

**THE ROLE OF CORRECTIONAL SUPERVISION IN  
CURBING OVERPOPULATION IN PRISONS**

by

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## **DEDICATION**

This dissertation is dedicated to Nanna who passed away on the 25th of May 2008 and my two grandchildren, Tryston and Jaelyn, whom I so dearly love.

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## **ABSTRACT**

The aim of this dissertation is to place the phenomenon of the overpopulation of South African prisons in perspective and to rectify the current situation in search of possible solutions. Since 1981, when this phenomenon reached unmanageable proportions, government has made numerous amnesties. This was only a short-term alleviation of the problem due to the high levels of recidivism.

Correctional supervision as a sentence option was advocated by both the Lansdowne and Viljoen Commissions, enacted during 1986 and finally implemented during 1991. Initial expectations soon became blurred by factors such as insufficient development programmes and specialised personnel, enormous caseloads and the exclusion of supervision cases from development programmes.

This study endeavours to analyse the current application of correctional supervision to determine the stumbling blocks and to create a foundation for new perspectives and possible solutions.

## KEY TERMS

- Overpopulation of prisons
- Correctional supervision
- Special remission of sentence
- Alternative sentencing
- Probation
- Parole
- Conversion of sentences
- Amnesty
- Monitoring
- Release

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# CHAPTER 1

## GENERAL ORIENTATION

The good about good science is that there will always be more questions to be asked on the same topic, shedding more light needed to uncover an entire new and significant finding (Salkind, N.J.).

### 1.1 INTRODUCTION

During the mid-1940s, crime became a phenomenon of great concern in South Africa. It masqueraded as a consequence of urbanisation, which severely affected areas such as Johannesburg and other bigger centres throughout the country.

Despite these concerns, crime continuously followed an upward trend until 1981 when it reached alarming proportions. In order to deal with the situation, a two-day seminar was arranged by the Department of Justice during June of that year, in search of possible solutions and analysis of the factors causing crime. During the seminar, the prison population was projected to rise to 170 000 in the year 2000. The projection was based on the growth of the prison population in comparison to the growth of the general population. Almost 20 years later this projection turned out to be surprisingly accurate, as by 2001 the prison population stood at 169 486.

In 2007, 26 years later, the same concerns were being expressed in almost similar phrases, and the same pressures and burdens experienced with regard to overcrowding of prisons. Despite the accurate projection of the growth of the prison population, little, if any, significant evidence could be found of solutions or measures implemented to counter overpopulation of prisons.

This document is yet another instance of research in search of possible solutions and methods to contribute to the alleviation of the problem of “over peoplement” (to be overstocked with inhabitants (Webster, 1964:592)) of correctional centres in South Africa. The Department of Correctional Services put great effort and financial resources into the compilation of the White Paper on Corrections in South Africa, published in February 2005. Despite these efforts, the high rate of recidivism, the enormous turnover

of movement to and from prison, the current status of overcrowding, the shortage of skilled workers, such as social workers and psychologists, and the collective detention of short and long-term offenders, has rendered the rehabilitation process almost worthless.

## **1.2 ORIGIN OF INTEREST IN THE STUDY**

The researcher has retired from correctional services after 32 years of service in a variety of positions – among others, as security officer at the Bloemfontein prison command during 1983/84. The researcher was actively involved in dealing with the drastic overcrowding of prisons during that time, which occurred not only within this prison command, but countrywide. On 24 February 1984 the researcher was put in charge of the opening of the Grootvlei maximum prison, where he served as head of the prison until 1988. The researcher was eventually transferred to the Krugersdorp correctional centre where he acted in alternate positions as assistant head of prison, chairperson of the institutional committee – and later, the case management committee – and acting chairperson of the parole board. During the last ten months of his term of service, he was re-appointed as assistant head of the prison until his retirement at the end of May 2005.

In September 2005, the researcher was invited to attend the national conference on strategies to address overcrowding of prisons, and has been a member of the steering committee ever since. During the second national conference held in East London on 25–26 November 2006, the researcher addressed the conference attendants about the possibility of providing training to those persons sentenced in terms of section 276(1)(i) and (h) of the Criminal Procedure Act 51 of 1977, and that such arrangements should be incorporated in their conditions of probation. The researcher held (and still holds) the opinion that correctional services are best positioned to apply its infrastructure to accommodate training in the building and construction industry. Training could also be provided in the field of agriculture. Correctional Services possesses a variety of prison farms throughout South Africa, with a well-established infrastructure to facilitate training in almost all the respective facets of the agricultural industry. Prisoners trained as such could be deployed to the various projects where land reform is practiced, as trained farm workers are to the benefit of their own communities.

The researcher's suggestion was met with two responses – one from a judge who actually scolded the researcher for being out of order to the topic under discussion, although fully relevant to the theme of the conference. The other response came from a provincial commissioner of Correctional Services who asked why the researcher had done nothing while in Correctional Services, but now wanted to promote such an idea. According to Salkind (2003:3), research ideas do not stand alone as interesting questions, but research provides the answers to questions which could form part of the pieces that are needed to complete a difficult puzzle.

### **1.3 MOTIVATION FOR THE STUDY**

During 2007 and 2008, a wide range of issues were reported through the written media, with regard to the multiple failures and almost non-existent successes with the application of the policy of land reform, and the enormous lack of skills of disadvantaged land owners to establish viable farming units. These reports actually ignited the interest of the researcher, and were relevant to the issues tabled by the researcher at the 2006 seminar on overpopulation of correctional centres – to wit, the role of correctional supervision in the curbing of overpopulation, through the training of persons placed under correctional supervision, as skilled farm workers in areas where land reform is practiced. Sources and the identification of research problems are frequently to be found in the observation of reality. The most evident source is one's contact with the external world and the direct observation of it. A research problem could arise from a concrete problem, and through research a problem could be solved (Bless & Smith, 1995:17). The situation described above, with regard to the response to the researcher's suggestion at the conference and the ensuing publications in the written media, is an excellent example of a research problem stemming from his contact with the external world and the direct observation of it.

### **1.4 SECONDARY PROBLEMS ASSOCIATED WITH OVER-CROWDING AND THE APPLICATION OF CORRECTIONAL SUPERVISION**

Correctional supervision is the one sentence option which brought about high expectations with regard to its role in the diminution of the prison population. The current high rate of abscondence of probationers and, more specifically, of parolees within the correctional supervision system, has, in fact, a subversive effect on the role of correctional supervision

as an instrument through which the depopulation of correctional centres is to be achieved. Despite the high expectations, it largely adds on to the ever present problem of recidivism.

The years following on the 1994 change of government have brought about a number of variables which have had an enormous impact on the credibility of the departments of justice and the South African Police Service (SAPS), in terms of the high levels of corruption, ineffective policing and a weak judiciary system, as well as the increasing phenomenon of imposition of long and ultra-long terms of imprisonment. These factors, in turn, are affecting the levels of overpopulation in correctional centres and, subsequently, the conditions of detention.

The total approach towards the realisation of rehabilitation within correctional centres amid conditions of severe overpopulation is restricted to basic required services, and the millions of rand spent on the White Paper on Corrections (2005) – a proverbial “white elephant”. Persons sentenced in terms of sections 276(1)(i) and (h) of the Criminal Procedure Act, are detained together with other offenders from a large variety of criminal backgrounds and sentence periods. Very little constructive social and other treatment interventions are taking place, due to the short period of time those sentenced under section 276(1)(i) are spending within a correctional centre, while those sentenced under section 276(1)(h) are placed under correctional supervision immediately after being sentenced. Support structures within the community are non-existent, and social work support and programmes are practically unobtainable, while the application of an intensive monitoring approach is overriding all other forms of assistance to probationers.

- (1) According to section 276(1)(h) of the Criminal Procedure Act, sentences are only imposed after
  - (a) a report by a probation officer or a correctional officer has been submitted to the court, and
  - (b) for a determinate period not exceeding three years.
- (2) Sentences under section 276(1)(i) of the Criminal Procedure Act are only imposed
  - (a) if the court is of the opinion that the offence justifies the imposition of a sentence of imprisonment, with or without the option of a fine, for a period of not more than five years, and

- (b) for a determinate period not exceeding five years. In terms of the Correctional Services Act 111 of 1998, section 73(7)(a), a person sentenced as such must serve at least  $\frac{1}{6}$  of his/her sentence before being considered for placement under correctional supervision (which represents a period of 10 months).

## **1.5 CHOICE OF THE SUBJECT**

The researcher is well conversant with the present-time phenomenon of overpopulation of correctional centres and the application of correctional supervision as a sentence option – which originated as an outcome of the findings of the Commission of Inquiry into the Penal System of the Republic of South Africa (Viljoen Commission) and the critical levels of overpopulation of South African prisons during the early 1980s. At the time when the researcher addressed the second seminar on overpopulation of correctional centres during November 2006, as described above, it was merely out of conviction and with the belief that by training persons placed under correctional supervision, a significant contribution could be made towards their re-integration into the community and, subsequently, to their abstention from further crime. Community re-integration could be complemented, due to the fact that offenders trained as such would then be in the possession of official proof of training and be better equipped for the relevant labour markets.

## **1.6 MOTIVATION OF THE RESEARCH**

For many years, the researcher played an active role in ascertaining that prisoners were kept in safe custody until such time that they were lawfully released or removed from prison – a period during which the humane treatment and conditions of detention were playing an inferior role. The researcher has experienced events of the utmost inhumane treatment of offenders, as well as horrendous prison conditions. When looking back, the researcher realised that it was now time to give something back to those in prison, who deserve to be given an opportunity to prove themselves and abstain from crime. On the other hand, those against whom the community must be protected and who deserve to be detained in custody, must remain in detention for as long as is needful.

The author, Charlene Smith describes some of these conditions and methods of punishment which were meted out to prisoners, in her book “Robben Island, 1997:105–118). She refers to a situation where convicts were ordered by a certain Piet Kleynhans to dig

a big hole in the ground, into which a prisoner was forced. His whole body was covered with earth, except his head. Kleynhans ordered the prisoner to open his mouth, whereafter he (Kleynhans) urinated over the prisoner's head. The process was repeated by Kleynhans's brother Evert, while the other warders stood by, laughing. The prisoner was beaten while wresting his body from the earth.

"Carry on's" were frequently carried out, specifically after gang fights in communal cells. Warders armed with pick handles and batons used to form two rows, creating a "passage" through which the prisoners had to run, one after the other, while being severely beaten by the warders – to the extent that cells were practically covered with blood from floor to ceiling. The researcher is not aware of any one instance where medical treatment was given to those beaten up. Pick handles formed an official part of a warder's equipment and were issued on form G15 by the G.I Stores (currently referred to as Logistics). Equipment issued as such became the personal property of a warder, and he was kept responsible for the maintenance and safekeeping thereof. When a warder resigned, or left the services of the Department of Prisons for any other reason, equipment issued as such had to be handed back.

Another form of punishment which was applied to punish ill-discipline of prisoners working in the stone quarries was what could probably be referred to as "Robben Island's own stocks and pillory", described in chapter 3, paragraph 3.4. Two wooden poles were planted tightly next to each other (in juxtaposition) into the ground. A prisoner had to stand with his back against the one pole with his arms stretched backward and around both poles. His hands were then pulled together and cuffed behind the second pole. His arms were forced upward until he literally stood on his toes, where after wooden spacers were placed between the cuffs and the pole to maintain the stretched out position, both arms virtually parallel to the ground. Such a prisoner then had to stand for any length of time, while the cuffs, tightly applied around his wrists, caused them to become lacerated and swollen.

In chapter 2, paragraph 2, it was mentioned that the first cornerstones of the Cape Town Castle were mined and cut on Robben Island. Apart from the political prisoners (and, among others, the Rivonia group) who were working in the lime quarry, the bulk of prison labour was applied in the stone quarries where huge slabs of stone were mined

and chiselled down to smaller slabs with rectangular corners, with which the new prison was built. Prisoners were working under the most severe and inhumane conditions, while gang fights and serious assaults were common features of a working day's activities. In an effort to escape from these working conditions, prisoners resorted to self-inflicted injuries, such as cutting their Achilles tendons (in some instances one after the other), and on other occasions they pierced their feet with a garden fork.

The researcher himself, at the age of nineteen, was well acquainted with the Kleynhans brothers, and was either present or took part in these brutal ordeals under pressure and compulsion by the system. The author's description of prison conditions and treatment of prisoners is real, though it sounds like fiction, while exposing only the "ears of the hippopotamus". Finding himself unable to cope with those forms of utterly inhumane treatment of prisoners, the researcher opted to work night duty, and was assigned to the segregation section, where those convicted of high treason in the Rivonia trial, including Nelson Mandela and others, were being detained. In October 1965 the researcher joined the newly established dog section in the prison services, and after that spent time patrolling the Robben Island coastline with dogs, using the opportunity to elude that nightmare experience and to get away from those practices of the utmost inhumane treatment of prisoners. Those experiences confirmed the fact that the island gradually became a symbol of the denial of human and political rights, as discussed in chapter 2, page 3.

## **1.7 METHODOLOGY**

Due to the fact that this study comprised a documentary research with regard to the issues in question, the technique of data collection was primarily directed at various literary sources.

Circumstances, such as a moratorium placed on police statistics, compelled the researcher to incorporate a substantial number of secondary sources. These sources mostly comprised newspaper reports about the functioning of the police and crime statistics reported since 2007, keeping in mind the fact that secondary sources should be treated with a measure of caution. This was done in the spirit of what Johnson (1981:18) refers to as content analysis, a process during which literature is searched for content relevant to the subject. The researcher also applied his extensive knowledge and experience in the field as an

additional source of information, complementing existing sources relevant to the aspect under discussion.

Mouton and Marais (1990:77) refer to documentary resources as “the extensive collections of records, documents, library collections or mass media material that have been amassed. It would clearly also include well-known material such as census data, life statistics, ecological and demographic data, personal documents like diaries, autobiographies, letters and case studies”.

In continuation of this method of research, documentary studies of a variety of authors were consulted, in addition to dissertations and doctoral theses, reports by commissions of inquiry, annual reports by Correctional Services and the Judicial Inspectorate of Prisons, newspaper reports, the Criminal Procedure Act 55 of 1978, the Correctional Services Act 111 of 1998 and the White Paper on Corrections (2005).

## **1.8 PURPOSE AND OBJECTIVES OF THE STUDY**

Although thorough in-depth studies and research were conducted with regard to the implementation of correctional supervision as a sentence option in South Africa, very little has been done to evaluate the application of correctional supervision, the justifiability thereof as a measure towards the depopulation of correctional centres, and the viability of the reintegration process, together with the exposure of supervision cases to rehabilitation programmes and “in community” support.

This study was, firstly, directed at the various causes of overpopulation of correctional centres and subsequent poor prison conditions in the South African context, and secondly, to determine the role and effectiveness of correctional supervision as a sentence option and statutory means of combating overpopulation in correctional centres, as well as the progress made during the past eighteen years of its existence.

