliament on departmental issues and activities (*White Paper on Safety and Security, 1998 : 27*).

3.2.3 SOUTH AFRICAN POLICE SERVICES

The objectives of the South African Police Service are to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, and uphold and enforce the law. The South African Police Service is headed by a National Commissioner appointed by the President to fulfil the terms of a performance agreement outlining specific performance indicators as approved by the Minister of Safety and Security. This entails the following:

- ▶ Assuming responsibility for the executive command and control of the South African Police Service in the performance of the objectives of the police as set out in the Constitution
- ▶ Providing an effective and efficient policing service in terms of the specific performance indicators outlined in the performance agreement

- ▶ Formulating an operational budget for its line and support functions in terms of the national policing policy
- ▶ Maintaining executive management control and accountability for the budget and the associated performance agreements
- ▶ Ensuring effective and efficient management and control of police resources, including human resources, to meet the specific goals articulated by the Minister in the performance agreement
- ▶ Focusing the resources and activities of the South African Police Service on the three major policing priorities outlined in the White Paper, namely the enhancement of:
 - criminal investigation
 - crime prevention through targeted visible policing; and
 - service delivery through support to victims of crime
- ▶ To account to the Minister and to Parliament on policing issues and activities from time to time or as requested (*White Paper on Safety and Security, 1998 : 27 - 8*).

Members of the South African Police Service serve in various specialised divisions, each of which is structured to render service in a specific sector of the community, namely:

3.2.3.1 DIVISION : DETECTIVE SERVICE

The main objectives of the Detective Service at National Head Office and in the provinces are to ensure:

- ▶ The effective investigation of crime
- ▶ Excellence in service rendering

- ▶ The effective gathering, management, use and dissemination of crime information in order to meet the legal responsibility of the South African Police Service (*South African Year Book, 1999 : 250*).

3.2.3.2 DIVISION : SUPPORT SERVICES

The main responsibility of the Support Services division is to ensure that an efficient support service is rendered to every member of the South African Police Service. At the end of 1998, the service had a personnel corps of 129,000 which included both members appointed under the Police Act, 1958 (Act 7 of 1958) and personnel appointed under the Public Service Act, 1984 (Act 111 of 1984). This division consists of Financial Services, Logistics, Auxiliary Services and Information Systems (*South African Year Book, 1999 : 250 - 1*).

3.2.3.3 DIVISION : CRIME PREVENTION AND RESPONSE SERVICES

The main responsibilities of this division are the prevention and detection of cross-border crime and the effective policing of all ports of entry into South Africa, crowd management, protection of every important person, operational planning and policy, as well as, standards for crime prevention and victim support.

The functions performed by this division are divided into five separate components:

- ▶ Border Policing
- ▶ Public Order Policing
- ▶ National Protection Service
- ▶ Operational Planning; and
- ▶ Crime Prevention.

3.2.3.4 DIVISION : HUMAN RESOURCE MANAGEMENT

The objective of this division is to provide, develop and maintain a content and motivated corps of employees with the South African Police Service. Human Resource Management consists of the following components:

- ▶ Labour Relations
- ▶ Equity
- ▶ Conditions of Service
- ▶ Human Resource Legal Services; and
- ▶ Personnel Service.

Personnel Services is responsible for all personnel related matters and the development of all directives in respect of career management, personnel provisioning, promotions, placements, service terminations. Organisational health and safety, social work services and psychological services (*South African Year Book, 1999 : 251*).

3.2.3.5 DIVISION : MANAGEMENT SERVICES

This Head Office division focuses on strategic management, organisational development, audit and inspection, anti-corruption, communication and research.

Given these responsibilities, this division follows an consultative, problem-solving approach, liaising internally with other South African Police Service divisions, and externally with relevant communities and interested stakeholders to formulate policies, priorities, strategies and means by which the impact of

these can be effectively measured, evaluated and, whenever necessary, modified (*South African Year Book, 1999 : 252*).

3.2.4 NATIONAL CRIME PREVENTION STRATEGY CENTRE

The National Crime Prevention Centre is responsible for continuing the work of the Department of Safety and Security. In relation to the National Crime Prevention Strategy, including co-ordinating and facilitating the Director's General and Ministers' joint decision-making structures. This centre is responsible for:

- ▶ Researching and developing an accessible resource base regarding appropriate best practice related to the delivery of crime prevention
 - ▶ Developing social crime prevention policies and initiatives to facilitate the delivery of crime prevention
 - ▶ Facilitating delivery of social crime prevention interventions through negotiation with provincial and Local Government, the private sector and organisations of civil society
 - ▶ Facilitating delivery of targeted social crime prevention interventions by providing seed-funding for which Provincial and Local Government, non-government and community-based organisations can bid for on a project-by-project basis
 - ▶ Developing interventions, through systems analyses, aimed at dealing with the economic rationale for certain crimes
 - ▶ Monitoring the effectiveness of social crime prevention interventions at provincial and local level
 - ▶ Facilitating and monitoring continual improvements in the justice system
- (*White Paper on Safety and Security, 1998 : 28*).

Given that crime prevention functions require co-ordination and interventions between a range of government departments, private sector and communities, a coherent and formalised relationship should be developed between this department and volunteers from the community.

3.2.5 INDEPENDENT COMPLAINTS DIRECTORATE (ICD)

The ICD functions independently from the Department of Safety and Security and reports directly to the Minister of Safety and Security. Therefore, the capacity and public profile of the ICD must be enhanced to ensure it is able to carry out its mandate effectively.

The ICD performs the following functions:

- ▶ Investigate police misconduct or any offence allegedly committed by a member of the South African Police
- ▶ Investigate any death in police custody or as a result of police action
- ▶ Investigate any matter referred to it by the Minister or MEC for Safety and Security (*White Paper on Safety and Security, 1998 : 28*).

3.2.6 THE ROLE AND FUNCTIONS OF THE PROVINCIAL STRUCTURES

The roles, functions and powers of Provincial Governments are granted by the Provisions of the Constitution of the Republic of South Africa and the South African Police Act (Act no. 68, 1995).

The mandate role of the provincial structures as outlined in the Constitution (Section 206 : 3) is:

- ▶ To monitor police conduct
- ▶ To oversee the effectiveness and efficiency of the Police Service, including receiving reports on the Police Service
- ▶ To promote good relations between the police and the community.
- ▶ To assess the effectiveness of visible policing
- ▶ To liaise with the Cabinet member responsible for policing with respect to crime and poling in the province (*White Paper on Safety and Security, 1998: 30*).

3.2.7 THE ROLE AND FUNCTIONS OF THE LOCAL STRUCTURES

The decentralisation of policing functions to the lowest possible level within the South African Police Service has become a core policy tenet, which informs national policing policy. This focus on the empowerment of the local policing aims to ensure that the diverse needs of communities are met by innovative responses from South African Police Service Station Commissioners. Thus, decentralisation grants Station Commissioners more autonomy over their human resources and asset management, policing priorities and the strategies they adopt to meet them. However, this will require a greater emphasise by the Department on the recruitment, training and development of skills of both police and volunteers at a police station level (*White Paper on Safety and Security, 1998 : 32*).

Public fear of crime has led many local governments to begin to consider ways in which the visible policing resources of the South African Police Service can be supplemented. In many cases municipalities have empowered their traffic and security departments to fight crime by providing visible patrols. Several

local governments are also now considering the establishment of Local Government Police Services, or Municipal Policing. However, this is largely limited to major metropolitan areas where the problems of crime are most pressing and the resources and capacity required for establishing such services are available.

The crime prevention functions of municipal police services is primarily exercised through the visible presence of law enforcement officials by means of point duty, foot, vehicle or other patrols. Police patrols will be discussed in detail in paragraph 3.6.6 below.

An example of a municipal police service that have operated for many years and reduced crime and the fear of crime in the city, is the Durban City Police (*White Paper on Safety and Security, 1998 : 32*).

Visible policing by municipal police services include responding to complaints and reacting to crime in instances where a delay in activating a response from the South African Police Service could lead to loss of life, loss of property or the escape of perpetrators (*White Paper on Safety, and Security, 1998 : 32*).

3.3 PRINCIPLES OF POLICING

The restrictions placed upon the power and authority of the police are not the only factors that keep policing within bounds; it is also limited by its own basic principles. These principles relate mainly to the manner in which the delegated task is carried out:

- The principal aim of policing is to preserve social order by the use of preventative methods or alternatively, in the event of disruption, to restore

social order by the use of repressive methods

- The authority and power accorded to the police for the maintenance of social order, and the subsidiary objectives they adopt and the steps they take with this end in view, are dependent upon and subject to public approval, and the ability to secure and retain the respect of public
- The attainment and retention of public approval and respect include the voluntary co-operation of the public in observing the laws
- The extent to which the public co-operates proportionally diminishes the need for the use of physical force and compulsion
- The favour and approval of the public must be sought, not by pandering to the public opinion, but by enforcing the laws with constant and absolute impartiality, giving prompt, individual and friendly service to all members of society, regardless of status, social position or national affiliation, being courteous and friendly at all times and being ready to make personal sacrifices in order to save lives
- The least possible degree of violence should be used in attaining the aim of policing, and then only when persuasion, advice and warnings have failed to secure co-operation, compliance with the law and the restoration of order
- Relations with the public must at all times be maintained in a manner reflecting the historical tradition of the police as the public and the public as the police - the police being members of the public who are paid to perform services which are conducive to the general welfare and to the survival of the community, services which are in fact obligating for all members of society
- Police officials must adhere to policing and refrain from taking it upon

themselves to perform judicial functions such as making authoritative decisions as to guilt or innocence or punishment, and from administering unlawful punishments

- The absence of crime and disorder is the true criterion of police efficiency, not the visible steps taken to combat it
- The integrity of policing is reflected by the degree of personal moral responsibility evident in the behaviour and actions of every individual member of the police
- The stability of a country, and the vitality and continuity of democratic ideals is dependent upon policing which is constantly aware of the sensitive balance between individual freedom and collective security; is constantly aware of the dangers inherent in illegal and immoral coercive actions and procedures; and will never give in to the temptation to sacrifice principles by resorting to evil, means to secure good ends
- The professionalisation of policing depends primarily upon intensive selection, training, planning, and research (*Van Heerden, 1988 : 78 - 9*).

3.4 RECRUITMENT, TRAINING AND DEVELOPMENT OF POLICE OFFICERS

The three sub-headings are discussed below.

3.4.1 RECRUITMENT AND APPOINTMENT

No police agency can be better than the police officers who compose it. One way to obtain better police officers is to recruit better educated police applicants (*Peterson, 1973 : 319*).

Recruitment and appointment of the South African police officers is governed

by Section 28 of the South African Police Service Act (Act 68 of 1995). This section covers, inter alia, that:

- ▶ The National Commissioner shall determine a uniform recruitment programme for the service
- ▶ Subject to Section 27, the National Commissioner may appoint a person to a post in the fixed establishment of the service
- ▶ Any commissioned officer, magistrate, additional magistrate or assistant magistrate may, if sufficient permanent members are not available at a particular locality to perform a specific police duty, appoint such fit and proper persons as may be necessary as temporary members to perform such duty on such terms and conditions as may be prescribed (*South African Police Service Act, No. 68 of 1995*).

3.4.2 TRAINING OF POLICE

In the case of *Canton v. Harris (1989)*, the Supreme Court held that inadequate police training may result in the imposition of municipal liability when the failure to train could be construed as a deliberate indifference to the constitutional rights of persons with whom the police come into contact. Since then, it has become increasingly important for police training to be assessed, to determine the propriety, adequacy, discernibleness and utility of the curriculum (*Police Journal Volume 21 number 1, 1998 : 54 - 5*). Carefully selected and well trained police personnel form a strong foundation upon which successful police administration is built (*Peterson, et al., 1973 : 320*).

Training of police officers in South Africa is determined by the National Commissioner in terms of Section 32 of the South African Police Services Act

(Act no. 68 of 1995). However, the Constitution of South Africa (Section 205, Act 108 of 1996) stipulates the following regarding the Police Service:

- ▶ The National Police Service must be structured to function in the National, Provincial and where appropriate, local spheres of Government
- ▶ National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of provinces
- ▶ The objectives of the police service are to prevent, combat and investigate crime to maintain order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

In addition, the vision of South African Police Service supports the above statement. The vision of the Department of Safety and Security is that the people of South Africa will enjoy greatly improved levels of security. However, the Mission State statement of the same department supporting the vision, reads as follows:

Real reductions in crime will be attained through, firstly, more effective and efficient policing as part of an effective justice system and, secondly, through a greater ability to prevent crime (*Draft White Paper in Service of Safety 1998, 2003 : vi*).

3.4.3 DEVELOPMENT OF POLICE

The public image of any police agency is determined by the nature of the contacts between its officers and the citizens. Both the police service and misconduct by police officers are noted by the public and reflect favourably or unfavourably on the entire force (*Melnicoe and Mennig, 1969 : 2*).

Basic training followed by annual in-service training provides a foundation upon which police agency can maintain and build operational effectiveness. Therefore, every police agency should provide at least 40 hours of formal in-service training annually to all sworn police employees. This training should be designed to maintain, update, and improve necessary knowledge and skills (*Peterson, et al, 1973 : 404 - 405*). By the same token, *Melnicoe and Mennig (1969 : 2)*, contend that even the professional policeman can fail if he has not had enough training in the principles of organisation and administration and their applications.

3.4.3.1 SUPERVISION

The job of the police supervisor is most exacting and includes many different responsibilities, among which are the following:

- ▶ The police supervisor must make certain that all personnel under his supervision have the requisite qualifications for the positions they occupy and are placed where they can serve best
- ▶ Rules governing lines of authority must be enforced
- ▶ The efforts of all individuals and groups must be coordinated, and friction between individuals and groups must be reduced in order to maintain morale at the highest possible level
- ▶ The supervisor must watch for personality defects in those servicing under him and must note the effects of crime, and social, economic, and political change upon his personnel
- ▶ The supervisor must enforce the observance of rules and regulations, general and special orders, and departmental policies, his enforcement must be humane and rational

- ▶ The supervisor must constantly search for flaws in the structure of the department
- ▶ Weaknesses in operational plans must be detected, and faulty procedures corrected
- ▶ The reasons for failures in any phase of the department's operation must be discovered and thoroughly analysed
- ▶ The supervisor must see that all his subordinates are striving to achieve departmental objectives
- ▶ The supervisor must also take responsibility for training, planning, counselling and motivating his/her staff (*Melnicoe and Mennig, 1969 : 3*).

3.4.3.2 WORK ETHICS

The other important responsibility of a police supervisor is to insure that the employees understand and adhere to a professional code of ethics. According to *Whisenand and Rush (1998 : 37 - 8)*, ethics is concerned with moral duties and how a police officer should behave regarding both ends and means. They go on to describe ethics, as the eternal struggle between the two principles - the right and wrong. These two principles have stood face to face from the beginning of time, and will ever continue to struggle, throughout the world, namely:

- ▶ Ethics = body of moral principles or values
- ▶ Moral = right conduct
- ▶ Honesty = intending to act morally and thus subscribing to ethical principles
- ▶ Integrity = behaving in a moral way and thus manifesting ethical principles (*Whisenand and Rush, 1998 : 38*).

It is, therefore, the responsibility of senior police officers to ensure that all officers understand ethics and realise that the effects of years of hard work by all officers at all levels can be destroyed by an isolated act of rudeness or insensitivity (*Holdaway, 1991 : 5*).

3.4.3.3 ACCOUNTABILITY

Police are being led to increasingly greater accountability for both what they do (outcomes) and how they do it (process). Macquarie Dictionary defines accountability as - the liability to be called to account. To call someone to account is defined as - to demand explanation or justification of actions (*The Police Journal Volume LXVII No. 1, 1994 : 111*).

It is, however, necessary here to state the obvious. Organizations are created to achieve results. The processes through which these results are achieved are, so long as no laws are broken, of concern to no one but the organisations themselves. Therefore, the primary challenge for police in this context is to determine and maintain a focus on the results required by the community at large in return for the resources provided (*Police Journal, Volume LXVIII, No. 1, 1994 : 112*).

3.5 REPRESSIVE POLICING

The police forces are the gatekeepers of the Criminal justice system. The police provides a range of services to the public and to government, namely:

- ➔ A duty to maintain law and order and to protect persons and property
- ➔ A duty to prevent crime

- Responsibility for the detection of criminals and, in the course of interrogating suspected persons, a part to play in the early stages of the judicial process
- Some responsibility for the decision whether or not to prosecute persons suspected of criminal offences
- Duties on behalf of other government departments
- The duty of controlling road traffic
- A duty to befriend anyone who needs their help (*Uglow, 1995 : 29 - 30, and Folley, 1980 : 413*).

Since preventive policing can never absolutely protect the social order, the processes of repressive policing must be set in motion to restore the damage whenever violations occur. These processes relate to the enforcement of laws through the investigation of crime. The idea of enforcing laws implies that the lawbreaker will be brought before the judiciary to answer for his/her disorderly conduct (*Van Heerden, 1976 : 181*). However, it is essential to note that crime investigation depends entirely on the participation of the society in providing the evidence that will eventually assist the judicial authority in determining the guilt of the accused person/s. According to *Van Heerden (1976 : 181)*, legal guilt, which forms the basis of any conviction, depends upon whether or not the factual evidence has been obtained and presented in accordance with the relevant legal provisions. These provisions are discussed below.

3.5.1 DETERMINATION THAT CRIME HAS BEEN COMMITTED

One of the first responsibilities of the police upon arrival at the scene of a

reported crime is to determine whether a crime has in fact been committed (*Folley, 1980 : 413*). Frequently, people call the police on the premise that "there ought to be a law". In burglary, for example, the essential elements necessary to constitute the offence may be the breaking and entering the house of another with intent to commit a serious crime therein. Therefore, this determination may not be as simple as it sounds, as there are other considerations. This means that the officer must know the legal definitions of breaking, entering and intent (*Folley, 1980 : 414*).

3.5.2 CRIME SCENE INVESTIGATION

A criminal investigation begins when the crime is discovered by or reported to the police (*Stone and Deluca, 1980 : 55*). By the same token *Bozza (1978 : 1)*, contends that criminal investigation is a probing from the known to the unknown and a step by step reconstructive process of what has occurred. Therefore, police officials around the world could do far worse than follow Rudyard Kipling's sound advice:

"I keep six honest serving-men (they taught me all I knew).

Their names are What and Why and When and How and Where and Who." (*The Police Journal, July 1998 : 189*).

There are three general objectives for the crime scene investigation and that is:

- ➔ To assist in determining that crime has been committed and the identification of what the specific crime is
- ➔ To secure evidence that provides proof relative to the perpetration of the crime; and
- ➔ To identify the criminal (*Folley, 1980 : 414 - 415*).

In the most situations, the patrol officer is the first to arrive at the crime scene, but his responsibility will vary from department to department. However, it is becoming more common for the beat officer to assume major responsibility for the preliminary investigation. This preliminary investigation consists of: protecting the scene; preserving the crime scene; searching the scene for evidence; packaging evidence and transporting it to the crime laboratory; interviewing witnesses; and preparing a detailed investigation report that will be forwarded to the detective division for the necessary follow-up investigation (*Folley, 1980 : 415*).

3.5.3 THE PRELIMINARY INVESTIGATION

The second edition of *The Patrol Operation*, by the International Association of Chiefs of Police, breaks down the word "preliminary" as follows, so that the officer can better understand the tasks he/she must perform.

- P - Proceed to the scene promptly and safely.
- R - Render assistance to the injured.
- E - Effect the arrest of the criminal.
- L - Locate and identify witnesses.
- I - Interview the complainant and the witnesses.
- M - Maintain the crime scene and protect the evidence.
- I - Interrogate the suspect.
- N - Note all conditions, events, and remarks.
- A - Arrange for the collection of evidence.
- R - Report the incident fully and accurately.
- Y - Yield the responsibility to the follow-up investigator (*Bozza, 1978 : 2 - 3*).

Therefore, it is essential that the first officer on the scene perform the above mentioned tasks because errors committed by the first officer, especially in the safeguarding and examination of the crime scene, can never be rectified (*Bozza, 1978 : 2*). By the same token *Stone (1980 : 56)*, warns that the

responding police officer must always be prepared for the possibility to find the crime still in progress and be ready to defend himself against being attacked on arriving at the scene.

3.5.4 IDENTIFYING THE CULPRIT/S

One of the primary objectives of the investigation is the identification of the offender. The identification of the offender is usually accomplished by information by the victim and witnesses (*Folley, 1980 : 416*). In many cases the victim can name the person responsible. This is frequently true in the case of an assault.

The offender may also be identified by physical evidence, such as:

- Fingerprints
- Personal property
- Footprints
- Clothing
- Tire tracks
- Broken glass
- Tools
- Blood
- Traces of tools
- Hair
- Weapons
- Semen stains
- Shells
- Tooth marks ; and
- Bullets
- Hair

Therefore, physical evidence plays an important part in modern-day law enforcement. It can give the policeman, investigator, or criminalist basic leads or clues to the person or persons responsible for a criminal act (*Bozza, 1978: 31 - 2*). However, *Van Heerden (1976 : 183)* contends, the diverse scientific and technological analyses of the great variety of objective clues has created

a need for specialised activities which could hardly be undertaken by the crime investigator himself/herself. These activities may require the services of a variety of experts in sciences such as chemistry, physics, pharmacology, physiology, biology, entomology, odontology, geology, botany, metallurgy and forensic medicine. Obviously these experts are available in the community and that is why this call for volunteers becomes critical at this stage.

3.5.5 ARRESTING OF THE CULPRIT/S

In many instances, the actual arrest is made on the scene subsequent to the commission of the crime (*Bozza, 1978 : 416*). Therefore, most arrests take place without a warrant, but the person arrested must have committed an offence in the presence of the officer or there must be knowledge that an offence has been committed and probable cause to believe that the suspect committed it (*Adler, Mueller, and Laufer, 1994 : 212*). The constable must, however, inform the accused of the grounds for arrest and a failure to do this or giving of the wrong reason could make the arrest unlawful (*Uglow, 1995 : 71*).

3.5.6 BOOKING OF THE CULPRIT/S

Following the arrest, the suspect is taken to the jail where he is "booked". Booking refers to making the positive identification of the suspect before he is actually placed in detention. This procedure consists of fingerprinting the suspect, photographing him, and verifying his name (*Folley, 1980 : 417*). By the same token *Uglow (1995 : 81)*, contends that on arrest a suspect must be taken to a police station where he is booked. The booking procedure also develops additional records that show the time of arrest, the person arrested,

the charge against the suspect, the name of the officer making the arrest, and additional information. These records are of great importance during the trial of the suspect, and it is important that they be accurate (*Folley, 1980 : 417*).

During detention, the custody officer must ensure that the person arrested is aware of his right to legal advice, and to notify someone of the fact of his/her arrest. Throughout the period of detention, it is the custody officer's responsibility to monitor the conditions of the custody:

- ▶ how long and how often a person is interviewed
- ▶ whether medical advice is required; and
- ▶ whether proper sleep and refreshments are being provided.

Therefore, the custody officer is initially responsible for the above, as well as for the length of time that a person is detained in a police station (*Uglow, 1995: 81 - 2*).

3.5.7 INVESTIGATION AND CASE PREPARATION

Crime investigation is a systematic search for the truth. It is lawful pursuit of persons and objects required to assist in the reconstruction of the true circumstances surrounding an illegal act or negligence, and the culpable state of mind connected with such an act or omission. Reconstruction implies moving from the known to the unknown, and from the present to the past, with a view to discovering the truth about an act insofar as this can be established on the basis of its history. Investigation is therefore a matter of making observations and enquiries in order to obtain factual information about allegations, circumstances and relationships. More is involved in this process than the mere assembling of admissible evidence. Investigation actually

implies the evaluation as well as the gathering of information.

Not all of the information obtained will necessarily be acceptable as evidence. In most cases, however, it directs the gathering of information that will be admissible and acceptable as evidence. The evidence eventually offered in court is in fact the end-product of the process of discovering, tracking down, evaluating and selecting relevant information. In this sifting process the investigation should take care to obtain facts sufficient to meet the legal standards regarding proof and the drawing of inferences, in a manner that will not preclude their admissibility as evidence. The personal inferences and convictions of the investigator, which follow on the available information and his own experienced judgement, are not sufficient to establish the guilt of the accused. Successful investigation is based on honesty, accuracy and integrity in the lawful seeking of the true facts concerning the events under investigation, and an equal degree of trustworthiness, precision and probity in reporting the results of the investigation.

Although crime investigation implies the detection, identification, arrest and prosecution of the offender, its primary purpose is the positive solving of crime by means of objective and subjective clues. By objective clues, we mean factual proofs and objective explanations of these, i.e., "mute" indirect or circumstantial evidence. The subjective clues are the evidence offered by persons (victims, eye-witnesses or suspects) directly or indirectly concerned in the crime (*Van Heerden, 1988 : 182*). Therefore, the final role of the police is the continuation of the criminal investigation to ascertain all facts relative to the case for presentation in court. This report on the case must be as

complete as possible, if the process of Justice is to work effectively (*Folley, 1980 : 417*). According to *Stone and Deluca (1980 : 65)*, the investigator's problem is two fold:

First, it is necessary to determine the meaning of each item of evidence, including all of the minute, often microscopic traces. In other words, the investigator should understand what does each bit of evidence have to do with the crime.

Second, the investigator must identify the evidence, determining its relationship to the specific individual - criminal or victim or witness - who left it at the scene.

Every action that a criminal commits leaves behind some evidence, for example, tools used, windows or doors, weapons used, liquids, powders, and gasses (*Stone and Deluca, 1980 : 64*).

In order to convey ideas, we normally use a verbal description of what we seek to communicate. For instance, if we want to explain what type of car was involved in an accident, we can describe the car by make, model, year, colour of body and interior, placement of radio antenna, license plates and other details. But things are different when we have to describe or deal with an object or incident of which we know too little or nothing. In order to convey what we have in mind accurately, some other means must be found to exhibit it. Here, we talk of photographic pictures, casts, models, maps and diagrams. All these do not eliminate the need for verbal description, but they only assist the viewer in creating a mental image of actual conditions, etc. (*Inbau,*

Moenssens, and Vitullo, 1972 : 1 - 24).

3.5.7.1 THE RIGHT TO INTERROGATE SUSPECTS

The police have the right to question suspects, but they are not free to use whatever methods they choose for this purpose (*Taylor, 1979 : 47*). During this process, the investigating officer must bear in mind the suspect's privilege against self-incrimination (*Adler, Mueller, and Laufer, 1994 : 213*). As former Supreme Court Justice Felix Frankfurter suggested in *Rochin v. California* (1952):

"..... use of involuntary verbal confessions in State criminal trials is unconstitutionally obnoxious not only because of their unreliability coerced confessions offend the community's sense of fair play and decency" (*Taylor, 1979 : 47*).

3.5.7.2 THE MIRANDA RIGHTS

Still, further restriction was placed upon the power of the police to interrogate suspects in Landmark Supreme Court decision known as *Miranda v. Arizona* (1966). Here the Supreme Court set forth what has come to be known as the "Miranda Warnings" (*Taylor, 1979 : 49*).

The Miranda Rights provide that before any questioning by the police, the accused must be informed as follows:

- ➔ You have the right to remain silent
- ➔ Anything you say can and will be used against you in a court of law
- ➔ You have the right to talk to a lawyer and have him present with you while you are being questioned

- If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you so wish
- You may stop answering questions at any time
- Do you understand each of these rights I have explained to you?
- Having these rights in mind, do you wish to talk to us now? (*Adler, Mueller, and Laufer, 1994 : 215, and Taylor, 1979 : 49*).

3.5.7.3 THE BURDEN OF PROOF

Police officers involved in the investigation, usually will appear in court as witnesses for the prosecution. Their responsibility and role is therefore, to gather all facts that will assist the court in rendering a just verdict (*Folley, 1980 : 418*).

The prosecutor, after a review of the police case and a pretrial investigation, makes a formal accusation against the individual identified by the police as the guilty person. By preparing the accusatory pleading against the defendant, and preparing for the trial, the prosecutor accepts the burden of proving the defendant guilty. This burden of proof remains on the prosecution throughout the case (*Weston and Wells, 1971 : 5*).

3.6 PREVENTATIVE POLICING

Increasingly, public debate about the police focuses on preventive strategies. The phrase, "Prevention is the noblest duty of the Police", has already become a cliché (*Albrecht and Backes, 1988 : 51*). Crime prevention strategies refer to specific or intentional methods of planning and action to prevent or control crime (*Naudé and Stevens, 1988 : 14*).

3.6.1 POLICE-COMMUNITY PARTNERSHIP

Crime prevention requires the involvement and cooperation between the police and various institutions and groups within the society.

Fundamental to the development of appropriate policing services in South Africa has been a shift from an inheritance of authoritarian law and order responses, to a broader concept of safety and security for all citizens. This was the vision spelt out both in the Green Paper and in the national Crime Prevention Strategy, released in May 1995.

3.6.1.1 COMMUNITY POLICING

The Constitution of the Republic of South Africa prescribes Community Policing as the style of policing to be adopted by the South African Police Service to meet the safety and security requirements of all the people in the country.

Fundamental transformation is therefore needed to ensure that the South African Police Services develops into a community-orientated policing service, which adopts a consultative approach to meeting the safety and security needs of the communities it serves; a service which, therefore, becomes more accessible and acceptable and more efficient and effective (*A Manual for the SAPS, 1997 : 1*).

This objective can only be achieved by establishing a strong and reliable partnership between the members of the South African Police and volunteers from the communities they are serving. The main objective of this partnership

should be to determine, through consultation, community needs and policing priorities, and to promote police accountability, transparency and effectiveness (*A Manual for the SAPS, 1997 : 1*).

Community policing is, therefore, a philosophy that guides police management styles and operational strategies which are informed by the following principles:

- ▶ Respect for and protection of human rights
- ▶ Community policing informs, guides and sustains all policing activities
- ▶ All members of the South African Police Service should participate in community policing and problem-solving initiatives
- ▶ Problem-solving should be based on a consultative approach which constantly seeks to improve responsiveness to identified and prioritised community needs
- ▶ Education, capacity-building and enskilling of South African Police Service personnel and members of the community to enable constructive participation in addressing the problem of crime
- ▶ Resolving conflict between and within community groupings in a manner which enhances peace and stability
- ▶ Awareness of, respect for, and tolerance of the languages, cultures and values of the diverse peoples of South Africa
- ▶ Enhancement of the accountability of the police to the communities they serve
- ▶ Shared responsibility and decision-making, as well as sustained commitment from both the police and the community with regard to safety and security needs
- ▶ Creation of understanding and trust between the police, the community and

other relevant role players

- ▶ Special attention is to be given to vulnerable groups who are most likely to become victims of crime, such as children, the elderly, women, the disabled and gays, lesbians and bi-sexuals (*A Manual for the SAPS, 1997 : 3*).

Based on the above principles and a commitment to face the challenges of policing tasks, the South African Police established in terms of their new policy guidelines, Community Police Forums and Boards all over the country. These will be discussed in the subsections below.

3.6.1.2 BUSINESS IN PARTNERSHIP POLICING

It is fundamental that the partnership should consider that the business community as an active partner and not just a source of funds. Therefore, the partnership should be a balance between creating a safer environment and achieving business objectives. This is particularly important as business community in South Africa is now actively involved in a wide range of crime prevention initiatives. However, many of these successful initiatives are short term solutions to the long term problem of curtailing crime. The challenge remains to maintain these initiatives once business has provided initial support and seed funding.

The business sector can make three main contributions to partnerships:

- ▶ Most businesses suffer considerable losses as a result of crime. In promoting and developing the "partnership approach", it is important for business communities to acknowledge that crime is a risk to their enterprise and its stakeholders. Since every business is part of a local community, it should be in that businesses' interest to help minimise the impact of crime

for their employees and within their community

- ▶ Business have the opportunity to, and some do, contribute directly and indirectly to the quality of life in their local community. In tackling the major social issues of crime, it is appropriate to invite business leaders to offer their ideas and managerial/problem-solving skills to local partnerships
- ▶ Businesses whether local, national or international, have proved a very useful source of short terms project funding through both charitable donations and sponsorship. However, the potential for further development is limited by general economic factors and the intense competition for business sector funding from a wide range of sources (*Oppler, 1996 : 5*).

Business Against Crime (BAC), an organisation formed in 1995 in response to a call from the previous South African President Mandela, negotiated priority areas where the business expertise could be most effective in improving the criminal justice system. One such area was capacity building in the South African Police Services. The **support partnership for the police stations (SPPS)** was formalised by BAC to make resources available to enhance service delivery in the South African Police Service. The SPPS has been incorporated as an official project of the South African Police Service. The aim of the SPPS is to develop, implement and sustain an effective local crime prevention and management strategy by harnessing, directing and maximising appropriate available resources at precinct level.

The project SPPS is underway in the Gauteng Province. Some thirty police stations have been sponsored by various businesses. A concerted focus of the SPPS is to Support Programme Johannesburg, which is a South African

Police Service initiative to create an effective policing model, as well as address the negative perception of policing in Johannesburg. The scope of the programme includes projects ranging from diversion to improved investigation, establishing crime information centres and assessing performance. The partnership products, include the following:

- ▶ Soft skills training
- ▶ Victim support/employment
- ▶ Labour relations
- ▶ Fleet management
- ▶ Housekeeping and maintenance
- ▶ Code of Conduct - discipline/reward and recognition
- ▶ Community participation
- ▶ Information technology and sectoral policing (*Oppler, 1999 : 6 - 7*).

Unlike community policing, Police-Community Relations (PCR) programmes attempt to enhance the community's perception of the police, not to change the basic method of policing a community (*Adler, Mueller, and Laufer, 1994 : 172*). By the same token, *Katzenbach, et al (1967 : 150)*, contend that the responsibility for improving Police-Community Relations must rest with the police. A recent inventory of PCR programmes in different jurisdictions, showed that department-sponsored activities included:

- ▶ "Ride-along" programmes in which citizens accompany the police on patrols
- ▶ Citizenship awards
- ▶ Citizen citation programmes to recognise meritorious acts
- ▶ Liaison programmes with the clergy
- ▶ Police Headquarters' tours; and

- ▶ Public speaking programmes (*Adler, Mueller, and Laufer, 1994 : 172*).

Stressing investigation and detection as the primary concerns of a crime strategy means that reactive policing has encouraged the police into eschewing responsibility for the volume of crime and into failing to set priorities or allocate resources rationally. Overwhelmed by the sheer volume, it also contributes to police criticisms (*Ugnow, 1995 : 69*). From the above, two strategies suggest themselves:

- ▶ Putting greater resources into crime prevention; and
- ▶ Giving great emphasis to proactive intelligence-based approached (*Ugnow, 1995 : 69*).

Pro-activity, however, must involve multi-agency work with a range of local agencies - Education, Health, Social Services, Planning, and other Council Departments, Victim Support groups, Probation and Prisons (*Ugnow, 1995 : 70*). By the same token, *Van Heerden (1986 : 46)* contends, no police institution can hope to fulfil its task with perfect efficiency if its functional activities are not planned and executed in a manner corresponding to the expectations of the public.

3.6.1.3 COMMUNITY POLICE FORUMS

The most effective methods of policing is one in which the community is actively involved. When policing takes place in isolation, it results in an "us-team" working style which, inevitably, leads to conflict. However, it is the responsibility of police officials to motivate and encourage the community to become involved in ensuring safety and security. One of the structured

consultation forums between the police and the different communities is - **Community Police Forums (CPF's)** (*White Paper on Safety and Security, 1998 : 34*).

According to the Michigan State Survey, most neighbourhood advisory committees consisted mainly of businessmen, civic organization leaders, clergyman, and other people whose "stake in the community" is readily apparent. Generally, membership includes only those persons who agree with the police or otherwise do not cause trouble. It is doubtful that such persons are representative of those who are hostile to the police or that are even cognizant or sympathetic to citizen grievances. Although police advisory committees should attempt to attract as many participants as possible, persons who are hostile may be argumentative, disruptive, or otherwise difficult to deal with (*Katzenbach, et al., 1967 : 156 - 7*).

The tangible results of effective Police-Community Relations Programmes efforts include the following:

- ▶ Increased likelihood of citizen cooperation in providing information to assist in law enforcement.
- ▶ More voluntary compliance with the law.
- ▶ Improved relations, especially with the majority black groups in South Africa.
- ▶ Community support for budget appropriations in an environment of competing demands (*Adler, Mueller, and Laufer, 1994 : 172*).

The CPF may involve representatives from many interested community groupings and the structure may become unwieldy. The CPF may, therefore,

be structured as outlined in Figures 6 and 7.

FIGURE 6

COMMUNITY POLICE FORUM : WORKING GROUPS

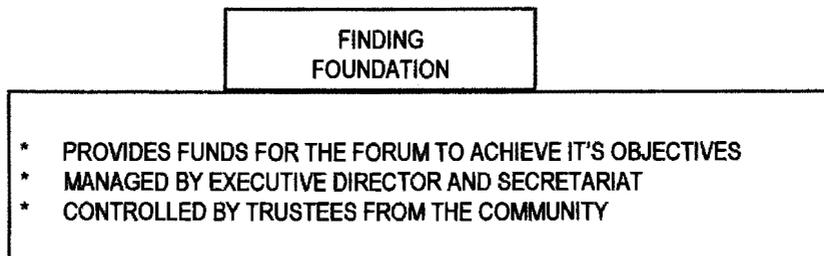
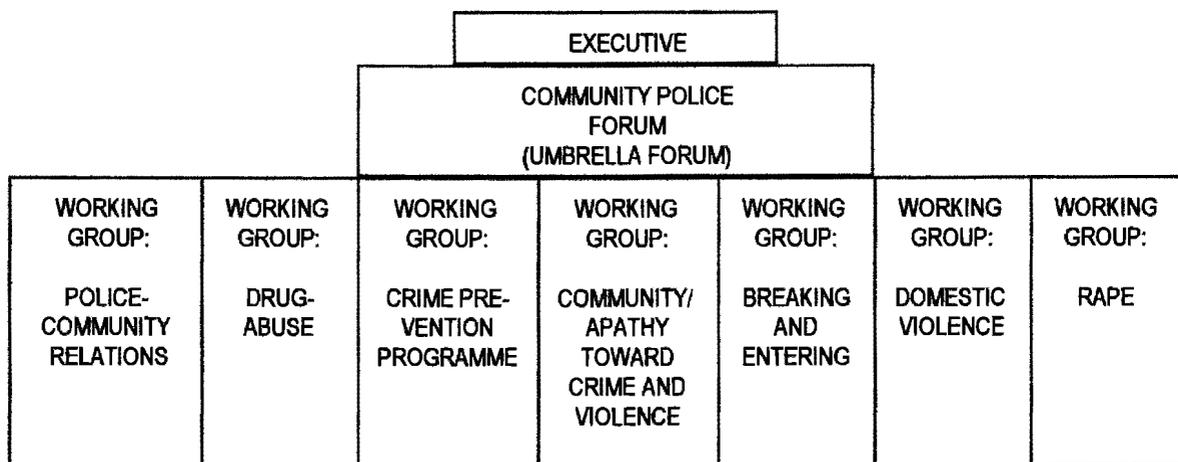
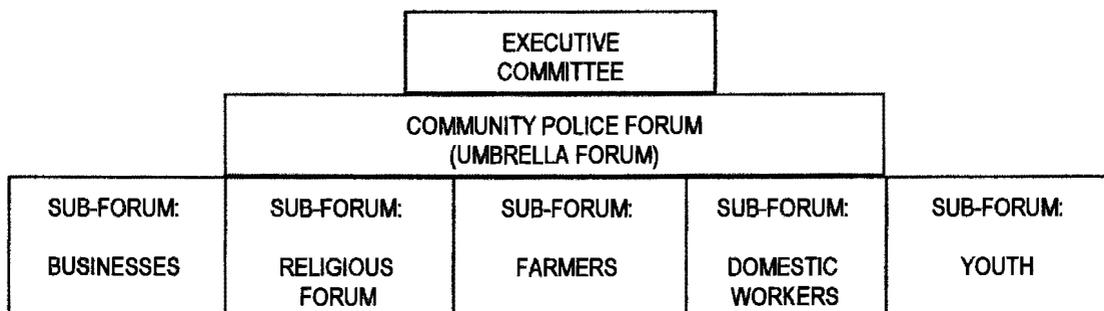


FIGURE 7

COMMUNITY POLICE : SUB-FORMS



- ▶ All interested parties from a plenary session which meets from time to time to discuss community needs, receive reports from the Executive Committee and working groups, and to instruct to these two bodies. A plenary session should at least be held on a quarterly basis
- ▶ The Executive Committee should be elected from the members of the Community Police FORUM and should, preferably, not consist of more than 5 - 8 members. The members elected to the Executive Committee should be as representative of the broader community as possible and should be impartial, enthusiastic, committed to the goals of community-police cooperation and, most importantly, have the time to actively participate in the workings of the CPF. The Station Commissioner should be an ex officio member of the Executive Committee
- ▶ The Executive Committee should be responsible for all tasks referred to it by the Community Police FORUM and should deal with the day-to-day functioning of the CPF (*A Manual for the SAPS, 1997 : 58 - 9*).