Salkind (2003:3) approaches research as a process through which knowledge is recovered. Quality research is based on the work of others, can be replicated, is generalisable to other settings, is based on logical rationale and is tied to theory, an apolitical activity that should be undertaken to the betterment of society.



## **1.9 LIMITATION OF THE STUDY**

Although the study is directed at the full magnitude of the respective phenomena as discussed, the references to aspects such as land reform and land restitution and the subsequent application of training and skills development of persons placed under probation are directed at the underprivileged – and mostly black – offenders sentenced to community-based sentences. With regard to land reform, it is relatively obvious that it would include those persons staying in the rural and agriculturally active areas where land reform is practiced and where small farming units are established within the vicinity of prison farms. It does, however, not exclude any other person or race group from participating, given the circumstances of such persons.

## **1.10 THE SIGNIFICANCE OF THE STUDY**

### **1.10.1 Importance of the research for the country**

The whole of South Africa – and the taxpayers in particular – can benefit from this study, in as far as the monetary saving for keeping offenders out of prison is concerned. Proper application of supervision and training, and assistance to probationers, will not only contribute to the safety of the community, but also benefit the labour market and land reform projects. On the other hand, it will enhance credibility of correctional supervision as a sentence option, with increased awareness and partnership by the community as a whole.

The outcome of this study will contribute to the solving of current problems, shortcomings and lack of skills experienced by Government in the field of land reform, and the establishment of viable farming entities to the benefit of the underprivileged and up-and-coming small farmers in areas where land restitution and land reform is practiced. The total scope of this study will only be completed when the role of correctional supervision in skills development towards the enhancement of land reform, has been researched.

Research is incremental. No one scientist is working in isolation, but one is inspired by another, and every contribution should be seen as a small part of a bigger whole. Every piece of research helps to put other findings in a better perspective (Salkind, 2003:5).

### **1.10.2 Importance for the Criminal Justice System**

The involvement of the Criminal Justice System (CJS) with the total concept of overcrowding of correctional centres will create better understanding of, and readiness to, participate in a national effort to find strategies to curb overpopulation in correctional centres. Active participation by the judiciary and the SAPS in the functioning of the correctional supervision and parole boards, as prescribed in section 74(5) of the Correctional Services Act, will establish a better understanding with regard to the release policies of the Department of Correctional Services. One of the major causes of overpopulation of correctional centres is the huge number of awaiting-trial prisoners who, after a certain period of detention in correctional centres, are released from court due to cases scrapped from the roll, cases withdrawn, etc. which is the result of a variety of causes and is indicated in the detention records of such prisoners as “not return from court”.

These cases present 199 058, 225 373 and 246 192 persons detained in 2003, 2004 and 2005 respectively (report of the inspecting judge for the period 1 April 2005 – 31 March 2006). This study was also directed at creating a higher level of confidence on the part of the judiciary in correctional supervision as a viable sentence option.

### **1.10.3 Importance for the Department of Correctional Services**

The purpose of this study was also to create a greater awareness by the Department of Correctional Services of the general stumbling blocks experienced in the striving towards the rehabilitation of offenders, as envisaged in the White Paper on Corrections, as discussed in chapter 5 of this study. These stumbling blocks, among others, refer to the negative impact of overpopulation on the current conditions within correctional centres. Parole boards, on the other hand, require a comprehensive social work report in respect of each prisoner who is to be considered for parole. This arrangement leaves social workers with hardly any time at all to deal with development programmes. The normal day-to-day administration of correctional centres also impacts negatively on the services rendered by service providers.

Another of aim of this study is to highlight the current situation with regard to the high rate of abscondence of probationers and parolees in the community corrections system, and to contribute towards the search for solutions in these problem areas.

## **1.11 AVAILABILITY AND RELIABILITY OF DATA**

Numerous sources of data have been consulted in pursuance of the research in this rather complex field of study. A variety of textbooks were consulted, together with reports on commissions of enquiry, fax transmissions by the Department of Correctional Services, Correctional Services orders, the Correctional Services Act, reports of the judicial inspectorate and Correctional Services, and various dissertations which contributed to insight into similar studies done, as well as a variety of media reports.

The majority of data available, with reference to the current functioning of the departments of justice and the SAPS, is data obtained from the media as secondary data. Some data was retrieved from reports from the judicial inspectorate, and obtained from the National Forum on Strategies to Curb Overpopulation in South African Correctional Centres. Police management has placed a total moratorium on the availability of crime statistics and related data. Media reports were basically the only source of information in this regard.

The researcher also experienced difficulties in obtaining literature, reports of commissions, and other books, from the library of the main campus of Unisa, as it proved to be a very dilatory process.

## **1.12 CHAPTER DIVISION**

The purpose of this dissertation was to research the origin and development of the South African prison services from the establishment thereof until its present state, as well as the conditions under which prisoners were detained. The role of correctional supervision was likewise investigated as an initiative based on the English and American system from which it originated, and also the current role it plays in overpopulation in South African correctional centres.

**CHAPTER 1:** An introduction and discussion of the background and the fundamental principles on which the research was based, is presented.

**CHAPTER 2:** The genesis of prisons in South Africa, the prevailing prison conditions, the application of treatment, or non-application thereof, and its influence on the present state of affairs in prisons, is explained.

**CHAPTER 3:** An historical evaluation of the English and American correctional supervision systems was conducted as a fundamental background on which the South African replica of correctional supervision was based, as well as the rationale of its development.

**CHAPTER 4:** Research and in-depth studies were conducted to determine the feasibility and suitable model of correctional supervision to be implemented in South Africa. The compilation of the statutory stipulations in the Prison Services Act 8 of 1959, as well as the amended version contained in the Correctional Services Act 111 of 1998, was clarified.

**CHAPTER 5:** This chapter comprises a thorough evaluation of the application of correctional supervision in South Africa, the viability of the system in terms of control and management of probationers within the system, and the level of abscondence from the system. The various shortcomings in the application of rehabilitation, as well as the problems and shortcomings with regard to the re-integration of probationers into the community are discussed.

**CHAPTER 6:** The conclusive chapter in this dissertation contains recommendations in respect of the problem areas discussed, and a general oversight of issues which require closer scrutiny by the Correctional Services authorities.

### **1.13 EXPLANATION OF KEY CONCEPTS**

- **Definition of community service sentence**

A “community service sentence” is an order by a court through which an offender is ordered to render one or other form of service to the benefit of the community. It entails a service being delivered to the community, which is beneficial to both the community and the offender.

- **Definition of community corrections**

“Community corrections” implies all non-custodial measures and forms of supervision applicable to persons who are subject to such measures and supervision in the community, and who are under the control of the Department of Correctional Services.

- **Definition of corrections**

According to Stinchcomb and Fox (1999:8), “corrections” is generally referred to as “custodial institutions”, due to its most visible physical structures, while Fox

(1985:1) describes it as being part of society's agencies of social control attempting to rehabilitate or control the deviant behaviour of criminals after being found guilty by a court.

- **Definition of prison**

“Prison” means any place established under the Correctional Services Act 111 of 1998 as a place for the reception, confinement, detention, training and treatment of persons liable to detention in custody or detention in placement under protective custody, as well as every place used as a police cell or lock-up.

- **Definition of prisoner**

“Prisoner” means any person, whether convicted or not, who is detained in custody in any prison, or who is being transferred in custody, or is en route from one prison to another prison.

- **Definition of parole**

“Parole” may be defined as the conditional release of the prisoner from prison or a reformatory, under certain prescribed conditions, after part of the sentence has been served. On violation of any these conditions, and on recommendation of the parole authority, the person so released is liable to be returned to prison.

- **Difference between parole and supervision**

Placement under “supervision” (probation) entails supervision over the offender without him being exposed to imprisonment, while “parole” is preceded by imprisonment where the offender has to serve a specific part of his sentence.

- **The Rivonia group**

This group of prisoners referred to were those who were trialled in the Rivonia high treason case. The group included prisoners such as Nelson Mandela, Walter Sisulu, Govan Mbeki (the father of former president Thabo Mbeki), Ahmad Kathrada, and others.

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## **CHAPTER 2**

### **HISTORICAL BACKGROUND OF THE SOUTH AFRICAN PRISON SYSTEM WITH REFERENCE TO OVERPOPULATION AND TREATMENT**

#### **2.1 INTRODUCTION**

Overpopulation of prisons is not an unfamiliar phenomenon or a post-apartheid occurrence. It is as old as the existence of prisons and has been reported on since the period prior to the unification of South Africa on 31 May 1910. During the period between 1809 and 1910, numerous complaints were lodged by means of letters and reports, regarding prison overpopulation. Some of the earliest statistics on the physical status of overpopulation of prisons in the Cape Colony were reported during the period 1845 and 1866 (Venter, 1959:38–39).

Overpopulation of prisons is also not a single way “infection”, and therefore not a phenomenon to be dealt with in isolation. Not only does it place enormous pressure upon the infrastructure of a prison, but it also exerts high levels of stress on personnel, due to excessive offender-personnel ratios, overload of work and extreme working conditions.

One of the most sought-after remedies for prison overcrowding is based on the objective of reformation or rehabilitation of the offender, which requires lengthy and in-depth classification – not only to diagnose, but to develop treatment programmes to fit the individual needs of an offender, and the application thereof (Roux, Willemse, May & Bezuidenhout, 1977:54).

The process of doing a proper assessment of each offender, to determine the individual needs of the offender and to develop suitable programmes, is very difficult to achieve. The shortage of professional personnel, and, in particular, social workers and psychologists, inevitably places a restriction on the amount of time – and the thoroughness – in which programmes are presented. In addition to this, even more pressure is exerted on social workers by virtue of the requirements that expert reports (with specific reference to social work and psychological reports) must be submitted in respect of every prisoner to be

considered by the parole board, in order to determine their progress since admittance to prison. These reports are of significant importance, as they contain information which was not known to the court during passing of sentence (S.C.S.O., B26.25.4).

During his term of service as assistant head of the Krugersdorp correctional centre during 2004 and 2005, the researcher was confronted by situations of severe overpopulation and utmost overcrowding in communal cells, where as many as 96 juvenile awaiting-trials were detained in a cell built for 34 people. The process of serving meals under these circumstances occupies most of the time between unlock and lock-up, as well as the presence of all available personnel, to the extent that hardly any time is left for other activities. The situation becomes even more challenging in respect of sentenced prisoners who are to be submitted to various development programmes, sporting and other leisure time activities. All these activities require staff to exercise control, facilities and continuous movement from one section to another, with accompanying high levels of noise and other disturbances.

## **2.2 DEVELOPMENTS PRIOR TO 1910**

Along with the occupation of the Cape by the Dutch in 1652, it became the possession of the Dutch East India Company, who also introduced the criminal procedures of Holland. Emphasis was placed on punishment inflicted on the body of the offender. Convicted offenders were executed by means of a firing squad, tortures and crucifixion after their limbs were broken and they were left to suffer a slow death (Van Zyl Smit, 1992:7). Corporal punishment was inflicted in South African prisons on numerous occasions. Although the procedure dictated that it had to be applied in isolation, it inevitably attracted the curiosity of a number of members who, one way or another managed to position themselves in such a manner as to be able to look on. The last occasion experienced by the researcher was at the Douglas prison in 1992.

The first ten convicts sentenced in the Cape were sent to Robben Island in 1614, to put up a victualling station at the suggestion of Sir Thomas Herbert, a British explorer. Initiated by the British, the island became a place of banishment. The ringleaders of an attempted mutiny were banned to Robben Island in 1636 by Hendrik Bouwer, a former governor general from Dutch East India (Van Zyl Smit, 1997:7–8).



The first cornerstones of the Cape Town Castle were cut on Robben Island and laid by Governor Zacharias Wagenaar on 22 January 1666 (Smith, 1997:9). The island became a convict station. In 1671, five Khoi prisoners were convicted of stealing sheep – three were sentenced to 15 years and two to 17 years on the island, after being flogged and branded. Although crime was not categorised, some offences were considered in a much more serious light than others.

In 1672, two soldiers were convicted of stealing vegetables. They were flogged and sent to work in irons for four months. Three years later, two slaves were convicted, also for stealing vegetables. Their ears were cut off and they were sent to Robben Island for life. Sodomy was considered to be the most serious crime of all. When Rijkhaart Jacobsz of Rotterdam was caught in an act of sodomy with Class Blank, a Khoi, they were thrown into the sea between Robben Island and the mainland, with heavy weights tied to them. Gradually the island “became entrenched as a symbol of the denial of human and political rights” (Smith, 1997:13–14). This statement underwrites the experiences of the researcher during his term of duty on Robben Island, as described in chapter 1, paragraph 1.6.

According to Van Zyl Smit (1992:7–8), offenders were detained in the Cape Town Castle while awaiting trial, by virtue of sections 15 and 16 of the notorious Ordinance on Criminal Procedure, proclaimed by Phillip II of Spain in 1570, in his capacity as ruler of the Netherlands, and were locked up in single segregated cells. Convicted prisoners were deported to Robben Island and other Dutch colonies in the East. Deportation was frequently combined with other cruel public punishments such as crucifixion, execution by means of firing squads, and torture. No other programmes for the development of offenders existed. The Dutch occupation of the Cape came to an end in 1795, together with a change in the approach towards a more moderate kind of punishment, proportionate to the crimes committed.

After the second occupation of the Cape by the British in 1806, incarceration for fixed periods of time became a favoured alternative of punishment to deportation. After the abolition of slavery, slave owners could turn their slaves over to magistrates, thereby entering a period where the state became actively involved in disciplining, and whereby placing severe restrictions on the power of slave owners to punish their slaves (Van Zyl Smit, 1992:9).

Together with the growing economy of the Cape, the demand for labour increased. The supply of slave labour could not match the demand, and the authorities had to apply other measures to ensure the supply of labour. According to Van Zyl Smit (1992:9), a proclamation was issued in 1809 to compel Khoi-Khoi inhabitants to work on farms, by making it illegal for them to move around without “passes” (a document, referred to as the “pass book” and almost similar in size and appearance to the identity books issued to whites, which identified the inhabitants of a specific demarcated area. The holder of the pass book could not freely move out of or into these demarcated areas without specific permission from local authorities). In 1823 the British sent a commission of inquiry to the Cape to investigate both the labour and penal systems. According to the report, published in 1828, the attempts to control labour were unsuccessful, while the pass system was greatly abused, and it was recommended that penal restrictions be abolished on the Khoi people and slaves, and the application of a more colour-blind approach towards control be carried out.

The local lock-ups became overcrowded by offenders of the pass laws, while the prison system was rather disorganised. Ordinance 50 of 1828 abolished the pass law system for Khoi-Khoi’s, and together with the abolishment of slavery in 1834, they became part of a multiracial group with the same legal values as European colonists. There was no classification system for prisoners, neither in terms of offences committed, nor on a racial basis (Van Zyl Smit, 1992:10). This effort could be seen as the first attempt towards the establishment of a democratic and non-racial penal environment in the history of South Africa, which took another 160 years before full realisation.

John Montagu, the colonial secretary of the Cape, was put in control of the penal system in 1843. While in Tasmania, he came in contact with Captain Machonochie, the superintendent of the Norfolk prison. According to Van Zyl Smit (1992:11), Montagu, under the influence of Machonochie, participated in drafting detailed rules along which the penal system should be organised. These rules contained guidelines for rehabilitation, and a classification system based on a point system for meritorious work and good conduct. Ordinance 7 of 1844 was enacted as a result of Montagu’s work, dealing with the “discipline and safe custody of convicts employed on the public roads”.

Many of the penal achievements in South Africa are based on Montagu’s approach, while the system of classification of prisoners is similar to that of today. In 1882 a gov-

ernment proclamation was adopted, by virtue of which the Kimberley prison became the first prison in the Cape to be “legally segregated along racial lines”. The De Beers Mining Company was the first non-state corporate entity to employ convicts on a regular basis, in 1885 (Van Zyl Smit, 1992:14–15). The labour force was supplemented by the prison. Many offenders, sentenced for violations of the pass law, spent time in the prison, which was the single biggest feeding source of labour to the De Beers mine. This practice inflated the prison population and was marked by the exploitation of prison labour at very low cost (Singh, 2004:71). “The role of the state as the provider of unskilled black labour for the mines through the penal system had become manifest” (Van Zyl Smit, 1992:15).

The first attempt to segregate prisoners on a racial basis was made during the 1880s, in which the mining sector played a significant role. During a session of the 1887 Cape Legislative Assembly, according to Van Zyl Smit (1992:17–18), Innes, who later became the second Chief Justice of the Union of South Africa, pointed out that the European (white) offenders were suffering severe degradation by being incarcerated with “the lowest of the lowest of prisoners” (referring to the black prisoners). In the conclusive remarks of a committee of inquiry, it was recommended that “there should be complete segregation of Europeans from the natives, both in gaols and convict stations” (the term **natives** referring to the black people incarcerated). This development completely overruled the previous efforts to bring about a non-racial and democratic dispensation in the early South African penal society. Unknowingly, Innes laid the cornerstone of apartheid.

Prior to 1910, each of the four provinces, the Cape, Natal, the Republic of the Orange Free State and the South African Republic (Transvaal), was functioning as an independent entity, each with its own prison system which was regulated by its own set of laws, regulations and rules (Roux et al.1977:20).

### **2.2.1 The Cape Colony**

Imprisonment in the early years of the Cape only became a reality with the completion of the Cape Fort and the Castle, and served mostly for the detention of awaiting-trial prisoners, judgment debtors and those condemned. During the period of the British occupation of the Cape, there was only one prison of which the system was strongly influenced by the English colonial secretary. Eventually this would influence the penal system of the Cape as a whole. The rapid growth of the prison population in the Cape

Colony was reflected in the fact that there were already 22 prisons outside Cape Town (Singh, 2004:72).

Between 1809 and 1910, numerous complaints were repeatedly lodged by means of letters, annual reports and presentations in parliament, with regard to overcrowding in generally too small prisons. During the period between 1845 and 1866, the prison population increased from 360 to 1710. Large numbers of prisoners were cramped up in communal cells, while it was reported that the existing accommodation had the capacity to accommodate 1 235 prisoners. It was wholly disproportionate to the average dimensions of the cells and prison accommodation in general. The following figures place the situation in perspective:

**Table 2.1:** Availability of prison accommodation against occupation

<b>Prison</b>	<b>Number of prisoners in detention</b>	<b>Cell capacity/size</b>
Grahamstown	20	12 feet square cell
Kimberley	90	20 by 26 feet cell
Cape Town	90	45 people
Burgersdorp	20 to 30	5 people

(Venter, 1959:38)

The magnitude of the overcrowding in the Burgersdorp prison can probably be best understood when comparing it with the official minimum norm per person in South African prisons of 3,44 m<sup>2</sup> accommodation. Twelve sq ft of space equals an area of 3,66 m<sup>2</sup>. To detain 90 people in an area of 6,1 m × 7,92 m, such as in the Kimberley prison, goes beyond any reasonable understanding.

### **2.2.1.1 Poor prison conditions**

During the mid-1800s, a member of the Legislative Authority expressed himself as follows: “It has long being a subject of public regret that prisons in this colony should be in such a wretched state”. The general term of reference to the prisons in the Cape Colony varies from “dirty”, “out of repair”, “defective state” and “den of filth” to “disreputable condition and a disgrace to [a] civilized community”. In the Kimberley prison, 600 prisoners had to wash before breakfast in only seven tubs filled by one “leading” (Venter, 1959:39–40).

While studying the history of South African prisons, the researcher became aware of two outstanding aspects. The first was the phenomenon of overcrowding, which has constantly been recorded since the beginning of 1800, and which is, until today, the motivation behind this and numerous other studies.

The second was the appalling conditions under which people were detained – conditions which were created by the huge number of people sentenced for rather petty violations. Facilities for detention were neglected, either due to lack of interest by the respective authorities, the non-existence of proper information and administration, or “slow to react” governments.

### **2.2.1.2 Reform measures**

The approach towards reform was strongly emphasised in Ordinance 8 of 1843, authorising the “padkamp” (road camp) system. The superintendent of the camp had to, apart from his other functions, mingle freely with the prisoners under his control. During his interaction with individual prisoners, he “will not fail to inculcate incidentally such truths and maxims as are most likely to contribute in each case to generate and arouse moral feelings, and leading to the right apprehension of guilt”. He also had to gain as much knowledge as possible of those under his control, and specifically with regard to the reasons for committing crime, in order to apply corrective measures. The personnel were orientated to avoid any form of harshness or severity in the treatment of convicts (Venter, 1959:54).

### **2.2.2 The Province of Natal**

Initially, two prisons were established in Natal: one in Pietermaritzburg, which was built by the Voortrekkers, and a “low cottage” which was rented in Durban in 1847. The first legislation regarding the prison system was only passed in 1862. A commission of inquiry was appointed, which resulted in new legislation in 1868 (Van Zyl Smit, 1992:17–18).

According to returns by the chief warders in 1907, it was indicated that the daily average number of prisoners in custody was 2 669, considering a total of 177 detention cells in which 2 490 prisoners could be detained without endangering health conditions. According to Van Zyl Smit (1992:18), this actually portrayed a rather unhealthy situation. It was only after the situation in each of the respective prisons was analysed, that this favourable perception drastically changed, exposing the following realities:

**Table 2.2:** State of overcrowding in Natal prisons

<b>Prison</b>	<b>Number of prisoners in detention</b>	<b>Cell capacity/size</b>
Durban	735	600
Pietermaritzburg	617	350
Ladysmith	179	60
Stanger	237	42
Wenen	270	102

(Venter, 1959:67)

The situation regarding overpopulation in Natal prisons was as critical as in the Cape Colony. The figures with regard to Stanger imply that 5,6 persons were detained in the space provided for only one person. The Ladysmith prison provided accommodation for 60 persons, while 179 were detained; 3 persons were locked up in the space meant for only one person. No indication exists or could be traced that any effort was made to manage the overpopulation. This could have been done by moving prisoners from the most critically overpopulated prison to one less overpopulated; instead, a rather healthy general state of prison conditions was reported. It is, however, common practice in South African prisons to equalise the levels of overpopulation by transferring prisoners between prisons in the same region – and even in other regions, if need be.

### **2.2.2.1 Prison conditions**

In 1868, a Durban magistrate complained about the lack of toilet facilities and the absence of baths in the recently completed prison. Only one bath was installed in the Pietermaritzburg prison, in which white prisoners could bath twice a week and black prisoners only once a week. All bathed in the same water, with the black prisoners bathing just after the whites had had their bath. It took 16 hours to fill the bath. General comments regarding prison conditions ranged from “altogether abominable”, “water in tank tested and reported unfit for human consumption”, “lean to against the wall provides an easy means of escape” and “the atmosphere throughout the gaol unspeakable” (Venter, 1959:67).

Singh (2004:73) refers to the prison conditions as “deleterious and unhygienic, prisons were overcrowded and there were fundamental shortcomings”.

### **2.2.2.2 Measures of reform**

During the 19th century and the beginning of the 20th century, the necessity for reformation of prisoners was continuously emphasised. Due to shortcomings in the existing prison system, and aspects such as punishment as a deterrent for crime, the application of forced discipline, and the absence of scientific knowledge regarding crime and treatment, reformation was a rather unachievable prospect. In 1907 it was recommended that juvenile offenders be treated by means of hypnosis. Not only was it much cheaper, but excellent results had been achieved in France and Germany. First offenders should be kept out of prison, and their treatment be dealt with by probation officers who should be appointed without hesitation. However, when the Union of South Africa came into being in 1910, these suggestions never materialised (Venter, 1959:79–80).

### **2.2.3 The Republic of the Orange Free State**

Information regarding the situation in the two “Boer” republics (the South African Republic and, in particular, the Republic of the Orange Free State), was basically non-existent, due to the following reasons:

The influence of the Dutch and the English in the Cape Colony and Natal, respectively, benefitted the collection of statistics and the administration in general. The development of the prison system and improvement of prison conditions hardly received any attention, due to the internal unrest between the Boers (the white farmers) and the local black population, and the time and effort spent on farm security. In addition to this, diamonds were discovered within the western border of the Republic (this refers to the De Beers mine in Kimberley which is situated on the western border). The discovery of gold on the Reef in the South African Republic, as well as the high level of poverty which prevailed within the two republics, also contributed to the drainage of governmental resources (Venter, 1959:82–83).

It should be kept in mind that diamonds were discovered in Kimberley, as discussed in paragraph 2 on page 26, and that pass laws were implemented to restrict the movement of blacks, as a means of providing ample labour to the De Beers diamond mines. Unrest between the Boers and the local black population, as well as the discovery of gold on the Reef, would also contribute significantly to the prison population. Yet again, the

development of prisons and prison conditions inevitably suffered, due to the focus on farm security, together with a general state of poverty as a result of the second South African War (Boer War) which began on 18 October 1899 and ended on 31 May 1902 (Researcher's note).

### **2.2.3.1 Insufficient facilities**

The cell of the female prisoners in the Bloemfontein prison was enclosed by a small courtyard, the surface of which was covered by sand. It was the only available facility for them to exercise, but due to the absence of toilet facilities, the women had to use the courtyard as a toilet as well, where after they had to cover the excrement with sand. Apart from the severe stench, it posed an extreme health risk. Barend Johannes Pretorius, a merchandiser who visited Windburg, was arrested for spreading inflammatory pamphlets and was detained for one night. He recalled his experience as “te verschrikkelijk om te verhalen, omring, bekropen en als het waren opgeeten van luizen en andere ongedierten”. He had to sleep “op den grond aan de onophoudelijke aanvallen van de gedierten blootgesteld.” (His experience was too awful to tell, surrounded, cramped up and almost devoured by lice and other creatures. He had to sleep on the ground, exposed to ongoing attacks by these creatures) (Venter, 1959:88).

### **2.2.4 The South African Republic**

As in the case of the Republic of the Orange Free State, no information or statistics were kept in regard to the prison population. Although annual reports only once referred to the fact that a certain prison was too small to accommodate the number of prisoners, the general status of overpopulation could not be determined.

In 1878 a total of 739 prisoners were detained, which figure increased to 7 646 European (white) and 20 409 non-European (black, coloured and Indian) prisoners, as well as a total of 525 females, making a total number of 28 578 prisoners in detention. It does, however, remain a question whether facilities for detention would have increased in comparison (Venter, 1959:109).

The prison systems in both the Orange Free State and the Transvaal were regulated by a set of provincial ordinances; however, the penal systems in these two provinces were substantially re-organised, due to the British occupation of both the Free State and Transvaal



provinces in 1900. The prison population was severely inflated as a result of transgressions of pass laws which were implemented supplementary to the supply of labour to the mines (Department of Correctional Services Draft Green Paper, 2003).

#### **2.2.4.1 Prison conditions**

On 4 March 1873, the magistrate of Potchefstroom indicated that continuous disturbances occurred due to the bad conditions of the prison, and required twice as many personnel to cope with the situation (Venter, 1959:110).

The report by a commission of inquiry into conditions in the Johannesburg Fort, the major prison in the Transvaal, stated that they were inadequate, and that the system as a whole required being overhauled (Van Zyl Smit, 1992:20).

#### **2.2.4.2 Treatment of prisoners**

Members of the House of Assembly were under the impression that life in prison was reasonably comfortable, resulting in their call for more serious penalties and more unpleasant treatment. This belief could apparently be ascribed to the fact that complaints from prisoners either never reached them, or were not reported on in the press. Overpopulation was, however, a cause of great concern to the government. The number of prisoners increased from 1 786 in 1902 to 6 000 (or 335,9%) in 1909. According to the attorney-general, the situation was caused by the influx of criminals into the country after the war (obviously referring to the Boer War) (Venter, 1959:122).

In 1908, Jacob de Villiers Roos, who was not only well informed about penological development internationally, but also well established among the Afrikaner political elite, was appointed as Director of Prisons. He drafted legislation which became law in 1909, which made provision for indeterminate sentences for persons declared as habitual criminals, by the court (Van Zyl Smit, 1992:20).

The essential ingredients for the new reformatory system were, among others, that no person, irrespective of record or age, should be considered as being incapable of improvement. It was also in the interests of the community that sentences imposed should accommodate the reformation of prisoners. Through physical development and work, the prisoner could be enabled to gain a livelihood in the future. The reformatory system

should be focused on long-term sentences and provide for a system for release on parole under suitable supervision of a board (Singh, 2004:79).

## **2.3 DEVELOPMENT OF THE PRISON SYSTEM SINCE 1910**

Little mention is made of the situation with regard to overpopulation immediately after unification. Although the four provinces were incorporated into the unified prison system on 31 May 1910, and the fact that the Department of Prisons started to function as an independent entity, it had no apparent impact on prison conditions and overpopulation.

The increasing industrial development in South Africa resulted in an influx of people to the cities. Simultaneously, it contributed to an increase in criminal activities and the subsequent concentration of convicted prisoners in the existing prisons, which rather speedily became overcrowded. The prison population increased from 13 564 in 1913 to 31 903 in 1952, an increase of 18 339 prisoners (or 235,2%) over a period of 39 years. Although it might not portray a critical rate of increase, it should be seen against a background of a backlog in erecting new prisons, which was caused by the depression of 1933 and World War II. Gradually, the situation in prisons became unbearable (Venter, 1959:152).

### **2.3.1 Political and administrative development of the Department of Prisons**

With the establishment of the Union of South Africa, a united prison system came into being. During that stage, the Department of Prisons was a sub-department of the Department of Justice and was subsequently placed under the control of the Minister of Justice. Despite the political position of the Department of Prisons, it was already functioning autonomously by virtue of the promulgation of the “Wet op Gevangnisse en Verbetergestigten, 1911 (Act 13 of 1911). The promulgation of this Act gave rise to the formulation of tasks, goals and functions of the Department (Roux et al., 1977:20).