The Community Police Forums should use its legislative mandate and functional powers to:

- Improve the delivery of police-service to the community
- Strengthen the partnership between the community and their police
- Promote joint problem identification and problem-solving
- Ensure police accountability and transparency; and
- Ensure consultation and proper communication between the police and the community (*A Manual for the SAPS, 1997 : 57*).

3.6.1.4 RESERVE POLICE SERVICES AS A VOLUNTARY DUTY

The Reserve Police Service was instituted in 1961 in terms of Section 34(2) of the old Police Act, 1958 (Act No. 7 of 1958). The new South African Police Service Act, 1995 (Act No. 68, 1995) Section 48(1) provides that the National Commissioner may determine the requirements for the recruitment, resignation, training, ranks, promotion, duties and nature of service, discipline, uniform, equipment and conditions of service of members of the Reserve Police Service and any other matter which he or she deems necessary in order to establish and maintain different categories of members of the Reserve Police Service. The division and the application of the Reserve Police Service is as follows:

A-GROUP

The services of members of the A-group are used in normal police duties, such as, for example, charge office duties, crewing of police vehicles, patrol services, safeguarding of vulnerable points or any other essential police duties, excluding combatting of riots.

However, such a member may be called up by the National Commissioner under circumstances which he/she deems necessary and with the consent of the concerned member or in times of war or other emergency situations to perform normal or specific duties on a full time basis.

B-GROUP

These members need only to perform duty in their own residential areas. Should a member prefer to do so, he/she may be allowed to perform the same duties as a member of the A-group.

In times of war or other emergency situations, members of the B-group shall perform duty, without remuneration in their own residential areas every day for two hours.

However, permission may be granted to members of both the A- and B-groups to perform duties in any specialist branch, excluding in units combatting riots and in the Special Task Units.

The selection process for the applicants include the following requirements:

- ▶ The minimum educational requirement is standard 8 or an equivalent. This requirement may be waived should the District Commissioner, after having taken into account the age of the applicant, his occupation, language proficiency, social standing and the general impression he/she makes, decide that in all other respects he/she is suitable for appointment
- ▶ If an applicant is not well-known to the local police, confidential enquiries shall be made from reliable sources to ensure that an applicant's attitude or behaviour will not be detrimental to the State.

After the members of the Reserve Police Service have been duly appointed, they are usually required to perform at least eight hours of duty per month. If, in exceptional cases, for good reasons, it is not possible, members may, as a temporary measure, be exempted from this obligation. In which case, permission must first be obtained from the Station Commissioner.

It is important to note that, before a member of the Reserve Police Service may perform any duties, he/she must be placed on duty. This means that

he/she has to be noted as being on duty in the Occurrence Book or in a SAPS.15 and in his/her pocket book after he/she has been inspected by the member in command of the relief or by another senior member on duty.

However, the members of the Reserve Police Service are thoroughly trained and made aware of the provisions in the Police Act relevant to the duties. The training involves theoretical courses, practical training, firearms and shooting exercises.

3.6.2 SECTION POLICING

This is a strategy where teams of police are assigned to a particular neighbourhood, and are responsible for all police services in that area. This is intended to make police more responsible to the community, to enhance the morale of police officers and to overcome fragmentation due to specialization, team policing incorporated a decentralized structure and a neighbourhood focus (*Adler, Mueller, and Laufer, 1994 : 168*).

3.6.3 PATROL OPERATIONS

Police patrol is an important function of the South African Police Service, because it is responsible for performing three related but different goals of policing, namely: law enforcement; order maintenance and general government services.

In law enforcement goal the police officers must arrest offenders, recover stolen property, prevent criminal acts and handle civil disorders. However, order maintenance entails the handling of disputes among people who

disagree over what is morally right, misconduct, or the assignment of blame in a situation. The family quarrel, a street disturbance by teenagers, a disagreement in a tavern exemplify problems which require police intervention.

The third and final goal - the provision of general government services - includes everything else that the police officer is asked to do while on patrol. Therefore, the police officer must, wherever required, abate nuisance, control traffic and crowds, administer first aid, furnish information, and provide a wide range of other miscellaneous services to the citizens. Some people refer to these services as non-police services. But the criminologists disagree; since the citizens currently expect the police officers to perform such generalised services (*Whisenand and Cline, 1971 : 1 - 5*).

Therefore, the police, among many roles, should also act as teachers in the communities, in order to help reduce crime (*Beckman, 1980 : 82*). This implies that police officers should also be deployed in the squatters not for the purpose of repression, but to get to know them and win that community's confidence (*Police Journal, Vol. LXIX number 1, 1996 : 24*). The advantage is that the "policed" provide the "grass roots" information about the policing needs (*Moolman, et al, 1997 : 7*). By the same token *Geoffrey, et al (1997 : 524)*, contend that community policing should incorporate a new openness to the members of the community who share in social control functions, not only of crime identification, but in the shaping of both formal and informal mechanisms of social control.

Police-community relations are not affected by the actions or conduct of

individual officers alone. Often, departmental procedures which are intended to reduce crime, quell riots, or promote efficiency have a major effect on police-community relations. For example, in order to reduce crime in a high-crime area, a police department may saturate it with substantially increased number of police officers or decide to use trained dogs and handlers. In order to make more efficient use of its personnel, a police department may use motor- rather than foot patrol or one-man rather than two-man motor patrols. Such practices, although often far more efficient and economical, can sometimes antagonize the public or at least reduce the opportunity for friendly contacts which are the basis of community relations (*Katzenbach, et al, 1967 : 190*).

Although all police experts agree that patrol is an essential police activity, the problem of how many police officials, under what orders and using what techniques, should patrol which beats and when, is a complicated, and highly technical one. At the same time it is apparent that, nationwide, the number of police has not kept pace with the relocation of the population and the attendant increases in crime and police responsibility. That means additional personnel, and when these new requirements are added to the existing vacancies in the department throughout the country, it is apparent that more police are needed if crime is to be controlled. But mere addition of manpower without the commitment from the community volunteers to fight crime along side with the police, might be wasteful.

The researcher is, therefore, of the strong opinion that each municipality of the Local Government should take the responsibility for law enforcement in the area of its jurisdiction and carefully assess the manpower needs of its police

station and provide the resources to meet the identified needs.

3.7 CAUSATIVE FACTORS OF CRIME AND CRIME PREVENTION STRATEGIES

In the mid-1950s, A.H. Maslow, a pioneer in Management Psychology, put forward the theory that there are five basic needs which people aim to satisfy, namely:

- **Physiological needs** : the basic need for food, clothing and shelter
- **Safety needs** : the need for security, continuity, protection against anything that threatens an organised orderly existence
- **Social needs** : the need to belong and be accepted in a social context
- **Esteem needs** : the need to have status and other's respect
- **Self-fulfilment needs** : the need to feel fulfilled through the creative use of your natural aptitudes and practised skills which leads to self actualisation (*Sir Rob Reid, et al, 1996 : 11*).

Therefore, a person who believes that he is being deprived of any of these basic requirements will question his chances of survival (*Beckman, 1980 : 73*).

The conditions under which a person lives have much to do with his personality. Some of those conditions are discussed below.

3.7.1 UNEMPLOYMENT

Unemployment in itself will not cause a person to turn to crime. If a person has

been employed regularly and finds himself out of work, he will probably wait until he is called back to his job or seek work elsewhere. Unemployment of an individual over a long period of time, however, may contribute to the crime problem. The chronically unemployed person will have to find other ways to fulfill his financial needs. He will find himself with much time on his hands and will generally associate with others in the same predicament. Such persons may be concentrated in parts of town known as areas of congregation. These areas are often run-down and sometimes have a large population of indigent persons. These sections of towns often have the highest rates of crime (*Beckman, 1980: 73*).

3.7.2 POOR EDUCATION

Education is another factor that has no exclusive bearing on the crime problem, but must be considered. The fact that a person is uneducated does not in itself mean that he will turn to crime, but it does mean that he may have more difficulty finding suitable employment. People who are underemployed may be dissatisfied with their condition. The life-style they adopt and the acquaintances they make as a result of that life style may predispose them to commit criminal acts. An uneducated person may be more easily persuaded by others to do things that he would not otherwise do (*Beckman, 1980 : 74*).

3.7.3 LACK OF PROPER HOUSING

Housing and neighbourhoods have been shown to be important factors in explaining crime. Clifford Shaw studied neighbourhoods in Chicago. He used maps to pinpoint the residences of juvenile delinquents and adult criminals he

found that some neighbourhoods had a disproportionately high percentage of offenders:

Those neighbourhoods were characterized by disorganisation and congestion and anomie, and absence of social influence or controls. The neighbourhoods were in the center of town, adjacent to industry and commerce.

These neighbourhoods are generally found in slum areas, where serious crime is frequent and the victimization rate is very high. Most serious crimes happen in the urban slum. For example, crimes related to physical violence (murder, aggravated assault, weapons) occur at a much higher rate in the ghetto than in the rest of the city.

Family and social disorganisation also appear to be concentrated in these areas. Crimes related to social difficulties, family disintegration, and broad psychological problems are more prevalent in the ghetto (prostitution, narcotics, drunkenness, offenses against the family).

In addition, psychological disorders and the accompanying problems are more prevalent among slum dwellers than among residents of the greater area. Decaying physical conditions, poverty, and family disintegration tend to infect people with a tendency toward violence or other outlets for their deep-seated problems.

The question appears to be whether people cause the conditions found in slums or whether the slums influence people to behave the way they do. The attack on crime in the ghetto appears to have two fronts:

The social ills affecting the people must be attacked, and at the same time something must be done about the physical environment (*Beckman, 1980 : 74*).

3.7.4 POVERTY

Economic conditions are distinctly related to crime. Poverty in itself does not cause crime, but problems arise when one group of people sees that they have very little and that everyone else appears to be better off.

Advertisements promote the "good life". Our society as whole, creates the desire for material wealth. When the desire for wealth is implanted in a person and he does not have the money to obtain the things he wants, he may resort to criminal means.

Many people consider personal prestige to be based on wealth. Some will rob, steal, and cheat to get the things they want. This desire is not only inherent in people of limited means. People with some degree of wealth will at times resort to illegal means through their business or profession to get the extra wealth they desire (*Beckman, 1980 : 75*).

3.7.5 COMMUNITY STABILITY

Cohesiveness and stability of the community are other factors that influence the crime picture. In a closely knit community, where people know each other or are related, the conduct of the individual is controlled by his family and neighbours. When closeness breaks down, as it often does in large population centers, people become anonymous. They do not know their neighbours and

often care little about what other people do. There are few standards for behaviour in such a neighbourhood. Therefore, crimes will be committed that might not have happened in a cohesive neighbourhood.

In a disorganized community, bookies and prostitutes can work with little or no opposition. If they are apprehended, little will happen, because there is no community demand for their removal. Generally they are returned to the community to continue their work (*Beckman, 1980 : 75 - 6*).

3.7.6 MOBILITY

Our present era is sometimes called the "Jet Age". We have the ability to travel vast distances in short periods of time, but we have discovered that the great increase in mobility has some side effects. Due to the ease of travel many people no longer consider the family to be their primary reference group. Communications and mass transportation have made men a part of a wider society. A person has the ability to work and play where he wants to. Mobility has also given people the opportunity to commit crime far away from home. A person can cover great distances rapidly, making it very difficult for law enforcement to operate effectively. Part of the reason is that police techniques have not kept abreast of the times. Small, uncoordinated efforts cannot deal with problems of crime on a countrywide scale (*Beckman, 1980 : 76*).

3.7.7 WEATHER AND CLIMATE

The climate weather and changing seasons brings with them differences in crime. Hot summer weather brings people out of their houses, and into more contact with others, precipitating an increase in crimes of violence.

Winter creates the conditions necessary for different types of crimes. Burglaries, and other property crimes, increase substantially during winter months, when there are long periods of darkness. The Christmas season brings large numbers of people to shopping areas, and as a result, shoplifting and larcenies increase significantly.

Crimes of violence also increase during the holiday season. People get together at parties and reunions and usually drink a fair amount. The result can be fights, family disorders, assaults, and more serious forms of violence. Drunk driving arrests also peak during the holidays (*Beckman, 1980 : 76*).

3.7.8 DRUG ABUSE

The drug problem can be a direct cause of crime. People may get involved in drugs casually, and their habits may gradually increase. After a person becomes addicted, life itself is a perpetual series of law violations.

Drug addiction is both physical and psychological, and the addict will do almost anything to get enough money for a "fix". In most urban areas, drugs must be considered one of the major causes of crime. It is unlawful to purchase or sell drugs without proper licensing (*Beckman, 1980 : 77*).

3.7.9 EMOTIONAL DISTURBANCES

Mentally disturbed people also contribute to the crime problem. The psychopath is believed to be one of the more dangerous types of offenders: The terms psychopath, psychopathic personality, and constitutional psychopathic inferior are used with little or no differentiation to refer to persons

who are regarded as emotionally abnormal, but who do not manifest the break with reality that characterizes psychotic.

There appears to be no standard method of identifying this type of behaviour. Some psychiatrists argue that psychopaths make up no more than 5 percent of the prison population; while others say they make up more than 90 percent of it. A psychotic is severely mentally ill and is identified by his loss of touch with reality. A person manifesting psychotic symptoms can be very dangerous. He may, for example, be guided by "voices" that tell him to kill. People with such disorders account for only a small percentage of offenders. It would be difficult to establish a person manifesting psychosis to be responsible for his actions (*Beckman, 1980 : 78*).

3.7.10 FAMILY STABILITY

The family is very important to a young person; it provides the environment where one gets the first experience of social living. It is believed that a deficient family background is possibly the most significant factor in the development of juvenile delinquency.

The early life experiences of the child in the family lay the ground work for the type of future behaviour and the development of attitudes, values, and a life style. Parental hostility, rejection, and inconsistency can all contribute to delinquent behaviour.

Without the aid of the family, a child loses most of his psychological support. Without parental love, affection, and guidance, a young person may turn to

outside groups, frequently deviant groups. Early emotional deprivation can also be directly associated with later psychological and emotional problems.

Therefore, if the family fails to keep a young person from going astray, then the community and government should step in. Community controls can take the form of probation, placement in halfway houses, and detention. Efforts to prevent delinquency must take into account the family, the neighbourhood, peer groups, and community (*Beckman, 1980 : 78 - 9*). However, if we bear in mind that the basic objective of social control is the preservation of order and the promotion of voluntary compliance with the laws, then it is clear that the primary element in the execution of the law is the protection of society against violations of the rules of behaviour. Therefore, crime prevention should consist of those measures adopted by a society for the purposes of addressing the causative factors of crime. The volunteers can contribute a great deal to this effect. The answer lies with the elimination or minimising of opportunities to commit crimes (*Van Heerden, 1986 : 16 - 17*).

The new paradigm for safety and security is a change in emphasis from an exclusive focus on crime control to include crime prevention.

In line with these principles, the White Paper viewed the concept of safety and security in terms of the broad inter-looking components: that of policing or law enforcement, and that of crime prevention, and particularly social crime prevention which is aimed at undercutting the causes of crime. This twin approach to fighting crime is critical: law enforcement and crime prevention are not mutually exclusive, but reinforce each other.

On the one hand, law enforcement initiatives will be weakened if conditions in which they are carried out continue to spawn high levels of community, which the police are only able to react to and not pre-empt. On the other hand, international experience has shown that sophisticated crime prevention strategies have only a limited effect when the state institutions of policing and criminal justice are poorly developed, with little deterrent effect.

What is required are social crime prevention programmes which target the causes of particular types of crime at national, provincial and local levels. These requirements have profound implications for how the Department of Safety and Security reorientates itself, conducts its business and reallocates its resources. It suggests a renewed concentration on law enforcement within the police service itself. It also requires the involvement of a wider number of new role-players in crime prevention (*Draft White Paper in Service of Safety, 1998 : 5*).

3.8 THE COMMUNITY'S ROLE IN LAW ENFORCEMENT

It is evident that, without significant inconvenience to themselves, citizens can take several commonsense measures that will reduce the threat of crime to their persons or property (*Katzenbach, et al, 1967 : 221*). Therefore, alleviation of crime requires the involvement and cooperation of various groups and institutions - the family, various organizations, the community, the police, the courts, the corrections system and the legislators (*Beckman, 1980 : 79*).

3.8.1 THE ROLE OF THE FAMILY

The family is the first institution with which an individual is in contact. From the

day he is born a person is taught the customs, language, and accepted behaviour of his society. It is, therefore, considered the responsibility of the family to teach children the proper way to act in their world. Parents not only teach, but become models that children imitate. Parents who provide an unstable home, pass their attitudes and habits on to their offspring. But a stable, model home life serves to teach the youngster the behaviour considered proper in his/her society (*Beckman, 1980 : 79 - 80*). Some surveys conducted in Johannesburg municipal areas, Germiston, Krugersdorp, Randfontein, Benoni, Brakpan and Springs, revealed that overcrowding in the home, where children of both sexes are being obliged to share their bedrooms with adults, who might be the parents themselves, or older brothers and sisters or even lodgers, resulted in misery that reigned both within and outside homes (*Freed, 1963 : 221 - 229*).

3.8.2 THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS

It is generally accepted that non-governmental organisations (NGO's) have become very important and permanent institutions in the implementation of development programmes and various projects within societies (*Swanepoel, and De Beer, 1997 : 65*). It is, therefore, apparent that people join service organisations, unions, and social clubs to organize for various purposes (*Beckman, 1980 : 80*). The energy of such organizations can be channelled into activities that will help combat crime. The leadership can try to promote the concept of citizen involvement, which includes reporting crimes when they are observed and not being afraid to get involved. Several communities have experimented successfully with concerted campaigns to impress upon citizens the urgency of reporting promptly to the police all relevant information about

crimes or suspicious incidents (*Katzenbach, et al, 1967 : 223*).

Non-governmental organizations can collect funds to start a "secret witness" or "silent observer" program that will reward persons for reporting crimes they might not otherwise have reported. The person who reports a crime under such a program does not have to be a witness in court, if he does not wish to do so. These organizations can also instigate programmes to stop prejudicial hiring practices by employers or to support bond issues that will encourage better education. Certain organizations can sponsor recreation programmes for children and teachers. If youngsters are kept busy, and have quality leadership in recreation programmes, they will be less likely to be tempted into unlawful activities (*Beckman, 1980 : 80*).

3.8.3 THE ROLE OF SOCIETY

According to *Beckman (1980 : 80 - 2)*, the community has a great responsibility in controlling crime. Therefore, the people and their government cannot be separated because they are interrelated. People elect representatives to run their local government machinery. This machinery, to a large degree, determines what programmes will be undertaken to better the lives of the people.

Local government is therefore responsible for the most of the public services - police, fire, garbage collection, maintenance and construction of streets, street lighting, building inspection, and public welfare.

All these agencies have something to do with quality of life in a community. It

is not known whether any particular failure in public services will breed crime, but it has been established that people are the product of their environment (*Beckman, 1980 : 81*). There are some notable examples of successful collaboration between the police and other agencies in crime prevention. For instance, one police department conducted intensive door-to-door surveys in especially crime-prone areas to determine what the residents thought their chief crime problems were and what the residents thought should be done about them. They received responses along the following lines, which confirm that public order is indeed a multi-departmental task:

- ▶ The Fire Department should eliminate and burn off lots being used for juvenile misbehaviour
- ▶ Schools should provide better perimeter lighting for the school yards and structures after hours
- ▶ The recreation department should offer more attractive programmes designed to use up idle youth energy
- ▶ Juvenile probation officers should intensify their contact with probationers in the area
- ▶ Public utilities should provide additional street lighting
- ▶ The alcoholic beverage commission should grade down on liquor dealers who sell to minors (*Katzenbach, et al, 1967 : 225*). Therefore, the people in the community are partially responsible for the incidence of local crime. They can do something about the conditions of life, although it is not an easy task after years of neglect.

Citizen pressure exerted at the proper place and time can bring about improvements. People can demand better police protection. They can force

building owners to bring housing up to lawful standards. The community must want to better its conditions before anything will ever be done. Before changes are made, apathy must be replaced by involvement. Methods of reporting crime and suspicious activities should be stressed. People should be told that they need not be witnesses if they do not want to be. The important thing is to report incidents (*Beckman, 1980 : 81*). Juveniles commit a large percentage of crimes, and the community can step in and help in this area. A variety have been tried and found to be of value with youthful offenders.

Halfway houses are quite beneficial. An offender is taken out of his home environment and put into a more structured and orderly one. Trained case workers help him deal with his problems. The youth is under close supervision, but can be allowed some freedom. The community must not only help pay for such a program, but if it is to work, they must believe in it. It is often difficult to find a suitable location for a halfway house, because the area residents fight its establishment.

Another method of community help to juveniles with problems is the "drop-in centre". Centers are usually staffed by trained volunteers under the supervision of a trained counsellor. Young people with problems or no place else to go, can stop by at any time. They find someone with whom they can share their problem and maybe get some help or guidance on what to do about the situation. Drop-in centers can help refer young people to other agencies if their problems require professional help. Drop-in centres, like halfway houses, often meet resistance by residents, and a suitable location may be hard to find.

"Hot Lines" staffed by trained volunteers can do much to help people in crisis situations. Those in trouble dial a number that connects them with a person who is trained in dealing with crisis, ranging from suicide threats to drug abuse.

All of these are community-based projects that can help lower the incidence of crime and at the same time benefit the individual in trouble. It takes both time and money to make such projects successful. If the community members seriously want to do something about their problems, they can put both their money and their personal efforts where it will do some good (*Beckman, 1980: 81 - 2*).

3.8.4 THE ROLE OF LEGISLATORS

Legislatures, too, have a responsibility for reducing the crime problem. Almost every unpopular act has been legislated against. The problem that law enforcement people must face is not too few laws, but too many for any person to comprehend. Law-making bodies continue to pass new laws that have to be enforced. What is needed is a simplified code of laws. Laws must be understood and supported by the average citizen and law enforcement officer. The penalties for similar violations should be uniform and should be appropriate to the actual amount of harm caused by the unlawful act. This matter is further discussed in chapter four.

Archaic laws that no longer have meaning should be repealed, as should laws that legislate morality. The laws should reflect the ideas of our society today. Constant updating is necessary to keep up with changing times (*Beckman, 1980: 86*).

3.9 SUCCESS FACTORS OF COMMUNITY POLICING : PARTNERSHIP

There are several factors which determine the success of partnership policing, namely:

3.9.1 POLICING

- ▶ The Station Commissioner must have a committed approach to crime prevention. Without his/her support at station level, the partnership approach will not be initiated or developed
- ▶ It is not only police response time which defines police service delivery. The police have to be effective as well as efficient. As a professional service to the community, their service must meet the basic needs of all South African citizen (*Oppler, 1995 : 7*).

3.9.2 CO-ORDINATING GOVERNMENT SERVICES AT LOCAL LEVEL

As a provider of a range of services that has a direct impact on the causes of crime, such as education, housing, welfare and recreation, government departments at a local level and municipalities have a major role to play in the partnership approach.

3.9.3 COMMUNITY AWARENESS AND TRUST

- ▶ Raising the awareness of both problems and solutions is likely to contribute to effectiveness
- ▶ A substantial amount of time and effort has to be devoted to building relations between the police, individuals and community interest groups

- ▶ Trust is a vital component in making a partnership flourish. An effective partnership, as in all human relationships, is built upon mutual trust, honesty and the sharing of information and views.

3.9.4 CLEAR GOALS AND RESPONSIBILITY

- ▶ At the outset, the partnership team should identify realistic goals, not just grand statements
- ▶ Clear identification of each partner's role and responsibility is therefore vital (*Oppler, 1995 : 7 - 8*).

3.9.5 SHARED OWNERSHIP

- ▶ Communities must be clear about what they expect from their local South African Police Service and should know the community's/police's aims and objectives as active partners in crime prevention. Through frequent consultation with the police, local problems and priorities must be identified
- ▶ The differing levels of power, money and influence in the partnership need to be addressed sensitively by all partners
- ▶ Community interest groups must take an active role in allocating responsibility to the relevant agencies to take the necessary action. This process may or may not involve the police (*Oppler, 1995 : 8*).

3.9.6 COMMUNICATION

- ▶ Communication between partners and with other agencies should be open and frequent
- ▶ Care must be taken to collate good information, understanding the importance of not breaching confidentiality when requested
- ▶ Conflicts, differences in roles and organisational problems, both within and

between agencies, inevitably occur, it is better to recognise these honestly and work to solve them.

3.9.7 SUSTAINABILITY

The partnership should not be a short term solution to a long term problem of crime. The project initiated by the partnership must be sustainable (*Oppler, 1995 : 8*).

3.9.8 MONITORING AND EVALUATION

- ▶ This should be an integral part of all projects. Although the terms are often used interchangeably; monitoring is defined here as the continual checking of progress to ensure that the project remains on course
- ▶ 'Evaluation' in contrast to monitoring, is taken to be overall assessment of the project's impact. Both are essential to minimise the risk of the project going wrong; to show whether a project's aims have been achieved; and whether resources have been used to good effect (*Oppler, 1995 : 9*).

Partnership policing is, however, in its infancy stage in South Africa : there is still much to learn.

3.8 SUMMARY

Policing is a social service created by human beings and rendered by human beings to human beings in an environment that has been shaped by human beings (*Van Heerden, 1988 : 81*). Therefore, to reduce crime, communities must be prepared to back up their police forces, become more involved in crime prevention strategies, and report all observed crime or suspicious incidents to the police.

Municipal Governments also need to adopt a more integrated approach toward crime control. The combination of alert and cooperative citizens, prevention-conscious police and crime-conscious Local Government can become a significant force against the menace of urban crime in particular.

CHAPTER 4

THE ROLE OF VOLUNTEERS IN THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM IN SOUTH AFRICA**4.1 INTRODUCTION**

In terms of Section 165 of the Constitution, the judicial authority of South Africa is vested in the courts, which are independent and subject only to the Constitution and the Law. Therefore, no person or organ of State may interfere with the functioning of the courts, and an order or decision of a court binds all organs of State and persons to whom it applies.

The Department of Justice, under the auspices of the national government, is responsible for the administration of the courts. It performs these functions in conjunction with the judges, magistrates, National Director of Public Prosecutions and Directors of Prosecutors, who are also independent.

This chapter outlines the origin, role and functions of the courts.

Although the main focus is on South African judicial system, this chapter contains a comparative study of other judicial systems in Africa and Europe.

4.2 THE ORIGIN OF THE SOUTH AFRICAN COURTS

According to *Van der Waldt and Helmbold (1995 : 49)*, the South African legal system is the result of the amalgamation of various laws and legal system which the settlers have brought to South Africa since 1652. The democratic principle of Rule of Law has become strongly integrated into our legal system.

The legal system in South Africa is not contributed by the constitution of the Republic of South Africa, 1993. Section 96 does, however, define the judicial authority. The main objective of the judicial authority is to guarantee the rights and freedoms of the individual and to preserve the sovereignty of the law.

The task of the courts of law is to interpret and apply the law, and not the Acts, and to exercise sanctions. The judicial authority of the Republic is vested in the courts and is independent, impartial and subject only to the constitution. No person and no organ of the state may interfere with judicial officers in the performance of their functions.

The control and prevention of criminal activity and the treatment and reform of criminal offenders are carried out by the police, the courts, and the correctional system.

Police departments are those public agencies created to maintain order, enforce the criminal law, provide emergency services, keep traffic on streets and high ways moving freely and create a sense of community safety (*Senna and Siegel, 1998 : 20 - 21*). The roles of the police were discussed in the previous chapter.

The criminal court is considered by many to be the core element in the administration of criminal system. The court is the part of the system which is most venerable, the most formally organised, and the most elaborately circumscribed by law and tradition.

It is the institution around which the rest of the system has developed and to which the rest of the system is in large measure responsible. It regulates the flow of the criminal process under government of law.

It is expected to articulate the community's most deeply held, most cherished views about the relationship of individual and society. The criminal court housed the process by which the criminal responsibility of defendants accused of violating the law is determined.

Ideally, the court is expected to convict and sentence those found guilty of crimes which ensuring that the innocent are freed without any consequence or burden. The court system is formally required to seek the truth, to obtain justice for the individual brought before its tribunals, and to maintain the integrity of the government's rule of law.

However, overburdened courts are often the scenes of informal bargain justice, which is designed to get the case over with as quickly as possible and at least possible cost. The criminal court ideally should hand out fair and even handed justice in a forum of strict impartiality and fairness, this standard of justice has not been maintained in millions of cases heard each year in the criminal justice systems of the world. Instead, a system of "bargain justice" has developed that encourages defendants to plead guilty. This means that most criminal defendants do not go to trial but instead work out a deal with the prosecutor in which they agree to plead guilty as charged in return for a more lenient sentence, the dropping of charges, or some other considerations. Critics have tried to limit plea bargaining in recent years, but so far it remains

a difficult practice to control.

In addition, the entire criminal court process is undertaken with the recognition that the rights of the individual should be protected at all times. These rights determined by constitutional mandates, statutes and case law form the foundation for individual protection of the accused. They include such basic concepts as the right to an attorney, and the right to a speedy trial. A defendant also has the right to be given due process, or to be treated with fundamental fairness.

4.3 COMPOSITION OF THE JUDICIAL AUTHORITY

According to *Van der Waldt and Helmbold (1995 : 50)*, the constitution of the Republic of South Africa, 1993, provides in section 96 that judicial authority of the Republic shall vest in the courts. A distinction may be drawn between the following categories of courts:

4.3.1 SUPERIOR COURTS

The superior courts include the following courts, namely:

- ▶ ***The constitutional court***

The constitutional court is the highest court in all constitutional matters.

- ▶ ***The supreme courts***

The supreme court consists of an Appellate Division and the provincial and local divisions. The appellate Division of the supreme court is the highest court in the Republic since the abolition of the appeal to the Privy Council in 1950 (*Van der Waldt and Helmbold, 1995 : 50*).

It is important to distinguish between trial and appellate courts. Both are involved in making and interpreting the law, but it is generally said that the trial courts try the facts of the case and the appellate courts are concerned only with law, not facts.

Therefore, on appeal, the case is heard by judges. The appellate court looks at the trial court record, considers written briefs submitted by the attorney who use these briefs to establish and support their legal arguments, and hears oral arguments from the defence and the prosecution.

It then determines whether there were any errors of law during the trial. The appellate court will generally make a ruling on those issues and either affirm the trial court ruling or send the case back to the trial court for retrial. When the case is sent back for retrial, the appellate court is reversing and remanding the trial court on those issues.

The appellate court may also affirm the trial court, in which case the finding of the trial court is upheld. It may reverse the case with prejudice, meaning that the case cannot be retried. Appellate courts are, in effect, trying the trial courts. This system allows the appellate court to exercise some administrative control over the trial courts, thus achieving more uniformity among courts than might otherwise be the case. But the trial court judge, do exercise considerable power in our system. Many cases are not appealed, in cases that are appealed and retried, the lower court often reaches the same decision as in the first trial.

Therefore, the appellate courts also have the power of judicial review over acts of the legislative and executive branches of government, if those acts infringe on freedom and liberties guaranteed by the state constitutions (*Reid, 1987 : 210 - 211*).

4.3.2 THE CONSTITUTIONAL COURT

In terms of section 98 (1) of the constitution, the constitutional court consist of 11 members (one president and ten judges) and is the highest court in all constitutional matters. The constitutional court has its seat in Johannesburg. The President of the constitutional court is appointed by the President in consultation with the Cabinet, and after consultation with the Chief Justice.

In terms of section 99 (1) of the constitution, the judges of the constitutional court are appointed by the President for a non - renewable period of seven years (*Van der Waldt and Helmbold, 1995 : 50*). However, to be appointed as President or a judge of the constitutional court, *Van der Waldt and Helmbold (1995 : 50 - 51)*, contend that the person must:

- ▶ be a person who, by reason of training and experience, has expertise in the field of constitutional law
- ▶ be a South African citizen
- ▶ be a fit and proper person to be a President or a judge of the constitutional court, and
- ▶ be a judge of the Supreme court or be qualified to be admitted as an advocate or attorney and have practised for at least ten years (*Van der Waldt and Helmbold, 1995 : 50 - 51*).

4.3.2.1 POWERS OF THE CONSTITUTIONAL COURT

The constitutional court affects every South African personally. Therefore, the constitutional court has jurisdiction in the Republic as the final court of last instance in regard to all matters relating to the interpretation, protection and enforcement of the provisions of the constitution of the Republic of South Africa.

In terms of section 98 (2) of the Constitution (Act 108 of 1998), the powers of the constitutional court include, inter alia, the following:

- ▶ any alleged violation or threatened violation of any fundamental right entrenched in the constitution
- ▶ any dispute over the constitutionality of any executive or administrative Act or conduct or threatened executive or administrative Act in conduct of any organ of state
- ▶ any inquiry into the constitutionality of any law, including an Act of Parliament, irrespective whether such law was passed or made before or after the commencement of the constitution of the Republic of South Africa.
- ▶ any dispute of a constitutional nature between organs of state at any level of government
- ▶ the determination of questions whether any matter falls within its jurisdiction, and
- ▶ the determination of any other matters such as may be entrusted to the court.

It may be deduced from the afore going discussion that the supreme political

authority is no longer vested in the legislative authority, as under the 1993 constitution, but in the constitution, which is the highest authority.

However, a decision of the Constitutional Court is binding on all persons and on all legislative, executive and judicial organs of the state. The Constitutional Court therefore, represents - as do the magistrates' courts and supreme court, in matters of a more local provincial nature - the refuge for every accused who feels that the government of the day is violating the rights (*Van der Waldt and Helmbold, 1995 : 51*).

4.3.2.2 ENGAGEMENT OF THE CONSTITUTIONAL COURT

The Constitutional Court is engaged in the following aspects, inter alia:

- ▶ the conditions upon which the constitutional court may be seized of any matter within its jurisdiction, and all matters relating to the proceedings of and before the court, shall be regulated by rules prescribed by the President of the Constitutional Court in consultation with the Chief Justice, which rules shall be published in the Gazette, and
- ▶ the rules of the Constitutional court may make provision for direct access to the court where it is in the interest of justice to do so in respect of any matter over which it has jurisdictions (*Basson, 1994 : 149*).

4.3.3 SUPREME COURTS

According to *Van der Waldt and Helmbold (1995 : 52)*, the supreme court of South Africa consists of an Appellate Division and the provincial and local divisions. The seat of the Supreme court is in Bloemfontein. The Chief Justice of the Supreme of South Africa is appointed by the President in consultation

with the Cabinet and after the consultation with the Judicial Service Commission.

The Supreme Court retain its legal jurisdiction and functions as determined in the Supreme Court Act, 1959 (Act 59 of 1959). The Appellate Division has no power to rule on any matter falling within the jurisdiction of the Constitutional court.

Subject to the Constitution, a provincial or local division of the Supreme court shall, within its area of jurisdiction, have jurisdiction in respect of the following additional matters, namely:

- ▶ any alleged violation or threatened violation of any fundamental right
- ▶ any dispute over the constitutionality of any executive or administrative act or conduct of any organ of the state
- ▶ any inquiry into the constitutionality of any law applicable within its area of jurisdiction, other than an Act of Parliament, irrespective of whether such law has passed or made before or after the commencement of the constitution
- ▶ any dispute of a constitutional nature between local governments or between a local and a provincial government
- ▶ any dispute over the constitutionality of a Bill before a provincial legislature
- ▶ the determination of questions whether any matter falls within its jurisdiction, and
- ▶ the determination of any other matters as may be entrusted to it by an Act of Parliament (*Basson, 1994 : 150*).

4.3.4 SPECIAL COURTS

Special courts consist of judges of the supreme court of South Africa and are composed for a particular purpose. They do not, however, form part of the supreme court of South Africa.

The Walter court, the special court for Revenue Appeals and the special court regarding Harmful Business Practices fall into this category. The most important of the lower courts are the magistrates' courts and the Regional magistrates' courts (*Van der Waldt and Helmbold, 1995 : 500*).

In discussions about the courts, frequent references are made to the lower courts. These are the courts of limited jurisdiction, so called because they are legally entitled to hear (that is, have jurisdiction over) only specific types of cases.

Jurisdiction may also be limited to certain activities of the courts. The judges, often referred to as magistrates, presiding over these courts may conduct only certain pre - trial procedures such as issuing warrants for searches or arrest, deciding bail, appointing counsel for defendants who are indigent or presiding over the initial appearance or preliminary hearing (*Reid, 1987 : 212*).

4.3.5 OTHER COURTS

Van der Waldt and Helmbold (1995 : 53), contend that in order to deal with the large number of criminal and civil cases, in more economical manner, the country has been divided up into magisterial districts. A distinction may be drawn between ordinary magistrates' courts and regional magistrates' courts.

4.3.5.1 ORDINARY MAGISTRATES' COURTS

According to *Van der Waldt and Helmbold (1995 : 54)*, the magisterial system is one of the most historic institutions in South Africa. A magistrate's office is to be found in virtually every town or city. The magistrate's court Act, 1944 (Act 32 of 1944) determines the function of magistrates' courts.

The Act furthermore sets out their powers of jurisdiction and litigation. The jurisdiction of magistrates' courts is both criminal and civil, but in both instances they are subordinate to the supreme court and have limited or circumscribed jurisdiction.

4.3.5.2 REGIONAL MAGISTRATES' COURTS

The regional magistrates were introduced to lighten the burden of the supreme court of South Africa in those cases which are not of such a serious nature. A regional magistrate may impose more severe penalties than those of ordinary magistrates' courts, but may not impose a fine exceeding R20,000,00 and or imprisonment exceeding ten (10) years (*Van der Waldt and Helmbold, 1995 : 54*).

4.3.5.3 COURTS OF SPECIAL JURISDICTION

According to *Adler, Mueller, Laufer (1994 : 265)*, courts of special jurisdiction include courts that specialise in certain areas of law: family courts, juvenile courts, and probate courts (which deal with the transfer of property and money of a deceased). The juvenile courts will be dealt with in depth in chapter 6. Before the accused could appear before the court, certain basic principles should be analysed which will be dealt with in the next sub-section.