The Department of Prisons was also responsible for, and had control of, industrial schools and reform institutions for youths and “young adults” who were referred to the Department by Union Education. In 1927 all the labour colonies were transferred to the Department of Labour, which, in turn, became the responsibility of the Department of “Volkswelsyn” (people’s welfare). The essence of the reform programmes was directed

at the education, training, development and disciplining of prisoners, the provision of “healthy” literature, and the inculcation of religious and moral values and principles of the respective categories of detainees (Roux et al., 1977:20).

Provision was also made for the implementation of boards of supervision, with regard to long-term prisoners with determined and undetermined sentences of imprisonment. The purpose of these boards was to determine the appropriate time of release of prisoners, either on parole or probation. On 31 May 1910 there were 292 institutions of detention, with a total of 2 811 personnel. The restructuring process of 1911 led to the minimising of the number of personnel by 401, and the detention institutions by 79, while there were 12 805 prisoners in detention.

In 1936 all existing prisons were divided into nine prison commands, while all the country prisons resorted under the residential magistrates. On 1 November 1956 all prisons were divided into the respective prison commands (Du Pre, as quoted by Roux et al., 1977:21).

Due to the lack of development opportunities, suitable personnel were hard to be found and maintained. In 1955 all public service personnel were converted into service posts, referring to their allocation to the uniformed departments such as the Department of Defence and the South African Police. Together, these three departments were known as the South African Forces. The outcome of this development resulted in the South African Prison Services becoming the only prison department in the world to be based on a semi-military foundation (Du Pre, as quoted by Roux et al., 1977:22–23).

## **2.4 APPOINTMENT OF THE COMMISSION ON PUNISHMENT AND REFORM**

A significant development took place in 1945, with the appointment of the Commission on Punishment and Prison Reform, known as the Landsdown Commission, which, among others, investigated the organisation of the Department of Prisons. Due to the increase in recidivism (those who relapse into crime, as well as the fact that the occurrence of crime continuously increases), the necessity of a commission of inquiry into the crime situation became apparent. On 21 April 1941 the Senate adopted a motion to appoint such a commission. Although the Minister of Justice in principle agreed to the suggestion, it was not implemented because of the demanding circumstances of the war.

With unification, the Department of Prisons was organised in terms of Article 3(1) of the “Wet op Gevangnisse en Verbetergestichten” (Act 13 of 1911) which stipulated that there must be a Department of Prisons under the management of the Director of Prisons appointed by the Governor-General. During the period between unification and 1918, the positions of Secretary of Justice and of Director of Prisons were vested in one person. The two departments were both placed under the administration of the Minister of Justice, although they were administered separately.

As a result of the investigations of the Landsdown Commission and the additional tasks and responsibilities ensuing from it, the commission recommended that the Department be controlled by a director who was not entrusted with the portfolio of Secretary of Justice as well (Landsdown Report, 1947;109).

## **2.5 EARLY STAGES OF PROBATION IN SOUTH AFRICA**

The first evidence of the application of probation officials in South Africa was found in a system of voluntary probation that had been undertaken by the “Vereniging tot hulp aan gevangnisse”. The promulgation of the “Wet op Gevangnissen en Verbetergestichting” (1911) had authorised, by strength of Article 88, that regulations be drawn up to provide for the conditional release of prisoners. These regulations were announced by Government Notice 527 of 1913, and prescribed the functions in regard to persons whose sentences were suspended, those to be released conditionally, as well as juveniles and children.

The “Kriminele Rechtspleging Wet” (Wet 40 of 1914) provided for the suspension or postponement of sentences, and regulation of probation as a condition for suspended sentences. Articles 359 and 360 of Act 13 of 1917 made provision for the suspension of sentences and the placement of the offender under the supervision of a probation officer. Sentences might be suspended by the court, where reasonable grounds existed that it would be to the benefit of the offender’s rehabilitation and his dependants (Landsdown Report, 1947:159).

### **2.5.1 Suggested conditions for probationers**

The commission also recommended a number of conditions to which a probationer had to adhere:

- To report to the probation officer as stipulated by the court or probation officer;
- May not leave the area as indicated by the court;
- Immediately inform the probation officer of change of address;
- Must report to the probation officer in writing or verbally on the first day of each month;
- May not obtain any alcoholic beverages from, or enter a place such as a bar where such drinks are sold;
- May not use any alcohol;
- May not socialise with criminals or persons with a bad reputation;
- Must behave properly at all times;
- Must work diligently for himself and his employer;
- Allow the probation officer to receive and spend any salary or money he earns;
- Must answer all questions posed to him by the probation officer, in a truthful manner;
- Must not commit any offences;
- Must consult and follow the advice of the probation officer as his best friend;
- Must conscientiously adhere to all the conditions set to him (Landsdown Report, 1947:160).

### **2.5.2 Characteristics of the probation system**

The essence of probation as a community-based sentence is to keep the offender out of prison while the safety of the community is maintained. Due to the fact that probation is a sentence in its own right, it compels the authorities to maintain control over the offender by virtue of conditions set by the court. The probationer is protected against the stigma of imprisonment, while the community also benefits from a cost-effective sentence option, which simultaneously alleviates the pressure of large numbers of short-term prisoners inside the prison (Landsdown Report, 1947:161).

Soon after the publication of the Landsdown report in 1947, the United Party, which had appointed the commission, was replaced by the National Party as governing party of the Union of South Africa. The recommendations made by the commission were ignored by the newly-instituted National Party. This resulted in a process of stagnation in the South African penal system. A variety of ill-considered systems of obligatory and discriminative sentences were implemented, which has drawn severe criticism from international roleplayers (Gerber, 1995:73).

Van Zyl Smit (1992:30) refers to this aspect, stating that “if the United Party government had been unsympathetic, the National Party government which came into power in 1948 was positively hostile to the general approach adopted by the commission”.

The remarks of Gerber and Van Zyl Smit, above, succeeded in underlining the fact that on some occasions conditions in South African prisons were ignored or rewarded low priority status for the sake of politics and other by-motives. Prisoners and prison conditions were, literally, left behind, which subsequently did not promote prison reform but, instead, paved the way towards an ongoing state of overpopulated prisons (Researcher).

## **2.6 THE STANDARD MINIMUM RULES**

The most significant development on an international level to impact on the South African Prison Services was the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, presented in Geneva from 22 August to 2 September 1955. A number of resolutions were adopted, directed at the management of prisons globally, such as:

- the composition of the Standard Minimum Rules for the treatment of offenders;
- norms for the selection and training of prison personnel;
- the establishment of open prisons;
- prison labour;
- the prevention of juvenile criminality;
- technical assistance in crime prevention and the treatment of offenders.

South Africa underwrote these rules and was challenged to accept the newly adopted philosophy for the treatment of offenders, with consideration for the local circumstances. This contributed to the replacement of the original “Wet op Gevangenis en Verbetergestigten” (1911) with the new Prisons Act 8 of 1959 and regulations promulgated accordingly. The new Act made ample provision for the international school of thought regarding the treatment of offenders. The emphasis had now been placed on detention and reform or rehabilitation, instead of retribution and punishment (Roux et al., 1977:23–24).

## **2.7 OVERCROWDING: DEVELOPMENTS DURING THE 1970s**

The phenomenon of overpopulation in South African prisons has existed since the early 1800s and it does appear to be a chronic and ever-ongoing phenomenon, without remedy,

and which can be neither maintained nor controlled. Singh (2004:94) also expresses herself with regard to the phenomenon of overcrowding, as not being a new problem, but one of an ongoing nature, inherited from the past. The period of the 1970s was no exception to this rule; however, it was marked by a number of interesting and far-reaching developments, with enormous impact on the future of the prison system.

On 11 December 1967, the Commissioner of Prisons submitted a memorandum to the Minister, informing him that farmers were urging the necessity that remission of sentence not be given to prisoners sentenced for stock theft, neither should they be released on parole, but have to serve their sentences in full.

The recommendation of the Commissioner was approved by the Minister on 12 December 1967 by means of General Circular 19 of 22 December 1967, stipulating that no remission of sentence would be awarded to prisoners sentenced in terms of the Act on Stock Theft 57 of 1959, neither would they be released on parole. In the case of theft of small numbers of poultry, or any other deserving circumstances, it had to be referred to the Commissioner for approval.

With effect from 1 January 1972, remission of sentence was again being awarded to prisoners sentenced to determinate sentences for stock theft. This category of prisoners, as well as those sentenced to determinate sentences for crimes in connection with game preservation, could not be released on parole, however.

On 1 December 1971, the Commissioner pointed out that those prisoners sentenced to imprisonment for correctional training, prevention of crime, and also those sentenced as habitual criminals, could be considered for parole after completion of 2 years, 5 years and 7 years of their sentences, respectively (Bothma, 1995:177–178).

### **2.7.1 Release on parole: Board prisoners**

During the course of 1972, remission of sentence with regard to prisoners sentenced to determinate sentences was still being awarded on the basis of the following guidelines:

- One-third remission for prisoners sentenced to six months imprisonment;
- One-quarter remission for prisoners sentenced between six months and two years imprisonment, as well as to first offenders sentenced to more than two years imprisonment;
- One-eighth remission for recidivists sentenced to more than two years imprisonment.

Prisoners sentenced to imprisonment for corrective training and prevention of crime, (four years and eight years respectively) were placed out on parole until their sentence expiry dates. Prisoners sentenced to life sentences and habitual criminals were placed out on parole for a period of three years, irrespective of amnesty granted (Bothma, 1995:178–179).

### **2.7.2 New measures: Granting of remission**

On 23 January 1975, in line with many previous amendments in policies regarding amnesty, yet another new policy was implemented, ruling the grant of amnesty:

- One-third remission to prisoners sentenced to less than two years imprisonment;
- To prisoners with determined sentences of longer than two years –
  - one-third remission to first offenders;
  - one-quarter remission to prisoners with previous convictions.

On 13 May 1976, the Commissioner of Correctional Services issued a stipulation that any prisoner sentenced to imprisonment due to his refusal to give evidence, would not be granted amnesty (Bothma, 1995:180–181).

### **2.7.3 Remission of sentence and parole: Offences of currency laws**

The Minister of Prisons decided that no amnesty would be granted to prisoners sentenced to violation of currency control regulations, neither would they be considered for parole. This decision was taken per memorandum dated 8 August 1977. On 4 July 1978, in addition to the above, the Minister decided that prisoners sentenced for fraud, theft, falsification, or any other crime committed with the intention to violate the currency control regulations, would not be considered for any remission of sentence or parole. On 14 June 1979, the Minister of Prisons, on recommendation of the Commissioner of Prisons, approved that remission of sentence and consideration for release on parole is awarded for the above category of prisoners. All such applications for remission of sentence or release on parole were to be submitted to the Commissioner for consideration (Bothma, 1995:181).

### **2.7.4 Appointment of the Commission of Inquiry into the Penal System of the Republic of South Africa**

The Commission of Inquiry to the Penal System of the Republic of South Africa, the Viljoen Commission, was nominated on 30 September 1976 to investigate the punitive



system of the Republic of South Africa and to make recommendations on the improvement thereof. Nomination of the commission was announced by means of Government Notice 1854 of 18 October 1976. The first session of the committee took place on 30 October 1974, during which the instructions to the commission were discussed, decisions were formulated in respect of the procedures to be followed, and a list of persons and institutions compiled, to be invited to make inputs to the commission (Viljoen Report, 1976:1).

#### **2.7.4.1 Reasons for nomination of the commission**

At the time of its nomination, the Viljoen Commission was aware of the fact that the South African punitive system needed to be investigated on a broad basis, and in a advantageous manner, due to the continuously changing circumstances and new knowledge which had become available since the last comprehensive report on penal reform compiled by the Landsdown Commission in 1947. The commission was also of the opinion that the critically high prison population of the republic had contributed in precipitating the course of events. Not only was it an issue of concern to the general public, but also to the government of South Africa.

For this reason, the commission would pay specific attention to the causes of this very unhealthy situation, in its endeavour to find solutions and come forth with suggestions towards the alleviation of the situation. The high prison population had to be seen as a symptom of an unhealthy situation in South African society. Before a diagnosis could be made and steps towards recovery could be taken, the origin of the problem should be investigated, in order to determine the seriousness thereof (Viljoen Report, 1976:3).

## **2.8 THE PERIOD BETWEEN 1980 AND 1990**

The seminar on overpopulation of prisons, held in Pretoria on 25 and 26 June 1981, was preceded by the announcement of special remission of sentence to commemorate twenty years of existence of the Republic of South Africa, in terms of Article 69(1) of the Prisons Act (1959), by virtue of which amnesty was granted to all categories of prisoners who were sentenced before, and in custody on, 31 May 1981, inclusive of those in police cells, police lock-ups, psychiatric hospitals and private hospitals. It also included all persons sentenced before 31 May 1981 and who were admitted to prison after this date for serving of their

sentences, those detained in farming colonies and those sentenced to periodic imprisonment, irrespective of their being in prison or not (Bothma, 1995:110–113).

### **2.8.1 The first seminar on overpopulation of prisons**

Another event of significance was the first ever seminar on overpopulation of prisons in South Africa, held on 25 and 26 June 1981 in Pretoria, as an initiative of the Department of Justice. This seminar was attended mostly by senior representatives of the departments of Justice, Prison Services, the South African Police and academics. The seminar was the outcome of a work group established by the Minister of Justice with the purpose of investigating and exploring the state of overpopulation in South African prisons, with a much more informal approach than in the case of previous commissions. The work group consisted, among others, of two permanent members – Lieutenant-General M.J. May from the Department of Prisons and Dr J.A. Van S. d'Oliviera from the Department of Justice, under the chairmanship of W.F. Krugel, president of the regional court (Gerber, 1995:97).

In his opening address to the conference, the Honourable Minister of Justice, Mr. H.J. Coetsee (*Notule van seminaar*, 1981:2), referred to the fact that overpopulation of prisons was not an occurrence unique to South Africa. Evidence indicated that it was a problem similar to what is experienced in other countries. He referred to a report in a well-known newspaper, dated 8 June 1981, under the heading “The prison nightmare”, reflecting the situation in American prisons:

A crisis of overcrowding spawns riots and meaner convicts. The circle is not only vicious, it breeds violence. As crime rates rise, the state regulators react by passing stiff laws requiring longer minimum prison sentences. Result: more prisoners stay longer in prisons that are already crammed well past their planned capacity. Tensions rise as up to five men crowd into one-man cubicles. Gang rule prevails, as the toughest convicts abuse and torment the meek or nonviolent. And guards and undermanned correcting staff fear to intervene. When an inmate is finally freed, he is equipped for only one thing: to survive in the ways of the walled jungle. More often than not, he returns to a life of crime.

The highest daily average prison population in existence in South African prisons was recorded at the end of February 1981, when 104 622 prisoners were being detained. The prison population had increased by 6 525 between January 1979 and April 1981 – an increase of 233 prisoners per month – which was mostly brought about due to an increase in the number of prisoners sentenced to imprisonment for periods longer than two years (*Notule van seminaar*, 1981:4).

The following conclusions can be drawn from this position:

The standard minimum norm for accommodation was 3 344 m<sup>2</sup> per person for normal accommodation, and 4 456 m<sup>2</sup> for hospital accommodation. Based on these norms, the Department of Prisons had official accommodation for 70 600 prisoners, while there were 104 622 in custody at the end of February 1981. According to the above norms, prisons were overcrowded by 48%.

Overcrowding was mostly restricted to general accommodation, and particularly with regard to non-European prisoners (coloured, Indian and black prisoners). Approximately 94 650 prisoners were detained in space provided for only 58 392 – an average of 62% overpopulation.

Some prisons were between 250% and 400% overpopulated, while 46 out of 242 prisons were overcrowded by 200% at the end of February 1981. Another 32 female prisons were less than 100% occupied, indicative of a decline in female prisoners.

Overpopulation was a phenomenon which particularly occurred in prisons for coloured, Indian and black prisoners. Statistics showed that the ratio between black and white prisoners was 5:1, between coloureds and whites – 9,5:1, and between coloureds and blacks – 2:1.

The prison population decreased by 13 000, however, due to prisoners who were released immediately, as a result of the announcement of amnesty granted as part of the 20th anniversary of the Republic of South Africa on 31 May 1981. Given the growth rate of the prison population proportionate to the growth of the general population, it was projected that the prison population would grow to 170 000 by the year 2000 (*Notule van seminaar*, 1981: 4–5).

Based on the above projection, additional accommodation needed to be provided for another 100 000 prisoners, which at the then current building costs would not provide solutions to overpopulation. To eliminate the backlog, the following would have been needed:

- Elimination of backlog of 32 418 prisoners = R324 000 000
- Replacement of 32 obsolete prisons = R 88 000 000
- Total amount needed = R412 000 000

In addition to this, another R589 000 000 would have been needed to erect accommodation for the projected increase in the prison population of 58 886 prisoners towards the year 2000. The total budget required added up to R1 001 000 000, i.e. R50 000 000 per annum for the next 20 years. To understand the magnitude of this option, it should be seen against the background of the calculated cost of building a 600-type prison, applicable at the time of the conference;

- Erected by the Department of Prisons = R1 482,00 per unit;
- Erected by private contractors = R7 390,00 per unit.

This calculation does not include the cost for personnel accommodation or any other costs (*Notule van seminaar*, 1981:5).

After having studied the minutes of the seminar, the researcher came to the following conclusions:

One of the main reasons for the appointment of the Viljoen Commission was because of the alarmingly high prison population of the Republic of South Africa, a phenomenon which caused wide-ranging concern. For this reason the committee agreed to pay considerable attention to the causes thereof and to endeavour to find appropriate solutions, and to make suitable recommendations towards the improvement and alleviation of the situation of overpopulation of prisons (Viljoen Report, 1976:3).

The commission deliberated extensively, and made a number of far-reaching recommendations on what could be referred to as the most challenging alternative to imprisonment – namely, “placement under probation” of offenders (Viljoen Report, 1976:119–125).

During the course of the 1981 seminar, various speakers referred on no less than six occasions to the findings of the Viljoen Commission, yet no mention was made of placing prisoners under probation, and neither was it considered as a means of alleviating over-population (*Notule van seminaar*, 1981:6, 9, 15, 17, 18 & 29).

One discussion group, however, considered community service as a “lastige perdjie” (a troublesome little horse) which would require a magic formula. Community service had been discussed on numerous occasions in the past and efforts should have been made to do research, in order to draw up an Act similar to the English Community Services Act. An article in this regard had been published in *The Landdros* a few years previously, and there was nothing more that the group could do in regard to community services (*Notule van seminaar*, 1981:31).

It is obvious that during the four years after the report of the Viljoen Commission was published, nothing was done towards the implementation of the recommendations made, and that community service as such received no attention from the Department of Prisons, the Department of Justice or the government. In his presentation at the seminar, Mr Krugel (Viljoen Report, 1981:8–9) expressed himself as follows in regard to the distribution of the report:

The report and recommendations of the Viljoen commission did not receive the deserved attention. In a number of offices copies of the report could not be found. In other instances the report was just superficially scanned by sentencing officials when it was distributed in March 1977. We deemed it necessary to make available copies of the report at the seminar in which the most important recommendations of the commission are discussed with an indication to what extent it is implemented.

It took another eleven years, following this seminar, for correctional supervision as a sentence (option) to be promulgated and implemented, eventually with effect from 1 March 1992, fifteen years after the recommendations made by the Viljoen Commission.

When reading the above conclusion, it is not at all surprising that the Viljoen Commission expressed an opinion that, in spite of the fact that some improvements might be effected by virtue of this report, no drastic decline in the prison population of the

Republic of South Africa should be expected, unless sentencing officials, who first and foremost think of imprisonment when considering a suitable sentence, deviate from this hackneyed line of thought. The commission also expressed itself as follows:

Die kommissie besef dat daar vele praktiese probleme is om die soeke na alternatiewe vir gevangenisstraf te oorkom, maar huldig die standpunt dat indien vonnisopleggende beamptes nie bereid sou wees om 'n mate van oorspronklikheid aan die dag te lê en van die uitgetrapte weg van vonnisse van gevangenisstraf af te wyk en om nuwe wêe van meer verligte vonnisoplegging te verken nie, die vonnisfunksie die stagnante en verbeeldinglose wat dit tans is, sal bly, die republiek se gevangenis oorbekvolk sal bly en die gemeenskap 'n groot verlies sal ly deur 'n oes ongerihabiliteerde, ont-nugterde en verbitterde oortreders sal maai (Viljoen Report, 1976:111).

The question, based on this evidence, could well be asked, to what extent the lack of interest and drive of the relevant state departments, and government, contributed to the high levels of overpopulation, which compelled the Department of Justice to stage a seminar of this magnitude. The most significant outcome of this seminar seems to be the fact that the actual mandate and purpose of the Viljoen Commission never materialised.

## **2.8.2 The Krugel work group**

On 19 September 1983, the director of the Department of Justice directed the inter-departmental work group on community service as follows:

To investigate community service as an alternative dispensation in the South African criminal procedure and the formulation of recommendations, infrastructure and procedural guidelines towards the implementation of community service orders as a viable punishment option.

The approach of the work group was to evaluate the possibility of community service as a sentence option as a contributive instrument to alleviate prison overcrowding. Recommendations were subsequently submitted with regard to the creation of infrastructure for community service, the amendment of legislation with specific reference to a clear definition of community service, the period of community service, and statutory provisions regarding liability in the event of damage or injury.

This led to the adoption of provisions regarding community service in the Criminal Procedure Amendment Act 33 of 1986.

Further provision was made in the act in connection to the performance of community service as a condition to the postponement of sentences or the suspension of a sentence, to provide for the liability of the state for patrimonial loss arising from community service. Here the intention of the legislator was that community service will be an alternative to short term imprisonment.

From this, the following objectives were identified:

Provision was also made for the performance without remuneration, and outside the prison, of some service to the benefit of the community, under supervision or control of an organisation or institution which, or person who, in the opinion of the court, promotes the interest of the community (referred to as community service).

Another section was inserted, stating that:

A condition relating to the performance of community service shall only be imposed if the person concerned is 15 years old, and for the performance of that service for a period of not less than 50 hours (Avery, 1987:63–67).

### **2.8.3 Some realities about overcrowding**

Statistics have shown that the South African prison population, in comparison to other countries, is one of the highest in the world. In November 1990 there were 357 persons per 100 000 of the general population in South African prisons, compared to 42 per 100 000 in the Sudan, 71 per 100 000 in France, and 96 and 426 per 100 000 in England and America, respectively, while the cost of detention of one prisoner per annum in South Africa amounted to R6 860.

The prison population remained at very high levels, despite all previous endeavours to bring it down to a more manageable situation. On 17 April 1990 the Commissioner of Prisons announced that the Cabinet had approved the advancement of all conditionally approved dates of release by three months, whether on parole or probation, of all prisoners who were sentenced for economically-related and other non-violent crimes and whose

dates of release were already approved until 30 March 1990 (Voorwaardelike vrylating van gevangenes, 1/8/B: 1990-04-17).

As a token of benevolence, the Commissioner of Prisons announced a further grant of six months' amnesty on 3 December 1990, which was approved by Cabinet on 28 November 1990. The minimum period of detention of prisoners sentenced to life imprisonment, habitual criminals, and correctional training and prevention of crime was advanced by six months, and they could only be released at an earlier stage of their sentences. A total of 30 179 prisoners benefitted from this grant (Voorwaardelike vrylating van gevangenes, 1/8/11: 03-12-1990).

Several other amnesties followed during the 1990s:

On 26 April 1991, another six months' amnesty was announced, effective from 30 April 1991, which resulted in the release of 25 467 prisoners (Toekenning van afslag van vonnis aan gevonniste gevangenes, 1/8/11: 26 April 1991).

One-third special remission was granted in terms of Article 69(1) of the Prison Services Act 8 of 1959 to all prisoners sentenced as first offenders, effective from 1 April 1991.

A total of 9 247 prisoners were affected by this grant (Toekenning van afslag van vonnis aan gevonniste gevangenes, 1/8/11: 02-07-1991).

On 9 December 1992, approval was granted, under reference 1/8/1, to all commanding officers in regard to a restricted programme of advanced release and parole, with effect from 15 January 1993, the so-called process of "Bursting". The process was initiated in order to bring down the total number of prisoners in custody to a more manageable and cost-effective level, in term of financial realities. A total of 10 936 prisoners benefitted from this grant.

Notice was given per reference 1/8/11 dated 13 June 1994 to all commanding officers in regard to the approval of 6 months' amnesty by Nelson Mandela. This amnesty was made applicable to all sentenced prisoners who were sentenced and in detention before or on 10 May 1994. A total of 21 511 prisoners benefitted from this amnesty (Bothma, 1995:124–125).



Special remission of sentence was approved on 9 November 1994 and dated 15 November 1994, for certain categories of prisoners who were sentenced to imprisonment before or on 10 May 1994 and who were 60 years of age or older (Toekenning van spesiale afslag van vonnis, 1/8/11: 15 November 1994).

On 27 April 1995, a special remission of sentence of one-quarter was announced to sentenced prisoners, correctional supervision cases, day parolees and parolees who were sentenced before or on 27 April 1995 (Toekenning van spesiale afslag van vonnis, 1/8/11: 17 April 1995).

Mr. S. Mzimela, the Minister of Correctional Services, issued a media statement on 17 July 1998, with regard to the granting of special remission of sentence to prisoners:

As part of the celebrations marking his 80th birthday, President Nelson Mandela has granted 6 (six) months special remission to all sentenced inmates, including those persons who have been sentenced to correctional supervision and who are either in custody or under correctional supervision on 18 July 1998.

Inmates who on 18 July 1998 will have 6 months or less to serve will be released, starting on 20 July 1998 once all relevant formalities have been dealt with. It is estimated that the number of release will be approximately 9 000 (Mzimela, 17 July 1998).

## **2.9 OVERCROWDING OF CORRECTIONAL CENTRES, 2005 TO 2007**

According to the report of the inspecting judge of prisons (2003:4), four out of ten South Africans could not find work. This correlated with the prison population, of which 60% were prisoners under the age of 30 years while they were committing 30% of all economic crimes and 50% of aggressive crimes – the result of poverty, joblessness and frustration.

During the period in question, South African prisons provided space for 114 787 prisoners, while the actual population was 187 640 prisoners, resulting in problems with stress and exercise rehabilitation, and turning prisons into “universities” of crime. Four out of every 1 000 persons in South Africa were prisoners, leaving South Africa with the worst

rate of imprisonment, in comparison to 1,5 per 1 000 in almost two-thirds of the countries in the world, and costing South Africa R19 and a half million per day – a total amount of R17 115 101 000 (Fagan Report, 2003:22).

Fagan also referred to large numbers of awaiting-trials in prison who were being detained for long periods of time. More than 65 000 cases would be withdrawn on a monthly basis after the accused had been detained for an average of 3 months (Fagan Report, 2003:5).

The most critical stage of overcrowding was reached in the beginning of 2005, when the prison population was reported to be 187 384. The situation in correctional centres became a burdensome task, considering aspects such as proper sleeping, bathing and ablution facilities, rendering of effective social work and other development programmes in support of the policy of rehabilitating offenders, etc. (report of the inspecting judge, 2005:4).

This situation compelled the state and Correctional Services to announce, as in the case of 31 May 1981, the grant of special remission of sentence (amnesty) in terms of section 84(2)(j) of the Constitution of South Africa Act 108 of 1996 to certain categories of sentenced prisoners, probationers, parolees and day parolees who were, or would have been, incarcerated or serving sentences within the prison system or community corrections system on **24 May 2005** according to the following criteria:

- **Maximum of six (6) months'** special remission of sentence to all prisoners, probationers, parolees and day parolees **irrespective of crime committed**;
- **An additional maximum of fourteen (14) months'** special remission of sentence to all prisoners, probationers, parolees and day parolees in correctional centres or in the system of community corrections sentenced and serving sentences for other crimes than the following:
  - All crimes in the category of **aggressive crimes**, and
  - Any attempt, inciting, soliciting, or conspiracy to commit any of these crimes;
  - All crimes in the category of **sexually-related crimes**, and
  - Any attempt, inciting, soliciting or conspiracy to commit any of these crimes;
  - Trading, cultivating or manufacturing prohibited drugs, or any attempt, inciting, soliciting or conspiracy to commit such crime. (Prisoners sentenced for **possession**

of drugs were therefore not excluded and qualified for both the six and fourteen months' amnesty.

Prisoners who immediately benefitted from this special remission of sentence were to be released from 13 June 2005 until 2 August 2005. Approximately 30 000 sentenced prisoners were bound to benefit (Toekenning van spesiale afslag van vonnis aan gevonniste gevangenes, 1/8/11: [s.a.]).

The impact of this measure is best visible when looking at the total prison population figures for the end of September 2005, showing a drop in the sentenced prison population of 25 000, from 136 436 end September 2004 to 110 736 by end September 2005. Sooner rather than later, the sentenced prison population resumed its upward trend, as it increased to 114 875 by the end of September 2006 (+4 139) (Fact sheet, 2006).

Despite the decline in the prison population, some prisons still remained critically overpopulated: 72 prisons were still more than 150% overpopulated, while 32 prisons were more than 175% overpopulated. Johannesburg Medium B prison provided official accommodation for 1300 prisoners, while being populated with 4 729 prisoners (Fagan Report, 2005:17–18).

## **2.10 OVERCROWDING AND THE IMPACT OF OTHER RELEVANT VARIABLES**

Dealing with overcrowding as such as a correctional phenomenon, is like dealing with the proverbial “ears of the hippopotamus”. Overcrowding in correctional centres cannot be dealt with in isolation as an exclusively correctional bounded issue, since it would not provide the required solutions. It is therefore imperative to focus on all the other existing, though indirect, factors impacting on the general status of the prison population. The estimated increase in the prison population done during 1981, according to the average growth of the prison population in comparison to the growth of the general population, turned out to be surprisingly close to the actual figures of the year 2000. An assumption could thus be drawn from this figure that a single variable (the growth of the prison population proportionate to the general population) was taken as the point of departure. Today, in 2007, 26 years later, South Africa is yet again dealing with the same phenomenon, but with a much more complex set of circumstances and variables impacting on this scenario, which is discussed below.