4.3.6 PROCEDURAL MATTERS

The procedural matters of the provincial or local division of the supreme court consist of the following:

- ▶ If, in any matter before a provincial or local division of the supreme court, there is an issue which may be decisive for the case, and which falls within the exclusive jurisdiction of the Constitutional court in terms of section 98 (2) and (3), the provincial or local division concerned shall, if it considers it to be in the interest of justice to do so, refer such matter to the constitutional court for its decision, provided that, if it is necessary for evidence to be heard for the purposes of deciding such issue, the provincial or local division concerned, shall hear such evidence and make a finding thereon, before referring the matter to the constitutional court.
- ▶ If, in any matter before a local or provincial division, there is any issue other than an issue referred to the constitutional court in terms of sub-section (1) the provincial or local division shall, if it refers the relevant issue to the constitutional court, suspend the proceedings before it, pending the decision of the constitutional court.
- ▶ If, in any matter before a provincial or local division, there are both constitutional and other issues, the provincial or local division concerned shall, if it does not refer an issue to the constitutional court, hear the matter, make findings of fact which may be relevant to a constitutional issue within the exclusive jurisdiction of the constitutional court, and give a decision on such issues as are within its jurisdiction.
- ▶ An appeal shall lie at the Appellate Division against a decision of a provincial or local division.
- ▶ If the Appellate Division is able to dispose of an appeal brought in,

without dealing with any constitutional issue that has been raised, it shall do so.

- ▶ If it is necessary for the purposes of disposing of the said appeal for the constitutional issue to be decided, the Appellate Division shall refer such issue to the constitutional court for its decision.
- ▶ The Chief Justice and the President of the constitutional court shall jointly make rules to facilitate the procedure and other issues, which may provide for the constitutional issues to be referred to the constitutional court before or after any such appeal has been heard by the Appellate Division.
- ▶ If any division of the Supreme court disposes of a matter in which a constitutional issue has been raised and such court is of the opinion that the constitutional issue is of such public importance that a ruling should be given thereon, it may, notwithstanding the fact that the matter has been disposed of, refer such issue to the constitutional court for a decision.
- ▶ When a constitutional issue has been referred to the constitutional court by a division of the Supreme court, the Minister responsible for the administration of justice shall, at the request of the President of the Constitutional court, appoint counsel to argue such constitutional issue.
- ▶ If the validity of law is in dispute in any matter, and a relevant government is not a party to the proceedings, it shall be entitled to submit written argument to the said court.
- ▶ Appeals to the Appellate Division and the constitutional court shall be registered by law, including the rules of such courts, which may provide that leave of the court from which the appeal is brought, or to which the

appeal is noted, shall be required as a condition for such appeal.

- ▶ Appeals arising from matters referred above, and which relate to issues of constitutionality shall lie to the constitutional law.
- ▶ If a dispute arises between organs of state regarding the question whether or not any executive or administrative act or conduct of one of those organs is consistent with this constitution, the organ disputing the validity of the act or conduct may apply to a provincial or local division to refer the question of the validity of such act or conduct to the constitutional court for its decision.
- ▶ If evidence is necessary for the purpose of deciding a matter, the provincial or local division concerned, shall hear such evidence and make a finding thereon, before referring such matter to the constitutional court.
- ▶ If, in any matter before a provincial or local division, the only issue raised is a constitutional issue within the exclusive jurisdiction of the constitutional court in terms of section 98 (2) and (3), a refusal to refer such issue to the constitutional court shall be appealable to the constitutional court (*Basson, 1994 : 149 - 150*).

4.4 THE FUNDAMENTAL RIGHTS

Fundamental human rights are those rights which developed over the years as rights of every accused and which are recognised and protected by the government. Only in exceptional cases and in accordance with strict guidelines as contained in the Bill of Rights, may; these rights be limited (section 36 of Act, No. 108 of 1996), and they, therefore, protect the accused against unlawful action by the government. Since the human rights that are entrenched in a Bill of Rights are not absolute, inviolable, and unlimited,

provision is made for their restriction under certain circumstances, namely:

- ▶ The empowered organ must be indicated. This organ can be the ordinary legislature, or another specific legislative institution, or a particular organ or member of the executive authority or in special instances, the judicial authority
- ▶ Secondly, the circumstances under which this empowered organ may restrict rights, can be circumscribed. The rights can, for example, be restricted for the protection of the public order, or in the general interest, or for the security of the country, or for economic welfare, or to prevent culpable activities, or for the protection of territorial inviolability or even to prevent the spreading of confidential communication
- ▶ Restrictions can, in the third place, be linked to prescribed codes of conduct, for example, that only those restrictions necessary for the maintenance of democratic order will be imposed
- ▶ In the fourth place, procedural requirements can be set regarding restrictions, that is, special procedures in addition to the ordinary, prescribed procedures that the empowered organ has to follow (*Basson and Viljoen, 1988 : 234*).

In addition, one reason for maintaining this practice is a moral preposition, such profound breaches of human rights should not be left unopposed. However, there is also a much more practical reason. The fact is that the emergency has been the cutting edge of the South African government's effort to control the rise of effective black opposition to apartheid. Even now this edge is still sharp.

The direct victims of the emergency are likely to be those individuals and those organisations who are in the forefront of the effort to bring change in South Africa. Protecting the people who have taken up such roles is important morally, preserving space for them and the organisations of which they are a part is important to the course of political events as well.

That course is often bleak and hard to predict, but can hardly be abandoned (*South African Journal on Human Rights, 1990: 250*). The operation of a Bill of fundamental rights will be discussed in the next sub-section.

4.4.1 THE OPERATION OF BILL OF FUNDAMENTAL RIGHTS

According to *Van der Waldt and Helmbold (1995 : 56)*, the rights described in the Bill are aimed at regulating the relationship between the state and the citizen.

The legislative authority, as well as the executive and administrative authorities has an obligation to obey the Bill. If the government of the day unlawfully contravenes a provision of the Bill, the Constitutional court may declare such action invalid.

The guarantees contained in the Bill are so powerful that all administrative acts and decisions of the government of the day may be tested against the Bill. Therefore, all governments at the national, provincial and local government levels are bound by the provisions of the Bill.

According to *Van der Waldt and Helmbold (1995 : 57 - 66)*, the Bill guarantees,

inter alia:

- ▶ the right to life
- ▶ the right to equality before the law and equal protection of the law
- ▶ human dignity
- ▶ the freedom and security of the accused
- ▶ freedom of speech and expression
- ▶ the right to freedom of conscience, religion, thought, belief and opinion, which shall include academic freedom in institutions of higher learning
- ▶ administrative justice
- ▶ access to information
- ▶ the right to fair labour practices, and
- ▶ the right to acquire and hold rights in property.

The Bill of Fundamental Rights protects the accused against unlawful action on the part of the state. In this way the state is restrained from infringing certain rights such as privacy and freedom of the press, for example. This statement is confirmed by *De Rebus (January 1994 : 898)*.

4.4.1.1 EQUALITY AND PROTECTION

Everybody has the right of equality and protection, including the following aspects: namely:

- ▶ Everyone, including the accused, is equal before the law and has the right to equal protection and benefit of the law
- ▶ Equality includes the full and equal enjoyment of all rights and freedoms
- ▶ The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy,

marital status, ethnic social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth

- ▶ National legislation must be enacted to prevent or prohibit unfair discrimination (*Section 9 of the South African Constitutional Act: Act 108 of 1996, and South African journal on human rights, 1995 : 365, and Bassiouni, 1995 : 16*).

4.4.1.2 FREEDOM AND SECURITY OF THE PERSON

According to Section 12 (1) of the constitution (Act 108 of 1996), everyone has the right to freedom, and security of the person which includes the following, the right:

- ▶ not to be detained without trial
- ▶ to be free from all forms of violence either public or private sources
- ▶ not to be tortured in any way, and
- ▶ not to be treated or punished in a cruel, inhuman or degrading way.

This statement is confirmed by *Hlongwane (1998 : 53)*, and *South African Journal on Human rights; vol. 12, 1996: 202*).

4.4.1.3 THE RIGHT TO PRIVACY

Everyone has the right to privacy, which includes the right not to have:

- ▶ their person or home searched
- ▶ their property searched
- ▶ their possessions seized or
- ▶ the privacy of their communications infringed in terms of section 14 of the Constitution (Act 108 of 1996).

4.4.1.4 FREEDOM OF RELIGION, BELIEF AND OPINION

In terms of section 15 (1) of the Constitution (Act 108 of 1996), everyone has the right to freedom of conscience, religion, thought, belief and opinion. However, section 15 (2) of the Constitution (Act 108 of 1996), states that religions observances may be conducted at the state or state - aided institutions, provided that:

- ▶ those observances follow rules made by the appropriate public authorities
- ▶ they are conducted on an equitable basis, and
- ▶ attendance at them is free and voluntary. The statement is confirmed by *Yearbook on Human Rights for 1988 (1992: 6)*.

4.4.1.5 HEALTH-CARE, FOOD, WATER, AND SOCIAL SECURITY

In terms of section 27 (1) of the Constitution (Act 108 of 1996), everyone including the accused, has the right to have access to:

- ▶ health care services
- ▶ sufficient food and water, and
- ▶ social security, including, if they are unable to support themselves and their dependants appropriate social assistance.

The accused in prison are depended on the state for their health care, food, water, and social security. Therefore, there is a positive duty on the prison authorities to ensure that adequate medical care is provided for all accused, and also all infants admitted to prison (*Erasmus, 1992 : 219 - 220, and Probation Journal, No.1, December, 1992: 171*).

The accused are entitled to the same standard of medical care and attention as they would receive outside the prison system (*Prison service Journal No.77 Winter 1990 : 23*). This statement is confirmed by *Pront and Ross (1988: 114)*. In addition, is the fact that physician is on call at all times to help with questions regarding appropriate response to medical complaints (*Dubler, 1986: 9*).

Equally important, is the fact that food should be wholesome, safe for human consumption and nutritionally adequate (*Dubler, 1986 : 68*).

4.4.1.6 RIGHTS OF ARRESTED AND DETAINED PERSONS

According to section 35 (2) of the constitution (Act 108 of 1996), everyone who is detained, including every accused, has the right:

- ▶ to be informed promptly of the reason for being detained
- ▶ to choose, and to consult with a legal practitioner, and to be informed of this right promptly
- ▶ to challenge the lawfulness of the detention in prison before a court and, if the detention is unlawful, to be released
- ▶ the conditions of detention that are consistent with human dignity, including at least exercise and the provision, at the state expense, of adequate accommodation, nutrition, reading material and medical treatment, and
- ▶ to communicate with, and be visited by, that person's:
 - spouse or partner
 - next of kin
 - chosen religious counsellor, and
 - chosen medical practitioner.

In addition, section 11 (2) of the new South African Constitution provides that no person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment (*Krautkramer, 1994 : 4, and Bassiouni, 1995 : 22*).

4.4.1.7 THE RIGHT TO LIFE AND DIGNITY

According to *De Waal, Currie and Erasmus (1998 : 183)*, the right to life requires the state to take the lead in re-establishing respect for human life and dignity in South Africa.

Therefore, the rights to life and dignity are the most important of all human rights, and the source of all other personal rights in this chapter. However, the right to life as understood, incorporates the right to dignity. So the right to human dignity and life are entwined (*South African Journal of Criminal Justice, July 1995 : 200*).

Equally important, is the fact that section 11 (2) of the constitution (Act 108 of 1996), provides that no person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman, or degrading treatment or punishment (*De Rebus, December, 1994: 898, and Schabas, 1997 : 95*).

Apart from the rights of the person before the court, the court system administering criminal courts, superior courts, and appellate courts.

4.5 THE ROLE AND FUNCTIONS OF THE COURTS

Defendants may be frightened because they experience a loss of control over their own destiny. The experience can be frustrating because courts seldom function as effectively or efficiently as they should. Delay is inevitable. Bargains and deals made by prosecutors and defence counsels are common. So are charges of bias, discrimination and arbitrariness (*Adler, Mueller, and Laufer, 1994 : 315*).

4.5.1 PRE-TRIAL JUDICIAL PROCESS

These pre-trial procedures are critically important components of the justice process because the great majority of all criminal cases are resolved informally at this stage and never come before the courts. However, the cases are settled during the pre-trial stage in number of ways. Prosecutors can use their discretion to drop cases before formal charges are filed, because of insufficient evidence, office policy, witness conflicts, or similar problems.

Even if charges are filed, the prosecutor can decide not to proceed against the defendant because of the change in the circumstances of the case (*Senna and Siegel, 1998 : 284*).

By the same token, *Konecni and Ebbesen (1982 : 235 - 236)* contend that perhaps the most surprising development in prosecutor 's dominance of the system is that the legislature and judicial branches of government have avoided confrontation with prosecutors over the exercise of their authority. In regard to the legislature, it seems as if there are two explanations for this reluctance. Firstly, legislators are fearful of sponsoring or supporting

legislation that may result even inaccurately in their being labelled as “soft on crime”. Secondly, the political image of prosecutors as leaders in society's effort to enforce its laws has provided them with a protective shield.

Equally important, is the fact that the prosecution or the defence may believe, for example, that the trial is not in the best interest of the victim, the defendant or society because the defendant is incapable of understanding the charges or controlling his or her behaviour. In this instance the defendant may have a competency hearing before a judge and be placed in a secure treatment facility until ready to stand trial or the prosecutor may waive further action so that the defendant can be placed in a special treatment program such as a detoxification unit at a local hospital. However, after arrest the accused is ordinarily taken to the police station where the police list the possible criminal charges against him or her and obtain other information for booking purposes. This may include recording a description of the suspect and may then be finger printed, photographed and required to participate in a line-up (*Senna and Siegel, 1998 : 285*). This process is fully dealt with in chapter 3. Therefore, the normal procedure is for the prosecutor to receive a copy of the booking slip and subsequent field investigation report. The prosecutor has responsibility of determining if there is sufficient evidence to bring charges against the suspect.

The prosecutor, when decides to prosecute, will prepare the complaint which contains the name of the person and the offence that the person has committed and is charged with. The complaint is usually signed by arresting officer or complaining witness, as well as by the prosecutor (*Folley, 1976 : 418 - 419*).

4.5.1.1 THE PRESENTMENT

The second step in the pre-trial judicial process is taking the offender before a magistrate without unnecessary delay. The magistrate then informs the suspect of the charge against him or her as well as his or her constitutional rights relative to that charge and the criminal justice procedure. The suspect is also informed of his or her right for preliminary examination as well as his or her right to legal counsel. If the suspect is indigent, the magistrate or court may appoint counsel for him or her. The magistrate may also set bail at this initial appearance of the suspect (*Folley, 1976 : 419*).

According to *Konecini and Ebbesen (1982 : 192)*, the bail system seems to provide a means for the court to avoid punishing individuals prior to their being found guilty of a crime and still insure that potential criminals are not allowed to escape appropriate legal proceedings and sanctions.

Therefore, the basic purpose of bail is to furnish a means for the release of a detained individual while his or her case is pending, provided the accused is ready to give willingness to appear in court at the appropriate time (*Territo, Halsted, and Bromley, 1998 : 399, and Milvor and Womer, 1996 : 13*).

4.5.1.2 PRELIMINARY HEARING

The preliminary hearing is not a trial for determining the guilt or innocence of the suspect, but an open hearing to determine if there is sufficient evidence to hold the trial. If, in the opinion of the judge, the evidence is sufficient, the accused will be bound over for trial by a court that possesses general jurisdiction. Many people accused of a felony waive the right to a preliminary

hearing, and their case automatically advances to the trial (*Folley, 1976 : 419, and Sallmann, and Willis, 1984 : 48*).

4.5.1.3 BAIL BEFORE FIRST APPEARANCE OF ACCUSED IN LOWER COURT

An accused who is in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2, or in Schedule 3 to the Internal Security Act, 1982 (Act 74 of 1982), may, before his first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, if the accused deposits at a police station the sum of money determined by such police official.

The police official referred to above shall, at the time of releasing the accused on bail, complete and hand to the accused a recognizance on which a receipt shall be given for the sum of money deposited as bail and on which the offence in respect of which the bail is granted and the place, date and time of the trial of the accused is entered.

The said police official shall forthwith forward a duplicate original of such recognizance to the clerk of the court which has jurisdiction. Bail granted under this section shall, if it is of force at the time of the first appearance of the accused in a lower court, but subject to the provisions of section 62, remain in force after such appearance in the same manner as bail granted by the court under section 60 at the time of such first appearance (*Barrow, 1998 : 37*).

4.5.1.4 BAIL AFTER FIRST APPEARANCE OF ACCUSED IN LOWER COURT

An accused who is in custody in respect of any offence may at his first

appearance in a lower court or at any stage after such appearance, apply to such court or, if the proceedings against the accused are pending in a superior court, to that court, to be released on bail in respect of such offence, and any such court may, subject to the provisions of section 61, release the accused on bail in respect of such offence on condition that the accused deposits with the clerk of the court, or as the case may be, the registrar of the court, or with a member of the prisons service at the prison where the accused is in custody, or with any police official at the place where the accused is in custody, the sum of money determined by the court in question.

The court may, on good cause shown, permit an accused to furnish a guarantee, with or without sureties, that he will pay and forfeit to the State the sum of money determined under subsection (1), or increased or reduced under section 63(1), in circumstances under which such sum, if it had been deposited, would be forfeited to the State (*Barrow, 1988 : 38*).

According to *Adler, Mueller, and Laufer (1994: 320)*, other bail options are the following, namely:

- ▶ **Fully secured bail:** The defendant posts the full amount of bail with the court.
- ▶ **Privately secured bail:** A bondsman signs a promissory note to the court for the bail amount and charges the defendant a fee for the service (usually 10 % of the bail amount). If the defendant fails to appear the bondsman must pay the court the full amount. Frequently, the bondsman requires the defendant to post collateral in addition to the fee.
- ▶ **Deposit bail:** The courts allow the defendant to deposit a percentage

(usually 10 %) of the full bail with the court. The full amount of the bail is required if the defendant fails to appear. The percentage bail is returned after disposition of the case but the court often retains 10 % for the administrative costs.

- ▶ **Unsecured bail:** The defendant pays no money to the court but is liable for the full amount of bail should the defendant fail to appear.
- ▶ **Conditional release:** The court releases the defendant subject to his or her following specific conditions set by the court, such as attendance at drug treatment therapy or staying away from the complaining witness.
- ▶ **Third - party custody:** The defendant is released into the custody of an individual or agency that promises to assure his or her appearance in court. No monetary transactions are involved in this type of release.
- ▶ **Citation release:** Arrestees are released pending their first court appearance on a written order issued by law enforcement personnel.

4.5.1.5 PRE-TRIAL DIVERSION

Another important feature in the early court process is placing offenders into non-criminal diversion programs before their formal trial or conviction.

In addition, diversion helps the offenders avoid the stigma of a criminal conviction and enables the justice system to reduce costs and alleviate prison overcrowding (*Senna, and Siegel, 1998 : 306*).

By the same token, *White and Petrone (1997 : 183 - 184)*, contend that some common form of diversion include, inter alia:

- ▶ Informal police caution, whereby police admonish a person directly for

his/her behaviour but not further action is taken at a formal level.

- ▶ Formal police caution, whereby police issue a formal warning which is on record but do not charge the person with an offence.
- ▶ Community aid panels, or community justice panels, to which alleged offenders are referred by police or the courts, and which have the power to make suggestions or impose particular remedies for a harm which has been committed such as community-based activities.
- ▶ Family group conferences, in which victims, offenders, their respective families and significant others, the police and welfare workers are represented, and which attempt to find appropriate ways to ensure victim satisfaction while allowing scope for the offender to reintegrate back into the community.

Therefore, pre-trial diversion is a procedure whereby criminal defendants are either diverted to community-based agency for treatment or assigned to a counsellor for social and psychiatric assistance (*Champion, 1999 : 124, and McShane, and Krause, 1993 : 16*).

However, diversion is used primarily for first offenders who have not committed serious crimes. It is like probation in that offenders must comply with specific conditions established by the court for a fixed period (*Champion, 1999 : 124*). In addition, the court should obtain an acceptance explanation from the offender as to why the offending took place (*Probation services, vol.40, No.1 March, 1993: 16*).

4.5.2 THE TRIAL PROCESS

According to *Folley (1976 : 421)*, the accused may, however, waive his or her right to a trial by jury and be tried by the judge. In this instance, the judge hears the evidence and decides by himself whether the accused is guilty or not guilty. Generally, the accused will receive a trial by jury and the following process will be in effect. This statement is confirmed by the criminal law quarterly, (*vol.11, No.4, October, 1969 : 345*).

4.5.2.1 THE PLEA

Defendants in jail or on bail are willingly or unwillingly participating in a process that ultimately leads them before the trial judge. A preliminary hearing may be conducted, various motions may be made by defence counsel, and the prosecutor will ready the case for trial, either on the basis of an information or of an indictment.

The further proceedings depend entirely on the defendant's response to the accusation, known as the plea. No matter how serious the alleged crime, all defendants must enter a plea (*Adler, Mueller, and Laufer, 1994 : 323*). By the same token, *Inciardi (1984 : 414)*, contends that after the formal determination of charges through either the information or indictment the defendant is arraigned, at which time the defendant is asked to enter a plea.

4.5.2.2 THE PROSECUTOR'S CASE

The prosecutor begins his / her case by presenting his or her witnesses. Witnesses for the prosecution present testimony that will support a verdict of guilty. The prosecutor begins with direct examination of his or her witnesses

with questions that will bring out the facts in chronological order. After the prosecutor has brought out all necessary information, the prosecutor rests (*Folley, 1976 : 421, and Territo, Halsted, and Bromley, 1998 : 458*).

The defence counsel then cross-examines the prosecution's witnesses. The defence counsel purpose is to challenge the witness relative to his or her testimony and, if possible, show inconsistencies in testimony exist. The defence counsel then rests (*Territo, Halsted, Bromley, 1998 : 459*). If the prosecutor believes it necessary, may engage in redirect examination of the witness for material that may have been overlooked or that is new. Following the redirect, the defence can also ask additional questions (*Folley, 1976 : 422*).

4.5.2.3 THE DEFENCE'S CASE

Following the presentation of all prosecution witnesses, the defence calls its witnesses. The same procedure is used in this process, with the exception that the defence counsel asks for testimony and the witnesses are cross-examined by the prosecution. The purpose of the defence is, of course, to prove that the defendant is innocent of the charges lodged against him or her (*Reid, 1987 : 333*).

4.5.2.4 PROSECUTOR'S REBUTTAL

The prosecutor then engages in the rebuttal and may call previous or additional witnesses in order to strengthen any part of his or her case that may have been weakened by the defence counsel. The same order of testimony and cross-examination follows during this rebuttal (*Reid, 1987 : 334*).

4.5.2.5 DEFENCE'S REBUTTAL

The defence then engages in a surrebuttal and brings forth previous and additional experts and witnesses to strengthen his or her case. The same procedure as in the prosecutor's rebuttal is followed (*Folley, 1976 : 422*).

4.5.2.6 SUMMATIONS BY DEFENCE AND PROSECUTOR

After the defence has rested its case, the prosecutor has the opinion of presenting additional proof to rebut the case presented by the defence. Not all prosecution decide to exercise this option. Where it is exercised, the prosecution may call or recall police officers to testify regarding facts that have been in dispute among witnesses at the trial (*Reid, 1987 : 334*).

4.5.2.7 DELIBERATION AND VERDICT

The pre-sentence investigation is a critical tool in the judge's decision process about sentencing. The document that results from the investigation gives up-to-date information about many aspects of the offender that are important in determining the most appropriate sentence (*McShane, and Krause, 1993 : 38, and Raynor, 1988 :17, and Law and Human Behaviour, vol.18, 1994 : 152*).

This statement is confirmed by *Raynor, Smith and Vanstone (1994: 44) and Clark (1991 : 47)*. In addition, the judicial officer should be free to exercise his discretion in determining sentence. The judicial officer should not be hindered unfairly by sentences imposed in previous cases for similar cases.

The judicial officer should take into account all surrounding circumstances of the crime committed and the person of the accused in determining appropriate

sentence. Unfortunately in sentencing does mean that people convicted of the same offence should get the same sentence. The reason for this is that the circumstance of each accused and his or her crime must be taken into account when determining an appropriate sentence (*Seriti, 1992 : 34 - 35*).

Therefore, the purpose of the pre-sentence report is to assist the court in making rational decisions about the disposition of a case, such as whether to grant probation. In addition, the report may also be used to determine the appropriate length of a sentence and to help plan the services that an offender will need, such as drug treatment or mental health counselling, while under the supervision of the criminal justice system (*McShane, and Krause, 1993 : 38 - 39, and Williams, 1995 : 95*).

Generally, the presentence document contains information on the following; namely:

- ▶ The current offence. The defendant's version of the events, including attitudes toward the crime and any victims, the official or police report of the crime, an offence description, the plea, and the findings of the court
- ▶ Any prior criminal record of the defendant (juvenile and adult), either misdemeanour or felony. The data may also include previous arrests.

4.5.2.8 THE SENTENCE

The sentence rests with the judge, who follows guidelines set by the state legislature. The defendant may be sentenced to imprisonment or to a correctional institution, or may be put on probation.

Equally important, is the fact that the disparity in sentencing goes deeper than official judicial decisions in that judges get most of the information on convicted offenders from their probation officers.

Probation officers may have differing values, and they may present the information with differing emphasis and or interpret the information differently, submitting different recommendations on similar cases (*Pinkele and Louthan, 1985 : 62*).

Therefore, the main roles of the court are to determine guilty or innocence and if a person is found guilty, to determine sentence. However, how the court does this, is subject to ongoing evaluation, criticism and public concern. The media often attack the “discretionary” aspects of our legal system, that is, the active and creative way in which judges deal with criminal matters on a case-by-case basis.

These criticisms are often premised on the view that a more formal rational system of justice is desirable. In order to diminish any possible judicial discretion, there are calls for an administratively efficient basis for decision. Making, one based on “mandatory” procedures and rules (*White, and Perrone, 1997 : 174*).

However, after the sentence is decided, the judge reads the sentence to the defendant. The sentence is then officially recorded in the court records. If the sentence involves incarceration, the defendant is usually taken immediately into custody (*Reid, 1987 : 358*). The correctional institutions will be dealt with

in depth in chapter 5.

4.6 THE ROLE OF ASSESSORS IN THE JUDICIAL SYSTEM IN SOUTH AFRICA

In terms of the Criminal Procedure Act, 51 of 1977, and the Magistrates Court Act, 32 of 1944, an assessor/s may be appointed to hear evidence during the trial held both in superior and lower courts in South Africa (*Barrow, 1988 : 84*).

An assessor is a person who, in the opinion of the judge who presides at a trial, has experience in the administration of justice or skill in any matter which may be considered at the trial. By the same token *Pretorius (1998 : 46 - 7)*, defines an assessor as a person learned in some particular science or industry, who sits with the judge on the trial of a cause requiring such special knowledge and gives his/her advice.

However, the assessor must take an oath or make an affirmation, as the case may be, before he/she hears any evidence in court - that he/she will, on the evidence placed before him/her, give a true verdict upon the issues to be tried (*Barrow, 1988 : 85*). Subject to the provisions of this section and of section 217(3)(b) of the Criminal Procedure Act, 51 of 1977, the decision or finding of the majority of the members of the court upon any question of fact or upon the question of special knowledge referred to above, shall be the decision or finding of the court, except when the presiding judge sits with only one assessor, in which case the decision or finding of the judge shall, in the case of a difference of opinion, be the decision or finding of the court (*Barrow, 1988: 85*).

The purpose of appointing assessors for the courts in South Africa follows the decision of the appeal court judge Schreiner in *R v Mati and others*, 1960(1) SA 504 (A), where he pronounced as follows:

"It is disquieting to think that under our system of procedure, of which we are in general justly proud, it is possible for an accused person to be convicted by a judge sitting alone and be sentenced to death after a trial in which by reason of his poverty he has had to conduct his own defence" (*Pretorius, 1998: 106 - 107*).

4.7 ASSESSORS IN OTHER JUDICIAL SYSTEMS OF THE WORLD : A COMPARATIVE STUDY

The researcher compared the judicial systems of the countries, such as Botswana, Nigeria, England, France and Sweden, in order to determine differences and/or similarities in the way in which assessors are used by their court systems.

4.7.1 BOTSWANA

After Botswana gained its independence, Section 7 of the High Court Act of Botswana made the following provisions regarding the use of assessors, namely:

- "> In any proceedings, whether civil or criminal, the judge presiding may summons to the assistance of the court two or more persons to sit and act as assessors in an advisory capacity
- ▶ It shall be the duty of the assessors to give, either in open court, or otherwise, such assistance and advice as a judge presiding may require, but the decision shall be vested exclusively in the judge
- ▶ The agreement or disagreement of an assessor with the decision of the

judge may be noted on the record, but if such agreement or disagreement is not noted, it shall be presumed that the assessor agreed with the decision of the judge (*Pretorius, 1998 : 129 - 130*)."

4.7.2 NIGERIA

All courts in Nigeria, except for tribunals, try criminal and civil cases. Therefore, the same court that hears and determines the case of stealing against an individual, will also determine a civil action in debt for the recovery of money allegedly owed a plaintiff by a defendant.

Most of the subordinate courts, that is, the Customary Courts and the Area Courts with the exception of the Grade A Customary Courts and the Upper Area Courts, are presided over by laymen. These lay justices sit alone without assessors or legally trained persons to assist them on questions of law.

Sitting immediately beneath the lay justices are the court clerks or registrars who call the case and pass the file to the lay justices.

The Grade A Customary Court judge, the Upper Area Court judge and the stipendiary magistrates are assisted by court clerks or registrars. These court officials sit immediately beneath the presiding officer of court.

The States' High Courts and the Federal High Court are presided over by a single judge, except the High Courts in Northern Nigeria that are presided over by two judges when hearing an appeal from a Magistrates' Court or an Upper Area Court.

The Court of Appeal is constituted by not less than three justices when it is hearing a case on a point involving the interpretation of the Constitution.

Finally, the Supreme Court is constituted by at least five justices, except when it is hearing a case on a point involving the interpretation of the Constitution, when it is comprised of seven justices (*Doherty, 1990 : 4 - 6*).

4.7.3 ENGLAND

All the England courts and tribunals are not examined here. However, the English courts are organised as follows:

▶ HOUSE OF LORDS

The oldest common law courts is Parliament. Even today, the judicial functions of Parliament are exercised by the House of Lords. In theory, the judicial proceedings are the responsibility of the entire house. This group consists of the Lord Chancellor, the Lords of Appeal in Ordinary, and any member of the House who has held high judicial office in the past (*Terrill, 1992 : 28*).

The House of Lords' jurisdiction is almost entirely limited to civil and criminal appeals from the Court of Appeal, and in exceptional cases, from the High Court.

▶ THE COURT OF APPEAL

The justices of the Court of Appeal are appointed on the recommendation of the Lord Chancellor. In order to qualify for a position on the court, the candidate must be a judge from the High Court or have had the Right of

Audience in the High Court for 10 years (*Terrill, 1992 : 28*).

▶ THE HIGH COURT

The High Court consists of 80 judges selected by the Lord Chancellor. In order to qualify for appointment to this court, a person must be a circuit judge for two years or have had the Right of Audience in the High Court for 10 years (*Terrill, 1992 : 29*).

▶ CROWN COURTS

The Crown Courts have exclusive jurisdiction over all major criminal cases; they also handle appeals from people convicted summarily in a Magistrates' Court.

Three kinds of judges preside over Crown Court trials:

- Justices from the Queen's Bench division of the High Court are assigned to handle the most serious cases
- Approximately 400 circuit judges preside over the less serious cases
- About 500 recorders (part-time judges) assist the circuit judges with their case-loads.

The part-time judges who are either barristers or solicitors of at least 10 years standing, apply to the Lord Chancellor to serve in this capacity (*Terrill, 1992 : 29*). Trials in the Crown Courts are heard by a judge and a jury.

▶ COUNTY COURTS

The jurisdiction of these courts is limited to civil matters. They are

primarily concerned with small claims arising from cases in contract or tort. The judges assigned to County Courts are the circuit judges who also sit in Crown Courts (*Terrill, 1992 : 29 - 30*).

▶ MAGISTRATES' COURTS

These are found in Local Government areas and they handle 98 percent of the criminal cases. The Magistrates' Courts also have some civil jurisdiction including revocation and renewal of licenses, enforcement of marital separation decrees, orders involving child custody, and some adoption proceedings.

There are two types of magistrates who sit in these courts:

- The stipendiary or professional magistrates, trained in the law and paid for their services
- The other 27,500 magistrates are laymen who are referred to as Justices of Peace.

Local advisory commissions recommend to the Lord Chancellor people who are willing to serve on these courts without remuneration. Justices of the Peace are expected to serve at least one day biweekly, and the position is considered a status symbol in the community. Their term of service is six years, and it can be renewed for an additional term which is supposed to be the maximum (*Terrill, 1992 : 30*).

4.7.4 FRANCE

The principle of unity of criminal and civil justice applies in France. This

implies that the main ordinary courts (the Tribunal di'instance and the Tribunal de Grand Instance) have criminal and civil jurisdiction. Another feature common to these courts is that they are all subordinate to the Court of Cassation by way of appeal (*Dadomo and Farran, 1993 : 51*).

▶ COURT OF CASSATION

The Court of Cassation is the highest court for civil and criminal appeals in France. The principal role of this court is to assure that the law is interpreted uniformly throughout the country. The court is composed of six chambers. Three handle civil cases, while the others entertain social, commercial, and criminal matters respectively. Each chamber has a judge who is called the President, and there is a first president who serves as the chief justice for the entire court. There are slightly more than 100 judges serving this court. Of these, approximately 24 are career judges who are appointed to the court for a period of up to 10 years. They assist the senior judges of the court and are referred to as advisors (*Terrill, 1992 : 115*).

▶ COURTS OF APPEAL

There are 27 Courts of Appeal that handle civil and criminal appeals from the Lower Courts. Courts of Appeal consist of four chambers that specialize respectively in civil, social, correctional and juvenile cases of appeal. Each case is handled by a three judge panel (*Terrill, 1992 : 115*).

▶ COURTS OF ASSIZE

In each of the 95 departments of France, a Court of Assize sits with both

appellate and original jurisdiction in criminal matters. When the court hears appeals from a Lower Court, three judges handle the matter. It is also the Court of First Instance for all major felonies, which are referred to as crimes. As a Tribunal of First Instance, this court includes a panel of three judges and nine lay jurors. These courts are staffed by judges from the Courts of Appeal. But judges from local courts also can serve on a Court of Assize. Courts of Assize are divided into two chambers. One handles adult cases, while the other is responsible for juvenile offenders.

▶ COURTS OF MAJOR JURISDICTION

The next tier in the court hierarchy consists of the 172 Courts of Major Jurisdiction. Each court is divided into three chambers. When judges sit to hear a civil matter, the court is called a Civil Court. Therefore, Courts of Major Jurisdiction have unlimited jurisdiction in civil matters throughout the department in which they are located.

When judges sit to hear a criminal matter, the court is called a Correctional Court. Courts of Major Jurisdiction handle serious misdemeanors which are called delicts. This court also sits as a Juvenile Court. Three-judge panels handle both the civil and criminal cases that come before the court (*Terrill, 1992 : 115*).

▶ COURTS OF MINOR JURISDICTION

Last in the hierarchy are the 455 Courts of Minor Jurisdiction. Each court is divided into two tribunals. Civil matters are heard in the Civil Tribunal.

Minor misdemeanors and violations, which are called contraventions, are handled in the police tribunal. This is the only court in the hierarchy that has a single judge sitting to decide a case (*Terrill, 1992 : 116*).

4.7.5 SWEDEN

Sweden has a three-tiered court hierarchy that is responsible for handling civil and criminal litigation, namely:

▶ THE LAW COUNCIL

The power of judicial review is one of the principal responsibilities of the United States Supreme Court. But, in Sweden this type of review is not practiced, because it is believed that the independent status of courts could be compromised.

Swedish Constitutional Law has, therefore, established the Law Council, which is composed of judges from the Supreme Court and the Supreme Administrative Court.

The extent to which Swedish judges are able to maintain their judicial independence from the political system is based on three factors:

- ⇒ Judges are not appointed to the bench based on past political associations or favors
- ⇒ They do not rule on administrative matters, for that is the Province of Administrative Tribunals; and
- ⇒ There is no tradition of judicial review, since those types of problems have already been anticipated and resolved by the Law Council.

Thus, Swedish judges are left with the responsibility of handling both civil and criminal litigation (*Terrill, 1992 : 172 - 3*).

▶ THE SUPREME COURT

The Supreme Court is composed of 25 justices, and the cabinet appoints one of them to serve as chair of the court. The court's jurisdiction is primarily limited to hearing appeals against decisions handed down in one of the Courts of Appeal.

The court carefully scrutinizes the kinds of cases that it will hear, and generally accepts for review only those cases that may establish a precedent. The decision to accept or reject a request for appeal is made by a panel of three justices (*Terrill, 1992 : 173 - 4*).

▶ COURTS OF APPEAL

There are six Courts of Appeal, and each is given a territorial jurisdiction as determined by the cabinet. These courts hear appeals from District Courts. They also have limited powers to serve as Courts of First Instance in special cases. The courts are divided into two or more divisions. In civil matters, cases are determined by five judges, whereas in criminal cases an appeal is heard by three judges and two lay judges (or lay assessors). The role of lay judges or lay assessors would include the collection of facts that were pertinent to a case. In conjunction with the lawman, these lay assessors would decide a case based on their investigation of the facts and the oral testimony of the parties involved. Although lawmen were replaced by professional judges in the

seventeenth century, the role of lay judges was retained (*Terrill, 1992: 176*).

Although each court handles most of the appeals from the city in which it is located, it may hold sessions in other locations within its circuit if the circumstances warrant it. The cabinet can also require a Court of Appeal to hold a session in another place within its circuit at specific times throughout the year (*Terrill, 1992 : 174*).

▶ DISTRICT COURTS

The District Courts are the principal courts of First Instance in the Swedish court hierarchy. They handle 95 percent of all litigation in the country. The cabinet determines how many District Courts are needed to serve the country; currently there are 97. Each court is presided over by a president and several assistant judges. The court may also be divided into divisions. Civil cases are heard by no more than four and no less than three judges.

Criminal cases are handled by one judge and a panel of three lay judges. Cases of minor importance are heard by a single judge. If the legal issue involves technical matters, the bench is composed of judges and technical experts (*Terrill, 1992 : 174*).

4.8 SUMMARY

The origin of the South African legal system is as a result of the amalgamation of various laws and legal systems which the settlers brought to South African

since 1652. However, the legal system in South Africa is not controlled by the constitution of the Republic of South Africa, but the main objective of the judicial authority is to guarantee the rights and freedoms of the citizens.

Therefore, the principal task of the courts of law is to interpret and apply the law, and not the Acts, and to exercise sanctions.

CHAPTER 5

THE ROLE OF VOLUNTEERS IN THE CORRECTIONAL SYSTEM IN SOUTH AFRICA**5.1 INTRODUCTION**

In the process of maintaining law and order within the Republic of South Africa, the Department of Correctional Service also strives to render a correctional service in order to contribute to the protection of society by focussing on the detention, care and treatment of prisoners, as well as, the supervision of offenders serving community-based sentences, such as probationers and all those who are released on parole.

This chapter focuses on the historical development of the South African correctional system and the role and functions of volunteers in correctional institutions programmes. Volunteer participation in the treatment and development of inmates forms the integral part of the rehabilitation process given the shortage of professional staff and overcrowded prisons in South Africa.

5.2 THE HISTORICAL DEVELOPMENT OF THE SOUTH AFRICAN CORRECTIONAL INSTITUTIONS

The early part of the previous century saw the prison system regulated by various Provincial Ordinances, namely:

- ▶ Cape Town
- ▶ Natal
- ▶ Orange Free State, and
- ▶ Transvaal.

5.2.1 THE CAPE

When the Cape was first occupied by Europeans in 1652, it became a possession of the Dutch East India Company. The system of criminal procedure and of punishment which was introduced, reflected that of the Dutch mother country in its emphasis on punishment of the body. Therefore the full punitive measures was presented as a cruel and public spectacle. Thus, for example, the execution of convicted persons by firing squad, was preceded by a military parade involving three companies of troops.