### **2.10.1 Current political influences**

The political situation which currently prevails in neighbouring Zimbabwe has caused an unforeseen influx of foreigners into South Africa, which is speculated to have an enormous impact on the size of the local population as Zimbabweans are crossing the border to South Africa in their thousands. This situation is brought about by the recent economic (and other) policies of the government of Robert Mugabe.

Zimbabwe, according to a United Nations report by the Economic Commission for Africa, has the highest inflation rate in the world and the lowest economic growth rate on the continent of Africa, while the value of the Zimbabwean dollar has depreciated by 87%. No confirmation could be found indicating the number of Zimbabweans who have taken refuge in South Africa, though it is estimated to exceed three million over the past few years. The estimated number of foreigners entering South Africa is believed to exceed eight million (October, 2007:2).

Although this aspect does not form part of the field of research, it does however constitute a major factor affecting the size of the general population. It is also not far-fetched to assume that tremendous pressure has been put on the South African government regarding infrastructure, labour, housing, provision of a day-to-day living, and many others, originating from the uncontrolled influx of foreigners from elsewhere in Africa. According to the 2001 census, South Africa has a population of 44.8 million. It would therefore be a subsequent assumption that this figure could be drastically increased, adding the number of foreigners (Fact sheet, 2006).

### **2.10.2 The current crime situation in South Africa**

There are currently about 6 500 foreigners in South African prisons, at a cost of R800 000 per day, while one in ten is detained for serious violent crimes. Mr. Charles Ncquakula, the minister of Safety and Security, has expressed his concerns in this regard at the latest announcement of crime statistics on Thursday, 6 December 2007. It is not, however, the legal immigrants who are the cause for concern, but those who are moving in and out of the country on a continuous basis. They are involved in armed robberies and other forms of organised crime.

According to Correctional Services' statistics, as at 13 November 2007 almost 4% of the 163 000 prisoners in custody are foreigners. It is thus confirmed that Zimbabweans

are responsible for at least 80% of all bank robberies, while Mozambiqueans are mostly involved in house robberies in Mpumalanga and KwaZulu-Natal. A significant increase in carjacking, house robberies and transit robberies occurred during the past few years in these areas.

Superintendent Sibongile Nkosi, provincial spokesperson for the SAPS in Mpumalanga, has confirmed that more and more foreigners are lately involved in violent crimes, which is causing serious concerns. Many of those are also in collaboration with local crime syndicates (Steenkamp & Van Wyk, 2007:1).

### **2.10.3 Life in South Africa since 1995**

The chance of someone being murdered in South Africa is 12 times higher than in the United States of America and 50 times more than in the United Kingdom. This is the conclusion drawn by the South African Institute for Race Relations in a survey done for the 2006–2007 period. It gives a comprehensive summary of the demographics, education, health services, social welfare, crime situation and circumstances of life and politics in South Africa since 1995. Among the most important are the findings regarding the crime situation in South Africa:

- 2,3 million cases of serious crime were reported annually between 1994 and 2005;
- Violent crime has increased sharply with 54% of sentenced prisoners detained for aggressive crimes at end March 2006;
- Another 23% were sentenced for economic crimes, 16% for sex-related crimes and 2% for drug-related crimes;
- A shocking 572% more awaiting-trials under the age of 18 years, up from 181 to 1217;
- The number of cases being struck off the roll countrywide has increased by 7,8%, up from 81 838 to 88 245 while the number of convictions remained unchanged;
- 1894 police officers were murdered in the 11-year period after 1994, in comparison to 1bn152 during the previous 11 years – the highest number murdered in any one year was 280 in 1993;
- The total cost of crime committed on farms in 2002 added up to R1,2 milliard, of which 39% was attributable to stock theft (Prince, 2008:14).

As much as 80% of all armed robberies reported to the police are never solved. This is a grave statement made in a report written by Liezel Steenkamp (Rapport, 2007:13). Being probably one of the most violent and savage crimes to be committed, it certainly calls for any possible measures to assist the police in apprehending these criminals. A certain Tristan Melland compiled a newspaper called *The Criminal Record*, which aimed at publishing photos and descriptions of wanted criminals, and by distributing the paper in the community, he endeavoured to receive information from the public to assist the SAPS in making the necessary follow-ups and arrests, and bringing to justice those criminals threatening the peace, life and possessions of citizens.

He presented a concept of the newspaper to police management, requesting approval to publish it. He also volunteered to print the paper at no cost to the public. The initiative of Mr. Melland was bluntly declined. According to the national spokesman for the SAPS, Senior Superintendent Vishnu Naidoo, it will not be more successful than what they currently have: "Those people also have constitutional rights". Though no statistics are available, a reasonable assumption could be drawn from the above that other crime categories could also be included.

#### **2.10.4 The role of the Department of Justice**

Another indirect contributing factor to the phenomenon of overcrowding of correctional centres evolves around the alarming amount of outstanding cases in the various courts throughout South Africa. On 30 September 2006, a total of 33 713 cases were still outstanding, which represents 19% out of a total of 176 651 cases. This amount comprises 184 cases in the high courts (18% of 1 001 cases), 18 981 cases in the regional courts (42% of 45 005 cases) and 14 548 cases in district courts (11% of 30 645 cases). This backlog should be seen against the background of the normal load of cases which are being added to on a daily basis. These are the cases outstanding longer than six (6) months in lower courts and longer than twelve (12) months in higher courts, as reported to the National Forum on Overcrowding of Prisons (Fact sheet, 2006).

The success in curbing misdemeanours and crime lies in the surety that punishment will follow. With 176 651 criminal cases outstanding in the various courts, and the number of cases which are added daily to the various court rolls, the possibility of criminals being trialled and convicted becomes rather slim. As a result, more and more people are

likely to become involved in crime with a reasonable expectation not to be punished (Researcher's note).

According to an article published in the *Sowetan* of 9 November 2007, "Criminal justice overhaul pledged", the criminal justice system was to receive a major overhaul to improve the conviction rate and remove "log jams" within the system. A lack of coordination between the SAPS, the Department of Justice, the National Prosecuting Authority, the Department of Correctional Services and other roleplayers such as the departments of Health and Social Development, exists. In conclusion, there was a realisation that these problems are negatively affecting the system. The head of Government Communications, Themba Maseko, informed journalists that a mere 14% of those arrested are eventually sentenced. The Cabinet has already approved this turnaround strategy in order to improve efficiency and effectiveness.

The focus will be on better planning, coordination, improved resource management and allocation, better training, and incentive schemes to reward expertise and experience. It certainly does not take a great deal of imagination to see that if successfully implemented, a great portion of the remaining 86% of alleged criminals arrested could find themselves in prison sooner rather than later, with a subsequent increase in the prison population.

### **2.10.5 The role of the Department of Safety and Security**

Criticism against the South African police and its incompetent and unskilled members is common knowledge, and frequents headlines in the media. According to General "Suiker" Britz, former national head of Murder and Robbery between 1988 and 1994, and national head of the section Serious and Violent Crimes Unit until 1999, the South African police are in a state of organised chaos, with incompetent, unskilled and lazy members.

The current crime rate is a direct result of the closing down of 27 specialist crime units against serious and violent crimes and 49 units responsible for family violence, child protection and sexual offences, and their replacement to local police stations. General Britz established his own investigating company after retirement from the SAPS, and encountered numerous incidents of police incompetence, such as affidavits of crime victims and witnesses which were not recorded, crime scenes not being searched for exhibits, some cases reported for which dockets were not opened, and dockets handed to police

officers, for investigation, who had never before handled any investigations (Steenkamp, 2007:8).

The researcher bears witness to an armed robbery which took place in Vaalbos Street, Wilro Park, in May 2006, after which, in June 2007, he picked up the victim's wallet, driver's licence, identity document and bank cards in a field. The victim was located and the items handed back to him. According to the victim, it was the first and only response he had received since the date of the crime.

## **2.11 CONTRIBUTORY FACTORS TO THE HIGH CRIME RATE**

Terblanche (1999:27) summarises the effect of crime in South Africa rather comprehensively, when saying:

Crime is disruptive and destructive. Crime strips South Africa of the right to security: to live in safety and without fear. It has become an integral part of lives of many ordinary people. Crime threatened our budding democracy and may destroy much of the goodwill which has developed between groups in South Africa. Ordinary people may lose faith in the process of democratization and develop a disregard for human rights. Crime costs an enormous amount of money, not to speak of its social costs.

### **2.11.1 Some crime ratios**

Crime ratios reported during 1974/75 were reported to be 4 246 per 100 000 of the population, which rose to 5 747 in 1993. Crime ratios are reported as a number per 100 000 of the population, to provide for items to be compared with one another. Crime ratios are showing significant differences between statistical areas and provinces.

For many centuries now, criminologists have been searching for explanations why, on the one hand, people are committing crime, and on the other hand, for ways and means to combat crime. Despite all the efforts and research, crime is an ever-increasing phenomenon, presenting itself in high levels of overpopulation of prisons around the world. It would, however, be of interest to look at the many causative factors giving rise to the occurrence of crime.



### **2.11.2 Crossing the threshold**

According to Webster (1967:872), “threshold” refers to the point at which a stimulus sensory organism is just sufficiently intense to be felt. Terblanche (1999:32) uses the word “threshold” as the point which most people are not prepared to cross. Few people never commit any offences, while others are prepared to commit any crime possible, while the threshold is normally determined by a person’s character, age, society’s view of a specific crime, life experience, etc. He is also of the opinion that the threshold can be influenced by factors such as alcohol, peer pressure and a sudden burst of anger. Boredom can also influence the position of the threshold.

### **2.11.3 The South African culture**

The South African culture can be distinguished from other cultures in Europe and America, in that in some South African cultures crime is more acceptable than in others, and one can therefore commit crimes as long one does not get caught. In a community where crime is accepted, social control will be much less evident than in communities where crime is unacceptable.

### **2.11.4 The age of the criminal**

An increasing number of young people have recently been committing crimes – a phenomenon which can be explained by a general lack of responsibility, susceptibility to peer pressure, and committing crime just for the thrill or the challenge it poses. It is, however, accepted that juveniles are more amenable to rehabilitation than adults, and are more likely to abstain from crime after having reached a certain age.

### **2.11.5 Standard causes of crime**

The high crime rate in South Africa cannot be explained according to factors such as unemployment, poverty and illiteracy alone, as many people tend to believe, as there are many countries in Africa poorer than South Africa, with lower crime rates (Terblanche, 1999:32–34).

### **2.11.6 Other factors involved in the high rate of crime and violence**

Glanz (as quoted by Terblanche, 1999:34–36) discusses a number of factors which can be associated with the high crime levels in South Africa.

### **2.11.6.1 Demographically young population**

Fifty-four percent (54%) of the South African population are under the age of 25 years, and known to be more involved in crime in proportion to the general population.

### **2.11.6.2 Rapid urbanisation**

Migration of the urban population to the cities is generally affected, due to the higher population growth encountered in the rural areas, while these areas cannot support the greater number of people. Traditional values, control systems and family ties are severed in the process of urbanisation.

It is important to understand the lifestyle and traditions of the black people in the rural areas. They were living in kraals and reserves under the control of their own systems, and differed significantly from the European lifestyle. Children were under proper control of the parents, while the youngsters were inducted as members of the tribe. The elderly were taken care of, and rights of ownership respected, while normal norms were maintained. When, however, they abandoned their tribal ties in exchange for city life, they also rid themselves of the influences of their cultural background.

They started to dress more smartly than their fellow tribesmen but were showing no respect for law and order in the Western society. Crimes like theft and murder were common, and cities became the breeding places for injustices, and security and safety of life and property became non-existent. It is doubtful whether the measures applied by the state would have had any effect in preventing the phenomenon of theft and murder (Cronje, Nicol, & Groenewald, 1947:27–28).

Landsdown (1947:4) also refers to the influences which the city dwellers have had on their families and friends who remained in their cultural environment. Their newfound freedom and the wonderful attractions of city life also inspired those who still remained in the cultural environment, to move to the cities as well. They became impatient of the strong control of the tribal system. Many of the young generation absconded to the cities.

### **2.11.6.3 Political instability and intolerance**

During the last few years of apartheid, between 1988 and 1993, the police were much more occupied in fighting unrest than crime, which left the opportunity open to criminals, to

flourish in their criminal endeavours, while the policies of the ANC to make the country ungovernable basically paved the way to more crime.

#### **2.11.6.4 The migrant labour system**

The male migrant worker abandoned his family to work in the cities, leaving them behind without proper control and the protection of males in the cultural situation, which led to an increase of violence (Glanz, as quoted by Terblanche, 1999:34).

#### **2.11.6.5 Problems with policing**

Successful policing is currently hampered by numerous factors such as high stress levels, negative attitudes among police members and between the community and the police, problems in the management structures, and the disbanding of specialist policing units fighting specific categories of crime, as discussed earlier in this chapter (Glanz, as quoted by Terblanche, 1999:35). This aspect was also confirmed by General Britz, as reported by Liezel Steenkamp in 2007 during her interview with him (see page 59).

#### **2.11.6.6 Poor credibility of the criminal justice system**

In general, people have a negative perception regarding the criminal justice system. Corruption in the police force, leniency in granting bail to offenders, early release of prisoners and the perception that life in prison is like a hotel do not contribute positively to instil trust in the judicial system.

#### **2.11.6.7 Problems with imprisonment**

The biggest problem regarding imprisonment is the continuous rise in numbers of people being imprisoned and high levels of overpopulation. The effect of this phenomenon has already been discussed earlier in this chapter.

#### **2.11.6.8 Large-scale amnesty**

Amnesty has been applied on frequent occasions during the past 25 years as a method of reducing the prison population, a process during which literally thousands of prisoners have been released, as seen elsewhere in this chapter. The chances of these prisoners falling back into crime are great, while the estimated rate of recidivism is around 70%.

#### **2.11.6.9 Poor gun control**

Prosecutions for murder where firearms were used had increased by 14% to 21%, robbery with aggravating circumstances had increased from 27% to 47%, while 16 135 firearms were reported stolen and 1496 reported lost in 1995 alone (Terblanche, 1999:36).

#### **2.11.6.10 High levels of unemployment**

The current rate of unemployment is estimated to be 25% although it could be much higher in certain communities. It is a strong crime-generating factor, making people much more vulnerable to organised crime.

In their report regarding the economic growth in South Africa, a panel of international researchers has had the following to say:

If South Africa had a similar unemployment rate as countries in other parts of the world at similar stages of development, about six million people would be in work. The bulk of extra jobs would be taken up by people who were left out of South Africa's longest economic boom since World War 2, young poorly educated African men and women.

It has been established that only 42% of working people in South Africa, or 13 million, have jobs, in comparison to about 60% in countries such as Latin America, Eastern Europe and East Asia. Eighty-five percent (85%) of university graduates have jobs, only one third of those without matriculation are in work, and less than a quarter of people in the age group 20 to 25 years are employed (Wray, 2008:5).

#### **2.11.6.11 Social transformation**

Many of the old-order policies and establishments were discarded and abandoned with the takeover of the new government, such as the demilitarisation of the Department of Correctional Services and the South African Police, and the closing down of various specialist policing units, the appointment of political figures as commissioner of police (referring to Commissioner Jackie Selebi), etc. (Researcher's own comments). Former police commissioner George Fivaz said to Liezel Steenkamp (2008:1) that the disbanded specialist police units should be reinstated immediately, as serious violent crime had become an enormous problem.

#### **2.11.6.12 Illegal immigrants**

There are currently large numbers of immigrants in South Africa, staying in informal settlements in and around urban areas. They are said to compete with locals for jobs, which could lead to confrontation. During the past few months, serious confrontation has broken out between South Africans and a large number of immigrants from various countries in Africa such as Ethiopia, Eritrea, the Democratic Republic of the Congo, Mozambique, and many others. About 9 544 foreigners were moved to temporary shelters, fearing for their lives after being attacked by locals, and having their houses burned down (Jackson, 2008:3).

#### **2.11.6.13 Inadequate education**

The majority of adults are poorly educated and cannot meet employment requirements, while the current education system does not live up to expectations in terms of preparing the youth for the labour market. This fact was also the point of focus during the Vice-President of South Africa, Me. Phumzile Mlambo-Ngcuka's address to the World Economic Forum on Africa, when she said that good education is the key to the development of skills in the economic sector. During a panel discussion, it was unanimously agreed that South Africa desperately needs skilled people. On the other hand, the current SETA system is a cause for serious concern and is falling short in the delivery of skills development while the quality thereof is also problematic (Mulder, 2007:4).

### **2.12 PROBLEMS ASSOCIATED WITH OVERCROWDING**

Although much has been said in regard to overcrowding of prisons, it is still difficult to visualise the day-to-day frustrations, the reality of people cramped up in small confined spaces, the pressure on members and facilities and the non-existence of interpersonal contact between officials and offenders. This is probably the most important and basic requirement towards influencing people to change their attitudes.

Singh (2004:336) gives a short summary of some of the negative effects and negative influences of overcrowding:

Security and personnel safety are being compromised, with subsequent worsening of conditions of confinement, hampering the delivery of development and rehabilitation

programmes and access to healthcare services. Already disrupted family ties are further weakened with a severe impact on mental and physical health, due to the stressful conditions of incarceration.

Overcrowding of prisons does not only affect the prison system but also has a serious impeding effect on the sound execution and credibility of the justice system. It breeds contempt for the administration of justice in general, and the courts in particular, when thousands of breadwinners are incarcerated while the regular and premature release of prisoners by means of amnesty is defeating the ends of justice. It contributes to a backlog of work, especially in the Supreme Court, because overcrowding breeds gangsterism, which leads to prison murders and often protracted court proceedings (Singh, 2004:186).

### **2.12.1 Pains of imprisonment**

In addition to its many consequences and implications, imprisonment goes along with painful experiences by inmates. Sykes, Stojkovic and Lovell (1992:259–264) discuss, in their accounts of life in a maximum security prison in New Jersey, five different pains experienced by prisoners, which they had observed.

The first and most visible of these pains is one of deprivation of liberty. Imprisonment is the total restriction placed on the freedom of movement. Not only was the offender placed involuntarily, but it also confirms his rejection by the community, which often transpires from his rejection of the same society.

Secondly, imprisonment brings about the deprivation of many personal belongings he use to have in the community. To be in prison, having been found guilty of committing a crime, and sentenced, evokes feelings of being thrown away as an inferior social being “... that he must carry the additional social burden of social definitions which equate his material deprivation with personal inadequacy”.

Thirdly, the inmate is deprived of all heterosexual relationships, the one most important social instrument to exercise his “maleness”. In order to relieve his sexual desires in a purely same-sex environment, he has to adapt to homosexual activities, which are strongly disapproved of by society.

Fourthly, the inmate is also deprived of the autonomy to arrange his own life and to exercise his free will. Life in prison is strongly regulated – when to eat, when to sleep,

when and where to move, etc. The inmate falls into a state of total dependency and incapability of dealing with his social responsibilities.

Finally, the inmate has to deal with the deprivation of security. The influences and demands of prison society place enormous pressure on him, by being in the forced company of other – and most dangerous – people, and continuously being victimised and harassed.

In regard to the new-order prison system, Schwartz and Travis (1997:61) have the following to say:

You cannot call it a prison system and you cannot call the people entombed their prisoners, for its no longer fashionable. They are now called correctional facilities under the department of corrections and those sent there are called inmates. Like anything else in this brave new world the “modern” prison system has been sanitized, repackaged and given a press agent ...

The new and improved system is more dehumanizing now than it ever was. The public perception is that prison has become soft and easy. This perception is based on the physical conditions of prison that they are allowed to see. Physical abuse and pain are no longer the proper tools to handle inmates. Like any organization designed to subdue large groups of people the correctional system has learned that mental and physical terror is much more effective tools. Let the average citizen spend a few months under the 24-hour glare of cameras, public address systems, constant strip searches and hostile roving eyes, and then ask how he feels about himself.

### **2.12.2 Perceptions in regard to rehabilitation**

In 1971, penologist Tom Burton (as quoted by Ntuli, 2007:85) remarked that placing a man in prison to train him for democratic society is as ridiculous as sending him to the moon to learn how to live on earth. This is a suggestion that everything is not well within correctional facilities. What would then be the alternative to assist the criminal justice system in order to control crime? The two most common alternatives to imprisonment are probation and parole.

Probation refers to a sentencing option in which an offender is serving in part (section 276(1)(i)) or in whole (section 276(1)(h)) of the Criminal Procedure Act 51 of 1997. Both

sentencing types are community based, and require supervision, in the attempt to rehabilitate offenders outside the correctional centre.

### **2.12.3 Rehabilitation and imprisonment**

Singh (2004: 314) is of the opinion that overpopulation in South African prisons is the result of a lack of alternatives to imprisonment. It is a most obvious problem, carrying far-reaching consequences, such as:

- mishandling of individual needs;
- a reduction in rehabilitation needs;
- the earlier release of criminal elements;
- pressure on the Treasury for extension and supplement of personnel;
- negative behavioural patterns in prison;
- an increasing burden on the Treasury for the support of the families and dependants of prisoners.

The question arises, however, whether imprisonment and prison itself is creating a proper environment and conditions to pursue the objective of rehabilitation. Singh (2004: 328–329) upholds the approach that it does, indeed, offer an opportunity for the realisation of rehabilitation, in the sense that it can bring about the realisation of the wrong of his deeds and the acceptance of punishment as a consequence thereof. This realisation will motivate him to adopt a desire to change, by using the opportunities for treatment, provided by imprisonment, which could inspire his rehabilitation. Singh is also of the opinion that imprisonment will create a favourable and dignified environment that can help to persuade the offender to develop a positive and receptive attitude towards treatment.

The researcher cannot, however, agree with this statement. The continuous state of overcrowding in prisons since the Colonial era (which is still highly prevalent), and the subsequent deterioration of conditions within prisons, are creating a most unfavourable and undignified environment, stripping the human being of his own dignity. Overpopulation is restricting not only the consistency of development programmes, but also the value thereof, amid continuous pressure and negative influences by other fellow inmates. The effect of prison conditions and service delivery by community-based organisations are also dealt with in more detail in chapter 5 of this research.



According to the mission statement of the Department of Correctional Services, in its Draft Green Paper in 2003, in Singh (2004:330), “the placing of rehabilitation at the centre of all the departmental activities in partnership with external stakeholders through:

- the integrated application and direction of all the departmental resources to focus on the correction of offending behaviour, on promotion of social responsibility and overall development of the person under correction;
- the cost-effective provision of correctional facilities that will promote security, correction, care and development services within an enabling human rights environment;
- progressive and ethical management and staff practices within which every correctional official performs an effective and encouraging role.”

The rehabilitation of offenders within the confinements of prison is a widely debated issue. A variety of negative experiences and influences are severely impacting on the offender. Imprisonment has been applied as a form of punishment from ancient times, together with fines, public humiliation and corporal punishment.

From the beginning of the sixth century until the 15th century, prisoners in England, France and Germany were sent to prison for punishment, when it became an important instrument in maintaining order. Prisons were built all over England as a means of detention of both awaiting-trial and sentenced prisoners, but gradually changed into punishment centres, according to Rothman (as quoted by Stojkovic & Lovell, 1971:162–165).

Crime was seen as a threat to the king’s peace, which subsequently led to the drafting of specific laws directed at offenders. The Catholic Church resorted to imprisonment as punishment, and turned monasteries into detention facilities. Imprisonment and prisons have developed through the centuries, and are still very much a part of debate and concern in the current modern penal approach, and one of inspiration to this research. When dealing with influences and experiences of imprisonment, it is obviously in reference to the sentenced prison population.

### **2.13 THE EFFECT OF IMPRISONMENT ON AWAITING-TRIAL PRISONERS**

In their study of corrections, Stojkovic and Lovell (1992:82) draw attention to the awaiting-trial detainee and the effect that imprisonment has on this category of prisoners.

Pre-trial detention is an applied mechanism by the court to ascertain that the defendant will be in court on the day of his trial. According to Irvin (1986:47–52), the problems that detainees experience are centred on four processes, namely, disintegration, disorientation, degradation and preparation. He explains as follows:

Going to jail and being held there tends to maintain people in a rebel status or convert them into it. To maintain membership in a conventional society and thereby to avoid rebel status a person must sustain a conscious commitment to a conventional set of arrangements. When persons are arrested and jailed their ties and arrangements with people outside, very often disintegrate. In addition, they are profoundly disorientated and subjected to a series of degrading experiences that corrode their general commitment to society. Finally they are prepared for rabble life by their experiences in jail, which supply them with the identity and culture required to go by as disreputable. They are exposed to an antisocial and unconventional lifestyle, though unintentionally, they may become alienated with the system and society treating them sub humanly even before being found guilty of a crime.

### **2.13.1 Disintegration**

Imprisonment resulted in a loss of property by the offender, and with the loss of personal property begins the process of disintegration which further removes the offender from outside life. Inmates are also deprived of social ties with their families and people outside. The loss of personal relationships cannot be compensated for by a few phone calls. Being in jail means that the offender has no responsibility, cannot manage his own life and does not have the capability to defend himself – a rather devastating set of circumstances.

### **2.13.2 Disorientation**

Being arrested, admitted to prison and being confronted with the inhuman prison conditions, a person finds himself in a situation which normally leads to a process of severe disorientation. In many instances, the offender becomes self-disorganised, while a sensation of total powerlessness takes possession of him.

### **2.13.3 Degradation**

The process of degradation begins right from the point of being arrested, and increases through the whole process of detention. He has to suffer a number of degrading experiences, such as being shouted at by police and personnel, being subjected to strip searches in the presence of other inmates and officials, and being harassed by other inmates.

The process of degradation continues in jail, and right through the court proceedings. This could be severely aggravated when the offender believes that he was treated and sentenced unfairly.

### **2.13.4 Preparation**

After having gone through all these experiences and degradation, he reaches a stage where there is adjustment to the rabble existence. Preparation means that he has gone beyond the psychological barrier between rabble and reputable people in society, after a prolonged period of association with the rabble class.

Cultural preparation sets in when the offender begins to accept the values and attitudes in prison and they become part of the offender's life. After being released, the "rabblies" continue to know each other and to socialise on a regular basis. With this "rabble" mentality, they continue with a life of crime and deviance.

## **2.14 STRATEGIES TO COMBAT OVERCROWDED PRISONS**

A second conference was held from 14 to 16 September 2005, in Pretoria, to address, define and stimulate a national initiative to deal with the overcrowding of prisons, the development of skills, and the curbing of criminal behaviour. This conference was initiated by the Department of Justice and Constitutional Development and other national ministries, NICRO, and the Justice College, and included the collaboration of the Department of Correctional Services and the SAPS. This conference has been followed by monthly meetings of the steering committee of the National Forum, to address overcrowding in correctional centres. The researcher attended the conference on invitation of the Justice College, and he also forms part of the steering committee.

## 2.5 CONCLUSION

By the end of March 2007, offenders were being housed in 238 active correctional centres countrywide, distributed among eight centres for female offenders, 13 youth correctional facilities, 131 correctional centres for males only, and 86 centres for both male and females. During this period, South African correctional centres provided official accommodation for 115 327 inmates, while the actual occupation was 161 023 inmates, constituting a 40% overcrowding rate – or 45 696 people. Awaiting-trial prisoners represented 48 228 people out of the total population, at an average cost of detention of R123,37 per day (South African Yearbook, 2007/2008:393).

Overpopulation is a phenomenon which has presented itself since the existence of the first detention facilities. Over the centuries, efforts have been made to curb overpopulation, to find causative factors to crime, and how to combat it by means of social and societal programmes, schooling, etc. Many studies have been conducted in the fields of penology, criminology and various others, and it is still the focal point of current-day studies. Although solutions will not easily be found, it should not discourage the search for weak areas in the application of the total system of corrections, and, more specifically, in those areas where focal points are misdirected.

Typical examples could possibly be found in the application of correctional supervision.

The endeavour to place as many people as possible under correctional supervision could impact negatively on the suitability of the candidate, due to improper pre-sentence reports, and the absence of participation of probationers in constructive training opportunities and programmes as part of supervision conditions set by courts. The shortage of suitable, skilled probation officers and the unavailability of sufficient funding also have a hampering effect. This surely leaves an area still to be explored by ongoing studies.

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## CHAPTER 3

### PROBATION BEFORE PROBATION: THE ANCIENT WORLD

#### 3.1 INTRODUCTION

The law of the Israelites was one of the primary sources for American law. Jones (2004:52) describes this law, also known as the Mosaic Law, derived from Moses, as founded in the Ten Commandments. The principle of Lex Talionis was one of the guiding principles behind the Mosaic Law. Lex Talionis referred to the principle of “an eye for an eye” from the Book of Exodus where Moses commanded the Israelites and meted out punishment on the “eye for an eye” basis. This principle was often used to protect the poor from the rich and to limit the application of vengeance.

Mosaic Law, as contained in the books of Exodus, Leviticus, Numbers and Deuteronomy, was created during the period while the Israelites were wandering in the wilderness after their release from slavery in Egypt. Due to their nomadic existence, it was not possible to erect structures for punishment, and offenders had to be dealt with by the application of restitution. If an offender could not pay his debt, the person owning the debt had the right to impress the debtor in involuntary servitude. Those who had domination over debtors had to assist the debtor to get back onto the right track and avoid repetition of similar behaviour in the future – an ancient antecedent of the philosophy of rehabilitation (Jones, 2004:53).

Leviticus 24:17–20 clearly describes the content of these principles:

If any one takes the life of a human being, he must be put to death. Anyone who takes the life of someone’s animal must make restitution – life for life. If anyone injures his neighbour, whatever he has done must be done to him. Fracture for fracture, eye for eye, tooth for tooth. As he has injured the other, so he has to be injured (Holy Bible, 2005:137).