Other forms of punishment, particularly those meted out to slaves, involved further tortures, even public crucifixions, in which the convicted, some of their limbs broken or severed, were left to die slowly (*Van Zyl Smit, 1992 : 7*). However, there has not been sufficient primary research into attitudes towards punishment during the period of the Dutch East India Company at the Cape (which extended virtually to the end of the eighteenth century) to know whether there was a gradual turning away from the spectacle of suffering similar to that which took place in the Netherlands during the century 1650 -1750 and which was the precursor of reforms in that country. However, the relative significance of imprisonment during the period of the Company is also far from clear (*Van Zyl Smit, 1992 : 7*). At the Cape, detainees were held in early fortifications, among which the Cape Town "Castle" was the most prominent, and later in the first rudimentary goal. The purpose, however, was usually to detain detainees pending their trial. Pre-trial detention was governed by the notorious Ordinance on Criminal Procedure, which had been proclaimed by Phillip II of Spain in his capacity as ruler of the Netherlands in 1570.

Section 15 and 16 of the Ordinance provided that prisoners awaiting trial, should be held in single segregated cells and that no one should be allowed to speak to them without the permission of the judge who was responsible for their interrogation (*Van Zyl Smit, 1992 : 7 - 8*). Convicted persons were occasionally held in chains in the Dutch East India Company's slave lodge and made to labour in public works, but this appears to have been rare and poorly organised. An attempt was made to extract labour from convicts deported to Robben Island. However, this was not a systematic programme of work designed to rehabilitate the convicted persons. Deportation to Robben Island (and deportation from the Cape to other Dutch colonies in the East), must rather be seen as part of the penal system of its age in which, in many jurisdictions, cruel public punishment were combined with the mass deportation of criminals (*Van Zyl Smit, 1992 : 8*). Deportation removed the criminal from a society which did not have much interest in his welfare. This was particularly true at the Cape where the colonial power had not as yet any systematic programme of development or exploitation for the colony and its inhabitants.

The end of the first Dutch occupation of the Cape in 1795 coincided with the beginning of the decline of the penal system that was designed only to inflict physical punishment. Influenced by the rejection of torture and the emphasis on moderate, measured punishment, proportionate to the crime, in the writings of the penal theorists of the European Enlightenment, such as Beccaria and Howard, and perhaps also by some of the last writers on Koman. Dutch law, the rulers, during the first British occupation (1795 - 1803) and the Batavian period (1803 - 1806), expressed their opposition to cruel punishments (*Van Zyl Smit, 1992 : 8*). However, there is some evidence that the local elite, carefully

nurtured by the British after the second and permanent occupation of the Cape in 1806, absorbed at least some of the ideals of the Enlightenment. It is certainly probable that the change in official attitude increased the demand for alternative punishment.

The secondary punishment of incarceration for a fixed proportionate to the heinousness of the offence was a obvious candidate, particularly because in the first half of the nineteenth century deportation ceased to be viable alternative for large numbers of persons convicted at the Cape (*Van Zyl Smit, 1992 : 8*).

However, a more complex factor in the development of the penal system, was the abolition of slavery, a process which began at the Cape in 1807 with the outlawing of the slave trade and continued to 1834 with the emancipation. In this process of gradual abolition, the powers of punishment of individual slave owners were eventually restricted severely. In their stead, slave owners could turn their slaves over to the magistrate for punishment in the form of whipping or detention in stocks. The state thus became actively involved in disciplining past of the labour force that had previously been left to private surveillance. The control of labour was also a significant factor beyond the immediate framework of the abolition of slavery (*Van Zyl Smit, 1992 : 9*). Thus, throughout the first decade of the nineteenth century, the economy of the Cape expanded and the demand for labour grew.

Since the supply of slave labour could not be increased, the authorities turned to other measures to ensure a steady supply of labour. The penal system was

soon involved. Various strategies were tried. In 1809 a proclamation was issued to compel indigenous Khoi-Khoi inhabitants to work on farms by making it illegal for them to move around without passes.

The penal system was also invoked in the early 1820s in an (unsuccessful) attempt to ensure that indentured immigrant labours from England remained in the employ of their masters (*Van Zyl Smit, 1992 : 9*). However, the strategy of criminalizing job seekers was not successful. There was much resistance to this form of social control, both from the English workers who simply broke their contracts, and from the indigenous labourers who congregated at the mission stations or who resisted passively by working with less than total commitment. In mid-1823, a Commission of Inquiring was sent by the British authorities to investigate matters in the Cape colony. Significantly, much emphasis was placed both on the labour situation, and on the penal system. The two issues were dealt with in the same report, which was published in 1928.

The report noted that the attempt to control labour, had been unsuccessful and found that the system of passes had been subject to great abuse (*Van Zyl Smit, 1992 : 9*). Therefore, patronage had been exercised by local magistrates on a large scale, yet the labour problems had not been solved. The alternative was to abolish specific penal restrictions on one part of the labouring population.

That is the Khoi-Khoi (and shortly thereafter slaves), and to substitute for it a more general colour-blind control, still operating by means of the penal system.

In recommending the repeal of the Proclamation of 1809, the Commission was not reducing the surveillance of the state. In fact, it was extending it to all employees, thus ensuring that the indigenous work force remained firmly within the power of the state (*Van Zyl Smit, 1992 : 9*). Another aspect of the findings of the Commission deserves mention. The Commission noted that the prison system had indeed expanded to fill the gap left by the abolition of some vicious punishments of the eighteenth century. However, this expansion had occurred on a relatively disorganised basis.

The few local lock-ups that existed, were filled to overflowing with so-called civil offenders against "pass laws" and other legislation that created petty crime. A parallel, though equally haphazard, system of convict stations for those sentenced to longer terms for more serious common law offences had come into existence. Virtually by default, imprisonment had become a major feature of the colonial penal system (*Van Zyl Smit, 1992 : 9 - 10*).

The Commission noted numerous abuses in this system, but did not recommend a systematic overhaul. Although the report of the Commission ranged widely, it did not place much emphasis on rehabilitation or on the alleged reformatory effect of useful convict labour. The main emphasis of the Commission was a relatively short-term and direct attempt to reduce the expenditure of colonial administration. The result was that, although it noted abuses, it made no significant concrete proposals for their amelioration.

In the wake of this report, Ordinance 50 of 1828 was introduced. It abolished the system of passes for Khoi-Khoi inhabitants of the colony and formally

placed them on an equal legal footing with other colonists. The abolition of slavery six years later, added further to the multi-racial group that now had the same legal status as the European colonists (*Van Zyl Smit, 1992 : 10*). However, in the form of punishment, if not always in its severity, there was also no racial distinction drawn in the colony in this period. The 1828 report led to no system of classification of prisoners at all - not on the basis of offence committed, nor on the basis of response to the regime of the prison, nor on racial lines. Even segregation between the sexes was not always enforced. There is no indication that systematic classification on any kind was introduced in the next two decades. What did change after 1828 were the numbers incarcerated. These grew from 681 in 1828 to 4,242 in 1842. Yet during this period no significant improvements were made. The prison regime remained disorganised.

Although the regime of punishment was not characterised by the cruelties that had been present in the eighteenth century, it was not yet organised along "positive" rehabilitative lines (*Van Zyl Smit, 1992 : 10*).

However, prior to the 1840s, neither the rhetoric of rehabilitation, nor attempts at its practice, had become particularly prominent. One partial exception to this, was the introduction of a treadmill in the 1820s. Working on the treadmill was regarded as a significant part of the regime of rehabilitative punishment in the prisons of the "home country" (the United Kingdom).

However, at the Cape, the single treadmill that was tried, did not prove to be a success, either financially, or as part of the regime. Its introduction does not

seem to have had a great influence on the development of prisons in South Africa.

The virtual demise of the old system of harsh punishment of the body of the criminal, without its replacement by any coherent new approach, was what confronted the newly appointed Colonial Secretary at the Cape, John Montagu, when in 1843 John Montagu was charged with the control of the local penal system (*Van Zyl Smit, 1992 : 10-11*).

Before serving at the Cape, Montagu had been in Tasmania. There Montagu had come into contact with captain Maconochie, the superintendent of the well-known Norfolk prison. Maconochie had been party to drafting a detailed body of rules according to which the system should operate. These included provision for techniques designed to rehabilitate prisoners, not by solitary confinement (as was being attempted in European and North American countries at that time), but by rewards determined according to a system of points awarded for meritorious work and general conduct (*Van Zyl Smit, 1992: 11*). In addition, Maconochie introduced a classification of prisoners according to their conduct, rather than according to the crimes that they had committed. Soon after his arrival at the Cape, Montagu sought to introduce changes in accordance with the general approach adopted by Maconochie.

The conditions for change were propitious. The agricultural sector of the economy was beginning to expand rapidly. For products to be marketed and state control of the hinterland to be maintained, a communications structure that would give easy access to the interior was required. At the same time, the

rehabilitative ideal was gaining acceptance by the colonial authorities as a positive goal of punishment. That rehabilitation could be achieved by “useful” labour made Montagu’s ideas more attractive to them (*Van Zyl Smit, 1992 : 11*).

In 1844, the Governor of the Cape, sir George Napier, wrote to the Secretary of the Colonies, Lord Stanley: “I feel satisfied that the effect that it (the penal system proposed by Montagu) will ere very long produce in checking crime, in improving the minds, the morals and habits of the convicts, and the class of persons they belong to , and for opening up the resources of the country, can scarcely be duly appreciated at present”.

Thereafter, Montagu soon sprang to work energetically. A new legislative framework was created by the enactment of Ordinance 7 of 1844,: “For the Discipline and Safe Custody of the convicts employed on the public roads”.

All convicts serving sentences of hard labour of longer than three months in scattered lock-ups were consolidated into three major convict stations. Convicts housed in these convicts stations (in fact, large, portable wooden prisons) were used to build a “hard road” across the flats surrounding Cape Town, and to build various mountain passes into the interior (*Van Zyl Smit, 1992 : 11*).

At the same time, the existing convict station on Robben Island was reorganised and eventually disbanded as its inmates were transferred to road camps on the mainland. The discipline in the remaining local prisons (lock-

ups) was tightened by Ordinance 24 of 1847, "For improving the goals of this colony" which also distinguished clearly between sentenced prisoners. Life in the convict stations was highly organised according to precise regulations drafted by Montagu himself.

Regardless of race, prisoners were initially divided into two groups - the chain gang and the road party. A tripartite system of classification based on Montagu's ideas, which consisted of a punishment class, a probationary class, and a good conduct class, were introduced in 1854 (*Van Zyl Smit, 1992 : 11 - 12*). Therefore, prisoners could be promoted from one group to another for good behaviour. They would also earn small cash payments, privileges, and even a limited reduction of sentence. The power of overseers to inflict physical punishment was carefully stipulated in the regulations. Superintendents of convict stations and even warders were encouraged to involve themselves in the rehabilitation of prisoners.

Provision was also made in the regulations for literacy training and religious instruction, and privileges of the inmates, will be discussed in chapter 7. However, the important benefits followed from the improved system. Major roads and mountain passes built by convicts provided, at very little cost to the State, vital links with the interior.

At the same time, the convicts were to some extent, protected against ill-treatment by the bureaucratic regulations that limited powers of punishment. Diet and standards of hygiene improved and opportunities for secular and religious, as well as education increased.

The benefits of the changes introduced by Montagu, must be seen in the context of the changed conceptions of punishment with underpinned them. But, the conditions of detention remained harsh, although their purpose shifted (*Van Zyl Smit, 1992 : 12*).

The State to inflict pain as a direct form of social control and attempted instead to mould, through the "reformative" influence of the totally controlled environment of the prison, the attitudes and morals of convicts, and through them, of society as a whole.

Indirectly, the sanction of physical punishment remained in the guise of penalties for disciplinary infringements in prison. Nevertheless, the new regime introduced by Montagu, was an example of what Foucault identified as the new techniques of punishment, which the state uses to shape the attitudes of the criminals (*Van Zyl Smit, 1992 : 12*).

Although the reformed system protected the accused (offender) against "random cruelties", it was not designed to safeguard the mental well-being or integrity of the convict. It is clear that, notwithstanding the humanitarian disadvantages, in some respects prisoners had been better off in the lock-ups where a more relaxed system of punishment allowed prisoners a measure of access to friends and family.

Montagu, however, favoured institutions in which convicts would be isolated from society, controlled by a system of rewards and privileges, and forced to labour for long periods (*Van Zyl Smit, 1992 : 13*).

Although convicts in the stations could not be physically separated from other prisoners, or condemned to long periods of silence (as was the case in prisons in Europe at that time), these stations were nevertheless “total institutions” in which every facet of the individual’s daily life could be controlled until the inmate changed this attitude to authority and to work. Therefore, at one level of analysis, the comprehensive reform of the penal system introduced by John Montagu, represents a signal achievement in penal policy in Southern Africa. Indeed, it was a system from which others could learn. Its system of classifying prisoners was relatively sophisticated and is similar to that in use today in South African prisons, where it is considered to be an essential part of the rehabilitative process (*Van Zyl Smit, 1992 : 13*). Classification is the process through which the educational, vocational, treatment and custodial needs of the offender are determined. At least theoretically, it is the system by which a correctional agency reckons differential handling and care, and fits the treatment and security programs of the institution to the requirements of the individual (*Inciardi, 1993 : 545*). There is, however, another and perhaps more fundamental level at which the reforms of the 1840s and 1850s have significance.

The use of labour and re-education opened the way, wrote Lord Grey in 1850, for closer control of colonial convicts. This indicates the increasing importance of both the qualitative and quantitative aspects surveillance by the State in the sense suggested by Foucault. The fact that most of the labourers “trained” by the system, were indigenous inhabitants, and therefore outsiders drawn into the net for the first time, was to be a significant factor, in spite of the protestations of equality of treatment of the races (*Van Zyl Smit, 1992 : 13 - 14*).

In the period immediately after the introduction of Montagu's reform, there was little further development of the prison system.

One factor, no doubt, was the campaign by the colonists to prevent the transportation of convicts from other countries to the Cape. Montagu, as a senior civil servant, had advocated their introduction into the colony and stressed their value as a source of labour, both as additional muscle to the existing convict labour system and as useful settlers after their release.

However, the colonists were successful in their campaign to prevent the convicts from landing in South Africa and thus, together with their Australian counter-parts, changed the course of British penal policy (*Van Zyl Smit, 1992: 14*). At the Cape, the successful agitation provided the organisational basis for a mobilization of opinion in favour of self-government for the colony and led to the demise of Montagu's wide administrative authority. But, Montagu's innovations in the penal system were not abandoned after his departure from the colony in 1852, but much less attention was paid to penal questions. Therefore, prisoners sentenced to hard labour, continued to be employed on public works and the emphasis in the following two decades shifted from mountain passes to harbours - with the construction of the breakwater in Cape Town as the most prominent activity (*Van Zyl Smit, 1992 : 14*).

Nevertheless, during this period control of the prison system as a whole, deteriorated and little effort was made to implement the positive, rehabilitative aspects of Montagu's penal policy.

At a structural level however, major changes were taking place in Southern African society. In particular, the successful mining of diamonds after 1871 drew a large number of additional colonists to the country. As diamond mining became more complex, there arose a need for more labour than was available. In addition, the larger mines required stricter discipline than before (*Van Zyl Smit, 1992 : 14*). At the same time the demands of the mines disrupted the existing patterns on the colonial farms. Once again, the prison system was to be put to use and public regarding incarceration was to be adapted. Inevitably, the focus for change shifted to Kimberley, the centre of the diamond mining industry. In 1882, by government proclamation, the Kimberley prison became the first prison in the Cape to be legally segregated along racial lines.

In 1885, the De Beers Diamond Mining Company became the first non-state corporate entity to employ convicts on a regular basis. The mine owners were clearly pleased with this arrangement (*Van Zyl Smit, 1992 : 14 - 15*). In the two decades after 1885, the employment of convict labour on the diamond fields increased.

Another mining company also used prisoners from the local Kimberley goal. The dominant De Beers Diamond Mining Company went a step further and built a branch prison which it staffed and where prisoners were housed, fed, and controlled by the company. The number of convict labourers employed by De Beers increased from 300 per day in 1885 to 600 per day after 1888. By 1903 large numbers of prisoners convicted in the areas inhabited by black peasants, were being transferred to the De Beers convict station. A parliamentary question in 1903 elicited the reply that during the period from

1 June 1902 to 31 May 1903, 496 convicts had been transferred from the "Native Territories" of Tembuland and Griqualand East to De Beers (*Van Zyl Smit, 1992 : 14 - 15*).

This was admitted to be part of a scheme by which "government undertook to supply to De Beers native labour up to a daily average of 11,000 when practicable". Although it was not stipulated that these labourers had to be convicts, "it had been the practice to supply convict labour in this connection, the convict labour being considered suitable for the purpose". The role of the State as the provider of unskilled black labour for the mines, through the penal system, had become manifest.

The deployment of convict labour in this way, had a profound impact on the whole mode of social control exercised by the State (*Van Zyl Smit, 1992 : 15*). As diamond mining developed in the 1880s, convict labour in the mines must be seen in conjunction with other means used to produce, primarily from the indigenous population, the large, docile, unskilled labour force required to work the deeper mines. One of these means was the system of pass laws that required black men in the area (with the important exception of skilled, mixed-raced, Cape artisans) to carry passes showing that they had a fixed place of abode and employment.

Failure to produce a pass, meant that they were sentenced to imprisonment and thus to force labour. There is evidence that in 1888 a significant proportion of the prison population had been created in this way (*Van Zyl Smit, 1992 : 15*). The second institution that parallel the development of the

company prison, was the so-called closed compound, in which unskilled black workers, who had entered into a contract with a mining company, were housed for fixed periods during which they were not allowed free access to the outside world. It appears that the "totals institution" of the convict station provided the model for the compound system.

Therefore, the use of convict labour in the mines, disrupted labour patterns in other sectors as well. Prisoners had been hired out to individuals since early in the nineteenth century, but this had taken place on a disorganized, ad hoc basis (*Van Zyl Smit, 1992 : 15 -16*). In 1887, these procedures were reorganized and placed on a more systematic footing. Provision was made for standard payment for convict labour to be made available to bodies such as municipalities and to private persons, such as farmers.

Such bodies or individuals, were to provide implements and even guards, who were to be sworn in as special warders. Convicts who performed well, received an allowance. An attempt was made to limit patronage and abuse by forbidding government officials to use convict labour in their private capacities.

Another aspect of penal policy that emerged in the 1880s, was the first systematic to segregate prisoners on racial lines (*Van Zyl Smit, 1992 : 16*). Here again, the developments in the mining industry played a crucial part.

Labour historians have noted that latent racial prejudice was used to shape the way in which labour was organized and controlled in the mines. Mine owners treated white workers differently from black workers. White workers were

allowed some measure of freedom to organise and campaign for better conditions for themselves. Black workers were tightly controlled in the compounds and the prisons. To some extent the tolerance of white workers was conditional - on their not making common cause with their black co-workers.

The distinction between civilised (white) and "barbarous" (black) labourers was emphasized (*Van Zyl Smit, 1992 : 16*). This enabled mine owners to exploit unskilled black workers by encouraging what Johnstone has called a "class colour bar", while "buying off" the more skilled white miners. Changes in the penal system in the Cape, mirrored these developments. Montagu's ideals of equality of treatment were abandoned at precisely the time that a segregated labour force was deployed in Kimberley. At an ideological level, the shift became apparent in the Cape Legislative Assembly in 1887, when a Committee of Inquiry into the convict system was mooted.

In supporting the motion, its proposer, Innes (who later became the Second Chief of Justice of the Union of South Africa), stressed the degradation suffered by a "European" who had to be incarcerated with the "lowest of the lowest of prisoners". In spite of the intervention of the Attorney-General, Uppington, who denied that there was anything amiss with the prisons of the colony, a Committee of Inquiry was set up (*Van Zyl Smit, 1992 : 16 - 17*).

The Committee did not disappoint its proposers. On the question of classification, it recommended "firstly and most emphatically that there should be a complete segregation of Europeans from Natives, both in gaols and convict stations". The findings embodied in the Report were soon reflected in

Legislation, for later in 1888 the "Act to consolidate and amend the law relating to convict stations and prisons" was passed by the Cape Parliament. The new Act, together with its regulations, followed the Ordinances introduced by Montagu. In turn, the new Act was to be the model for further developments throughout South Africa.

It sought to minimise the distinction between convict stations and lock-ups by combining them in a single prison system. A system of classification was introduced which revived Montagu's tripartite categories of a penal, a probationary and a good conduct class for the longer term prisoners detained.

The new Act, together with its regulations, followed the Ordinances introduced by Montagu. In turn, the new Act was to be the model for further developments throughout South Africa.

It sought to minimise the distinction between convict stations and lock-ups by combining them in a single prison system. A system of classification was introduced which revived Montagu's tripartite categories of a penal, a probationary and a good conduct class for the longer term prisoners detained in convict stations (*Van Zyl Smit, 1992 : 17*).

The Act also provided for segregation of the sexes and administrative arrangements were made for the further segregation of prisoners awaiting trial, juveniles and debtors. Racial segregation was a matter of administrative policy.

However, its implementation in the Cape for both adults and juveniles was, at best, uncertain and the colonial authorities found it necessary to encourage the Cape Government to take further measures.

Minor amending Acts subsequent to 1888 did not bring about significant changes, and the effects of the Boer War and economic decline in the first decade of the twentieth century were to retard further development (*Van Zyl Smit, 1992 : 17*).

5.2.2 NATAL

In Natal the first prisons, "a wattle-and-daub structure" built by the Voortrekkers in Pietermaritzburg and a "low cottage" rented for this purpose in Durban in 1847, were apparently instituted without any specific legal framework.

Only in 1862, seventeen years after the British annexation of the territory, was the first enabling legislation passed. The decades that followed saw an intriguing tug of war between the penal ideas dominant in the colonial motherland and practices in the colony (*Van Zyl Smit, 1992 : 17 - 18*).

In essence the dispute took the form of an attempt to prescribe to the authorities in the fledging colony that they introduce into their prisons strictly penal labour and the separate system of prison accommodation. To this end reports on the state of the prisons in England were circulated to the colonies. They were asked to describe their own practices. Eventually, in 1868, a Commission of Inquiry was set up. This was followed by new Legislation and

finally two treadmills and a dozen other machines were ordered. The economic exigencies were such that labour could not be "wasted" on unproductive activities. These were kept to the minimum required to satisfy the colonial masters. Prisoners were, at most, subject to a short period of such strictly penal labour and were then channelled to public works.

Prison discipline was severe and much use was made of flogging as a form of punishment, with black prisoners being treated particularly harshly (*Van Zyl Smit, 1992 : 18*).

Whatever the wishes of the colonial masters in London, local resources were never adequate for the risk, nor was the British Government prepared to put its money where its ideological mouth was. The question of separation did arise in local penal politics, but only in the context of racial segregation both at work and in the cells. In practice, the key classification device was the body of rules relating to diet. In 1887 a typical classification system of "European" (including mulattos - "coloured" in modern South African parlance), "Indian" (including Madagascans and all other Asians) and "Native" (Africans) was adopted in a government notice which determined diet scales (*Van Zyl Smit, 1992 : 18*). In the following year this system of classification was applied to labourers. It also formed the basis for the segregation of prison accommodation. The degree of "intermixing" which arose as a result of the broad definition of European was lamented by the Prison Reform Commission of 1906.

This Commission represented the one major attempt to overhaul the penal

system in Natal and, amongst others, to introduce the event narrower racial categories, which had become dominant. However, its recommendations were not implemented and no major reforms of the Natal Penal System took place prior to the Union in 1910 (*Van Zyl Smit, 1992 : 18*).

5.2.3 THE ORANGE FREE STATE AND THE TRANSVAAL

There has been little systematic research into the earlier prison history of the Orange Free State and the Transvaal. Particularly little is known about imprisonment in these two territories in the first three decades, following the recognition of their independence in the 1850s. It appears that in both the Orange Free State and the South African Republic (Transvaal) the early Republican periods were characterized by a low priority being given to the development of a prison system or a legislative frame-work to encompass it (*Van Zyl Smit, 1992 : 19*).

In the Orange Free State, the Constitution of the new Republic described a rudimentary system of prison law and even specified the ambit of punishment, for example: what was meant by hard labour in the prison context.

Not much is known, however, about how the prison system actually operated. The first major piece of prison legislation in the Transvaal was introduced in 1880 during the short period of British Annexation from 1877 to 1881.

The reinstated Republican Government did not repeal this legislation or the regulations observed from it which were based on Legislation in other British Colonies in Southern Africa. Only one significant alternation was made to the

regulations: In 1894 the system of internal discipline was reorganised and the local landdrost (magistrate) was given sole jurisdiction to try infringements of prison regulations. The magistrate could impose corporal punishment of up to 25 lashes, imprisonment, with or without hard labour, of up to 12 months or solitary confinement, with or without reduced rations, of up to seven days (*Van Zyl Smit, 1992 : 19*). But, not much attention was given in theory or in practice to systems of classification or reformatory ideas.

The prison labour for the most part was used directly by the State to build roads and to service the public amenities. However, the British occupation of the two Republics in the middle of 1900 led to a major reorganisation of the penal systems of both territories. In the Transvaal in particular, the authorities were faced by an enormous increase of the prison population and by major disorganisation of the supply of labour to the mines. Attempts to control the latter through a system of "pass laws" further increased the prison population (*Van Zyl Smit, 1992 : 19*). As on the diamond mines in the Cape, the "solution" adopted was to allow a mining company (in this case the ERPM Gold Mine in Boksburg) to build a prison for approximately 800 black prisoners. The company then had to pay the government one shilling per day per prisoner to be allowed to use the prisoners as labourers on its mines. A Commission of Inquiry into conditions at the Fort in Johannesburg, the major prison in the Transvaal, found not only that the prison was inadequate, but that the system as a whole required to be overhauled.

The legal instrument for this purpose was Ordinance 6 of 1906, which closely followed the Cape Act of 1888. The Cape Act was also influential in the

Orange Free State where Ordinance 3 of 1903 was introduced to reorganise the prison system after that county had been annexed. The final phase of prison law reform in the two territories centred on the introduction of indeterminate sentences.

In the Transvaal it was pioneered by Jacob de Villiers Roos, who was appointed Director of Prisons in 1908 (*Van Zyl Smit, 1992 : 19 - 20*). Roos was a government official, who was to play a major role in the development of South African prisons. Like Montagu, Roos was well versed in the international penological ideas of his time. Roos was also closely linked to the increasingly powerful Afrikaner political elite in Southern Africa. Legislation which Roos drafted, became law in the Transvaal in 1909.

Section 9 of the Criminal Law Amendment Act of 1909 made provision for the indeterminate detention as hard labour prisoners of prisons who had been declared by a court to be habitual criminals.

Their eventual release could be effected only after a positive recommendation to the Governor by a newly created statutory body, a Board of Visitors (*Van Zyl Smit, 1992 : 20*). Such a Board of Visitors was appointed for every convict prison in the Transvaal. In addition to its duties in rehabilitation to habitual criminals, it was given the further function of reporting to the Governor on all prisoners who had completed sentences of longer than two years so that they could be considered for unconditional release or release on probation (*Van Zyl Smit, 1992: 20*).

5.2.4 SOUTH AFRICAN UNITED

The period immediately after the Union of South Africa came into being on 31 May 1910, was a time of significant development of prison law. Roos was appointed Secretary of Justice and Director of Prisons for the Union. Roos began immediately to work on new prison legislation for the Union as a whole, and the consolidated Prisons and Reformatories Act of 1911 was the product of his labours.

Before this new Act could come into operation, however, the courts of the Union were called upon to interpret the Transvaal Ordinance 6 of 1906 (*Van Zyl Smit, 1992 : 20 - 21*). Their general pronouncements on the rights of prisoners made in this regard, were to mark the beginning of modern jurisprudence on South African prison law. In a series of cases, involving two alleged dynameters, Whittaker and Morant, the Transvaal courts and eventually the Appellate Division, were asked to rule on the lawfulness of detaining prisoners awaiting trial in conditions which amounted to solitary confinement. In *Whittaker versus Governor of Johannesburg Goal*, the court held firmly that the Ordinance did not allow the Prison Governor to discriminate against the individual prisoner, even if the prisoner had been ordered to do so by the Governor of Prisons. On appeal, this decision was upheld unanimously by a full bench of the Transvaal Provincial Division (*Van Zyl Smit, 1992 : 21*).

Secondly the judgement of Bristowe brought into twentieth century South African jurisprudence the principle that a prisoner who has been illegally heated in goal, has the legal standing to approach the court for relief. Bristowe cited *Cobbett versus Grey* and *Osborne versus Milman*, the leading nineteenth

century English Prison Law cases, as the authority for this proposition. Bristowe went on the find that, as there was no regulation authorising the type of treatment which Whittaker, a prisoner awaiting trial, had received, the treatment was unlawful. In determining the legal rights of the prisoner the court considered closely the wording of the Ordinance and the regulations made in terms of it (*Van Zyl Smit, 1992 : 21*).

This approach was the opposite of that which the English courts, in disregard of their own nineteenth century precedents, were subsequently to adopt, and it opened the way for the South African courts to play an active role in the development of prison law. In addition, Bristowe also laid down a third general guideline for the development of prison law.

Reflecting on the power of the prison officials to order solitary confinement, Bristowe remarked that this power could not be limited by assisting that prison officials should exercise a judicial discretion. Therefore, more general restraints were required (*Van Zyl Smit, 1992 : 21*).

Further important jurisprudential principles were expounded when Whittaker and Morant sued the authorities for damages resulting from the injuries they had suffered, because of their treatment in prison. The Appellate Division in particular, took a most serious view of the matter and awarded damages not only against the Governor of the Johannesburg Gaol, but also against the Director of Prisons personally. However, from this foundation Innes proceeded to criticize the new Prisons and Reformatories Act, which had been passed by the time the appeal was heard, but had not yet come into operation when

Whittaker and Morant had been detained. Section 25(3) of the new Act, made provision for the isolation of prisoners awaiting trial and their subjection to mechanical restraint "if the isolation or restraint is requested by the police authorities in the interests of justice".

Such detention of prisoners awaiting trial, was subjected to the approval of the local magistrate or, if it continued for longer than a month, of the Director of Prisons (*Van Zyl Smit, 1992 : 22*). But this safeguard did not impress Innes who remarked that "the present case shows that a desire to fall in with the views of the police may sometimes prevail over a due regard for the rights of the accused". Innes went on to urge the Legislature to reconsider the "terms of the statute" because of their far reaching effect: Although such reconsideration took place, the views of the bureaucrats prevailed, and the legislation remained unamended.

The relative disdain with which the structures of the Appellate Division were treated by the legislature should not be interpreted as significant that the 1911 Act was designed to introduce a harsh penal regime. On the contrary, its author, Roos, regarded it as "the work he is proudest of, containing as it does some of the most modern principles for modern penology".

These "modern principles" were influenced by the resolutions for the International Prisons Congress which had been held in Washington in 1910 (*Van Zyl Smit, 1992 : 22 - 23*). It had given its "scientific" stamp of approval to the indeterminate sentence. In the first Annual Report for the new prison system of the Union as a whole, Roos paraphrased the key findings of the

Congress: The essential principles on which the modern reformatory system should be based are, that no person, no matter what his age or past record, would be assumed to be incapable of improvement. That it is in the interest of the public, not merely to impose a sentence which is retributive and deterrent, but also to make an earnest effort to reform the criminal, which is most likely to be attained by religious and moral instruction, mental quickening, physical development, and such work as will best enable the prisoner to gain his livelihood in the future. And that the reformatory system is incompatible with short sentences, and long period of reformatory treatment is more likely to be beneficial than repeated short terms of rigorous imprisonment.

That reformatory should be continued with a system of liberation and parole under suitable guardianship and supervision on advise of a board (*Van Zyl Smit, 1992 : 23*). Translated into legislation, this meant that the system of dealing with habitual and long-term offenders which had been introduced in the Transvaal, became part of the new law.

A favourable report from the Board of Visitors set up in terms of this legislation, could lead to the release of the prisoner on probation, either directly into the community or first for a period in a work colony, refuge or similar institution (*Van Zyl Smit, 1992 : 23*).

However, the remission of sentence for set proportions of a sentence, but subject to good conduct, was also provided for in the Prison Regulations made in terms of the Act. But, evidence of the serious rehabilitative intent of the South African prison authorities in the first years after Union is not limited to

legislative reforms.

The Annual Reports of the Director of Prisons for the early years contained a mass of statistics about the social, psychological and physical characteristics of prisoners. The clear implication was that, with the help of this information, techniques of rehabilitation could be developed (*Van Zyl Smit, 1992 : 23 - 24*). In addition, there is considerable evidence in the Reports that Roos himself, took a great interest in the careers of individual prisoners. However, the changes in law and practice introduced by the 1911 Act, were partial at best. One significant legal weakness was that the Act itself did not attempt to lay down specific purposes of imprisonment. Although Roos often articulate the policy of rehabilitation, it was difficult for a court to rely upon it when interpreting the Act, (*Van Zyl Smit, 1992 : 24*).

A more fundamental cause of prisons, remaining primarily places for punishment was that, to a large extent, the system set up by the 1911 Act remained a captive of its legal and social history.

Thus, some of the most punitive features of prison systems of the four colonies survived unscathed. The distinction which had developed in the Cape between convict stations and gaol was retained. Provision was also made for the carrying out of sentences of imprisonment with the additional specification of hard labour.

Punishments for further infractions committed within prison, remained harsh.

Male prisoners up to the age of 60 could be whipped for various infringements of prison discipline. The maximum number of strokes, ranged from six strokes which could be imposed by the Superintendent of a prison for a contravention of prison discipline to 24 strokes (and two years imprisonment) which could be imposed by a magistrate for violent escape (*Van Zyl Smit, 1992 : 24*).

Other punishments included solitary confinement, dietary punishment and additional labour. In the sphere of racial segregation in prison, the 1911 Act consolidated the earlier provisions of colonial legislation. In practice, segregation was now enforced rigorously throughout the new Union Prison System. A sphere in which differentiation became the overt policy, was that of prison labour. One illustration of this was the provision in the 1911 Act for road camps to which black offenders were sent for "venial offenses against the Pass Law, the Tax Law or the Masters and Servants Law". But the policy of segregation and differentiation of prison labour ran deeper : Roos established the policy of "the Native for outside work and the European for inside workshop work" (*Van Zyl Smit, 1992 : 25*).

5.2.4.1 DEVELOPMENTS POST 1959

Until the early 1960s, the link between prisons and the authoritarian aspects of the system of social control in South Africa was indirect, in the sense that prisons were not used on a large scale as a means of controlling political unrest. In post Sharpeville period of the early 1960s, this changed. The incarceration of political detainees and sentenced political prisoners became a significant permanent feature of South African prison life. The impact of these detainees and prisoners on the legitimacy of the system was undermined

by their being incarcerated there at all (*Van Zyl Smit, 1992 : 33*).

Thus, the opponents of the government used this combination of events to their advantage. Thus, for example, in a 1964 pamphlet entitled "Brute Force": Treatment of Prisoners in South African Gaols, the African Nation Congress combined an attack on the use of prisoners as labourers on white farms with a scathing denunciation of the way in which the government was detaining political prisoners.

It included a note "smuggle out" from Nelson Mandela about conditions in Pretoria Central Prison. Therefore, the only response that the South African Government could offer was to deny that it held political prisoners at all, and to claim that all prisoners were treated equally (*Van Zyl Smit, 1992 : 33*). Therefore, the new generation of political prisoners was significantly more articulate and self-consciously dedicated to attacking the legitimacy of the South African state in all its aspects. Their autobiographical accounts of life in South African police cells and prisons developed into a virtual literary sub-genre. Notable also, was the attention which they paid to examples of the deprivations of ordinary prison life suffered by non-political prisoners. Therefore, South African newspapers which published accounts of prison conditions were prosecuted in terms of section 44 of the Prison Act, a process in which the courts assisted by placing a heavy onus on the news-paper to prove that they had taken "reasonable steps" to verify their information. Nevertheless, at least internationally, political prisoners' accounts of prison conditions in South Africa had an important negative impact on the legitimacy of the prison system. Therefore, the detention of high profile political prisoners

caused international organisations, such as the International Red Cross, the United Nations and Amnesty International, to turn their attention to South African prisons. From the South African government's point of view, this amounted to unwelcome meddling in South Africa's internal affairs (*Van Zyl Smit, 1992 : 34*).

Thus, for example, pamphlets issued by the government in 1967 held that an investigation conducted by the United Nations working group of experts on the treatment of the United Nations charter which forbids intervention in matters which are essentially within the domestic matter and the South African government is not prepared to renounce its jurisdiction in this regard - a view no doubt, shared by all states. In the circumstances, the South African government could hardly be expected to co-operate with the working group (*Van Zyl Smit, 1992 : 34*).

This legislated approach was of limited propaganda value and the South African government sought also to challenge the objectivity of the United Nations and its organs.

The International Red Cross, however, was treated differently. In 1964 the Delegate General of the International Red Cross, was invited to visit South African prisons. Reports by the Red Cross on prison visits are not normally made public, but in 1966, after considerable international criticism of the conditions under which political prisoners in particular were held, this report was published. The South African government claimed that the report exonerated it from serious criticism and that its publication demonstrated that

caused international organisations, such as the International Red Cross, the United Nations and Amnesty International, to turn their attention to South African prisons. From the South African government's point of view, this amounted to unwelcome meddling in South Africa's internal affairs (*Van Zyl Smit, 1992 : 34*).

Thus, for example, pamphlets issued by the government in 1967 held that an investigation conducted by the United Nations working group of experts on the treatment of the United Nations charter which forbids intervention in matters which are essentially within the domestic matter and the South African government is not prepared to renounce its jurisdiction in this regard - a view no doubt, shared by all states. In the circumstances, the South African government could hardly be expected to co-operate with the working group (*Van Zyl Smit, 1992 : 34*).

This legislated approach was of limited propaganda value and the South African government sought also to challenge the objectivity of the United Nations and its organs.

The International Red Cross, however, was treated differently. In 1964 the Delegate General of the International Red Cross, was invited to visit South African prisons. Reports by the Red Cross on prison visits are not normally made public, but in 1966, after considerable international criticism of the conditions under which political prisoners in particular were held, this report was published. The South African government claimed that the report exonerated it from serious criticism and that its publication demonstrated that

it had nothing to hide. A careful analysis of the report by the International Defence and Aid Fund attempted to demonstrate that in fact, the report revealed major abuses (*Van Zyl Smit, 1992 : 34*).

Therefore, the publicity surrounding this debate itself, was evidence that the legitimacy of at least, aspects of the South African prison system was open to change. An important feature of the 1964 Red Cross report was that it insisted that a distinction be drawn between political and other prisoners. The South African government refused to do so, but eventually itself declared a category of "security prisoners" - prisoners convicted of crimes against the security of the state - whom the International Red Cross could visit on a regular basis. The increased number of political detainees and prisoners, also meant that for the first time, there was a body of prisoners with the skills and the resources to mount direct legal challenges to the decisions of the prison authorities (*Van Zyl Smit, 1992 : 35*).

Though initially they had little success. In a series of decision in the 1960s and 1970s the various divisions of the Supreme Court, including the Appellate Division, handed down judgements which, broadly speaking, were unsympathetic to the cause of prisoner's rights. The liberal approach to the rights of prisoners, adopted by Innes in Whittaker's case, were severely restricted. On the one hand, this was achieved by holding that it was not applicable to detainees held for purposes of interrogation.

On the other hand, the same result was achieved indirectly by the emphasis which the majority of the Appellate Division in the leading case of Goldberg

versus Minister of Prisons, placed on the power of the Commission to determine how sentenced prisoners would be treated and trained (Van Zyl Smit, 1992: 35).

The prisoners who brought the action were, as the court itself noted, self-styled political prisoners and the court was clearly determined to allow the prison authorities the widest discretion to deal with such prisoners. It therefore, defined the rights of prisoners far more narrowly than had been done in Whittaker's case. However, as "political" prisoners were not recognised as an analytical category, its reasoning was made applicable to sentenced prisoners, with the result that the rights of all sentenced prisoners were restricted (*Van Zyl Smit, 1992 : 35*).

These court actions brought by political prisoners were not, however, without impact. At the very least, they drew attention to the plight of prisoners and to the petty indignities imposed upon them by prison authorities. Even though the courts often adopted a pro-executives "hands-off" approach, they did express their incomprehension of decisions not to allow prisoners to study law, or to have any access to news or current events for years on end. These legal interventions were not without impact on the government either. However, their response was typically to legislate ever wider powers for the prison authorities. In some instances these charges were extremely petty.

An indication that prisoners might demand to use prison libraries was met by amending the regulation that "a library shall be at the disposal of all prisoners detained in (a particular) prison" to a regulation which stated that a "library may

in the discretion of the Commissioner (of Prisons) be placed at the disposal of all the prisoners detained in such prison (*Van Zyl Smit, 1992 : 35 - 36*). It is noteworthy that the latter formulation abandoned the imperative contained in Rule 4 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. In other instances the amendments went to the root of the powers of the prison authorities over prisoners.

Thus, for example, in response to the decision of the Appellate Division in Goldberg's case, the Prison Act was amended to give the Commission of Prisons unfettered powers to grant privileges or indulgences to prisoners, or to withdraw them without furnishing any reasons and without giving a hearing to the prisoners concerned or anyone else. Therefore, the jurisprudence which emerged from the prison litigation was, however, not entirely negative. In Goldberg's case Cobbett gave a powerful dissenting judgement in which Cobbett argued for the recognition of the fundamental rights of all prisoners (*Van Zyl Smit, 1992 : 36*). The judgement in Goldberg's case in particular, also evoke a flood of academic comment which asserted the importance of a rights based approach to the treatment of prisoners. Even general texts on constitutional law, administration law, and criminal procedure noted that the court had failed to apply to prisoners the standards which were applied to other people and argued that this should change. There were other changes to prison legislation in the 1970s which were not directly linked to political development, but which were nevertheless highly controversial.

In 1977 the Prison Act was amended to make provision for the establishment of special hospital prisons for psychopaths. Such special prisons would serve

to detain sentenced prisoners and also state president's patients who had been certified as psychopaths in terms of the Mental Health Act or who were apparently suffering from psychopathic disorders and had been referred for observation (*Van Zyl Smit, 1992 : 36 - 37*). Therefore, these amendments were followed by changes to the Mental Health Legislation and more specifically by the recognition of psychopathy as a clinical category in the Mental Health Act of 1973.

However, the underlying of these changes was an important intellectual development, which was to have real policy implications. The concept of psychopathy was widely propagated in South Africa by Major-General Roux, the Director of Psychological Services in the Department of Prisons in the early 1970s, who provided the concept with intellectual respectability in South Africa at a time when it was in relative decline abroad following the passage of the 1977 legislation, special hospital prisons were set up for whites at Zonderwater and later for coloureds at Brandvlei (*Van Zyl Smit, 1992 : 37*).

But, the controversy has continued to smoulder, with critics challenging not only the concept of psychopath, but also the allocation of resources to staff intensive units for psychopaths. Moreover, it has been suggested that intensive treatment of this kind constitutes an unjustified onslaught on the personal integrity of the prisoner who is classified as a psychopath. However, extensive reforms to the penal system as a whole, proposed by the Viljoen Commission in 1976 also had some impact on the evolution of prison law. In 1977, as a direct result of the proposals of the Commission, two relatively indeterminate sentences, namely imprisonment for corrective training and

imprisonment for prevention of crime were abolished. In addition, the system of releasing prisoners was reorganised as a response to the Commission's proposal a "Parole Board" be introduced (*Van Zyl Smit, 1992 : 37*).

A parole board is appointed by the Commission of Correctional Services to fulfil one or more functions. This Parole Board is an autonomous body, which has certain recommendation and decision-making powers. The activities of the Parole Board focus on responsible consideration of the placement of board prisoners under correctional supervision, on daily parole, parole and in specific cases, the release of board prisoners on the date of sentence termination (*Coetzee, Kruger and Loubser, 1995 : 149*). However, the new system was not designed to limit the power of the executive to release prisoners to the extent that an independent Parole Board may have been done. The attacks in the legitimacy of the prison system continued into the early 1980s (*Van Zyl Smit, 1992 : 37 - 38*). Therefore, pass laws and prison labour remained targets for critics on the government and the prison system in particular. At the same time, the early 1980s saw a series of disclosures about conditions in prisons near the town of Barberton in the Eastern Transvaal.

These culminated in the well-publicised trial and conviction of a number of prison warders and the appointment of a Committee of Inquiry to investigate conditions in prisons and around Barberton. However, the editorial comment was hostile and emphasised the danger of a pattern of abuse remaining undiscovered in a service which had been closed to public scrutiny by the operation of Section 44(1)(F) of the Prison Act (*Van Zyl Smit, 1992 : 38*).

Shortly afterwards, the Minister of Justice announced an agreement with the newspaper Press Union, which guaranteed that newspapers would not be prosecuted for reporting on prison conditions if they gave equal prominence to the comments of the Prison Service.

As far as government policies, which had directly undermined the legitimacy of the prison system were concerned, the judicial Commission of Inquiry into the structure and functioning of the courts, which reported in 1984, that the incarceration of "hordes of Blacks" as a result of influx control measures was a major cause of overcrowding in prisons. At the same time the significance of using convicts as a source of agricultural labour was beginning to decline (*Van Zyl Smit, 1992 : 38*).

In part, this was due to international pressure through the threatened application of the general agreement on Trade and Tariffs in order to outlaw the export of goods produced by convict labour. It was also a matter of changing demands for unskilled labour. As a result the so-called prison outstations were closed down and the use of "parolees" on paid contract was reduced. When the pass laws were finally abolished in 1986 a further factor inhibiting the normalisation of the prison system, was removed. For a time the process of structural change was overshadowed by the declaration on 21 July 1985 of a State of Emergency and the incarceration without trial of a large number of persons (*Van Zyl Smit, 1992 : 38 - 39*).

In addition, the State of Emergency also brought with it extensive further restrictions on news reporting, including news on prisons. Emergency rule is

an effective basis for attacking the general authority of the state to exercise power, for its imposition is itself a recognition of a failure to achieve legitimacy. Therefore, such general attacks were made forcefully, both within the outside of South Africa. A specific charge against the Prisons Service was that detainees were unjustly subject to a primitive regime, as they had not been convicted of any crime. This charge was not without substance, particularly at an early stage of the emergency.

The seriousness of the situation was underscored when the International Red Cross refused to continue to visit sentenced political prisoners because it was denied access to emergency detainees and other prisoners whom it regarded as also being political prisoners (*Van Zyl Smit, 1992 : 39*). Gradually amendments to the specific emergency regulations reduced the differences between the conditions of detention of detainees and prisoners awaiting trial. Nevertheless, detainees could be held in what was effectively solitary confinement. A detainee who was held in this way, sued the Prison Services for damages in 1989. Amid wide publicity, this claim was upheld by the court. In other respects, though, the court did not make a positive contribution to the development of the right of detainees during the State of Emergency.

However, after lifting of the State of Emergency in 1990, therefore, Omar's case remained, somewhat ironically, an important legal precedent defining the rights of prisoners in this respect (*Van Zyl Smit, 1992 : 39*). An important reversal of the almost total racial segregation which had existed in South African prisons for more than a century, had begun in 1988 when a number of regulations were amended in order to exclude all references to race. These

included the earlier regulations in terms of which all "white" members of the Department of Correctional Services automatically outranked all "non-whites", and the regulation which provided that "white" prisoners could not be visited by a "non-white" Minister of Religion (*Van Zyl Smit, 1992 : 39 - 40*).

5.2.4.2 DEVELOPMENTS POST 1990

Political changes in South Africa, particularly those which followed President De Klerk's speech to Parliament on 2 February 1990, have had a direct impact on prison law and practice in South Africa. Perhaps the single aspect which was given the most prominence in this speech was the announcement that various political organisations would be unbanned and that political prisoners would be released. The gradual release of political prisoners in the course of 1990 and the first part of 1991 meant that the prison authorities could look forward to a period in which prison management would be necessarily be linked to major national political questions (*Van Zyl Smit, 1992 : 40*).

However, this has not yet happened. The definition of political prisoners has remained controversial and disputes about the process of releasing political prisoners have meant that the prison authorities have had to face various forms of protest action including hunger strikes by disaffected prisoners.

Legislation introduced in a number of areas as a result of these political developments, has had significant impact on the prison system. Thus the Criminal Procedure Act was amended in 1990 in order to restrict drastically the imposition of the death penalty. At the same time a panel was appointed to review cases where sentences of death had been imposed under the previous

legislation, but had not yet been implemented. The effect of these steps, which follow directly from an undertaking given in President De Klerk's speech, is that the number of persons actually hanged as well the number imprisoned pending their executions is likely to be only a small fraction of what it was in the past (*Van Zyl Smit, 1992 : 40*).

Similarly, the lifting of the State of Emergency in 1990 and the modification to the Internal Security Act in 1991 mean that the number of unsentenced political detainees in prison is likely to be reduced significantly. Amendments made to the Prison Act in 1990 dealt directly with the abolition of apartheid in the prison system. Most important in this respect, was the removal of the requirement that "white" and "non-white" prisoners had to be housed separately. In the same year the requirement that white prisoners should "at all times be in the safe custody and under the guard of a white member or white temporary warder" was removed from the regulations (*Van Zyl Smit, 1992 : 40*). In both these instances the Commission was given wide authority to determine how prisoners should be housed and guarded. Nevertheless, the removal of statutory apartheid from the ambit of prison law was a significant development.

Whether the legislative moves away from racial discrimination are a move to a more general liberalisation of prison law, is not yet certain (*Van Zyl Smit, 1992: 40 - 41*). Therefore, a key factor in such a change is the Police and Prison Officers Civil Rights Union (POPCRU).

This organisation, which was founded by policeman, lieutenant Gregory Rockman in 1989, soon established a significant presence amongst black

prison warders. It is aligned with the extra-parliamentary opposition in South Africa and committed to the recognition of the civil rights of all prisoners. However, the government has clearly perceived POPCRU as a threat to the emerging, but still consensus surrounding prisons. It has therefore moved simultaneously to (re-) legitimate the prison system and to isolate critics such as POPCRU who would demand more radical change. Thus the 1990 amendments to the Prison Act, which removed the racially discriminating provisions of the Prison Act, also outlawed strikes by members of the Prison Service (*Van Zyl Smit, 1992 : 41*).

Therefore, the (white) liberal opposition in Parliament was uncertain whether to support the amending bill as a whole, but in the end did so. Of equal importance were the amendments to the Prison Regulations which were made during 1990, which abolished the remaining overtly racially discriminatory measure, but which also made it a disciplinary offence for a member of the Prison Service to establish a trade union, or even become a member of a trade union, without the permission of the Commission. However, all members of the Prison Service were to be treated as members of the military and forced to toe the line.

The immediate issue was therefore to become a question of discipline (*Van Zyl Smit, 1992 : 41*). Late in 1990, the government announced that it planned to introduce major changes to the way in which the prison system was administered. The Prisons Service was immediately separated from the Department of Justice and renamed the Department of Correctional Services. The statement is confirmed by *Neser (1993 : 74)*.

The new Department would also be responsible for the supervision of offenders in the community, as well as running the prison system. It would, as the first press releases claimed, be managed "according to business principles", thus linking with the policy of privatisation in the broader field of state activities (*Van Zyl Smit, 1992 : 41*)

In 1991, a far reaching revision of 1959 Prisons Act was indeed undertaken. Changes of norm endure were confirmed, the title of Commission of Prisons and the short title of the primary Act were changed to the Commission of Correctional Services. Substantive legislative changes were introduced as well.

These gave effect to the newly announced policy of running the prison system on business principles by removing many of the restrictions on the use of prison labour. The extended responsibilities of the new Department, with respect to sentences of Correctional Supervision in the Community, were also define. These latter changes may have a direct impact on the management of the prison sentence (*Van Zyl Smit, 1992 : 42*).

Not only is it possible that fewer offenders will be sentenced to imprisonment, but the new legislation also empowers the Commission of Correctional Services to approach a court which has sentenced offenders to certain terms of imprisonment and request that a sentence of correctional supervision in the community be substituted for the original sentence. In this way the prison authorities will be able to exercise a measure of control over the prison population. In addition, the amendments have also introduced significant

modifications to the system of committees responsible for the release of prisoner. They are to be introduced piecemeal, on a regional basis. It is not yet clear what their effect will be, but it is doubtful whether they will limit executive discretion in this respect (*Van Zyl Smit, 1992 : 42*).

Another major development in the first half of 1991 was the early release of as many as 57,000 sentenced prisoners. Although general amnesties had been granted in the past, the scale of these releases was unprecedented and caused widespread public concern. Significantly, these releases did not take place in terms of the new legislation, which had not yet come into effect. The overriding impression was that the authorities, who, in a White Paper released in May, had expressed concern about the high rate of incarceration in South Africa and the inability of the State to provide adequate accommodation for increased numbers of prisoners, had decided to reduce the prison population drastically before the new legislation took effect (*Van Zyl Smit, 1992 : 42*).

However, it is not yet clear what the long-term impact will be of these wholesale releases and of the legislative changes which culminated in the 1991 amendments to the Correctional Services Act. Previous experience has been that the prison population increased relatively quickly after a general amnesty. It is also noteworthy that the amendments do not extend to modifying the legislative framework within which the law relating to prisoner's rights have developed. However, the historical features of the South African prison system will continue to exercise an influence on the development of prison law in South Africa for many years to come (*Van Zyl Smit, 1992 : 43*).

The next sub-section examines the rationale for imposing prison sentences.

5.3 THE RATIONALE FOR IMPOSING PRISON SENTENCES

Punishing people certainly needs a justification, since it is almost always something which is harmful or unpleasant to the recipient. In some cases it happens that the recipient does not find the punishment painful, or even welcomes it - some offenders might find prison a refuge against the intolerable pressures of the outside world (*Cavadino and Dignan, 1992 : 32*).

5.3.1 RETRIBUTION

Every sentence is an act of punishment and is justifiable simply because a person has offended, has broken the legal requirements of the society. For this reason, punishment under these circumstance is a means of reaffirming the social order.

Another reaction often considered by the court is based on the idea of reparation. Although it is a penalty often given as part of a sentence by a judge, reparation is not necessarily considered punishment by either the court or public. It requires the offender to make amends by paying compensation to the victim or to society for the harm, resulting from a criminal offence (*Callison, 1983 : 4 - 5*).

Therefore, restoration is a sentencing goal which seeks to make the victim and the community "whole" again (*Schmallegger, 1995 : 371*).

5.3.2 DETERRENCE

Punishment is justified by the value of its consequences, that is, the prevention of crime (*Rabie, Strauss, and Mare, 1994 : 25*). Essentially, deterrence is the

simple idea that the incidence of crime is required, balance of people's fear or apprehension of punishment they may receive (*Glazer, 1984*). Therefore, general deterrence is the prevention of crime by the example to others (*Bartollas and Conrad, 1992 : 115, Levine, et al, 1980 : 354, and Reid, 1985: 77*).

General deterrence will be discussed in point 5.3.2.2. The deterrence mechanism can be divided into two categories, individual, and general deterrence which will be discussed in the subsequent section.

5.3.2.1 INDIVIDUAL DETERRENCE

Individual deterrence refers to the effect of punishment in preventing a particular individual from committing additional crimes (*Reid, 1994 : 111, Finkenner, 1982 : 33 and Newman, 1978 : 205*). This statement is confirmed by *Adler, Mueller, and Laufer (1994 : 348)*.

Individual deterrence occurs when someone commits a crime, is punished for it, and finds the punishment so unpleasant or frightening that the offence is never repeated for fear of more of the same or worse (*Jenkins, 1984 : 152*).

5.3.2.2 GENERAL DETERRENCE

Territo, Halsted and Bromley (1998 : 487), contend that general deterrence is a theory of punishment that seeks to discourage would-be offenders from committing the same crime for which a defendant has been convicted.

Therefore, the form of deterrence theoretically is designed to prevent further

crimes by someone who has already experienced the sanctions imposed by the criminal law through the mechanisms of the courts and imprisonment.

Thus, some convicted criminals and parolees, have failed to comply with the legal requirements of society, can yet be persuaded to avoid future crimes by experiencing some form of punishment (*Pursley, 1994 : 424*).

Therefore, people are made to fear the power of law, to believe that their illegal behaviours will be met with certain and severe punishment, then they should be unwilling to risk involvement in outlawed activities (*Senna and Siegel, 1985: 82*).

Therefore, the general prevention is applicable to all the members of the community without exception (*Von Hirsh and Ashworth, 1992 : 62 and Killinger and Cromwell, 1978 : 28*).

By the same token, *Murphy (1985 : 5)*, contends that even when punishments are not actually inflicted on individuals, the possibility that they might be inflicted may be sufficient to generate enough fear in those individuals to cause them refrain from acting in ways they otherwise would have found desirable, a coercive curtailment of liberty.

Therefore, punishment may be viewed as a message from the state for the following reasons; namely:

- ▶ First, punishment is a message which intends to say that crime does not pay

- ▶ Secondly, it is a message which intends to say that one should avoid certain acts, because they are morally improper or incorrect (moral education)
- ▶ Thirdly, it is a message which intends to say that one should get into the habit of avoiding certain acts (habit formation).

In addition, the criminal Justice system, comprising the prosecuting authorities, the police, the courts and the sanctioning apparatus which includes the prison, may be seen as a large machines having the purpose of communicating this message to people (*Mathiesen, 1990 : 58 - 59, and Duff and Garland, 1994 : 11*).

5.3.3 INCAPACITATION

Incapacitation of criminals is a justifiable goal of sentencing because inmates will not be able to repeat their criminal acts while they are under state control. For some offenders, this means a period in a high - security state prison where behaviour is closely monitored.

Fixing sentence length involves determining how long a particular offender needs to be incarcerated to ensure that society is protected (*Senna and Siegel, 1998 : 349, and Territo, Halsted and Bromley, 1998 : 488*).

However, this rationale is regarded by both supporters and critics of the punitive approach as the most - plausible argument in favour of punishment. In everyday language this theory of punishment is known as "lock 'em up and throw away the key" (*Territo, Halsted, and Bromley, 1998 : 488*).

A basic component of an incapacitation system, is the use of risk assessment methods which identify those who must be incapacitated and determine when the risk is abated sufficiently to end the control measures.

5.3.4 REHABILITATION

Punishment has not been society's only response to the offender. An alternative has been rehabilitation - the use of therapy, education, and training for managing offenders (*Callison, 1983: 5, and McShane, and Krause, 1993: 10*).

Therefore, rehabilitation implies that the inmate needs to be changed. The task of a system of rehabilitation is to reform an offender by developing in him or her the skills and disposition necessary for one who is to act in accord with those social practices recognised as just by the members of the community at large (*Hlongwane, 1994 : 82 - 84*).

However, in order for the court to fulfil its activities, the community members must be involved in criminal justice administration which will become clear in the next sub-section.

5.4 VOLUNTEER INVOLVEMENT IN THE PRINCIPAL GOALS OF THE DEPARTMENT OF CORRECTIONAL SERVICES

The mission of the Department of Correctional Services is to render a correctional service in order to contribute to community protection, stability and development (*Annual Report : Department of Correctional Services, 1999*).

In order to achieve this mission, the Department of Correctional Services,

identified six principal goals to guide the focus and the direction of the whole department, namely:

- ♦ Safe custody of prisoners
- ♦ Supervision and control over probationers and parolees
- ♦ Humane detention and treatment of prisoners
- ♦ Provision of development programmes to prisoners
- ♦ Reintegration of prisoners into the community
- ♦ Effective resource management and utilization

Each one is briefly set out hereunder:

5.4.1 SAFE CUSTODY OF PRISONERS

The primary function of the Department of Correctional Services is to ensure that those detained in prison are kept therein in safe custody until they are legally released.

Prisoners are housed in 236 prisons country wide, as on 31 December 1999.

These prisons are made up as follows:

- ▶ 8 female prisons
- ▶ 12 youth correctional facilities
- ▶ 115 prisons for male adults only
- ▶ 89 prisons accommodating males and females in different sections thereof
- ▶ 12 prisons temporarily closed down for renovations (*Annual Report : Department of Correctional Service, 1999 : 6*)

The Department of Correctional Services strives to provide adequate prison

accommodation according to internationally accepted standards. However, certain realities are frustrating the pursuance of this objective; the major factor being a long history of inadequate capital funding to build more prisons and to renovate the old ones. Another factor is that the Department of Correctional Services has to answer over the numbers of awaiting trial persons flowing into the system on daily basis. As a result the prisons all over the country are currently bursting at the seams. On the 31 December 1999, the prisoner population in South Africa stood at 162,638. This showed an increase of 11,18% on the figures during the same period in 1998. Figure 8 below, will indicate the extent of overcrowding in South African prisons during the periods December 1995 to December 1999.

FIGURE 8

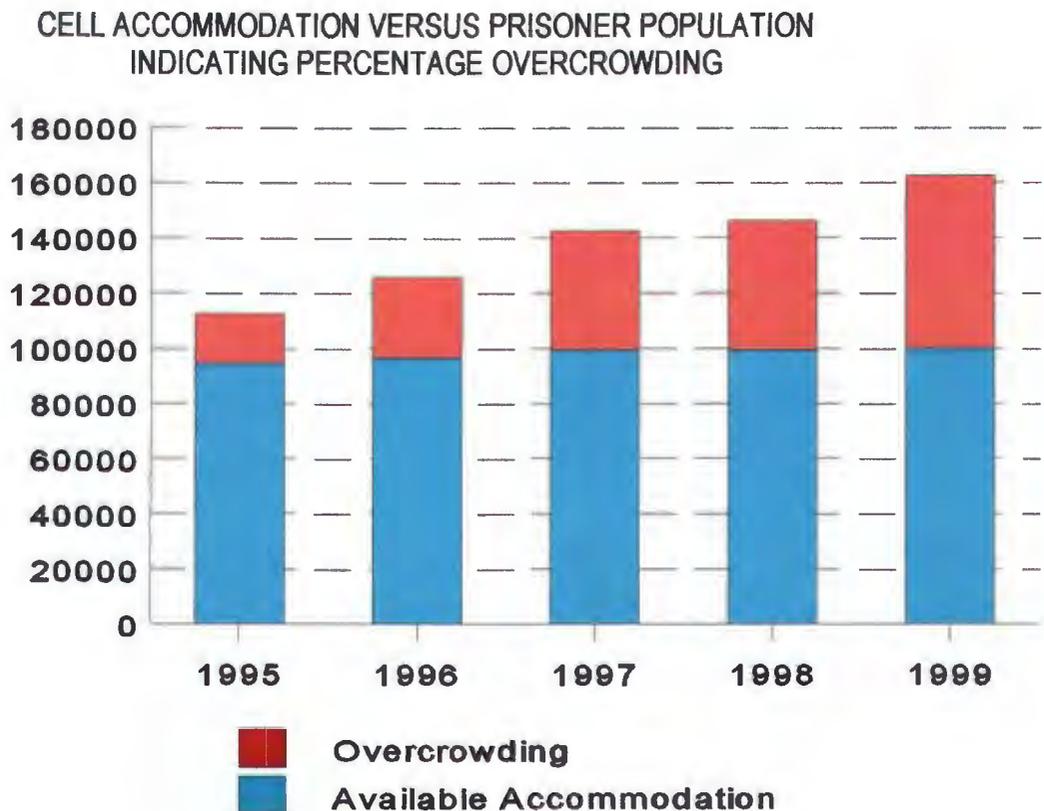


Figure 8 suggests that the level of over-population in South African prisons reached 62,9% at the end of December 1999, which is a serious national problem, in terms of the fundamental human rights and costs to maintain so many prisoners in prisons throughout the country. The good news is that, despite the overcrowded prisons, the Department of Correctional Services managed to reduce the number of escapes to 459 prisoners as compared to 1069 escapes in 1997.

Steps taken to reduce escapes included:

- the erection of electrified security fences at high-risk prisons throughout the country
- incentive schemes for prisoners who report planned escapes and thus, raising the alarm
- continued training and retraining of staff
- more stringent measures to prevent unauthorised articles that could assist in the escape from being taken into prisons
- the forfeiting of certain privileges as a result of an escape
- disciplinary action against negligent staff; and
- upgrading, repairs and renovations on old prison buildings (*South African Year Book, 1999 : 238*).

5.4.1.1 CAUSES OF OVERCROWDING

There are various causes for overcrowded prisons in South Africa. But the most important, are the following:

5.4.1.1.1 COURT DELAYS

South Africa over the past decade has witnessed growing public concern about the "crisis of the courts", as manifested by congestion, backlogs, and delays in the processing of criminal cases. To some observers the problems derive from inadequate resources and call for more spending on the courts; to others the problems are due to inefficiency and require administrative rationalization; to still others the problems stem from different sources, such as deliberate stalling by defence legal advisors and poor investigations by police officers.

An analysis of delay in the criminal courts must begin with the concept of "delay". To say that a particular case has been delayed, one needs a standard against which to evaluate its length. An efficiency expert might assume that the faster a case was concluded, the better, but this standard of judgement does not mesh well with the notions of justice and fair play upon which the common law is based. The conduct of a defence requires time, whether to exercise legal rights, to arrange a settlement, or both. It is therefore difficult, if not impossible, to supply a standard that indicates when a single case has become delayed or when a whole courtroom manifests delay (*Solomon (Jr)*, 1983 : 51).

It is possible, however, to examine variations in the average length of cases between different courts and in the same court over time and to inquire into the consequences and the causes of these variations. In this way one can learn how urgent the problem of long or delayed cases is and also how to deal with it (*Solomon (Jr)*, 1983 : 51).

5.4.1.1.2 SENTENCING OPTIONS

Accused persons face a range of sentencing options upon conviction for a crime. These include an option of fine or time in prison or in probation (*Brannigan, 1984 : 220*). Heavy case loads for the courts can be reduced by keeping minor crimes away from courts. Whereas, overcrowding can be reduced by keeping offenders committed for minor offences out of the prisons.

By minor crimes, the researcher refers to offences that present a relatively small degree of social danger and usually result in a mild punishment. These include victimless crimes like impaired driving and possession of dagga; property offences involving small amounts of money and minor public order offences. Notwithstanding the fact that any of these offences might become serious if committed repeatedly.

The cost of handling minor crimes in court fall into three categories:

- ▶ expense to the public purse
- ▶ burdens for the accused, witnesses and victims; and
- ▶ the consequences of heavy case loads (*Solomon (Jr), 1983 : 65 - 7*).

To be able to consider the sentencing options, the courts must fulfil certain requirements:

- there must be good understanding of the offender's circumstances, background and history
- there must be a familiarity with the sentencing resources and alternatives available, the variety of services, programmes and opportunities for an offender, given his/her peculiar circumstances

- the courts should seek creative ways for sentence guided by a frame of reference that seeks to minimize the destructiveness of punishment for the offender, his/her dependents and the victim
- the courts should seek ways to avoid the extreme punishment of prison and the often inadequate option of traditional probation or correctional supervision. It is the search for the creative, appropriate sentencing that can make the difference to the overcrowding of prisons in South Africa (*Lea, 1991 : 212*).

Obviously, one must have all the possible information pertaining to the accused as an individual gathered and evaluated to obtain and maintain the credibility of the courts, adequate preparation is the ultimate key. In particular, it is essential to conduct thorough investigations and to prepare detailed, professional and succinct presentence reports. That is where the researcher believes, volunteers can play an important role.

5.4.2 SUPERVISION AND CONTROL OVER PROBATIONERS AND PAROLEES

The new Correctional Service Act, 1998 (Act No. 111 of 1998), makes provision that all probationers and parolees be subjected to the same conditions. Currently, the parolees do not have to render community service. But in terms of the new Correctional Services Act, both probationers and parolees must render community service.

The Criminal Procedure Act, 1977 (Act 51 of 1977), regulates the imposition of sentences of correctional supervision. For an example, Section 290 of the Criminal Procedure Act, determines that any court in which a person under the

age of eighteen years is convicted of any offence may, instead imposing punishment upon him/her for that offence:

- ▶ order that he/she be placed under the supervision of a probation officer; or
- ▶ order that he/she be placed in the custody of any suitable person designated in the order; or
- ▶ deal with him/her in terms of both (*Barrow, 1988 : 155*).

Given the fact that the overwhelming majority of offenders entering the correctional system today are juveniles and children, the involvement of volunteers in probation services in South Africa can make the difference, in terms of avoiding negative consequences of imprisonment, particularly to the youth.

A person sentenced to correctional supervision is placed under the control of a correctional supervision official. This official must ensure that the probationer complies with the following conditions to which he/she may be subjected:

- ▶ house arrest
- ▶ community service, rendered free of charge for the benefit of the community
- ▶ victim's compensation
- ▶ restriction to a magisterial district
- ▶ prohibition on alcohol usage or abuse; and
- ▶ participation in some of the correctional programmes (*Nxumalo, 1997 : 216 - 228*).

If the set conditions are violated, the probationer could be referred to the court of first hearing for consideration of an alternative sentence or, in certain cases, be admitted directly to prison in order to serve the remainder of the sentence.

5.4.2.1 DAY PAROLE

There is little systematic information regarding this form of release. Day parole may involve residence in a minimum security penitentiary, accommodation in a halfway house, or private accommodation in a private residence in the community. Consequently, day parole can take many forms under some arrangements inmates will be released from prison during the day for work, or may be *de facto* fully paroled with requirements to periodically report to correctional officials. Day parole can be granted after an inmate has served one-sixth of the sentence and is generally granted for a four month period, and may be renewed, but the inmate's day parole programme will not last longer than 12 months (*Brannigan, 1984 : 232 - 3*).

In South Africa, since 1997, certain categories of prisoners have been allowed to spend week-ends at home under this system. Inmates may temporarily leave prisons on compassionate leave, consolidation of family ties, preparation for release and for reasons that involve reintegration of the prisoner into society (*South African Yearbook, 1999 : 244*).

5.4.2.2 ELECTRONIC MONITORING

During September 1996, the Department of Correctional Services commenced with a research or pilot project in the Pretoria and adjacent areas to ascertain the viability of such a system for South Africa. The results indicated that the

electronic monitoring system is viable and can be implemented nationally.

The main aim of electronic monitoring is to exert more effective and intensive control over probationers and parolees in order to protect the community from further crime.

Electronic monitoring system brings together a series of major breakthroughs in offender monitoring, namely:

- provides a foolproof offender monitoring system
- minimizes costs for the monitoring service provider
- simplifies the task of the field monitoring officers
- draws no attention to the curfewee
- offers an alternative to custodial sentences (*Nxumalo, 1997 : 242 - 4*).

5.4.3 HUMANE DETENTION AND TREATMENT OF PRISONERS

Physical care of prisoners is regarded as an important responsibility of the Department of Correctional Services, and includes personal health care, nutrition and accommodation. The Department of Correctional Services endorses the fundamental rights and privileges of all prisoners.

5.4.3.1 PRIVILEGE SYSTEM

All prisoners are entitled to certain privileges, according to their categories of security classification. The main objectives for designing the privilege system for prisoners are:

- to minimise the possibility of corruption or bribery
- to minimise the inflow of unauthorised articles taken into prisons

- to establish a practical and effective privilege system for prisoners
- to ensure a safe and disciplined environment for both prisoners and correctional officials (*Correctional Service B-Orders*).

5.4.3.2 HEALTH-CARE SERVICES

The approach to health-care services in the South African prisons focuses, among other things, on:

- the strict pursuance of ethical codes by health-care professionals in prisons
- regular health "quality inspections" in all prisons
- strict compliance with rules of confidentiality and privacy with regard to the medical records of patients
- the continuous evaluation and upgrading of medical emergency services in all South African prisons
- an improved system for the allocation of medical assistance devices such as hearing-aids, spectacles, etcetera
- the implementation of "universal precautions" in prisons to prevent the spreading of HIV/AIDS in the workplaces and prisons (*South African Yearbook, 1999 : 240*).

5.4.3.3 MOTHER AND CHILD UNITS

On the 31 December 1999, there were 437 babies in prisons for women, country wide. Therefore, mother and child units are established - where the surroundings and facilities are complementary to sound physical, social, mental care and development of babies who are in prison as a result of their mothers who have been sentenced for crime. Clearly, such babies do not belong to the

prison in the first place, and therefore they should not be there. These children are kept in prison because of their mothers sentenced to imprisonment and lack of support systems within the community to take care of children meanwhile their parents are serving sentences. This is where volunteers can come in and make the difference, in South Africa.

5.4.3.4 NUTRITION

The Department has a duty and responsibility to provide nutritious meals to all those who are imprisoned and entrusted to its care. The main aim is to:

- ▶ provide all prisoners (and babies) with a balanced diet on a daily basis, as prescribed
- ▶ prepare meals in adequately and suitably equipped food preparation areas, under conditions conducive to a high standard of hygiene
- ▶ distribute meals in three serving sessions, in terms of the Correctional Services Act, 1998 (Act No. 111 of 1998).

5.4.3.5 PERSONAL CARE

The Department of Correctional Services' main objective is to maintain a high standard of personal hygiene of prisoners by ensuring that the following facilities are provided to prisoner:

- ▶ toilet and bathing facilities with warm water
- ▶ suitable clothing and shoes
- ▶ adequate bedding; and
- ▶ a clean and healthy environment.

5.4.3.6 PRISONER'S RIGHT TO LODGE A COMPLAINT

In terms of the provisions of Section 21(1) of the Correctional Service Act, read with Regulation 103, every prisoner must, on admission and on a daily basis, be given the opportunity of making complaints or requests to the Head of Prison or a correctional official authorized to represent such Head of Prison.

In dealing with prisoners' complaints the head or correctional official must:

- ▶ record all such complaints and requests and any steps taken in dealing with them
- ▶ deal with complaints and requests promptly and inform the prisoner of the outcome; and
- ▶ if the complaint concerns an alleged assault, ensure that the prisoner undergoes an immediate medical examination and receives the prescribed treatment.

Above all, Section 92(1) of the Correctional Service Act, 1998 (Act No. 111 of 1998), also makes provision for the appointment, by the Inspecting Judge, of lay persons as Independent Prison Visitors.

The functions of the Inspecting Judge include the following:

- ▶ to inspect or arrange for the inspection of prisons in order to report on the treatment of prisoners and conditions in prisons
- ▶ to receive and deal with the complaints submitted by the National Advisory Council, the Minister, the Commissioner, or a Visitors' Committee and in urgent cases from the Independent Prison Visitors
- ▶ to submit a report on each inspection to the Minister of Correctional

Services and to such other persons as the Inspecting Judge consider appropriate

- ▶ to submit an annual report to the President of South Africa and the Minister of Correctional Services
- ▶ to conduct such investigations as he considers necessary to carry out proper inspections and to submit proper reports for which purpose the Inspecting Judge may make such enquiries and hold such hearings as may be considered necessary.

The scope of such inspections will relate to all matters concerning treatment of prisoners and the conditions in prisons and any corrupt or dishonest practices including:

- accommodation
- personal hygiene
- food
- medical services
- assaults
- discipline
- transfers, etcetera.

It is interesting to note the volume of work that has gone to the Inspecting Judge, in terms of complaints from the prisoners since the beginning of January 1998 to December 1999.

•	Total cases reported	=	968
=	closed case files	:	89
=	assault	:	164
=	medical complaints	:	99
=	treatment	:	178

=	conditions	:	150
=	other	:	277
=	deaths	:	11 (<i>Judicial Inspectorate Manual, 1999 : Annexure A</i>).

5.4.4 PROVISION OF DEVELOPMENT PROGRAMMES TO PRISONERS

Fundamental to an effective correctional system is a firm commitment to the belief that offenders have the potential to stop their criminal behaviour and become law-abiding citizens. Therefore, development and training of prisoners forms an integral part of the rehabilitation process.

In South Africa, there is an Institutional Committee which is established for each prison. This committee is responsible for ensuring that in each prison there is a professional, and coordinated effort towards the incarceration, treatment, training and development of all sentenced prisoners.

This is effected by means of establishing in each prison a multi-disciplinary team consisting of custodial staff and professionals, such as educationists, social workers, psychologists, religious care workers, and artisans from production workshops.

The institutional committee must inform each prisoner about the opportunities available for training and development in that particular prison or in other prisons within the Province, according to individual's needs. The committee must encourage offenders to participate actively in appropriate programmes, by explaining the advantages for doing so.

Thereafter, the committee decides regarding the suitability of the programme, and allocate the individual prisoner on it. The offender is consistently monitored by the same committee to determine progress and evaluate the effectiveness of the programme in changing the behaviour of the prisoner concerned.

5.4.4.1 EDUCATION AND TRAINING

Illiteracy among prisoners is estimated at about 60% in South Africa. Therefore, a combination of correctional service educators and volunteer educators from the communities will obviously assist the Department of Correctional services in dealing with this problem.

Educational programmes, provided to both adult and juvenile prisoners include the following:

- ▶ life-skills training and development
- ▶ literacy training
- ▶ adult basic education and training (ABET)
- ▶ main stream education
- ▶ vocational training
- ▶ occupational skills training
- ▶ recreation and library education
- ▶ entrepreneurial skills training
- ▶ computer skills training; and
- ▶ distance education.

All these programmes are aimed at providing prisoners with competencies,

values and knowledge that is market related and need-directed.

5.4.4.2 SOCIAL WORK SERVICES

Social work services aim at supporting and developing the social functioning of all offenders, in order to enable them to adjust and adapt well to the demands of their social environment, thereby contributing to the stability of family relations and community protection.

These services, if rendered in close cooperation with the communities from where offenders come, will guarantee the successful reintegration of all ex-prisoners and probationers in the community.

The Department of Correctional Services decided to phase out the utilisation of auxiliary social workers and to concentrate on suitably qualified social workers, to render the following programmes to prisoners:

- ▶ life-skill programmes
- ▶ family care and marriage counselling programmes
- ▶ alcohol abuse programmes
- ▶ drug abuse programmes
- ▶ orientation programmes
- ▶ programmes for sexual offenders
- ▶ counselling to traumatised prisoners.

The number of qualified social workers in the employ of the Department of Correctional Services on 31 December 1999, were only 483. Given the number of prisoners who are incarcerated in South Africa, this calls for an

urgent need to involve volunteers by formally recruiting them into the system if these services are important for the rehabilitation of offenders.

5.4.4.3 PSYCHOLOGICAL SERVICES

Psychological services are provided to sentenced prisoners, persons under correctional supervision and probationers in order to maintain or improve their mental health and quality of live.

Prisoners who enjoy first priority of the psychologists are:

- ▶ suicide risk prisoners
- ▶ persons with emotional problems, mental disturbances or persons who need psychiatric treatment
- ▶ court referrals; and
- ▶ persons under probation and parole who are posing a threat to the community's safety.

Although there were 75 financed posts in the Department of Correctional Services by 31 December 1999, only 44 were filled. This can be ascribed to the fact that there are very few psychologists in South Africa and, therefore, the Department of Correctional Services have to compete with the private sector for the few that is available in the market. Obviously, psychological services must be rendered to prisoners as they are the ones who need it most. The Department of Correctional Services, among other strategies, wants to employ students with honours degree in psychology, as councilors, under the supervision of qualified psychologists in order to render this service to the prisoners.

Despite the above effort by the Department of Correctional Services, the researcher is still of the opinion that there are volunteers in the community that have time to render such services for the sake of South Africa, free of charge.

5.4.4.4 RELIGIOUS CARE

South African communities consist of overwhelming numbers of religious people. Therefore, religious care services in prisons must cater for all religions that are available in the country, in terms of the Constitution of the Republic of South Africa.

This service is rendered by the chaplains in partnership with external churches and other role players. The religious care programmes take the form of:

- ▶ large group gatherings, such as church or religious services
- ▶ small group sessions, such as bible/scripture studies, prayer meetings, catechism, audio visual shows and need-based group work
- ▶ personal interviews; and
- ▶ counselling.

In its endeavour to render a professional service to offenders, the Department of Correctional Services makes use of community resources and religious workers representing 71 different church denominations in South Africa.

The Department of Correctional Services also make full use of external expertise from non-governmental organisations and community-based organisations, such as:

- ▶ the Bible Society of South Africa

- ▶ the Gideon Movement
- ▶ Prison Fellowship South Africa
- ▶ New Life Behaviour Ministry
- ▶ the Alpha Course; and
- ▶ Scripture Union, etcetera.

Although the above sounds more positive, the researcher is of the opinion that there is still a need to evaluate the impact of the religious programmes to the behaviour of prisoners inside prison and after release. Therefore, more volunteers will be needed to monitor the progress and evaluate the results.

5.4.4.5 OCCUPATIONAL SKILLS-TRAINING

This is one field that was neglected for too long in the history of the people of colour in South Africa. Prisoners can be equipped with need-based specialised basic technical skills in more than 60 fields. These fields include:

- ▶ woodwork
- ▶ metal work
- ▶ needlework
- ▶ pottery
- ▶ fencing
- ▶ leatherwork; and
- ▶ building skills.

Agricultural training can be provided to prisoners in three main fields, namely:

- ▶ livestock farming
- ▶ crop farming; and
- ▶ mechanised farming.

As part of the National Crime Prevention Strategy, prisoners must be equipped with technical skills and entrepreneurial management skills to enable them to start and manage their own small businesses after release.

There are volunteers in the community that can share these skills with the prisoners with the aim of making them law-abiding citizens.

5.4.5 REINTEGRATION OF PRISONERS TO THE COMMUNITY

The preparation for placement and settlement of a prisoner to the community after release, should begin from the time the inmate enters the prison for admission. The advantage of doing that is obvious, and that is to avoid running around on the eleventh hour, looking for the support system and accommodation for prisoners. This is the prerequisite for placement of prisoners into the community, in terms of the current release policy. Failure on the side of the correctional services staff to take proactive steps to prevent this can delay the release process.

Nationally there are over 50 parole boards whose main purpose is to consider the suitability for conditional placement of prisoners serving sentences of imprisonment of longer than six months.

There are three main factors that can influence the suitability of the time for placement of prisoners on parole, namely:

- policy stipulations, including special instructions from the sentencing court
- prisoner's involvement in development programmes, as discussed in paragraph 5.4.4 above
- inmate's behaviour towards other prisoners and personnel.

There is a standard pre-release programme which is presented during the last few months of imprisonment, aimed at preparing young and adult offenders for placement. The preparations include day parole or temporary leave in terms of Section 44 of the Correctional Services Act, 1998 (Act No. 111 of 1998), which authorizes the Commissioner to grant such permission, especially to young offenders in order to:

- ▶ promote or re-establish family ties by means of paying visits to their homes, before placement
- ▶ participate in therapeutic programmes outside prison; and
- ▶ visit public places like shopping centres under supervision to orientate them, especially those who have served long sentences.

5.4.6 RESOURCE MANAGEMENT AND UTILISATION

The budget allocation for the Department of Correctional Services for 1999/2000 financial year is R4,6 billion, which indicates a slight increase of about 2,09% to the 1998/1999 financial year's R4,5 billion.

The Department of Correctional Services had a personnel component of 31812 members as at 31 December 1999. The approved post establishment during the same period was 34552 leaving approximately 2740 posts vacant, country-wide.

The moveable and fixed assets of the Department of Correctional Services include government vehicles, equipments, furniture, buildings, workshops and agricultural farms. The rand value of such assets is unknown at this stage.

It may rightly be asked what is required for a public institution like Correctional Services to manage its resources for excellence.

To answer this question, it can be said that managing the institution's personnel, who comprise the most important component of the Department of Correctional Services, makes an indispensable contribution in this regard.

In much of the literature on the management discipline, it is contended that the greatest human achievements of this century can be directly linked to increasing management knowledge. Management is increasingly being recognised as the most critical element in both the public and private sector, and is regarded as an essential element for the creation of wealth, peace, and prosperity in society. But a significant percentage of South Africa's population has not yet been exposed to management as a discipline. Therefore, the whole country and the Department of Correctional Services are standing at a crossroads. With insufficient resources and largely illiterate and unskilled human resources, the Department of Correctional Services will only overcome this obstacle by having all its management corps trained for knowledge and skills (*Van der Waldt, 1997: 7*).

The Management Development Programme of the Department of Correctional Services includes competency-based courses targeting the following levels:

- ▶ basic training
- ▶ junior management
- ▶ middle management; and
- ▶ top management.

There is also functional training, which aims at equipping personnel in a specific posts to effectively perform their duties (*Annual Report, 1999 : 35*).

5.5 SUMMARY

The Department of Correctional Services does not and cannot function in a vacuum. Therefore, it is imperative that there be an interaction between the Correctional Services and the community. This chapter attempted to indicate and identify opportunities that exist in the Department of Correctional Services where volunteers can be engaged in order to make rehabilitation programmes effective in changing the criminal behaviour of inmates.

The next chapter deals with the role of volunteers in the justice system for juveniles in South Africa.

CHAPTER 6

THE ROLE OF THE VOLUNTEERS IN THE JUVENILE JUSTICE SYSTEM**6.1 INTRODUCTION**

This chapter is pertaining the development of the justice system specially designed to handle children. In addition, this chapter also considers the many stages in the system: stages that require full range of decisions concerning custody, detention, disposition and treatment, as well as the role played by volunteers within the system.

6.2 DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM IN SOUTH AFRICA

The roots of our system of juvenile justice are 2,000 years old, in classical Roman law. There are two roots, one clearly punitive, the other supportive and caring (*Adler, Mueller, and Laufer, 1994 : 470*). According to *Robin (1987: 474)*, the hub of the juvenile justice system is the juvenile court. The juvenile courts' mission is to act on behalf of children, to treat and rehabilitate rather than punish.

A basic assumption of the juvenile court is that the interests of the state and juvenile offender are identical and are never in conflict by the same token, *Carney (1980 : 247)* contends that the juvenile court operates under the doctrine of *parens patriae*, that is, it acts as the parent surrogate "in the best interest of the child". Therefore, the court, the task force asserts, instead of being indiscriminately concerned with the "best interests" of every child, should make a consistent distinction in the severity of sentencing for those

under and those over the age of 18 years, waiving the seriously violent offenders into adult court.

By the same token *Reid (1987 : 520)*, contends that under the *parens patriae* doctrine, the jurisdiction of the juvenile court is extensive. It includes all children who have not yet achieved the age at which the criminal court takes jurisdiction, although that age may differ from jurisdiction to jurisdiction. Some states have a minimum age for juvenile court jurisdiction, but as a practical matter courts do not generally decide cases involving very young children. This statement is confirmed by *Inciardi (1987 : 679)* and *Reid (1981: 348)*.

6.2.1 CHANGES IN LEGAL NORMS

A group known as the constitutionalists argue that the juvenile court was unconstitutional because under its auspices, the principles of a fair trial and individual rights were denied. This group was primarily concerned that children appearing before the juvenile court were denied, their procedural rights as well as the right to shelter, protection, and guardianship. The constitutionalists contended that the procedure of the juvenile court be modified in three ways, namely:

- ▶ by the adoption of separate procedures for dealing with dependant and neglected children and those who are accused of criminal behaviour
- ▶ by the use of informal adjustments to avoid official court actions as frequently as possible; and
- ▶ by the provision of separate procedural safeguards and rights for children appearing before the court at the adjudicatory stage (*Bartollas, and Miller,*

1998 : 168 - 169). This statement is confirmed by *Musick (1995 : 33)*.

Adjudication will be discussed in sub-section 6.3.4 of this chapter.

6.2.2 TRANSFER TO ADULT COURT

The waiver or transfer of juvenile to adult court is taking place more frequently now than it had in the past. However, the offences juvenile commits are also important in the waiver decision. For example, more states transfer juveniles at 14 years of age, than at any other age (*Bartollas, and Miller, 1998 : 206 - 207*).

6.2.3 JUDICIAL WAIVER

Except where state laws mandate that a youth be tried in adult court, someone has to make the decision to waive a youth. Judicial waiver, the most widely used transfer mechanism, involves the actual decision making process that begins when the juvenile is brought to intake.

In the other states, a court other than the juvenile court makes the decision: For example, the prosecutor or judge in the adult court may decide where a juvenile is to be tried: What decision is made is determined by the requirements of the state and the way the intake officer, prosecutor or judge, interprets the youth's background. In addition the presentence investigation report is a basic working document in judicial and correctional administration (*Carter, Glaser, and Wilkins, 1984 : 12*).

Typically, the criteria used include the age and maturity of the child, the

seriousness of the referral incident, the child's past record, the child's relationship with parents, school, and community; whether the child is considered dangerous, and whether court officials believe that the child may be helped by juvenile court services (*Bartollas and Miller, 1998 : 100*). This statement is confirmed by *Adler, Mueller, and Laufer (1994 : 477)* and *Atkinson, and Gerull (1993 : 100)*.

6.3

THE JUVENILE JUSTICE PROCESS

Like the criminal process, the juvenile justice process has its clients (alleged delinquents, status offenders, and dependant or neglected children). There is also a process that result in some distinct products; protected and rehabilitated children a safe community, and a sense that justice was accomplished. Like the criminal process, the juvenile process begins with a person 's entry into the system and ends with the diversion from the system or with a correctional program. But there are some notable differences. First, there are critical differences in the very nature of the proceedings criminal courts have adversarial proceedings while juvenile courts still are guided to some extent, by the *parens patriae* philosophy. Here are some other critical differences, namely:

- ▶ In criminal proceedings charges are filed to start the process. Juvenile proceedings begin with a petition
- ▶ Adults charged with crime may be released by judicial decisions before trial. Most juvenile courts release children to their parents custody before an adjudicatory hearing
- ▶ Plea-bargaining practices, common in adult proceedings, are absent in juvenile proceedings

- ▶ Criminal proceedings have procedural formality, juvenile court proceedings are informal
- ▶ The right to trial by jury exists in criminal but not in juvenile proceedings
- ▶ Criminal courts are strictly bound by rules of evidence, juvenile courts are not.

An adult convicted in criminal court is sentenced. In the case of a juvenile, the juvenile court judge makes a “disposition” (*Adler, Mueller and Laufer, 1994 : 478 - 479*). The juvenile justice system is ideologically different from the adult criminal justice system. The aim of the juvenile court is to protect and safeguard children from embarking on a criminal career, rather than to prosecute children (*Thornton, and Voigt, 1992 : 380*). This statement is confirmed by *Acta Criminologica, vol 10.1 (1997 : 118)*. Disposition hearing will be discussed in sub-section 6.3.5 of this chapter.

6.3.1 ENTRY INTO THE SYSTEM

Perceptions and tolerance levels vary from area to area and neighbourhood to neighbourhood, but on the whole there appears to be much more tolerance for juvenile misconduct than for adult misconduct. The number of deviant and criminal acts actually committed by juveniles is far greater than those reported to the police. But while this is true, the jurisdictional reach of the juvenile justice system is far greater than that of the adult criminal justice system. The juvenile court hears cases involving, inter alia:

- ▶ delinquent children
- ▶ children in need of supervision, sometimes called status offenders

- ▶ neglected children and dependent children

Therefore juveniles are subjected to the criminal law and to laws relating to juvenile court (*Adler, Mueller, and Laufer, 1994 : 478 - 479*). This statement is confirmed by (*Inciardi, 1987 : 683*).

6.3.2 CUSTODY

Juvenile court employees learn about problems of children from three main sources: police, parents and school officials. Some children referred to the courts by the police officers are taken into custody and put into detention (*Musick, 1995 : 215*). If a magistrate court decides against granting bail, then a remand in custody would be made-usually to a local prison. If a defendant is remanded in custody, then they have the right to reappear before the court to make two further bail applications during the period that they are awaiting trial (*Clark, 1991 : 51*). By the same token, *Adler, Mueller, and Laufer (1994 : 482)*, contend that once juvenile misconduct has been brought to the attention of the authorities usually police, the next step is a decision to investigate, to take the juvenile into custody, and to process the juvenile.

Therefore, a subsequent to take decision that recommends a hearing before the juvenile court judge, most state statutes require a detention hearing to determine whether the child should be released to a parent or guardian or retained in custody. The issues addressed include, inter alia:

- ▶ whether there is a need to protect the child
- ▶ whether the child presents a serious threat to the community; and
- ▶ the likelihood that the child will return to court for adjudication (*Inciardi,*

1987 : 691). Adjudication will be further discussed in sub-section 6.3.4. In theory, the temporary detention of juveniles should meet three basic objectives, namely :

- secure custody with good physical care that will offset the changing effects of confinement
- a constructive and satisfying program of activities to provide the juvenile with a chance to identify socially acceptable ways of gaining satisfaction
- observation and study to provide screening for undetected mental or emotional illness as well as diagnosis upon which to develop appropriate treatment plans. Should these goals be met, the detention experience might actually aid both the child and the court. In practice, however most children in detention are housed in facilities that provide little more than security (*Inciardi, 1987 : 691*).

6.3.3 INTAKE HEARING

Once a juvenile has been taken into custody, the police juvenile unit must also decide, inter alia:

- ▶ guided by law, whether to process the youngster as an adult offender, and take him or her before a magistrate for a first appearance
- ▶ to choose the juvenile path and take the suspect before juvenile court judge; or
- ▶ to deal with the case in a less formal manner (*Adler, Mueller, and Laufer, 1994 : 484*).

Most juvenile courts are part of circuit, district, superior, common pleas, or municipal courts. The jurisdiction generally includes delinquency, neglect, and dependency cases; however, adoption appointment of guardians for minors, determination of custody, and termination of parental rights are also included in juvenile court jurisdiction. (*Trojanowicz and Morash, 1992 : 196*). If the case is not informally disposed of by the police or the juvenile probation department, it moves before a juvenile court judge for an intake hearing, which is similar to an arraignment in criminal court. In large metropolitan areas the juvenile court judge usually is a specialist in juvenile matters (*Adler, Mueller, and Laufer, 1994 : 484*).

Intake workers who are usually probation officers, juvenile court personnel or volunteers or state youth service counsellors are in a strategic position to reduce the penetration of juveniles further into juvenile justice system. "Penetration" is a term used to characterise a youngster's contacts with the formal agencies of the system. Intake workers can warn, release juveniles, refer them to outside programs, place them on informal probation or file a petition with the juvenile court (*Territo, Halsted, and Bromley, 1998 : 645*).

Therefore the procedure of the juvenile court begins with a petition against the child, which usually originates with the law enforcement agency, although it can be initiated by other sources. School authorities for example, can refer truancy and vandalism cases. Other agencies may also make references, but most referrals come from the police. Most juvenile courts employ a well-defined routine in processing juveniles who are brought before them on a petition

alleging delinquency, dependency, or neglect. The intake or initial screening is usually performed by an intake unit, control and supervised by the juvenile court, which consist of one or more probation officers (*Trojanowicz, and Morash, 1992 : 197*).

By the same token, *Territo, Halsted and Bromley (1998 : 650)*, contend that juveniles diverted from the system by the police are referred to the juvenile court intake unit, which is frequently staffed by probation officers or professional volunteers. The primary purpose of intake is to determine if youngsters accused of criminal acts or status offences should be diverted from the juvenile court. Intake officers or professional volunteers consider a variety of factors in making this decision. First, they must decide if the juvenile falls within the jurisdiction of the court by virtue of his or her age, the place where the offence took place, and the nature of the offence itself. In many jurisdictions, intake workers or professional volunteers must also ascertain the legal sufficiency of the referred offence and determine if there is sufficient evidence to support the allegations of delinquent conduct. Following this, a decision is made whether to refer the case to the juvenile court.

In making this decision, intake workers or professional volunteers consider the seriousness and time of the day of the alleged offence, the type of neighbourhood where the youth lives, and the youth's age, attitude toward authority, involvement in religious activities, prior court and police contacts, home environment, school record, reaction to sanctions previously imposed, and present interest and activities.

In recent years, the intake function has taken on increasing importance because of the dual emphasis on diverting as many youth as possible while at the same time protecting the community (*Territo, Halsted, and Bromley, 1998: 650 - 651*). However, if the court has jurisdiction over a child who is referred, and if there is sufficient evidence to warrant processing a case, the next step for intake probation is to set up an interview with the child and his/ her parents. For children who are placed in detention, this involves having a probation officer or professional volunteer call the child's parents, inform them of their child's arrest, and invite them to come to the office for an interview. With children who are not incarcerated, the process is much the same. Parents are called by an intake probation officer or professional volunteer and are invited to bring their child to the probation office for a voluntary scheduled interview (*Musick, 1995 : 218*). The volunteers will be discussed in chapter 7. In addition, intake discussions are made by intake officers or professional volunteers. Theoretically they conduct an investigation before making the intake decision, but with heavy caseloads, this investigation may not be conducted thoroughly, if at all.

Some states have placed statutory requirements on the intake officer in regard to referrals out of the system or dismissals. For example, in some jurisdictions the intake officer or professional volunteer may not dismiss a case without the written permission of the prosecutor. In others, the case may not be dismissed or diverted if the complaining witness insists that formal action proceed beyond this stage (*Reid, 1987 : 535*). This statement is confirmed by *Creechan and Silverman (1995 : 316)*. By the same token, *Reid (1987 : 537)* contends that

another important person in the juvenile system is the probation officer or professional volunteer, who will be actively involved in the gathering of information and evidence for the hearing and for the disposition of the case. This statement is confirmed by *Campus Law enforcement journal Vol.28. no 1. Jan/Feb (1998 : 19)*.

6.3.4 ADJUDICATION

If the juvenile court has retained jurisdiction over the alleged delinquent, the case moves into the adjudicatory hearing, which is the equivalent of a trial in criminal court (*Adler, Mueller, and Laufer, 1994 : 485*). The adjudicatory or fact-finding stage of the court's proceedings usually includes the following steps, inter alia:

- ▶ the plea of the child
- ▶ the presentation of evidence by the prosecution and by the defence.
- ▶ cross-examination of witnesses; and
- ▶ the finding by the judge.

These steps serve as protections to ensure that youths are entitled to proof "beyond a reasonable doubt" when charged with an act that would constitute a crime if committed by an adult and that the judge follows the rules of evidence and dismisses hearsay from the proceedings. Hearsay is dismissed because it can be unreliable or unfair, in as much as it cannot be held up for cross-examination.

The evidence must be relevant and must contribute to the belief or disbelief of

the act in question (*Bartollas, 1990 : 409*). Prosecutors in most juvenile courts today begin these proceedings by presenting the case of the state. The arresting officer and witnesses at the scene of the crime testifying, and any other evidence that has been legally obtained is introduced. The defence attorney, who is present in most juvenile court today, then cross-examines the witnesses. Defence counsel, who may be a public defender, a court-appointed counsel or a privately retained attorney, also has the opportunity at this time to introduce evidence favourable to his or her client and the youth may testify on his or her own behalf. The prosecutor then cross-examines the defence witnesses.

The prosecutor and the defence present summaries of the cases to the judge who reaches a finding or a verdict (*Bartollas, 1990 : 410*). The judge will then proceed to the second stage of the adjudication process, which proceeds to sentencing in criminal courts. In many states, the adjudicatory and dispositional hearings are separate. Separate and distinct hearings protect the child from any prejudice resulting from irrelevant, often damaging evidence raised during the adjudicatory hearing (*Adler, Mueller and Laufer, 1994 : 487 - 488*).

By the same token *Reid (1987 : 537)* contends that the juvenile hearing may be much less formal than that of the criminal court, but the same general procedures will take place. The prosecutor will present the evidence against the juvenile, the defence will have an opportunity to cross-examine the witnesses and some rules of evidence will prevail.

This statement is confirmed by *Reid (1987 : 537)*. By the same token *Thornton, and Voigt (1992 : 387)* contend that the purpose of the adjudicatory hearing is to determine whether the child is delinquent. The judge has three options, namely:

- ▶ the case can be dismissed
- ▶ adjudication can be withheld and the child placed on probation or referred to another agency; or
- ▶ the judge can find the child to be delinquent.

When a judge finds the child to be delinquent, a disposition hearing is scheduled for the near future. This statement is confirmed by *Bynum and Thompson (1989: 86)* and *Duffee (1989 : 99)*.

6.3.5 DISPOSITIONAL HEARING

According to *Musick (1993 : 227)* at disposition judges are obligated by modern state juvenile law to protect the child or the best interests of the community. In addition, at the disposition hearings, juvenile court judges have extremely broad discretion. They have an authority to dismiss a case, give the juvenile a warning or impose a fine, order the payment of restitution require the performance of the community service, refer the offender to a community agency or treatment facility, place the child on probation under the supervision of court officer, place the child on some informal probationary status, put the child in a foster home , enter an order against the parents for the protection of the child or mandate commitment into a juvenile institution.

In practice, the most common dispositions are probation court sponsored restitution programs and institutional commitment (*Inciardi, 1987 : 692*). In traditional language, juveniles are not sentenced, dispositions are made.

Dispositions tend to be indeterminate, although the court loses jurisdiction over the child when the child reaches the age of majority (*Reid, 1987 : 537 - 538*).

After a child has been found delinquent at the adjudicatory stage, some juvenile court codes still permit judges to proceed immediately into the disposition hearing. But the present trend is to hold bifurcated or split, adjudicatory and disposition hearings, because a split hearing gives the probation officer or professional volunteer appointed to the case an opportunity to prepare a social study investigation of youth.

The disposition stage of the court's proceedings normally is quite different from the fact-finding stage, especially when it is held at a different time. Because the dominant purpose is to administer individualised justice or to set in motion the rehabilitation of the delinquent. The judge is not limited as much by constitutional safeguards.

Rules of evidence are relaxed, parties and witnesses are not always sworn in, and hearsay testimony may be considered. The starting point of the disposition hearing usually is the written social study of the child prepared by the probation officer or professional volunteers. This report examines such factors as school attendance and grades, family structure and support, degree

of maturity and sense of responsibility, relationships with peers, participation in community activities, and attitudes toward authority figures (*Bartollas, 1990: 410 - 411*).

The factors influencing judicial decision making at the disposition stage can be separated into formal and informal factors. The three most important formal factors are the recommendations of the probation officer or professional volunteer and the information contained in the social study investigation, the seriousness of the delinquent behaviour and the previous contacts with the court, probably have the greatest impact on judicial decision making at this stage. The informal factors that sometimes influence judicial decision making at the disposition stage are the values and philosophy of the judge; the social and racial background of the youth as well as his or her demeanor, the representation of a defence counsel, and political repercussions of the delinquent acts.

In terms of the values and philosophy of the judge, some judges work from a legal model and some from an educational model and some from a medical model and the model of a particular judge emphasises of course will affect his or her handling of juvenile delinquents (*Bartollas, 1990 : 410 - 411*).

6.4 JUVENILE CORRECTIONAL INSTITUTIONS

The juvenile court may decide that the only option is to place the juvenile in an institution. There has been considerable debate over whether such placement is ever an appropriate response to juvenile wrongdoing. However, policy

makers determine that some juvenile offenders must be segregated to protect the community and thus they must be detained in an institution.

Equally important, is the fact that incarceration of juveniles will do more harm than good unless the conditions of detention are radically reformed and the population is kept at a minimum (*Adler, Mueller, and Laufer, 1994 : 488 - 489*). In addition, juveniles by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subjected to the control of their parents, and if parental control falters, the state must play its part as *parens patriae*. In this respect the juveniles' liberty interest may in appropriate circumstances be subordinated to the state's *parens patriae* interest in preserving and promoting the welfare of the child (*Inciardi, 1987 : 708*). According to *Roberts (1989 : 147)*, states bring juveniles into custody and thereby to the point where detention status becomes an issue essentially in two ways.

The first is through arrest by a police or an official authorised by the court (usually a probation officer), on grounds that are set forth in state statutes. The statutory grounds for arrest of juveniles include all grounds applied in adult arrests as well as, in many states, authorisation to take youth into custody because of the following aspects; namely:

- ▶ it is necessary for the protection of others
- ▶ they are suspected of running away from home; and
- ▶ for the protection of the child's safety, morals, or general welfare.

A juvenile may also be taken into custody and detained on a warrant or a signed summons issued by a judge in most cases to remove them from situations defined as dangerous to their welfare. This statement is confirmed by *Waegel (1989 : 149)*.

In addition, after the trial has been concluded, and if the verdict of guilty has been rendered, the judge has several alternative actions to take relative to the guilty party. The two most common alternatives are sentencing to a penitentiary for a specified length of time or probation (*Folley, 1980 : 424*).

6.5 DIVERSION OUT OF THE JUVENILE JUSTICE SYSTEM

Diversion is probably the most common term used to refer to screening out children from the juvenile court without judicial determination. Numerous national groups, commentators, lawyers and other criminal justice experts have explored the concept of diversion since its inception in the mid 1960s. Diversion is primarily the early court process of placing offenders, both adult and juveniles into non-criminal diversion programs prior to their formal trial or conviction (*Senna. and Siegel, 1981 : 605 and Robin, 1980 : 230*).

However, diversion has become one of the most popular reforms in juvenile justice since it was recommended by the Presidents Crime Commission in 1967. The arguments for the use of diversion programs include the following:

- ▶ it keeps the juvenile justice system operating or it would collapse from voluminous case loads
- ▶ it is a preferable approach than dealing with the present inadequate

juvenile justice treatment system

- ▶ it gives legislators and other governmental leaders the opportunity to reallocated present resources to programs that may be more successful in the treatment of juvenile offenders
- ▶ the costs of diversion programs are significantly by less than the per capita cost of institutionalization (*Senna, and Siegel, 1981 : 606*).

By the same token *Inciardi (1987 : 710)*, contends that a recent trend has been the greater use of diversion programs with many young offenders being placed in remedial education and drug abuse treatment programs, foster homes and counselling facilities. According to *Adler, Mueller, and Laufer (1994 : 489)*, the diversion is justified as follows:

- ▶ the earlier a youth enters the juvenile justice system, the more likely that the juvenile is to become a career criminal
- ▶ children who are not diverted miss out on a wide range of community services
- ▶ juvenile court jurisdiction should be reserved for extraordinary cases
- ▶ filtering out cases relieves overcrowded juveniles court dockets
- ▶ programs for juveniles cost less than juvenile court processing.

Therefore, diversion which refers to keeping juveniles outside the formal justice system can be attempted through either the police and the courts or agencies outside the juvenile justice system. The main characteristics of diversion initiated by the courts or police is that the justice sub-systems retain control over youthful offenders. A youth who fails to respond to such a program

will usually be returned to the juvenile court for confined processing within the system (*Bartollas, and Miller, 1998 : 261*).

6.6 THE JUVENILE TRIAL

During the adjudicatory or trial process, often called the fact-finding hearing in juvenile proceedings, the court hears evidence on the allegations stated in the delinquency petition. In its early development, the juvenile court did not emphasize judicial rule-making similar to that of the criminal trial process. Traditionally, the juvenile system is designed to diagnose and rehabilitate children appearing before the court. This is consistent with the view that the court should be social-service oriented. Proceedings are to be non-adversary, informal and non-criminal in nature (*Senna, and Siegel, 1981 : 609*). This statement is confirmed by *Pursley (1991 : 632)*.

6.7 THE VOLUNTEERS' ROLE IN SENTENCING AND CORRECTIONS

Just as our adversary criminal procedure viewed trial as merely a contest between prosecution and defence, it regarded sentencing and corrections as purely a matter for the judicial and executive arms of government. But here too, changes are becoming participants in sentencing and even release decisions (*Adler, Mueller, and Laufer, 1994 : 512*).

6.7.1 PARTICIPATION IN PROBATION DECISIONS

In most jurisdictions, victim impact statements are incorporate into the presentence investigation report routinely prepared by the probation officer at the request of a judge.

As its name indicates this statement records the victim's view of the effects of the crime on the victim and the victim's family. Generally recorded by the probation officer after conversation with the victim, the impact statement is an excellent way for the victim to communicate with the sentencing judge. In addition, the probation officer will seek information from the victim concerning personal injury, property loss, the need for restitution and any other harm the crime has caused, the victim (*Adler, Mueller, and Laufer, 1994 : 512*).

6.7.2 THE VICTIM'S ROLE IN SENTENCING

According to *Adler, Mueller, and Laufer (1994 : 512)*, many policy makers, judges and scholars fear that allowing victims a role in the sentencing process will interfere with the legislatively mandated aims of punishment, whether these be just deserts, deterrence, incapacitation or rehabilitation and might even result in undue delays. But policies are changing rapidly, victims now have the right to make statements at sentencing hearings in thirty states. While victims influence is still limited, their views are considered by the sentencing court either in personal appearances (allocation) or in written statements, and they do have an impact.

6.7.3 VICTIM'S ROLE IN THE PAROLE PROCESS

Whether officially or unofficially, the public has always had an impact on the parole decision. But opposition to parole on the part of victims, relatives, or victim interest groups becomes particularly vociferous when it is felt that the sentence was too lenient in the first place. Conflicts also arise when victims have not been adequately notified of a scheduled parole board hearing or when

the victim's wishes are not adequately considered.

However, several states have granted victims the specific right to attend parole hearings of convicts who have injured or otherwise harmed them. Equally important, is the fact that most states restrict these appearances to victims of serious or violent crimes (*Adler, Mueller, and Laufer 1994 : 514*). In California, the victim, or the next of kin has the right to make a statement, either in person or writing, to the panel conducting the hearing.

But the victims and their families are notified of parole hearings only if they requested such notification. The statement may contain comments about both the crime and the inmate. A few states requires parole boards to notify victims of their right to appear, either through personal letters or through notices in local newspapers. Because parole hearings are held under the tight security within the walls of a security prison, conditions are likely to be quite uncomfortable. However, victims who choose to speak at the hearing, like everyone else entering the prison, must undergo a clearance procedure that customarily includes the temporary removal of belts, jewellery and shoes. Items such as keys may be held in custody, until the victim leaves the prison. While waiting for the hearing, the victim is often seated within view of the offender-inmate, who's secured in a nearby holding cell.

Hearings are conducted in a structured manner and last between two and three hours. The victim may speak after the panel members have questioned the inmate, the prosecutor has argued against parole, and defence attorney

has argued in favour. Therefore, the victim does not speak directly to the inmate, rather the inmate addresses the members of the panel. The victim is not usually subjected to cross-examination by the defence attorney and usually is not asked question by the panel members (*Adler, Mueller and Laufer, 1994 : 514*).

6.7.4 OFFENDER RELEASE OR ESCAPE/VICTIM PROTECTION

Victims may want to keep track of the whereabouts of offenders, especially if they have been threatened with reprisal.

Without notification from corrections or parole authorities, victims are unable to take precautions, or at least prepare themselves mentally for possible face-to face encounters with the offender. One potential problem related to victim notification on an offender's release is locating victims. A lot of time may elapse between the initial sentencing stage and the offender's release from prison. During that time victims may have moved and not informed the appropriate agency of their current address. However, it is understandable that victims that become fearful if their assailants are once again in the community.

In addition, this anxiety increases when a victimizer has escaped from prison, an event that is frequently highly publicized. It is a normal procedure everywhere for law enforcement authorities - including police and corrections - to notify victims if at all possible. Equally important, is the fact that this is not a legal requirement except in California, where in the event of an escape, the

Department of Corrections must immediately notify the victim (or next of kin if the crime was a homicide) if the notice was previously requested. If the inmate is recaptured, notice of this event must also be sent within thirty days (*Adler, Mueller, and Laufer, 1994 : 514 - 515*).

6.7.5 COMPENSATION AND RESTITUTION

Restitution began to be widely used in probation during the 1970s and 1980s. Indeed, by 1985, formal programs were known to exist in more than 400 jurisdictions, more than 35 states now have statutory authority to order monetary or community service restitution. Juvenile courts have instituted job-skills preparation classes to help juveniles with ordered restitution to find jobs and hold them.

The private and public sectors sometimes provide jobs in which youths required to make restitution can earn money and compensate victims. Therefore, juveniles failing to complete their restitution payments may have their probation term extended. With community work restitution, probationers are generally required to perform a certain number of work hours at a private non-profit or government agency.

Sites where the work may be performed include libraries, parks, nursing homes, animal shelters, community centres, day-care centres, youth agencies and the local streets. In large departments, restitution programs provide supervised work crews in which juveniles go to a site and work under the supervision of an adult (*Bartollas, and Miller, 1998 : 235*). This statement is

confirmed by *Sharp and Hanevck (1995 : 412)*. By the same token, *Adler, Mueller, and Laufer (1994 : 515)*, contend that compensation and restitution are different remedies. Both are intended to provide victims with some reparation for damages. With restitution, the offender is required to make the reparation. With compensation, there is no link between offender and victim. Rather the state pays the compensation much like an insurance company paying a damage claim. Therefore, legislation is needed to provide equitable relief for all crime victims, either by compensation or by restitution (*Adler, Mueller, and Laufer, 1994 : 515*). This statement is confirmed by *Rabie and Strauss (1981 : 200)*.

6.7.5.1 GOVERNMENT COMPENSATION PROGRAMS

Restitution is one of the post-adjudication alternatives available to juvenile judges. It is described as repayment by the offenders in money or services of the losses suffered by the victim or society as the result of the offenders' criminal/delinquent act. One of the most profound changes in juvenile justice during the past decade has been the phenomenal growth in the use of restitution as a sanction for juvenile offenders. However, financial restitution and community service restitution are almost equally common (*Territo, Halsted, and Bromley, 1998 : 656*).

6.7.5.2 RESTITUTION FROM THE OFFENDER

In ancient law, restitution or payment from the wrongdoer to the victim was intended not only to make the victim whole again but also to satisfy the victim's desire for vengeance. Restitution was also intended to encourage a lasting

peace between the parties. During the last half century, restitution has made a comeback. It has been increasingly sanctioned by statutes and has become a common condition for probation.

Therefore, restitution is based on the idea of the offender's responsibility to his or her victim. Authorised officials of the justice system impose sanctions that require offenders to return stolen goods to their owners, to hand over equivalent amounts of money to cover out-of-pocket expenses, or provide services to those they have harmed. Four different types of restitution arrangements are possible and may be combined; namely:

- ▶ Payments by the offender to the actual victim or through an intermediary (this is the most common definition and actual use of restitution)
- ▶ Earnings shared with some community agency or group serving as a "substitute victim"
- ▶ Personal services performed by the offender to benefit the victim (an uncommon arrangements)
- ▶ Labour donated by the offender for the good of the community (community service) which is frequently ordered in lieu of imprisonment.

Therefore, restitution amounts and payments must be formally specified and scheduled. Probation officers can include restitution plans and recommendations in their presentence reports.

Prosecutors can investigate defendants' financial status and ask for repayments in plea negotiations. Victim impact statements or allocations can

be used by victims to inform the court of costs and losses. Restitution contracts can be administered and supervised by any criminal justice agency. However, when the burden of supervision is on the court system, the court clerk usually is responsible for seeing that victims actually receive payments (*Adler, Mueller, and Laufer, 1994 : 518 - 519*). This statement is confirmed by *Athers (1984 : 89)*, and *Acta Criminologia, vol.6. No.1 (1993 : 82)*.

6.7.5.3 VICTIM/OFFENDER MEDIATION

If the objective is to achieve a lasting peace, perhaps even a reconciliation, between offender and victim, it might not be advisable to bring offender and victim together. These ideas are behind the recent emergence of victim offender mediation programs. Mediation programs provide opportunities for citizen participation in the criminal justice process. Mediation programs are intended to facilitate communication between offenders and victims, encourage offenders to assume responsibility for their conduct, and provide better opportunities for social control of offenders than do programs that separate and isolate offenders from their community and those they have harmed.

In mediation, a neutral person helps the fending parties arrive at their own settlement. The mediator provides opportunities for discussion, solicits viewpoints, and helps uncover areas of common interest to provide the basis for a mutually acceptable compromise. Hearings are usually held at dispute resolution centres, are scheduled at the convenience of the participants, nor the staff. The rules of evidence are minimized; witnesses are not sworn in and mediators do not wear robes or sit on raised seating (as judges normally do in

courtrooms).

A typical hearing involves one or two mediators, the disputants, and perhaps a witness. At the outset the disputants are reminded that their participation is voluntary, and that either party can withdraw at any point and pursue the matter with their criminal justice agencies - police, prosecutor, criminal or civil court (*Adler, Mueller, and Laufer, 1994: 519 - 22*).

6.7.6 VICTIMS AND THE MEDIA

The media - newspaper, radio, television, magazines - report accounts of crime as front page items and lead stories. These crime stories often include details about the victim, and are justified as "human interest" stories. It is not a revelation that bad news sells. But sensational coverage may aggravate the victim's plight, whether the report is understated or overstated.

When a crime story makes the headlines of a local newspaper or is featured as the lead story in a television news broadcast, the victim suffers an invasion of privacy. The victim may also experience a loss of control as others comment on, interpret, and impose judgements on the case. Therefore, victim advocates editors, and journalists have begun to address questions of ethics concerning media portrayal of crime victims. There appears to be a consensus that media portrayals of the victim's plight are abusive, unethical, and unfair if:

- ▶ names and exact addresses are needlessly made public, and repeated in subsequent accounts
- ▶ the victim's family finds out the crime from media coverage instead of

being personally notified by the victim or the police

- ▶ victims are hounded at home or at work by packs of reporters and camera crews
- ▶ reporters use deceit or intense pressure to convince victims to participate in interviews
- ▶ reporters intrude at private moments of shock and grief
- ▶ camera crews shoot pictures in poor taste, such as blood stains at the scenes of the crime, dead bodies, or hysterical relatives
- ▶ reporters conduct interviews with children who were victimized or who are relatives or eyewitnesses
- ▶ editors run headlines and captions that demean the victim and reduce him or her to less than a person, and merely a category, using labels such as "blonde" or "model"; and
- ▶ reporters recklessly spread half - truths, inaccuracies or unchecked or misinterpreted details (*Adler, Mueller, and Laufer, 1994: 522 - 523*).

6.8 SUMMARY

From the foregoing exposition, it is clear that the juvenile court acts in the interest of the children who are brought before it as well as in the interest of the community. The court requests a pre - sentence report from a probation officer or professional volunteer in order to determine the circumstances which led the juvenile to commit an offence.

The court also consider the type of the offence committed by the juvenile to determine if the juvenile could be placed under the care of the parents or foster

parents, relatives or detained in custody. However, the court may set a juvenile free if the parents of the said juvenile can pay back the damage caused by that juvenile. In addition, the court may order that the juvenile should render community services in the community where the juvenile committed the offence.

CHAPTER 7

ESTABLISHMENT AND MANAGEMENT OF A VOLUNTEER PROGRAMME IN AN ORGANISATION**7.1 INTRODUCTION**

This chapter deals with the management of a volunteer program in an organisation. Throughout history, there have been individuals willing to give of themselves in time, effort, resources, and money to help their fellowman. This is the story of the volunteer program. Society is sufficiently complex, and the need for service so great on the part of many people, that it becomes necessary formally to recruit, train, and supervise those individuals willing to extend a helping hand to those needing help. It becomes necessary to restate the basic philosophy by which certain people, of their own free will, devote interest to this necessary work. Many services to people can be provided through the use of volunteers (*Routh, 1972 : 3*). The next sub-section explains the historical background of voluntarism.

7.2 HISTORICAL BACKGROUND

Voluntarism began as an informal response from individuals who volunteered their efforts to assist those with unmet human needs and arose from Judea-Christian teachings of man's responsibility for his fellow man (*Segal, 1970 : 20*). Therefore, volunteers come from all walks of life, rich and poor alike, professional and non-professional. This statement is confirmed by *Gilbert and Specht (1981 : 31)*.

They come from all ethnic, racial, financial, religious and intellectual background. All, however, should be united in a common desire to give of themselves to make easier the lot of their fellow men. They should be desirous of helping others less fortunate than themselves (*Routh, 1972 : 7 - 8 and Carney, 1977 : 282*).

By the same token, Fox (1977:243) contends that the volunteers have been part of society's effort to help others in trouble, whether economically, in matters of health, in conflict with the law, or in any type of debilitating circumstance. The familiar legend of the good Samaritan suggests the value that people have long placed on assisting fellow human beings in trouble without expecting compensation. This statement is confirmed by *Gladstone (1979 : 3)*.

7.3 THE DESCRIPTION OF THE VOLUNTEERS

Volunteers or voluntary workers, in the purest sense, are people who receive no payment for what they do, although out of pocket expenses may be reimbursed. In recent years, however, the term volunteer has also been used to describe non-professional helpers who are paid small amounts for their services (*Johnson, 1987 : 94*).

By the same token, National Council for Mental Health (1989) contends that a volunteer is a person who gives of his/her time, expertise and skills to benefit a specific individual, organisation or community without receiving any financial reward for services provided. Therefore, in the broadest sense of the term a

volunteer is any man, woman, group, or organisation who in some way provides a service without pay.

The service may be direct or indirect, individual or group oriented, and united to a single contribution or sustained (*Boesen and Grupp, 1976 : 137 - 8, and Gann, 1996 : 41*).

7.3.1 THE CHARACTERISTICS OF THE VOLUNTEERS

People who volunteer have the following characteristics, namely:

- ▶ they believe in the cause for which they volunteer
- ▶ they have a definite interest in the area of their involvement
- ▶ they have time available which they want to utilise meaningfully
- ▶ they have knowledge and expertise which can benefit the individual organisation or community in which they are interested
- ▶ they have a need to serve fellow persons and the community
- ▶ they offer their services by choice when they become aware of the needs
- ▶ they respond positively to recruitment drives when they become aware of need areas in which they are interested
- ▶ they derive satisfaction from their volunteer involvement (*National Council for Mental Health, 1989 : 5*).

Therefore, motives for becoming a volunteer are quite mixed. Most people hope to gain something for themselves - new friends, greater links with the community, and experience before undertaking training are reasons often given.

However, explanations about the reasons why people take part in voluntary activity are more specifically linked to their field of interest (*Poulton, 1988:22*). Therefore, their expectations of the organisation are often vague or unrealistic.

Sometimes it is those talented volunteers with the greatest expectations of the organisation who tend to be disappointed in the work that is offered to them (*Darvill and Munday, 1984 : 47*).

7.3.2 THE MEANING OF VOLUNTEER WORK

Volunteers are seen as occupying a fundamentally uncertain societal position. In contrast to volunteers, employees have very visible incentives, and society tends to believe that it knows what they are. However, organisational volunteering is inherently contradictory in nature. It is “work” - working within a formal structure to provide a service to others - and it is a “leisure activity” - something done whenever convenient because it is personally rewarding. The problems caused by facile assumptions about the motives of employees have been well documented, but the difficulties for volunteers are in many respects more basic (*Pearce, 1993 : 9*). The problems of volunteers’ limited time, uncertain motives, and a high degree of individual independence can result in debilitating levels of uncertainty for organisational volunteers.

Volunteers need to adopt a “shared” definition of the situation before they can take action. Therefore, citizens who influence legislation and social action in a sense may be the most important volunteers of all to the community and nation. The roles citizens play to some degree accomplish this and effect

important changes in our institutions.

Many community welfare councils with social legislation communities, members of which study federal and or state legislation, gather facts, discuss appropriate action and present testimony before boards and committees which they can appropriately influence (*Cull, and Hardy, 1974 : 88 - 89*).

7.3.3 VOLUNTEER ROLES AND TASKS

Two categories of volunteers with rather differing roles can be distinguished. There are those who are recruited by the community liaison officers and placed with individuals or families requiring assistance in a residential establishment or with a community group. And there are those who become involved in community groups through the community development officers (*Darvill, and Munday, 1984 : 67*) Involvement of the first category of a volunteers usually start with requests, mainly from social workers, for a volunteer to help a person in need. With the latter the objective may be to help keep a person in the community by supplementing the assistance provided by domiciliary services, but it may also be to help someone throughout a temporary crisis such as returning home from prison.

They can augment the jobs of agency personnel by providing support services, such as a clerical and reception services. Volunteers can be used to perform direct service tasks that do not require professional training or skills for example telephone contact with clients (*Rapp and Poertner, 1992 : 235*).

In addition, the volunteers can help with the charity fund-raising. Fund-raising must promote a public benefit both in the sense that the purpose itself benefits the public and also in the sense that it must be capable of benefiting a sufficient section of the public (*Luxton, 1990 : 116, Callison, 1983 : 165, and Jedlicka, 1990 : 60*). This statement is confirmed by (*Manser, and Cass, 1976: 52*).

Equally important is the fact that, the volunteers are also used to help with the casework of the social workers (*Holme and Maizels, 1978 : 61*). Similarly, as caseload size rises, so do the proportions of social workers using volunteers on practical and befriending and counselling activities - involving them in personal relationships in general (*Holme, and Maizels, 1978 : 76*).

Therefore, social workers are expected to undertake both specialist and generalist roles and to realise the importance of collaborating with community resources like volunteers if the gap between the demand and supply of social care is to be reduced (*Darvill, and Munday, 1981 : 14, and Walsh, 1988 : 243*). All voluntary social services see the provision of information and advice as one of their responsibilities (*Johnson, 1981 : 96*).

7.3.4 VOLUNTEERS AND STAFF

Volunteers should never displace staff members. This policy may require interpretation to agency staff prior to the arrival of the volunteers and, if necessary reinforcement by interpretation to volunteers (*Hardy and Cull, 1973 : 75*). In addition, not all social workers welcome the participation of trained

volunteers (*Muller, 1970 : 31*).

According to *Williams (1981 : 153)*, it is unreasonable to expect statutory staff to co-operate with volunteers or with the local communities if they are simply making themselves redundant. But it is not beyond the bounds of possibility that such agreements might be reached.

Equally important is the fact that the extensive face-to-face dialogue between worker and client is the essential core component of social work practice. All over respondents feel that engaging in direct and regular talk with clients is what counted first and foremost as doing social work, for example taking precedence over acting as an advocate in dealing with other agencies or mobilising community resources (*Baldock and Prior 1981 : 18*). Though in many respects, the paid staff are thought to have important advantages over unpaid volunteers.

But, they are seen as having a range of other resources from their agency at their disposal, and some clients did not feel beholden to people who were paid to help them unlike their feelings towards volunteers who seemed to receiving nothing in return for their help (*Darvill and Munday, 1984 : 26*).

Consciously or unconsciously, professionals often distrust and resist making use of volunteers except in the most passive positions and for the most trivial jobs with little or no authority and ill-defined roles (*Maves, 1981 : 24*).

The professionals are seen as delivering a standard service, the volunteers as providing a more general support for the family. Through a period of testing, the family has convinced itself that the volunteers is theirs, not someone to be shared out between many, not someone acting on another's behalf but a personal, caring friend (*Van Den Eyken, 1982 : 61*).

7.3.5 THE VOLUNTARY WORK WITH THE CORRECTIONAL FIELD

The volunteer can bring direct personal interest into institutional welfare services. The volunteer and the voluntary agency can help in practical issues of employment, accommodation and material assistance. The volunteers can help in ways that frequently are not possible for the full-time officer who is identified as an agent of the state.

But the volunteer and the voluntary agency must work within well-defined areas, to enable the best possible service to be provided to individuals and their families (*Culley, Dowding, and Griffin, 1988 : 291 - 292*).

The term "volunteer" in probation and parole applies to all persons who provide services without pay to probationers or parolees. These services can take a variety of forms. Some may involve the supervision of released offenders (*Mernunzen, 1987 : 119*).

7.4 THE VOLUNTARY BODIES

Gill and Mawby (1990 : 13 - 14), state that the voluntary bodies tend to conform on five criteria, namely:

- ▶ they are initiated independently of the state
- ▶ they are controlled or directed by the state, for example, regarding decisions on services or clients
- ▶ they are not financial exclusively by the state
- ▶ they are non-profit-making (or at least non-profit distributing)
- ▶ acceptance of clients is not based on prior membership or an ability to pay.

7.4.1 A TYPOLOGY OF VOLUNTARY ORGANISATIONS

The organisations are subdivided according to whether the work is carried out by volunteers or paid staff. For the former are, those who served their own members (self-help groups or mutual and associations) and those providing a service for others (volunteer organisations) (*Gill and Mawby, 1990 : 14 - 15*).

The next subsection focuses on the role of the volunteer in South Africa.

7.4.2 THE ROLE OF VOLUNTEERS IN SOUTH AFRICA

In South Africa the role of the volunteer is rooted in the historical development of voluntary welfare services. As is the case elsewhere, it was concerned citizens who initiated action to meet the needs of underprivileged groups and the poor. Very often, services developed because a professional practising in a certain field felt that some social action needed to be taken to address a problem. The community member then voluntarily took on the responsibility of mobilising the community into action. A study of the historical development of various welfare organisations in South Africa will testify to this fact.

At the beginning of this century the term "Social Worker" was used to refer to volunteers who devoted most of their time to serving the community.

A society became more complex, problems also became more complex. This led to the training of professionally qualified social workers who took over the role of the voluntary "social worker".

Since the 1940's the role of the volunteer has been mainly restricted to that of committee member and fundraiser. During the last fifteen years, however, there has grown a new awareness that volunteers can make a very valuable contribution in service delivery.

In terms of South Africa's current welfare policy, voluntary welfare organisations, and therefore volunteers, have a central place in the delivery of welfare services. The National Welfare Act, Ref. No. 100 of 1978 prescribes that the Board of Management of a voluntary welfare organisation shall consist of at least seven people elected from the members of the organisation. The role of the committee member is the only role prescribed in legislation. All voluntary welfare organisations in South Africa use volunteers to some extent. If "we" take into consideration the unmet needs in the community and the shortage of the resources such as money and paid manpower to meet those needs, it is obvious that every effort should be made to mobilise the rich untapped volunteer resources in South African Society (*The National Council for Mental Health, 1989 : 9 - 10*).

7.4.3 FACTORS WHICH MOTIVATE VOLUNTEERS

People have a wide range of needs which must be met for them to be content with themselves and their circumstances. For most people voluntarism serves as a vehicle to meet some needs. Volunteerism is thus not an act of altruism - nobody has an unselfish concern for the welfare of others. People are motivated by their unmet needs. They volunteer their services, hoping that they will derive satisfaction therefrom, often, volunteers are not consciously aware of these needs (*Morris, 1969 : 191*).

7.4.4 THE NEEDS OF VOLUNTEERS

Voluntarism serves to meet one or more of the following needs of volunteers:

- ▶ personal satisfaction derived from a job well done
- ▶ social satisfaction derived from a sense of belonging to an organisation
- ▶ relief from boredom because of meaningful utilisation of free time
- ▶ prestige derived from a leadership position in an organisation, or association with a prestigious organisation
- ▶ emotional satisfaction derived from meaningful one-to-one relationships which offer friendship and counteract loneliness
- ▶ expression of gratefulness rooted in religious convictions
- ▶ use of skills and talents which would otherwise be under-utilised
- ▶ development of self-confidence in a safe environment
- ▶ testing of skills before taking up employment
- ▶ self development (*The National Council for Mental Health, 1989 : 11 - 12*).

7.4.5 EXPECTATIONS AND REWARDS

Depending on their needs, volunteers have certain expectations. They expect to receive certain rewards from their involvement as volunteers. If they receive the expected reward, they will stay, if not, they will decide to quit. Different people have different expectations and therefore need to be rewarded differently. Three sets of rewards can be distinguished, namely:

- ▶ Firstly, rewards are derived from the content. This has to do with the type of work that is being done and the sources being achieved.
- ▶ Secondly, rewards are derived from the context. The general environment in which the work is done, positive interaction with staff and other volunteers, and opportunities to participate in activities for which the opportunity does not normally exist, are all important factors.
- ▶ Thirdly, rewards are related to the emotional needs of the volunteer, This may include the need for self-development, social interaction, prestige, status and power (*The National Council for Mental Health, 1989 : 12*).

7.5 OPERATIONS OF VOLUNTEER PROGRAMS

Before seeking volunteers, the organisation must examine its needs and determine the types of expertise that it will require from volunteers. Therefore, the organisation should have a well planned selection process that permits carefully decisions to be made regarding volunteers who are chosen (*Rapp and Poertner, 1992 : 236*).

By the same token, *Shanahan and Whisenand (1980 : 40)*, contend that planning is necessary to put ideas to work, it creates proactive administrative

and avoids crisis management. According to *Shanahan and Whisenand (1980 : 41)*, the purposes of planning include, namely:

- ▶ It explains and clarifies policy by defining more accurately an immediate objective or purpose and pointing out how this is to be achieved
- ▶ It serves as a guide both to timing and performance. It places responsibility for action and reduces the complexity involved
- ▶ It gives continued attention to the improvement of practice and procedure through assuring increasingly better performance
- ▶ It makes control possible by enabling accomplishments to be checked.
- ▶ It assures the most effective and economical use of manpower and equipment.

This statement is confirmed by *Phillips and McConnell (1996 : 42)* and *De Beer, et al. (1998 : 50 - 1)*. Therefore, specific tasks are allocated to the plan participants and the required information is identified (*McCarthy, and McCarthy, 1991 : 406*). In addition, the plan is broken down into various steps in order to ensure that the manager plans as effectively as possible (*Kroon, 1995 : 121 - 4 and Lussier, 1997 : 85*).

However, planning is an ever-present feature of modern life where changes and development are indispensable (*Kreitnet, 1989 : 148 and Bruyns et al, 1997 : 81 - 2*).

By the same token, Kroon (1990:322), contends that planning places more emphasis on scientific manpower planning as an important facet of the staffing

process. This statement is confirmed by American Correctional Association in co-operation with the *Commission on Accreditation for Correction (1990 : 14)*.

Therefore, planning is the function of deciding on the goals and objectives of the agency. It involves the development of policies programmes and procedures for goal achievement (*Allen, Corlson, Parks, and Seifer, 1978 : 18*).

Equally important, is the fact that the implementation phase of the policy, focuses on the interrelated behaviours that translate a legislate decision into government action (*Hefferman, 1992 : 42 - 43*).

Therefore, the policy indicates the decision-making powers of managers and thus lowers the risk of uninformed decisions. The policy promotes uninformed actions since every employee (volunteer) must act in accordance with the set guidelines (*Marx and Van Aswegen, 1983:11 and Van Niekerk, 1987:36*).

In addition, every policy should have a definite purpose whenever is established for the volunteers (*Lundgren, et al, 1978 : 74*).

7.5.1 RECRUITMENT, SELECTION AND TRAINING

Once volunteers are chosen, they need to be oriented and trained. Expectations should be carefully laid out so that everyone understands what is required of the volunteers and the staff who will be working with them (*Rapp and Poertner, 1992 : 236*).

7.5.1.1 RECRUITMENT

The volunteer program must determine the types of persons needed and seek them out. Public speaking engagements and radio, television and newspaper advertisements can publicise the program. Interested citizens can be invited to visit the agency (*McCarthy, 1991 : 381*). Therefore, the efforts should be made to recruit volunteers from all segments of society (*American Correctional Association, 1977 : 87*).

In addition, in recruiting voluntary associates it is necessary to have an estimate of the work available for them. An assessment that is based on the regular evaluations of work being done by a team of volunteers (*Hardy, and Cull, 1973 : 113*). This statement is confirmed by personnel journal, July (1994:30).

Therefore, recruitment involves assigning new volunteers to positions and orientating them properly so that they can begin working (*Edwards and Yankey, 1991 : 117*).

Equally important, is the fact that the recruitment activities must be ongoing and continuous in order to establish new groups, to expand already existing groups, and to maintain a high level of participation (*Hatch and Motroff, 1983: 75*).

7.5.1.2 SELECTION

Selection is concerned with reviewing the qualifications of job applicants to

decide who should be offered the position (*Edwards and Yankey, 1991 : 117*).

Swart (1992 : 141), contends that the selection can be made through "aansoekvorms, onderhoude, sielkundige toetse, biografiese vraelyste, ensovoorts."

What occurs during selection interviews is of even more importance than the job advertisement. Here, for the first time, the potential new volunteer makes personal contact with the potential employer, and may see the actual work place and meet his potential supervisor (*Fowler, 1990 : 22*).

By the same token, *Carter, Glazer and Wilkins (1984 : 242)* are of the opinion that interviews provide the applicant with more information about the program, while allowing the agency to determine if the applicant can work in its particular program.

By the same token, *Stone (1982 : 30)* contends that all interviews require planning "we" plan and prepare for the interview by clearly knowing our purpose, what is it that "we" are hoping to accomplish? Once "we" know this "we" can then give authentic explanations for asking and receiving information (*Stone, 1982 : 30*).

Therefore, selection is concerned with reviewing the qualifications of job applicant to decide who should be offered the positions (*Edwards and Yanky, 1991 : 117*).

Equally important, is the fact that the processing of the interview is similar to that of interviewing a prospective employee, namely:

- ▶ the necessary preparations should be made before the interview
- ▶ as interviews always generate anxiety, a special effort should be made to relax the volunteer. A warm friendly greeting and a few minutes spent on socialising should have the required effect
- ▶ the most important areas to be covered during the interview are a brief overview of the organisation, the organisation's volunteer policy, and a detailed discussion of the volunteer position
- ▶ the volunteer's ability to meet the expectations and demands of the available position should be explored fully. The volunteer should be requested to evaluate her/his ability to make a meaningful contribution to the organisation. The motivation for volunteering should also be discussed openly
- ▶ the interview is terminated with an agreement about a date for feedback by both parties
- ▶ depending on the nature of the position and the outcome of the interview, a decision is made about the references which should be checked
- ▶ the application is reviewed and it is ensured that all relevant information and observations are recorded in the file. When a volunteer is not suitable, is informed immediately and referred to an appropriate resource
(The National Council for Mental Health, 1989 : 38 - 39).

7.5.1.3 PLACEMENT PROCESS

Each volunteer generally must be matched to a job and a supervisor, as well

as to an offender. The latter effort should focus on the offender's willingness and ability to work with a volunteer, an attempt must be made to devise a compatible match based on an assessment of the personalities, attitudes, skills, interests, and culture of the two persons.

It is also generally desirable to assign offenders to volunteers who live within convenient travelling distance. Most programs attempt to place offenders with volunteers of the same sex and approximate age or older, although both criteria are flexible (*McCarthy, and McCarthy, 1991 : 282*).

Equally important, is the fact that the inmates should understand the role of volunteers, the limits of their authority and the mutual responsibilities of the inmate and volunteer before a working relationship is initiated. An identification card should be kept at the institution for each volunteer. This card ensures proper identification and should include a photograph, address, telephone number at which the volunteer can be reached, and other job-related information. In addition, the institution should develop written policies and procedures specifying the volunteers respect to all institution policies. It is particularly important that volunteer respect the confidentiality of records and of other privileged information (*American Correctional Association, 1977 : 88*).

However, the placement processes included the following aspects, inter alia:

- ▶ The most important aspect of the placement process is ensuring that the right person is matched to the job.
- ▶ In considering placement the needs of the organisation should not

override the decision. It may lead to an inappropriate placement and consequent volunteer dropout.

- ▶ The skills, knowledge, attitudes, experience and interests of the volunteer should be assessed against the requirements of the position before deciding whether it is a satisfactory match.
- ▶ A joint decision should be reached by all relevant staff about the placement in a specific position.
- ▶ The volunteer should be telephonically informed of the decision and, if the offer is accepted, it should be confirmed in writing.
- ▶ An appointment is made to discuss agency policy and job description in detail, sign a contract and confirm the date on which the volunteer will take up the position (*The National Council for Mental Health, 1989 : 39*). Equally important is the fact that a volunteer's job description should not be overlong or unduly bureaucratic. It should address the key tasks concerned with the volunteer's role (*McGreeney, and Alexander, 1996 : 93*). This statement is confirmed by *Koun (1990 : 74 - 75)*, and *Schindler-Rainman and Lippitt (1977 : 25)*.

7.5.1.4 ORIENTATION

Once volunteers are appointed, they need to be oriented. Expectations should be carefully laid out so that everyone understands what is required of the volunteers and the staff who will be working with them (*Rapp and Poertner, 1992 : 236*).

Orientation is the first step in the development of the volunteers. The purpose

of orientation is to familiarise the volunteer with the organisation and with her/his role within the organisation. New volunteers should receive a special welcome when taking up their positions. It will enhance their sense of belonging. Orientation should consist of the following:

- A two hour orientation session in which the following aspects are covered:
 - ▶ organisational policy, including volunteer policy
 - ▶ historical development
 - ▶ organisational structure
 - ▶ role and function of the organisation
 - ▶ target group served
 - ▶ services provided
 - ▶ relationship with other organisations
 - ▶ list of committee and staff members and other volunteers
 - ▶ floor plan of organisation
 - ▶ job description.
- A volunteers handbook or information list with written material on issues discussed above.
- A tour of the facilities and introduction to all staff and volunteers.
- Ongoing information about plans and activities (*The National Council for Mental Health 1989 : 43*).

Therefore, the aim of volunteer development through orientation as in-service training, is to improve services by improving volunteer performance (*Coffey, 1975 : 190*).

In-service training will be discussed in point 7.5.1.7 of this chapter.

7.5.1.5 TRAINING

After recruitment, all volunteers take part in a training programme (*Hadley and Scott, 1980 : 45*). Training prepares a volunteer to improve performance on present jobs and is usually regarded as an expense item necessary to make the agency more effective or increase productivity / services (*Phillips, 1987 : 149*).

"Die opleiding van vrywilligers hou direk verband met die doelstellings van die organisasie en die tipe diens wat gelewer word. Die primêre oogmerke van opleiding is om die vrywilliger se kennis en insig te verbreed, waar nodig houdings en gesindhede te verander en om die vermoëns van die vrywilliger verder te ontwikkel en uit te brei. Die diens wat die vrywilliger gaan lewer, bepaal dan ook in 'n groot mate die aard en graad van opleiding (Swart, 1992: 146)".

Therefore, the volunteer is equipped through training to carry out tasks allocated. It involves the direct teaching of specific theory and practical skills necessary for the job.

In addition, the training must have the following requirements, inter alia:

- ▶ A training programme must be well planned
- ▶ Recognition must be given of the fact that volunteers have certain skills and experiences which can form the basis for further training
- ▶ Training must be relevant, rewarding and designed to help volunteers to do the job immediately

- ▶ The volunteer's time commitment must be taken into consideration when planning a training programme
- ▶ The learning principle whereby volunteers are an actual part of the teaching process is the most effective in training volunteers (*The National Council for Mental Health 1989 : 44*).

Therefore, training in any field where quality of performance is desired is a continuing process. Carefully planned and well executed, it will contribute to the growth of the individual volunteer at the same time that increases his/her skills and productivity / service. The training of volunteers begins with their first contacts with the agency or organisation and continues throughout their service (*Cull, and Hardy, 1974 : 43 - 44*).

However, the job description is the basis for the training programme and should be reviewed before a training programme is developed. All tasks which should be undertaken by the volunteer are identified and listed. Therefore, a training programme is designed to bridge the gap between needed skills / attitudes and existing skills / attitudes, enabling the volunteer to achieve the needed level by the end of the training, which,

- ▶ set specific measurable training objectives
- ▶ develop an evaluation format
- ▶ determine what content is needed to teach the skills and attitudes
- ▶ determine which methods will be most appropriate to achieve the training objectives
- ▶ estimate "how" much time is needed to carry out the training programme

decided at what stages of volunteer involvement the training should be offered

- ▶ obtain the necessary training material
- ▶ specify who should carry out the training (*The National Council for Mental Health, 1989 : 45 - 46*).

In addition, a volunteer must be helped move to levels of greater responsibility, whether in the present job or new one. Just as when first coming aboard the organisation, so in moving to a different job, one must be prepared for entry and must be helped to work ahead rather than back (*Campus Law enforcement journal, Vol. 28, No 3, May/June 1998 : 78*).

7.5.1.6 ON-THE-JOB TRAINING

The training of volunteers does not stop with the general orientation or even with additional pre-service training courses. The in-depth learning process takes place on the job. The volunteer's immediate supervisor or staff member to whose service the volunteer is assigned is responsible for quality of performance. This involves weekly supervisory contacts which for some uncomplicated tasks may require not too much time and effort after the training for the specific task is completed. In some programs the supervisor may find it helpful to pair the new volunteer with an experienced one who is available to help him/her with the routine instructions during the first few weeks.

This is often an upgrading assignment for an experienced volunteer as well as, time saving technique for the supervisor (*Cull, and Hardy, 1974 : 52 - 53*). The

supervision will be dealt with In this chapter.

7.5.1.7 IN-SERVICE TRAINING

This is broader than the on-the-job phase of training which comes in the first few days of the volunteer's assignment and almost wholly deals with training the individual volunteer for his / her specific task or service. In-service training applies to all the volunteers, old and new.

It is sometimes organised as group sessions with the volunteers from the same servicer, or those who serve on the same day, or annually, or more often if feasible, with the entire body of volunteers (*Cull, and Hardy, 1974 : 53*).

7.5.1.8 THE REFRESHER COURSES

These are usually arranged for the smaller groups serving on the same day or same service, to bring them up-to-date on any new methods, refresh their minds about previous discussions of agency policies, rules, and regulations, emphasise certain areas in which more training is needed, or discuss problems of a personal or work nature, sometimes relating to volunteer dress or conduct (*Cull and Hardy, 1974 : 53 - 54*).

7.5.1.9 A VOLUNTEER NEWSLETTER

A volunteer newsletter has been found most helpful as a training and for exchange of ideas, for the "personals" which keep volunteers acquainted with one another, for listing reading matter relevant to the service, and for current news relating to the neighbourhood and the community (*Cull, and Hardy, 1974: 54 - 55*).

7.5.1.10 INTER-AGENCY WORKSHOPS AND SEMINARS

Inter-agency workshops and seminars are arranged through the co-operation of a number of agencies in the field or under the sponsorship of a local university or college. Such workshops are open to the public, to volunteers from many fields and arrangement made for representative volunteers to attend and report back to their own volunteer programs. Often the agencies will pay the registration fee for the workshop (if there is a fee) (*Cull, and Hardy, 1974 : 55*).

7.6 MANAGEMENT OF A VOLUNTEER PROGRAMME

To an increasing extent, responsibility for managing the volunteer program in a probation or parole agency has been given to a paid professional variously referred to as "volunteer coordinator" "Director of probation (parole) volunteer services" or "volunteer specialist" (*Henningsen, 1981 : 127*).

As noted previously, the second aspect of managing a volunteer program involves the direct supervision of volunteers. For the most part, the probation or parole officer is responsible for this supervision, which involves the following:

- ▶ Clarification of responsibilities; co-coordinator must help the volunteers understand that they have specific responsibilities to the professional staff and the agency, as well as to the probationer or parolee assigned to them.
- ▶ Checks of volunteers; as part of the supervision process, the probation or parole officer must of course maintain checks on the volunteers working on his / her cases.

- ▶ Facilitation of proper communications; regular communications must be established between the probation or parole officer and the volunteers who are helping him/her. The co-coordinator should provide guidance and support to volunteers and otherwise take steps to ensure proper feedback.
- ▶ Removal of inadequate volunteers; finally, the probation or parole officer must seek to remove those volunteers whose commitment, effectiveness, or relationships with clients are below acceptable standards.

This is rarely an easy or pleasant task, but it is essential to the proper functioning of the volunteer to the proper functioning of the volunteer program (*Henningsen, 1981 : 130*).

7.6.1 EVALUATION AS A TRAINING TOOL

No training program can move forward without the use of the evaluation process. As an aid to placement and early on-the-job training, and also an ongoing procedure for continued supervision training and upgrading of the volunteer program, evaluation is an invaluable tool.

As a standard device for measuring the progress of any worker, paid or volunteer, evaluations must be carried out by supervisory personnel with the help of any others associated with or related to the worker's performance (*Cull, and Hardy, 1974 : 55 - 56*). Therefore, evaluation must be built into the programme when it is set up.

Although evaluation is an ongoing process a formal evaluation should be done six monthly for the organisation as a whole. The effectiveness of the volunteer programme is evaluated together with the other programmes of the organisation. The performance of the volunteers is evaluated together with that of the staff of the organisation.

Therefore, the purpose of the evaluation is to improve the effectiveness of volunteers and to provide them with a rewarding experience, namely:

- ▶ Objectives are set for each volunteer when a volunteer position is filled
- ▶ The volunteer is evaluated on the basis of performance as it relates to the stated objectives
- ▶ Accurate records are kept to determine the amount of time given by volunteers
- ▶ Performance is assessed at regular intervals and documented..

However, the volunteer programme is evaluated in terms of:

- ▶ the job satisfaction of volunteers
- ▶ the adequacy of supervision
- ▶ the training sessions; and
- ▶ the overall programme (*The National Council for Mental Health, 1989 : 49 - 50*).

7.6.2 STATISTICS ON VOLUNTEER INVOLVEMENT

Monthly statistics should be kept on the following format, namely:

- ▶ The number of volunteers involved.

- ▶ The hours volunteers are involved in the organisation.
- ▶ How the efficacy of volunteer task is rated. This information is very valuable to negotiate for funds - either from companies or from state subsidies (*The National Council for Mental Health, 1989 : 50*).

One effective means of checking on volunteer services is the monthly progress report submitted by the volunteer on each chart assigned to him/her.

The report allows the staff officer and the volunteer coordinator to review not only the progress of the released offender but also the type and quality of services being provided by the volunteer counsellor (*Henningsen, 1981 : 130*).

7.6.3 SUPERVISION

The purpose of supervision is threefold, namely to:

- ▶ support the volunteer in the job situations
- ▶ teach the volunteer the necessary skills to do the job
- ▶ monitor the efficacy and progress of the volunteer (*The National Council for Mental Health, 1989 : 47*).

The controlling therefore, is described as the means of monitoring volunteer's activities (*Draft, 1994 : 12*). Therefore, control processes are the means by which they obtain much of the essential information (*Heuriegel and Slocum, 1992 : 619 - 619*).

In addition, the budget-manager needs to be kept informed of current progress

on spending if the budget is to be controlled effectively (*Taylor, 1992 : 43*).

The budget is important for the financial manager to know how much capital is required and the personnel manager to know how many volunteers are required. Therefore, the performance ratings of supervisors included determining how accurately they forecast their expenses and how well their expenditures match the moneys allocated (*Umiker, 1988 : 89 - 90*).

7.6.4 EFFECTIVE SUPERVISION

The effective supervision ensures, inter alia:

- ▶ that volunteers are thoroughly integrated into the organisation
- ▶ that volunteers experience job satisfaction
- ▶ that volunteers are retained because their needs are being met
- ▶ that the volunteer develops and wants more responsibility
- ▶ that volunteers always have new challenges on the job
- ▶ that objectives are met
- ▶ open communication, which allows for the sharing of information, problems and feelings
- ▶ that tasks and roles are constantly being clarified.

Therefore, the frequency of supervision will be determined by the skills of the volunteer and the nature of tasks to be performed, namely;

- ▶ supervision is offered more frequently to new volunteers and when new tasks are allocated
- ▶ when the volunteer has gained the necessary skills and knowledge, the

supervisor only acts as consultant

- ▶ as the volunteer's skills, competence and independence increase, the role of the supervisor diminishes. Support is provided on a peer group level. Evaluation of the efficacy of the programme and the volunteer's functioning becomes a joint responsibility with the supervisor taking the initiative (*The National Council for Mental Health, 1989 : 47 - 48*). Therefore, the volunteers appreciate good supervision. Without a salary reward system, good supervision requires great skills and genuine compassion to help volunteers remain motivated, and to encourage effort and progress toward responsibility. It is much easier to leave a volunteer job than a paid one, and there are many claims on volunteers.

Supervision produces commitment if it is good, when people who share goals and objectives can enjoy their work together, each improves job performance because they have mutual respect and trust.

The supervisor has leadership responsibility for clarifying goals, recognising volunteer objectives and helping the volunteer to develop his own congruent work objectives. Together, they work out their philosophy and the rationale underlying the assignment and discovering the many ways the volunteer can contribute to the whole while working on his/her part of a project (*Cull, and Hardy, 1974 : 68 - 69*). Therefore, leadership relates to motivation of volunteers to enable them to do their job, treating them fairly and maintaining morale, meeting volunteer's need for recognition. It also makes suggestions for improvement through communication by managers, and provide

opportunities for growth (*Snarr, 1996 : 181*). By the same token, *Jackson and Frigon (1994 : 45)*, contend that leadership is an art and a science of getting others to perform what needs to be accomplished.

A leader challenges, encourages, enables and provides a model for volunteers. Leadership is a personal relationship between the leader and the volunteers. A leader should be honest, look forward to achieve the goals set for the organisation and be competent and inspiring.

In order that the leader can be able to motivate the volunteers, the leader should communicate with them. Communication is a two-way process, through which information is sent and received and also correctly understood by means of different types of communication activities.

Communication activities are amongst others listening, reading, speaking and writing. By the same token, *Van Voorhuis, Braswell and Lester (1997 : 26)*, outline six elements of communications which every person contributes to the communication process namely:

- ▶ The body as an element of communication that moves and has form and shape. A person's movement and, physical appearance provide significant information
- ▶ Values are other elements of communication which are reflected in a person's behavioural habit and a verbal communication
- ▶ The expectations a person brings into an experience which are based upon experiences and are inclined to influence the way a person

perceives his / her own and others' communication

- ▶ The sense organs such as ears, eyes, nose, mouth and skin, enable a person to see, smell, taste, touch and be touched
- ▶ Words and a person's voice combine to provide an individual with the ability to talk, which is essential to all verbal communication
- ▶ The brain stores the knowledge a person has acquired from the past experience.

7.6.5 BUILDING CONFIDENCE

A good supervisor builds confidence in volunteers by sincere appreciation of the unique strengths each worker brings to the assignment and realistic assessment of his/her weaknesses, offering advice and resources. Essential is shared confidence that the person can do the job, and wants to do it well (Cull, and Hardy, 1974 : 69).

7.6.6 GROUPS AND SUPERVISION

When supervision is handled in groups meetings, it is essential to insure fairness and to individualise group members and their uniqueness. Equal attention to each volunteer and his particular concerns must guarantee that the volunteer is not made to feel inadequate in front of the others, but given constructive help which is truly enabling.

Each member can reinforce participation by the others but so that the group identity will become another attraction to strengthen then the retention of all the volunteers.

Group supervision makes possible efficient use of consultants and training resources such as films, with group discussion providing new points of view and stimulation. Periodically, as opportunities arise, volunteers should be encouraged to pursue other learning opportunities at community meetings, extension courses and conferences which remove him/her from the usual work setting (*Cull, and Hardy 1974 : 69 - 70*).

Therefore, the approach to volunteer supervision must be future orientated, not "how I used to do it" but "how could it be done, given today's resources and tomorrow's potentials".

A supervisor has responsibility to know what is going on in the field beyond the ken of the volunteer and him/her informed of new ideas and resources to adopt for situations that the volunteer may face in the future.

The supervisor represents a two-way link for the volunteer to other parts of the organisational setting, as well as, to the whole field of human service. Democratic concepts of participative management imply that the volunteer brings a valuable contribution to the program development and policy planning process through the supervisory relationship. The supervisor may hold the key to his/her participation on the planning process at times when his/her contributions would be most influential.

Such participation in planning and admittance to inner sanctions of administration is explicit recognition of the value of volunteer perspective is

inspiring to staff and volunteer alike (*Cull and Hardy, 1974 : 74 - 75*). This statement is confirmed by *Jorgensen and Scheier (1972 : 22)*.

7.6.7 EVALUATION

The effectiveness of the volunteer programme is evaluated together with other programmes of the organisation. The performance of the volunteers is evaluated together with that of the staff of the organisation (*The National Council for the Mental Health, 1989 : 49*).

7.6.8 EVALUATING THE PERFORMANCE OF VOLUNTEERS

The purpose of the evaluation is to improve the effectiveness of volunteers and to provide them with a rewarding experience, inter alia:

- ▶ objectives are set for each volunteer when a volunteer position is filled
- ▶ the volunteer is evaluated on the basis of performance as it relates to the stated objectives
- ▶ accurate records kept to determine the amount of time given by volunteers
- ▶ performance is assessed at regular intervals and documented (*The National Council for Mental Health 1989 : 49, and Smith, Rochester and Hedley, 1995 : 164*).

7.6.9 STATISTICS ON VOLUNTEER INVOLVEMENT

One effective means of checking on volunteer services is the monthly progress report submitted by the volunteer on each client assigned to him/her. The report allows the staff officer and the volunteer coordinator to review not only

the progress of the released offender but also the type and quality of services being provided by the volunteer counsellor (*Henningsen, 1981 : 130*).

7.7 SUMMARY

The procedures outlined in this chapter are for recruiting volunteers for training staff to work with them, training volunteers for maximum quality performance in service to the agency, as well as, in personal growth and satisfaction for themselves. All this may seem a heavy undertaking for agencies that are understaffed and overburdened.

The volunteer programs to be successful, must make every effort to meet human needs. Well planned and substantive training programs with the co-ordinator demonstrate to the volunteer that his / her service is of value. Careful selection of an assignment suited to his/her interest, with continued training, evaluation and supervision, reinforces the feeling that the volunteer is needed.

The acceptance and welcoming attitude of all staff, professional and non-professional serve assure the volunteer that is liked and wanted as a person as well as a co-worker on the team. These are responsibilities that an agency cannot ignore and must accept regardless of the cost in time and effort, and in expense as well, if it wishes to retain its volunteers. In addition, there must be created in the agency an atmosphere of general approval and appreciation for volunteers.

CHAPTER 8

CONCLUSION AND RECOMMENDATIONS8.1 **CONCLUSION**

The South African criminal justice system is under increasing pressure to function more effectively than it is currently doing and yet society does little to relieve the burden placed on the system.

Changes within the socio-political structure of society have possibly contributed to the increase in crime in the various communities, while governmental changes have brought about a change in funding policies, resulting in less money being channelled into the criminal justice system.

The increase in crime and violence has also contributed to a general negativity within society and feelings of hostility towards offenders.

The question that must be asked is what effective criminal justice system means to an ordinary South African. Some people interviewed, gave the following vies regarding the same question.

Effective criminal justice is about:

- ▶ proactive policing
- ▶ speedy trials
- ▶ appropriate sentences
- ▶ hard on criminals
- ▶ successful rehabilitative programmes

- ▶ prevention of crime.

After conducting an intensive study of the activities within the departments constituting the criminal justice system in South Africa and having done a comparative study of criminal justice systems of the world, the researcher believes that there must be a clear understanding of the system's past, even before one looks to its future. Secondly, there must be a clear understanding of applicable policies within which these institutions operate. Thirdly, look into the role of the government in shaping the system and finally identify problems, determine possible solutions and consequences of those solutions.

In this study the researcher attempted to follow the above steps in order to come to the following recommendations:

8.2 RECOMMENDATIONS FOR THE ESTABLISHMENT OF AN EFFECTIVE AND EFFICIENT CRIMINAL JUSTICE SYSTEM IN SOUTH AFRICA

RECOMMENDATION 1

Develop the policy that will regulate the functioning of the criminal justice system cluster in South Africa.

The interdepartmental relations at National, Provincial and Local levels must be regulated and controlled by clearly formulated policy document/guidelines.

The New Constitution of the Republic of South Africa, 1993 introduced nine provinces and their government structures. The national government policies, such as "ensuring public safety", must be executed by these departments at different levels. Traditionally, the government departments worked in silos with

each once protecting its turf. Obviously, this cannot be addressed by the formation of clusters only, but by also establishing policy to regulate their working relationship with the aim of promoting service delivery.

RECOMMENDATION 2

The established policy for the criminal justice cluster must tie the responsibility for police, courts and correctional services to the local governments of each province.

As indicated above, after the implementation of the 1993 Constitution, the structure and composition of government institutions changed significantly. Unfortunately, the same cannot be said as some of the department structures still reflect the organizational structures determined by the old acts as far back as 1910.

The rationalisation of the public service further took place with the implementation of the 1996 Constitution. Restructuring of various government levels and public institutions, was guided by the White Paper on the Transformation of the Public Service.

South African government is, therefore, divided into:

- ▶ central government
- ▶ nine provincial governments; and
- ▶ approximately 1 000 local governments.

The researcher is of a very strong opinion that the effectiveness and efficiency

of the criminal justice system will only be realised when the local governments take ownership of the system, because it is at that level where crime is committed and the answers will have to come from that level upwards.

RECOMMENDATION 3

The policy framework established for the criminal justice cluster must be dominated by strategies calling for community volunteers involvement.

- **Police**

From now on the strategic development of the South African Police Services should be dominated by "community policing". In other words every 'mission statement' developed within the police service must emphasize on this new approach of policing communities.

"This broad responsibility is fulfilled by demonstrating local accountability and treating the community not as a passive recipient of police services, but as an active agent and partner in promoting security. It requires establishing as operational priorities those problems that disturb the community most, adopting a proactive, problem-solving approach and measuring effectiveness by the degree of public cooperation received and by the absence of crime and disorder in a community. It is a generalist rather than a specialist style of policing and it is built on community consensus rather than the unilateral view of the police" (Barley, 1991 : 30).

- **Courts and Correctional Services**

The researcher recommends that these two departments be made part

of community policing structures by policy at all three levels.

Although the courts involve lay assessors in some courts, and the correctional services having a number of non-governmental organisations rendering some programmes to inmates across the country, the study revealed that there is little effort if any, from ~~these departments~~^{of} in motivating and recruiting volunteers or organisations to come and close existing gaps within the ~~respective departments~~^{DCS}.

Opportunities are there, they will have to be used to the advantage of South Africa by minimizing the levels of in partnership with the communities.

"WE SERVE WITH PRIDE!"

8.3 **BIBLIOGRAPHY**

- Abadinsky, H. 1984. *Discretionary Justice : An introduction to discretion in Criminal Justice*. Charles C. Thomas. Publisher. Pringsfield. Illinois. U.S.A.
- Abadinsky, H. 1987. *Crime and Justice : An Introduction*. Nelson-Hall Publishers/Chicago.
- Abadinsky, H. 1987. *Probation and Parole : Theory and Practice*. Prentice-Hall, INC, Englewood Cliffs, New Jersey 07632.
- Abeyie, D.G. 1984. *The criminal justice system and blacks*. Clark Boardman Company, Ltd, New York, New York.
- Abraham, H.J. 1975. *The judicial process*. N.Y. Oxford University Press.
- Acta Criminologia. Vol. 6 No. 1 1993. ISSN 1012 - 8093. Published by the Criminological Society of southern America.
- Acta Criminologia, Vol. 10 No. 1 1997. Institute for Criminological Sciences : University of South Africa: Pretoria.
- Adler, F., Mueller, G.O.W., and Laufer, W.S. 1994. *Criminal justice*. McGraw-Hill, INC. New York : USA.
- Albrecht, P.A., and Backes, O. 1988. *Crime Prevention and Intervention : Legal and Ethical Problems*. Walter de Gruyter. Berlin. New York.
- A Manual for the South African Police Service, April 1997 : Department of Safety and Security.
- American Correctional Association, 1990. *Manual of Standards for Adult Correctional Institutions*. Commission on Accreditation for Corrections, INC.
- Annual Report, 1999. Department of Correctional Services. Private Bag X136 Pretoria, 0001.
- Ary, D., Jacobs, L.G. and Razarieh, L.C. 1985. *Introduction to Research in Education*. 3rd Edition. New York : Holt, Rinehart and Winston.
- Athens, L.H. 1989. *The Creation of Dangerous Violent Criminals*. Great Britain: Biddles Ltd : Guilford and King's Lynn.
- Atkinson, L., and Gerull, S. 1993. *National conference on juvenile justice. Proceedings of a conference held 22 - 24 September 1992*. Australia Institute of Criminology, Canberra, ACT.

- Barley, D.H. 1991. *Managing the Future : prospective Issues in Canadian Policing*. School of Criminal Justice State University of New York at Albany.
- Barrow, O. 1988. *The Criminal Procedure Act 51 of 1977 (as amended)*. Juta & Co., Ltd. P.O. Box 14373, Kenwyn 7790.
- Bartollas, C., Miller, S.J., and Wice, P.B. 1983. *Participants in American Criminal Justice. The Promise and the Performance*. Prentice-Hall, INC., Englewood Cliffs, NS 076332.
- Bartollas, C. 1990. *Juvenile delinquency. Second Edition*. MacMillan Publishing Company : New York.
- Bartollas, C., and Conrad, J.P. 1992. *Introduction to corrections*. Harper Collins Publishers, INC.
- Bartollas, C., and Miler, S.J. 1998. *Juvenile justice in America*. Prentice Hall, Upper Saddle River, New Jersey 07458.
- Bassiouni, M.C. 1995. *The contributions of specialized institutes and non-governmental organisations to the United Nations Criminal Justice Program*. In honour of Adolfo Beria Di Argentina. Martinus Nijhoff Publishers, The Hague/Boston/London.
- Basson, D.A., and Viljoen, H.P. 1988. *South African Constitutional Law*. Juta and Co, Ltd, Cape Town, Wetton, Johannesburg.
- Basson, D. 1994. *South Africa's interim constitution. Text and notes*. Juta and Company, Ltd.
- Beckman, E. 1980. *Law enforcement in a democratic society : An Introduction*. Nelson-Hall Law Enforcement Series. Nelson-Hall Chicago.
- Benson, L. 1998. *To serve and protect. Privatization and community in criminal justice*. New York University Press: New York and London.
- Best, J.W., and Kahn, J.Y. 1993. *Research in Education*. Allyn and Bacon a Division of Simon and Schuster. INC 160 Gould Street Needham Heights, MA 02194.
- Beveridge, L. 1949. *Voluntary Action. A Report on Methods of Social Advance*. George Allen and Unwin Ltd. London.
- Blumstein, A., Cohen, J., and Nagin; D.L. 1978. *Deterrence and incapacitation; estimating the effects of sanctions on crime rates*. Washington, D.C.; National Research Council, National Academy of Science.

- Boesen, P.G., and Grupp, G.E. 1976. *Community-based Corrections : Theory, Practice and Research*. Davis Publishing Company, Inc, 250 Potrero Street : Santa Cruz, California 95060.
- Bottomley, K., Fowles, T. And Reiner, R. 1992. *Criminal Justice. Theory and Practice*. Published by the British Society of Criminology in Association with the Institute for the Study of Treatment of Drunquency. King's College London, Chelsea Campus, Manresa.
- Bozza, C.M. 1978. *Criminal Investigation*. Nelson-Hall Law Enforcement Series. George W. O'Connor, Consulting Editor Superintendent of Public Safety, Froy, New York. Nelson-Hall/Chicago.
- Branningan, A. 1984. *Crimes, Courts and Corrections : An Introduction to Crime and Social Control in Canada*. Holt, Rinehart and Winston of Canada, Limited.
- Brantingham, P. And Blomberg, T. 1979. *Courts and Diversion : Policy and Operations Studies*. American Society of Criminology, Sage Publications, Beverley Hills, London.
- Brownlee, I. 1998. *Community punishment. A critical introduction*. Longman: London and New York.
- Bynum, J.E., and Thompson, W.E. 1989. *Juvenile delinquency. A sociological approach*. Allyn and Bacon. Boston : London, Sydney : Toronto.
- Byrne, J.M., Lurigio, A.J., and Petersilia, J. 1992. *Smart Sentencing. The Emergency of Intermediate Sanctions*. Sage Publications, International Education and Professional Publisher, Newbury Park : London : New Delhi.
- Cairns, W., and McKeon, R. 1995. *Introduction to French Law*. London : Cavendish.
- Calar, C.L., 1991. *Theory and practice in voluntary senal Action*. Avebury, Gower Publishing Company Limited Gower House Croft Road, Aldershot Hansts Gull 3HR England.
- Callison, H.G. 1983. *Introduction to Community Based Corrections*. McGraw-Hill Book Company, New York.
- Campbell, R.F. 1977. *Justice through restitution : making criminals to pay*. Mott Media, Box 236, Milford, MI. 48042.
- Campus law enforcement journal, volunteer, 28, No. 1. January/February 1998. A Publication of the International Association of Campus Law Enforcement Administration.

- Carney, L.P. 1980. *Corrections : Treatment and Philosophy*. Prentice-Hall, INC., Englewood Cliffs, New Jersey 07632.
- Carter, R.M., Glaser, D., and Wilkins, 1984. *Probation parole, and community corrections*. Prentice-Hall, Englewood Cliffs, New Jersey 07632.
- Cavadino, M., and Dignan, J. 1992. *The penal system: an introduction*. Sage Publications: London: Newbury Park: New Delhi.
- Champion, D.J. 1999. *Probation, Parole, and Community Corrections*. Prentice Hall, Upper Saddle River, New Jersey 07458.
- Cilliers, C.H., 1984. 'n Penologiese Studie rakende die vergoeding aan die slagoffers van misdaad. D.Litt.Phil.: ongepubliseerde proefskrif: Universiteit van Suid-Afrika: Pretoria.
- Clark, C.L. 1991. *Theory and practice in voluntary social action*. Avebury, Aldershot, Brookfield, USA, Hong Kong, Singapore, Sydney.
- Clear, T.R., and Cole, G.F. 1990. *American Corrections. Second Edition*. Brooks/Cole Publishing Company Pacific Grove, California.
- Coetzee, W., Loubser, J.C., and Krüger, W. 1995. *Correctional Services in Focus*. Holder and Stoughton Educational Southern Africa, a division of Hodder Headline PLC: Randburg 2125.
- Correctional Service Orders "B" 1999. Department of Correctional Services, Private Bag X136, Pretoria, 0001.
- Crehan, J.H., and Sulverman, R.A. 1995. *Canadian delinquency*. Prentice-Hall Canada IN. Scarborough, Onario.
- Croall, H.1998. *Crime and society in Britain*. Longman London and New York.
- Cull, J.G., and Hardy, R.E. 1974. *Law Enforcement and Correctional Rehabilitation*. Charles C. Thomas : Publisher : Springfield : Illinois : USA.
- Dadomo, C., and Farran, S. 1996. *The French Legal System*. London : Sweet & Maxwell.
- Darvill, G., and Munday, B. 1984. *Volunteers in the Personal Social Services*. Trafistock Publications, London and New York.
- De Rebus, January, 1994. No. 313. *The South African Attorney's Journal* Published by the Association of Law Societies, 1 SSN 0250 - 0329.
- De Rebus, Februarie 1995, No. 326. *Vereniging van Prokureursordes van Republiek van Suid-Afrika*.

De Villiers, H.W. 1980. 'n Penologiese beskouing van die oplegging van lyfstraf in die Howe van die Kaapse Skiereiland. Ongepubliseerde M.A. Proefskrif : Universiteit van Suid-Afrika : Pretoria.

De Waal, J., Currie, I., and Erasmus, G. 1998. Life. Juta and Co., Ltd, P.O. Box 14373, Kenwyn, 7790.

Difton, J., and Ford, R. 1994. The reality of probation. A formal ethnography of process and practice. Avebury, Aldershof. Brookfield USA. Hong Kong. Singapore, Sydney.

Doeren, S.E. and Hageman, M.J. 1982. Community Corrections. Criminal Justice Studies. Anderson Publishing Co. Cincinnati, Ohio.

Doherty, O. 1990. Criminal Procedure in Nigeria : land and Practice. London. Blackstone.

Draft White Paper in Service of Safety, 1998 - 2003 : Department of Safety and Security.

Dubler, N.H. 1986. Standards for Health Services in Correctional Institutions. American Public Health Association : 1015 Fifteenth Street, NW : Washington, DC 2005.

Duff, A., and Garland, D. 1994. Oxford readings in socio-legal studies. A reader on punishment. Oxford University Press, INC; New York.

Duffee, D., and Fitch, R. 1976. An introduction to corrections : A policy and systems approach. Good Year Publishing Company, INC; Pacific Palisades, California.

Du Toit, E. 1981. Straf in Suid-Afrika. Kaapstad, Juta.

Edwards, R.L., and Yankey, J.A. 1991. Skills for effective Human Services Management NASW Press. National Association of Social Workers Silver Spring, M.D.

Eldefonso, E., Coffey, A., and Grace, R.C. 1982. Principles of Law Enforcement: An Overview on the Justice System. John Wiley and Sons New York. Chichester, Brisbane. Toronto. Singapore.

Elias, R. 1981. Impact of compensation on crime victims, criminal justice, and Government. University Microfilms International : An Arbor, Michigan, USA : London, England.

Erasmus, W.P. 1985. Die vestiging en ontwikkeling van die Kriminologie in Suid-Afrika met spesiale verwysing na die penitensiêre inligting tussen 1910 - 1961. Ongepubliseerde M.A. Verhandeling : Universiteit van Suid-Afrika : Pretoria.

Fielding, N. 1984. *Probation Practice. Client support under social control.* Gower Publishing Company Limited, Gower House, Croft Road, Aldershot, Hampshire GU11 3HR, England and Gower Publishing Company, Old Post Road, Brookfield, Vermont 05036, USA.

Finckenauer, J. 1982. *Scared straight and the panacea phenomenon.* Englewood Cliffs, Prentice - Hall.

Folley, V.L. 1976. *American Law Enforcement Police, courts and corrections.* Third edition Allyn and Bacon, INC. Boston, London, Sydney, Toronto.

Folley, V.L. 1980. *American Law Enforcement Police, Courts and Corrections.* Allyn and Bacon, Inc. Boston. London. Sydney. Toronto.

Fox, V. 1985. *Introduction to Corrections.* Prentice-Hall, INC. Englewood Cliffs, New Jersey.

Freed, L.F. 1963. *Crime in South Africa : An Intergrated Approach.* Juta and Co. Limited. Cape Town, Wynberg and Johannesburg.

Gann, N. 1996. *Managing Change in Voluntary Organisations : A Guide to Practice.* Open University Press Buckingham. Philadelphia.

Gilbert, N., and Specht, H. 1981. *Handbook of the Social Services.* Prentice-Hall, Inc, Englewood Cliffs, New Jersey.

Gill, M.L., and Mawby R.I. 1990. *Volunteers in the Criminal Justice System: A comparative Study of Probation, Police and Victim Support.* Open University Press. Milton Keynes. Philadelphia.

Glazer, N. 1984. *The public interest on crime and punishment.* University Press of America, Lanham, New York; London.

Goldstein, H.K. 1980. *Research Standards and Methods for Social Workers.* Whitehall Company / Publishers 120050. Willis Avenue Wheeling, 1160090.

Greenfeld, LA. 1993. *Performance measures for the Criminal Justice System.* U.S. Department of Justice. Discussion Papers from the BJS-Princeton Project.

Hamai, K., Villé, R., Harris, R., Hough, M., and Zvekic, U. 1995. *Probation Round the World : A Comparative Study.* Routledge, 11 New Fetter Lane, London EX4P 4EE, and New York.

Hefferman, W.J. 1992. *Social Welfare Policy : A Research and Action Strategy.* Longman Publishing Group, 95 Church Street, White Plains, N.Y. 10601.

Henderson, P., and De Tufo, S. 1991. *Community work and the probation service.* London. HMSO.

- Henderson, J.H., and Simpson, D.R. 1994. Crimes of the Criminal Justice System. Anderson Publishing Co. P.O. Box 1576, Cincinnati, OH 45201 - 1576.
- Henningsen, R.J. 1981. Probation and Parole. Harcourt Brace Jovanovich, INC, New York.
- Hlongwane, A.L. 1994. Gang conflict in prison. Unpublished M.A. Dissertation, University of South Africa; Pretoria.
- Hlongwane, A.L. 1998. Life Imprisonment in Penological Perspective. Unpublished thesis for the Degree of : Doctor of Literature and Philosophy : University of South Africa. Pretoria.
- Holdaway, S. 1991. Recruiting a Multiracial Police Force. London. HMSO.
- Hogg, R. And Brown, D. 1998. Rethinking Law and Order. Pluto Press Australia Limited. Locked Bag 199. Annandale. NSW 2038.
- Hosten, W.J., Edwards, A.B., Nathan, C., Bosman, F. 1977. Introduction to South African Law and Legal Theory. Durban : Butterworths.
- Inbau, F.E. Moenssens, A.A. and Vitullor, L.R. 1972. Scientific Police Investigation. Chilton Book Company, Philadelphia. New York.
- Inciardi, J.A. 1987. Criminal Justice. Second edition. By Harcourt Brace Javanovich, INC.
- Inciardi, J.A. 1993. Criminal Justice. Fourth Edition. Harcourt Brace Javanovich College Publishers. 301 Connerce Street, Suite 3700, Forth Worth, TX76102.
- Inciardi, 1999. Criminal Justice. Fifth Edition. Harcourt Brace Jovanovich College Publishers. 301. Connerce Street, Suite 3700, forth Worth, TX76102.
- Jarvis, D.S. 1978. Institutional treatment of the offender. New York : McGraw-Hill.
- Jenkins, P. 1984. Crime and justice issues and ideas. Brooks/Cole Publishing Company: Monterey, California.
- Johnson, N. 1987. The welfare state in Transition. The Theory and Practice of Welfare Pluralism. The Harvester Press Publishing Group and Wheatsheaf Books Limited. Great Britain.
- Jorgensen, J.D., and Scheier, I.H. 1972. Volunteer Training for Courts and Corrections. The Scarecrow Press, Inc. Metuchen, N.J. 19773.
- Katzenbach, et al, 1967. Task Force Report : The Police. US Government Printing Office, Washington. D.C. 20402.

Killinger, G., and Cromwell, P. 1978. Introduction to correctionals: selected readings. St. Paul: West.

King, J.F.S. 1958. The Probation Service. London Butterworth and Company. (Publishers) Ltd.

King, J.F.S. 1969. The Probation and After-care Service. (Third Edition). The Whitefriars Press Ltd., Tonbridge, Kent, England.

Klaus, J.F. 1998. Handbook on probation services. Guidelines for probation practitioners and managers Unicri : United Nations Interregional Crime and Justice Research Institute, Publication No. 60, Rome/London.

Konecm, V.J., and Ebbesen, E.B. 1982. The criminal justice system. A social - psychological analysis. By W.H. Freeman and company, San Francisco.

Koun, M.K. 1990. Volunteerism and Older Adults. Santa Barbara, California. Oxford, England.

Krautkrämer, R.P.R. 1994. The South African death sentence under a new constitution. Unpublished M.A. Dissertation. University of South Africa, Pretoria.

Kroon, J. 1995. General Management. Haum Tertiary : Haum Building : 227 Minnaar Street, Pretoria.

Latessa, E.J. and Allen, H.E. 1997. Corrections in the Community. Anderson Publishing Co. P.O. Box 1576 Cincinnati. OH.

Law and Human Behaviour, Vol 18, 1994. The Official Journal of the American Psychology - Law Society/Division 41 of the American Psychological Association.

Lea, C.C., 1991. The Role of the Criminologist in Sentencing. Unpublished Doctorate of Literature and Philosophy, University of South Africa.

Leedy, P.D. 1993. Practical Research Planning and Design. MacMillan Publishing Company 886 Third Avenue, New York. 10022.

Lefcourt, R. 1974. "Law against the People", in Richard Quinney, Edition, Criminal Justice in America : A critical understanding. Boston, Little, Brown and Co.

Levine, J. et al., 1980. Criminal Justice. A public policy approach: New York: Harcourt, Brace, Jovanovich.

Luxton, P. 1990. Charity Fund Raising and the Public Interest : An Anglo American Legal Perspective. Avebury Gower Publishing Company Limited, Gower House : England.

- Mathews, M.L.; Heymann, P.B. and Mathews, A.S. 1993. Policing the Conflict in South Africa. University Press of Florida. Gainesville/Tallahassee/Tampa/Boca Ration/ Pensa-cola/Orlando/Miami/Jacksonville. U.S.A.
- Mathiesen, T. 1990. Prisons on trial: a critical assessment. Sage Publications: London; Newbury Park: New Delhi.
- Maves, P.B. 1981. Older Volunteers in Church and Community : A Manual for Ministry. Judson Press, Valley Forge.
- McCarthy, C.R. and McCarthy, B.R. 1991. Community-based Corrections. Brooks/Cole Publishing Company, Pacific Grove, California.
- McGreeney, P., and Alexander, D. 1996. Managing Volunteers Effectively. Argona Ashgate Publishing Limited. Gower House, Croft Road : England.
- McIvor, G. 1992. Sentenced to serve : The operation and impact of community service by offenders. Avebury, Ashgate Publishing Company, Old Post Road, Brookfield, Vermont 05036 USA.
- McIvor, G., and Warner, S. 1996. Bail services in Scotland. Published by Avebury. Aldershot. Brookfield U.S.A. Hongkong, Singapore, Sydney.
- McShane, M.D., and Krause, W. 1993. Community Corrections. McMillan Publishing Company; New York : Maxwell MacMillan Canada : Toronto.
- Melincoe, W.B. and Mennig, J. 1969. Elements of Police Supervision. Glencoe Press A Division of the Macmillan Company. Beverley Hills, California. Collier-Macmillan Limited, London.
- Miller, J.L., Roberts, M.M., and Carter, C.A. 1981. Sentencing reform: A revive and annotated bibliography. A publication of the national centre for state courts.
- Monette, D.R., Sullivan, T.I. and Cornell, H.D. 1990. Applied Social Research. Second Edition. Forthworth : Holt, Rinehart and Winston.
- Morris, N. 1981. "Punishment, Desert, and Rehabilitation" in Hyman Gross and Andrew von Hirsch, eds, Sentencing, NY : Oxford University Press.
- Muraskin, R. And Roberts, A.R. 1996. Visions for Change. Crime and Justice in the Twenty-First Century. Prentice-Hall, INC. A Simon and Schuster Company. Upper Saddle River, New Jersey 07458.
- Murphy, J.G. 1985. Punishment and rehabilitation. Second edition. Wandsworth Publishing Company: Belmont, California: A division of Wandsworth, INC.
- Musick, D. 1995. An introduction to the sociology of juvenile delinquency State University of New York Press, Albany.

- Naudé, C.M.B., and Stevens, R. 1988. *Crime Prevention Strategies*. Haum Educational Publishers. P.O. Box 629, Pretoria, 0001, RSA.
- Ndabandaba, G.L. 1987. *Crimes of Violence in Black Townships*. Butterworth : Durban.
- Neser, J.J. 1980. 'n Teoretiese prinsipiële studie oor sekere aspekte van die straf en behandeling van die oortreder vanuit 'n Penologiese Perspektief.
- Neser, J.J. 1993. *Penitentiary penology*. Second Edition. Lexicon Publishers, Johannesburg.
- Newman, G. 1978. *The punishment response*. New York: Lippencol.
- Nxumalo, T.E. 1997. *Parole Supervision : A penological perspective*. UNISA, Pretoria.
- Olivier, N.J.C. 1997. *Die Beginsels van Proaktiewe Polisiëring met spesifieke verwysing na die Suid-Afrikaanse Polisie*. Unpublished Thesis. University of South Africa.
- Organizational Procedures and Administrative Rules Manual for Independent Prison Visitors : Judicial Inspectorate*. Office of the Inspecting Judge. Cape Town. (First Addition. 1999.10.22)
- Osler, A. 1995. *Introduction to Probation Service*. Waterside Press, Dornum Road, Winchester 5023 9 NN.
- Ovens, M. 1998. *A Penological Perspective on the Handling of the Drug Offender*. Unpublished Doctorate of Literature and Philosophy, University of South Africa.
- Pearce, J.L. 1993. *Volunteers : The Organisational Behaviour of Unpaid Workers*. Routledge, 29 West 35th Street, New York.
- Pease, K., and McWilliams, W. 1980. *Community Service by Order*. Published by Scottish Academic Press Ltd, 33 Montgomery Street, Edinburgh EH75JX.
- Peterson, R.W. et al, 1973. *National Advisory Commission on Criminal Justice Standards and Goals*. Washington DC. U.S.A.
- Petersen, D.M. 1979. *Police Work : Strategies and Outcomes in Law Enforcement*. Sage Publications. Beverley Hills. London.
- Phillips, J.J. 1987. *Recruiting, Training and Retraining new Employees : Managing the Transition from College to Work*. Jossey-bars Publishers, San Francisco : London.

Phillips, R.L., and McConnell, C.R. 1996. *The Effective Corrections Manager : Maximizing Staff Performance in Demanding Times*. Maryland : Aspen Publishers INC.

Pink, J.E., and Perrier, D. 1992. *From Crime to Punishment* (2nd ed). Carswell, Thomson Professional Publishing, One Corporate Plaza, 2075 Kennedy Road, Scarborough, Ontario MIT 3V4.

Pinkele, C.F., and Louthan, W.C. 1985. *Discretion, Justice, and Democracy. A public policy perspective*. The Iowa Sate University Press/ames.

Pointer, W.D., Rosenstein, C., and Kravitz, M April 1982. U.S. Department of Justice, National Institute of Justice.

Policing. Volume 20 number 1. 1997 : *An International Journal of Police Strategies and Management*. (pp 524 - 530).

Policing : An International Journal of Police Strategies and Management. Volume 21 number 1 1998 : pp 54 - 55.

Pontell, H.N. 1984. *A capacity to Punish : The Ecology of Crime and Punishment*. Indiana University Press. Bloomington.

Poulton, G. 1988. *Managing Voluntary Organizations*. John Wiley and Sons : Chichester, New York, Brisbane, Toronto : Singapore.

Practical Guide to Local Partnership Policing, 1999 : Institute for Security Studies. Pretorius, A. 1998. *Assessore : 'n Penologiese Oorsig*. Ongepubliseerde Magister Atrium Boek, Universiteit van Suid-Afrika.

Prison Service Journal, No. 77, Winter 1990, Regimes Edition.

Prison Service Journal, January 1999, No. 121, Human Rights.

Probation Journal, vol. 37, No. 4, December 1990. Published quarterly by National Association of Probation Officers. 3 - 4 Chivalry Road, Battersea, London SW11 1HT.

Probation Journal, vol. IV, December, 1992. National Association of Probation Officers, 3-4 Chivalry Road, Battersea, London.

Probation Journal, vol. 40, No. 1, March 1993. National Association of Probation Officers, 3-4 Chivalry Road, Battersea, London.

Probation Journal, March, 1994. Irish offenders and British Justice.

Probation Journal, vol. 41, No.3, September 1994. National Association of Probation Officers, 3-4 Chivalry Road, Battersea, London SW11 1HT.

Probation Journal, vol. 42, No.1 March 1995.

Probation Journal, vol. 43, No.1 April 1996. Hindpal Singh Bruin, c/o 191a Askew Road, London W129 AX.

Probation Journal, vol. 44, No.1, March 1997. Hindpal Singh Bhui, c/o 191a Askew Road, London. W 129 AX.

Probation Journal, vol. 44, No.3, September 1997. National Association of Probation Officers, 3-4 Chivalry Road, Battersea, London W11 1HR.

Probation Journal, vol. 45, No.3, March 1998. Hindpal Singh Bhui, c/o 191a Askew Road, London W129 AX.

Probation Journal, vol. 45. No.2 June, 1998. Hindpal Singh Bhui, c/o 191a Askew Road, London W129 AX.

Probation Journal, vol. 45, No.4, December 1998. Hindpal Singh Bhui, c/o 191a Askew Road, London W 129 AX.

Probation Journal, vol. 46, No.1 March 1999. Hindpal Singh Bhui, c/o 191a Askew Road, London W 129 AX.

Pront, C., and Ross, R.N. 1988. Care and Punishments of Prison Medicine. University of Pittsburg Press, Pittsburgh, P.A. 15260.

Punke, H.H., 1978. Education, Lawlessness and Political Corruption in America. The Christopher Publishing House North Quincy, Massachusetts, USA.

Pursley, R.D., 1991. Introduction to criminal justice. Fifth edition. McMillan Publishing Company, a division of McMillan, INC.

Pursley, R.D. 1994. Introduction to criminal justice. McMillan Publishing Company, New York, Collier McMillan, Canada, Toronto.

Rabie, M.A., and Strauss, S.A. 1981. Punishment an Introduction to Principles. Lex Patria Publishers, Cape Town and Johannesburg. ISBN 0628 029837.

Rabie, M.A., Strauss, S.A., and Moré, M.C. 1994. Punishment. An introduction to principles. Fourth Edition. Lex Patria Publishers, Cape Town and Johannesburg.

Raine, J.W., and Willson, M.J. 1993. Managing Criminal Justice. Biodles Ltd., Guilford and Judg's Lynn, Great Britain.

Rapp, C.A., and Poertner, J. 1992. Social Administration. A Client Centred Approach. London : New York and London.

- Raynor, P. 1988. Probation as an Alternative to Custody : A Case Study. Gower Publishing Company, Old Post Road, Brookfield, Vermont 05036, USA.
- Raynor, P., Smith, D., and Vanstone, M. 1994. Effective Probation Practice. The McMillan Press Ltd, Houndmills, Basingstoke, Hampshire RG 212 X 5 and London.
- Reid, S.T. 1981. The Correctional System. An Introduction. The University of Tulsa College of Law. Holt, Rinehart and Winston.
- Reid, S.T. 1985. Crime and criminology. New York, Holt, Rinehart and Winston.
- Reid, S.T. 1987. Criminal justice. Procedures and issues. West Publishing Company, St Paul, New York, Los Angeles, San Francisco.
- Reid S.T. 1994. Crime and criminology. Holt, Rinehart and Weston, INC.
- Roberts, A.R. 1989. Juvenile. Police, programs, and services. The Dorsey Press, Chicago, Guinoise 60604.
- Roberts, A.R. 1994. Critical Issues in Crime and Justice. Sage Publications. International Educational and Professional Publisher. Thousands Oaks. London. New Delhi.
- Robin, G.D. 1987. Introduction to the criminal justice system. Third edition. Hooper and Row, Publishers, INC. New York.
- Rubin, S. 1973. The Law of Criminal Correction. West Publishing Company. St. Paul, Minn. New York City.
- Salhany, R.E. 1989. Canada Criminal Procedure. Fifth Edition. Canada Law Book Inc. Canada.
- Sallman, P., and Willis, J. 1984. Criminal Justice in Australia. Oxford University Press, Melbourne, Oxford, Auckland, New York.
- Schabas, W.A. 1997. The Abolition of the Death Penalty in International Law. Printed in the United Kingdom at the University Press, Cambridge.
- Schmalle, F. 1995. Criminal Justice Today. An introduction text for the twenty - first century. Prentice-Hall Career and Technology, Prentice-Hall, INC, Paramount Communications. Englewood Cliffs, New Jersey, 07632.
- Senna, J.J., and Siegel, L.J. 1981. Introduction to Criminal Justice. Second Edition. West Publishing Co., So West Krolh Boulevard, P.O. Box 3526, St. Paul, MN 55165.
- Senna, J.J, and Siegel, L.J. 1985. Juvenile deliuiquency: Theory, practice and Law. West Publishing Co; West Kollog Boulevard, St. Paul, Mirinesota.

Senna, J.J., and Siegel, L.J. 1998. *Essentials of criminal justice*. West/Wadsworth Publishing Company ITP. An International Thomson Publishing Company. Printed in the USA.

Seriti, W.L. 1992. *Arguments in Favour of the Abolition of the Death Sentence in South Africa*. Unpublished M.A. Dissertation. University of South Africa, Pretoria.

Sessor, K. and Kerner, H.J 1991. *Developments in crime and crime control research. German Studies on Victims, Offenders, and the Public*. Springer Verlag, New York, Berlin, Heidelberg, London, Paris, Tokyo, Hong Kong, Barcelona.

Shapland, J., Willimore, J., and Duff, P. 1985. *Victims in the criminal justice system*. Published by Gower Publishing Company Limited, Gower House, Croft Road, Alderhot, Hants, GU 11 3HR, England.

Sharp, P.M., and Hancock, B.W. 1995. *Juvenile delinquency historical, theoretical, and social reactions to youth*. Prentice-Hall, Englewood Cliffs, New Jersey 07458.

Shinnar, R., and Shinnar, S. 1975. *The effect of the criminal justice system on the control of crime; a quantitative approach* Law and society review, vol.9.

Sir Rob Reid, et al, 1996. *The Manager's Handbook : The Practical Guide to Successful Management*. Published by Warner Books, Brettenham House, Lancaster Place London.

Smit, B.F. 1979. *Die Sosialisering van Nuweling in die Suid-Afrikaanse Polisie Subkultuur*. Ongepubliseerde Tesis : UNISA Pretoria.

Snarr, R.W. 1996. *Introduction to Corrections*. Brown and Benchman Publishers, Madison Du Buque; 1A Guilford, C.T. Chicago, Toronto, London, Caracas Mexico, Madna, Bogota, Sydney.

Solomon, Jr., P.H. 1983. *Criminal Justice Policy from Research to Reform*.

South African Journal of Criminal Justice July 1995. South African periodicals.

South African Journal on Human Rights, 1990. South African Journal on Human Rights, Cape Town, Wetton, Johannesburg.

South African Journal on Human Rights, 1995. South African Journal on Human Rights, Cape Town, Wetton, Johannesburg.

South African Journal on Human Rights, Vol. 12, 1996. Juta and Co, Ltd., Cape Town, Wetton, Johannesburg.

South African Police Service Act, Act no. 68, 1995.

South African Yearbook 1999 (Sixth Edition) Government Communication and Information System (GCIS), Private Bag X745, Pretoria, 0001. Printed by The Rustica Press, N'Dabeni, Cape Town.

Stenzel, A.K., and Grupp, G.E. 1976. *Community-based Corrections : Theory, Practice and Research*. Davis Publishing Company, Inc, 250 Potrero Street : Santa Cruz, California 95060.

Stone, A.R., and Deluca, S.M. 1980. *Investigating Crimes : An Introduction*. Houghton Mifflin Company. Boston. Dallas. Geneva, Illinois. Hopewell, New Jersey. Paolo Alto. London.

Stone, J.M. 1982. *How to volunteer in Social Service Agencies*. Charles C. Thomas. Publishers. Springfield. Illinois. USA.

Sullivan, T., Thomson, K., Wright, R., Goss, G., and Spady, D. 1980. *Social Problems. Divergent Perspectives*. John Wiley and Sons, New York : Chichester: Brisbane : Toronto.

Swanepoel, H. And De Beer, F. 1997. *Introduction to Development Studies*. International Thomson Publishing (Southern Africa) (Pty) Ltd. P.O. Box 2459, Halfway House. South Africa 1685.

Swart, D.N. 1992. *Die Benutting van Vrywilligers en Vrywillige Gemeenskaps-organisasies by die Herinskakeling van Vrygelate Oortreders*. D.Phil. Proefskrif, Ongepubliseerd : Universiteit van Suid-Afrika : Pretoria 0001.

Taylor, D.T. 1979. *Law, Order and Justice*. Hayden Book Company, Inc.

Terrill, R.J. 1997. *World Criminal Justice Systems (3rd Ed)* Cincinnati : Anderson Publishing Co.

Territo, L., Halsted, J.B., and Bromley, M.L. 1998. *Crime and justice in America*. Butterworth - Heineman. Boston "Oxford", Johannesburg, Melbourne, New Delhi, Singapore.

The Constitution of the Republic of South Africa, 1996. Act No. 108 of 1996. Government Printers, Pretoria.

The Criminal : Quarterly, Vol. 11, No. 4, October, 1969. *Canadian Criminal Lawyer*. United States.

The Police Journal : A Quarterly Review for the Police of the World. Volume LXVII number 1, April 1994 : (pp 100 - 115).

The Police Journal : A Quarterly Review for the Police of the World. Volume LXIX number 1, 1996. (Pp 21 - 30).

The Police Journal : A Quarterly Review for the Police of the World. Volume LXXI number 3 July 1998 : (page 189 - 190).

The President's Commission, 1967 : Task Force Report : The Police. U.S. Government Printing Office, Washington : USA.

Thornton, W.W., and Boigt, L. 1992. Delinquency, and Justice. McGraw-Hill, INC.

Trojanowicz, R.C., and Morash, M. 1998. Juvenile delinquency. Concepts and control fifth edition. Prentice Hall, Englewood Cliffs, new Jersey 07632.

Tutt, N. 1978. Alternative Strategies for Coping with Crime. Basil Blackwell, Oxford, Martin Robertson, London.

Uglow, S. 1995. Criminal Justice. Sweet and Maxwell Limited. South Quay Plaza, 183 Marsh Wall, London E14 9FT.

Van den Eyken, W. 1982. Home Art : A Four Year Evaluation. Leicester : Home Start Consultancy.

Van der Berg, J. 1986. Bail. A Practitioner's Guide. Juta and Company, LTD. Capetown. Wetton. Johannesburg.

Van der Waldt, G., and Helmbold, R. 1995. The Constitution and a New Public Administration. Juta and Co., Ltd, Kenwyn.

Van der Waldt, G., and Du Toit, D.F.P., 1999. Managing for Excellence in the Public Sector. Juta & Co Ltd, P.O. Box 14373, Kenwyn 7790.

Van Heerden, T.J. 1986. Introduction to Police Science. University of South Africa Muckleneuk, Pretoria.

Van Zyl Smit, D., and Dunkel, F. 1991. Imprisonment Today and Tomorrow. International Perspectives on Prisoner's Rights and Prison Conditions. Kluwer Law and Tacatings, Publishers : Boston.

Van Zyl Smit, D. 1992. South African Law and Practice. Butterworth : Durban.

Von Hirsh, A., and Ashworth, A. 1992. Principle sentencing. Edenburg University Press: 22 George Square; Edinburgh.

Waeger, W.B. 1989. Delinquency and Juvenile Control : A Sociological Perspective. Prentice Hall, Englewood Cliffs, New Jersey 07632.

Westermann, T.D., and Burfand, J.W. 1991. Crime and Justice in two Societies. Brooks/Cole Publishing Company : Pacific Groove, California.

Weston, P.B., and Wells, K.M. 1971. *Criminal Evidence for Police*. Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

Whisenand, P.M. and Cline, J.L., 1971. *Patrol Operations*. Prentice-Hall, INC. Englewood Cliffs, New Jersey.

Whisenand, P.M., and Rush, G.E. 1998. *Supervising Police Personnel : The Fifteen Responsibilities*. Prentice Hall. Upper Saddle River, New Jersey 07458.

White Paper on the Extension of the Mission of the Department of Correctional Services and the Implementation of Correctional Supervision as an alternative Sentencing Option: 1991. Department of Justice and Correctional Services, Pretoria, 0001.

White, R., and Perrone, S. 1997. *Crime and social control. An introduction* Melbourne: Oxford University Press: Oxford; Aucland; New York.

Williams, B. 1995. *Probation Values*. Published by Venture Press, 16 Kent Street, Birmingham B 56 Rd.

Yearbook on Human Rights for 1988, 1992. United Nations, New York.