## **3.2 THE ANCIENT GREEKS**

In 620 B.C., Draco the law-giver enacted his famous homicide laws which were the forerunner of pre-trial supervision of modern times. One such example was the public proclamation of an individual who had been accused of homicide, and that no one should interact with him. While awaiting trial, the accused was banned from the public marketplace until finalisation of his case. On the other hand, the Athenians initiated a law which was the precursor of community corrections. In terms of this law, offenders were ordered to be excluded from all forms of special communications. Throughout history, capital punishment has been a form of community-based corrections or community-based punishment. Mosaic laws required that capital punishment be administered in public, with the involvement of the community (Jones, 2004:53–55).

Leviticus 24:13–16 records the story of a man convicted of blasphemy:

Then the Lord said to Moses: Take the blasphemer outside the camp. All those who heard him are to lay their hands on his head, and the entire assembly is to stone him. Say to the Israelites: if any one curses his God, he will be held responsible; anyone who blasphemes the name of the Lord must be put to death. The entire assembly must stone him. Whether an alien or native-born, when he blasphemes the Name, he must be put to death (Holy Bible, 2005:137).

## **3.3 MEDIEVAL EUROPEAN ANTECEDENTS**

A power vacuum was formed with the gradual decline of the Roman Empire in Europe. The administration of justice became informal, while Germanic kingdoms started to dominate the continent. Jones (2004:55) also indicates that fines and restitution were frequently used as punishment, while a wide gap existed between the rich and the poor during the European Middle Ages. Poor people fell into debt with the rich landowners, and on many occasions the poor were stealing from the rich. The word “felony” originates from the 12th century, when it referred to a breach of faith with the feudal lords.

### **3.3.1 Judicial reprieve**

According to Jones (2004:55), this practice emerged in England during the middle ages, a period when most felonies carried the death penalty. After being convicted, offenders could appeal to the Crown, and could be released on their own responsibility in cases

not strongly opposed by prosecutors. In many instances the reprieve was permanent, and it served as a deterrent from committing another crime. Formal supervision of offenders did not exist, while the community exercised an informal type of monitoring.

### **3.3.2 Benefit of clergy**

During the middle Ages, the Roman Catholic Church was the most powerful institution in existence. Privilegium Clericale (benefit of clergy) implied that an offender could request that his case be transferred from a secular (non-religious) court to an ecclesiastical (church-administered) court, for the benefit of receiving a less harsh punishment.

Initially, only members of the clergy who had been accused of a crime could benefit from this practice. It was later extended to laypeople who could read, excluding the illiterate. Women were not eligible for benefit of clergy until 1624, when it only applied to nuns, but as from 1693 it was extended to all women (Jones, 2004:55).

At some stage during the trial process, the offender could apply for benefit of clergy. Jones (2004:56–57) explains that authorities from the church would then interview the offender to determine whether he was a suitable candidate. People usually showed remorse for crimes committed, by reading or reciting a number of Bible verses. Psalm 51 was the most frequently used, and became known as the “neck verse” as it was used to save condemned criminals from being hanged.

### **Psalm 51**

For the director of music. A psalm of David. When the prophet Nathan came to him after David had committed adultery with Bathsheba.

Have mercy on me, O God, according to your unfailing love; according to your great compassion blot out my transgressions.

Wash away all my iniquity and cleanse me from my sin.

For I know my transgressions, and my sin is always before me.

Against you, you only, have I sinned and done what is evil in your sight, so you are proved right when you speak and justified when you judge.

Surely I was sinful at birth, sinful from the time my mother conceived me (Holy Bible, 2005:662.) (First five verses)

Benefit of clergy played a vital role in the American colonies' demand for independence from the British. On the 5th of March 1770, five American protesters were shot by British soldiers under the command of Captain Thomas Preston. The soldiers were trialled for murder. After being successfully defended by a team of lawyers, among others John Adams, a future President of America, only two of the soldiers were convicted of manslaughter. They pleaded benefit of clergy and were released after being branded in the thumb. The event was referred to as the "Boston Massacre" which is still commemorated each year on the 5th of March (Jones, 2004:58).

### **3.4 COMMUNITY CORRECTIONS IN COLONIAL AND EARLY AMERICA**

The term "probation" was practically non-existent during the 18th century in colonial America. A system of **filing** was, however, commonly practised, which occurred when a court postponed formal prosecution on condition that the offender promised to abide by the law. Although public punishments were imposed, fines and other relevant forms of punishment were frequently applied (Jones, 2004:58).

**Security for good behaviour** was an option very similar to the current bail options. Security entailed a fee paid to the court both before and after conviction, on condition that the offender behaved properly.

**The ducking stool** was a common form of punishment for gossiping women. The woman was strapped to a chair and paraded through the town, where after she was dropped several times into a river or lake.

**The stocks and pillory** was also a frequently applied community-based punishment. Offenders were required to put their head and wrists through holes. The stocks were locked, leaving the person in an uncomfortable position in full view of the community.

Most of the American countries did not have the infrastructure or capacity to build prisons, and there were no means of removing the offender from the community. They therefore had to punish offenders within the community, applying methods directed at punishment of the body and the mind (Jones, 2004:59–62).

## **3.5 PROBATION IN AMERICA**

### **3.5.1 Founders of probation**

Although John Augustus of Boston is considered to be the “father” of probation, it was actually Matthew Davenport Hill, of Birmingham, England, who took the first step. He observed that magistrates on some occasions imposed token sentences of one day, on condition that the offender was supervised by a guardian. This sentence contained three basic elements: it was a form of mitigating punishment, no other conditions were prescribed, and it did not make provision for revocation.

Hill became a recorder, and immediately adjusted the procedure by suspending the sentence and placing the offender with a guardian, hoping that it would provide an opportunity towards betterment, rather than in jail. Hill’s approach showed some similarities to that of Augustus, in respect of suspension of sentences for selected cases, and no sanctions being levied if the offender got into trouble. In order to protect the community, he requested the police to investigate the conduct of the person under supervision.

John Augustus was, however, the first American to establish probation, in 1841. He was a volunteer to the court when he stood bail for a man charged for being drunk. He helped the man to find a job. When the man again appeared before the court after three weeks, he had shown some improvement. The judge fined him one cent, with costs being paid by the defendant.

Augustus was convinced that the law should pursue the reform of criminals, and the prevention of crime instead of punishment. Over a period of 18 years he bailed 1 946 persons out on probation. Augustus was rather meticulous in his approach. He selected his candidates carefully, and offered assistance to first offenders, susceptible to change.

He also considered the previous character of the persons, their age and external influences, aided them in finding employment and a place to live, and also assisted in their education. He also provided the courts with impartial reports (Latessa & Allan, 1996:105–106).

### **3.6 AUGUSTUS'S CONTRIBUTION TOWARDS COMMUNITY CORRECTIONS**

There are a number of reasons why the contributions of John Augustus have played such a significant role in the development of community corrections.

He paved the way towards correctional supervision as it is applied in modern times, without monetary compensation, and started a process of assisting and helping probationers towards positive change in their lives – something which still forms part of the ideal implementation of correctional supervision.

Augustus directed all his efforts towards diverting the offender from incarceration, as he believed in the fact that an offender has a better chance of becoming a better person without being imprisoned. He developed a system of pre-sentence interviews with offenders, which gave prominence to the pre-sentence recommendations to court. He also made a huge contribution towards the supervision and monitoring of his clients and was well informed about their lives (Jones, 2004:66–67).

### **3.7 PHILOSOPHICAL APPROACH TOWARDS PROBATION**

The application of harsh punishment in Europe, such as death penalties, torture, mass executions and public humiliation, was a common penal practice throughout Western Europe during the early 19th century. This was a period of considerable social turmoil and conflict, and gave rise to numerous arguments, philosophical debates and new thoughts, which eventually led to the effectuation of probation in America.

During the 18th century, a number of French philosophers attempted change in the criminal law, towards a more humanitarian approach. One of the major figures to emerge was Cesare Beccaria, an Italian genius, who established the classical school of criminology, which strived for the abandonment of torture to extract confessions, a right to defence at trials, and better prison conditions.

Beccaria believed that the punishment should fit the crime and not the offender. The philosophical trend quickly spread to England and her colonies, and resulted in the abandonment of the harsher English penal codes in America soon after the revolutionary war. Contrary to the harsh punishments of the 18th century, the emerging trends towards

reformation were focusing on the way offenders were viewed, and the intent of criminal law. The emphasis shifted from focusing on the crime toward dealing with individual offenders (Latessa & Allen, 1996:106–107).

### **3.8 THE NATURE OF PROBATION AND REVOCATION**

Although probation was considered to be a privilege and not a right, the probationer has had an interest in remaining on probation. The United States Supreme Court has duly ruled that probation cannot be revoked, unless the following rights and procedures have been adhered to:

- The probationer be informed in writing about the charge(s) against him;
- Has received written notice prior to the revocation hearing;
- Attend the hearing and be able to present evidence;
- Challenge those testifying against him;
- Confront witnesses and cross-examine them;
- Have legal representation in cases where charges are complicated.

#### **3.8.1 Probation conditions**

According to Latessa and Allan (1996:112), conditions are imposed by a judge who also has the authority to amend, modify or reject conditions, which entail routine blood tests to detect use or abuse of narcotics, and participation in Alcoholics Anonymous if the probationer has an alcohol problem. The offender could be required to pay restitution to victims if, due to unemployment, the probationer fails to pay, probation cannot be revoked and he is not to leave the court's jurisdiction without prior approval.

It is also determined by law that any condition may be imposed if it is constitutional, reasonable, clear and related to some definable correctional goal, such as rehabilitation and public safety.

#### **3.8.2 Supervision**

The probation officer functions both as supervisor and helper, and is responsible for informing the court if conditions are not met by the probationer. The probation officer is also potentially liable for acts taken or steps omitted – for instance, failing to disclose a probationer's background to a third party, if this resulted in serious injury or death, or

hiring of a probationer by an employer as a bank accountant when he committed the crime of embezzlement (Latessa & Allen, 1996:112–113).

### **3.8.3 Community service**

Community service forms part of a court order and the package of conditions which a probationer must adhere to. This entails that the probationer must perform work, for a specified number of hours, to the benefit of charitable organisations or public service institutions, such as:

- maintenance of public buildings;
- volunteer hospital orderlies;
- street cleaning;
- providing service to indigent groups;
- welfare recipients.

The Minnesota Department of Corrections established an interesting form of community service, called a sentencing to service jail programme, in collaboration with the Minnesota Department of Natural Resources, to assist in natural resource management projects, beautifying forests and recreational trails, etc.

Probationers opted to work, rather than sitting idle in jail cells. They worked hard and prided themselves on their achievements. Positive results were achieved, such as easy monitoring at night when probationers were tired from the hard work, improved attitudes and less conflict.

An analysis done in 1991 indicated that projects were cost-effective, US\$5 worth of labour against US\$1 expenses. Eighty-six percent (86%) of probationers successfully completed their probation, and over US\$1million was saved by using this work programme, while 21 000 jail days were saved.

The programme is jail-based community work, while most of the community work orders allow probationers to stay at home and report for community services (Latessa & Allen, 1996:53–54).



### **3.9 WHAT IS PROBATION?**

Stevens (2006:214) defines probation as a sentence imposed by the court on a convicted offender, requiring the offender to meet certain conditions of supervision in the community.

Probation can be ordered directly, or be combined with a period of imprisonment (often called a split sentence), or it can be imposed in lieu of a suspended or prison sentence. It is a term of community supervision ordered by the court, under specified conditions, for a specific period of time that cannot exceed the maximum sentence for an offence. These conditions can vary, based on the belief system of the public and policy makers, the offender, or the jurisdiction of the judge. The probation officer carries the responsibility to enforce the set conditions.

### **3.10 WHAT IS A PROBATIONER?**

Probationers are criminal offenders who have been sentenced to a period of conditional supervision in the community. A probationer is required to abide by the conditions and restrictions ordered by the court and supervised by a probation officer. When violating his conditions, the probationer can be referred back to court, and have his sentence revoked and replaced by a sentence decided upon by the judge (Stevens, 2006:215)

#### **3.10.1 Advantages of probation**

One of the major aspects in favour of probation is found in the number of advantages that it provides as a sentence option. Not only is it cost-efficient in comparison to confinement, but it also reduces recidivism and overcrowding in prisons. Those offenders who should not be confined can be supervised, while supervision among violent offenders is also provided.

According to the Department of Corrections in Georgia, the average daily cost of probation in 2001 was US\$1,49 in comparison to the daily average cost of confinement of US\$64,64. The daily average cost per probationer across the country was US\$4,18 compared to US\$105,24 per offender in detention (Stevens, 2006:215).

#### **3.10.2 Advantages of probation to the offender**

Probation also comprises a number of advantages for offenders, in the sense that they are diverted from confinement, which eliminates the stigma of a prison sentence. It allows the offender to comply with the conditions of supervision, and it provides a

greater opportunity for them to be reformed than for those imprisoned. The offender remains with his family and can pursue employment, while a greater choice of service providers are available to render treatment programmes (Stevens, 2006:216).

### **3.10.3 Disadvantages for the offender**

Probation also contains a number of disadvantages with regard to the offender, however. According to those in favour of confinement as a function of the criminal justice system, probation lacks punishment, causing community members and victims of specific offences to lose confidence in the criminal justice system. It also poses an increased risk to the community, due to the possibility that some probationers could fall back into crime (Stevens, 2006:216).

## **3.11 CONDITIONS OF PROBATION**

There are a great variety of conditions which could be applied. However, it does depend on judicial discretion and also on the personal circumstances of the offender. The following are among the most commonly applied conditions:

- Reporting to a probation officer or community centre;
- Maintaining residence at a specific address;
- Curfew;
- Employment;
- No association with other offenders;
- Compliance with law and other regulations established in the conditions of probation;
- Drug and alcohol free;
- Victim restitution;
- Community services;
- Limited travel (Stevens, 2006:217).

All these conditions are not necessarily applicable to every probationer, while the following could also form part of the total package of conditions in addition to those above.

Probationers could be requested to contribute to their supervision fees, fines and court costs.

They can be restricted from contacting any victim, and be required to participate in treatment programmes such as psychological counselling, and/or the completion of

specific training and also educational programmes. Limitations could be placed on certain movements, and visits to certain places prohibited. They could also be monitored electronically. According to Stevens (2006:217), the issue regarding the rights of probationers was clarified by a federal court of appeal in America. (Conditions which restrict freedom of speech and association are valid if they are reasonably necessary to accomplish the essential needs of the state and public order).

A significant comparison of the above conditions can be made with the approach of McCarthy and McCarthy (1991:115):

In order to prevent a situation where the same set of conditions is repetitively applied to all probationers, the National Advisory Commission on Standards and Goals has recommended three considerations to enhance flexibility:

- That the conditions must fit the needs/situation of each individual offender;
- The conditions must be in relation to offenders' correctional programme;
- The conditions should not be unduly restrictive or in conflict with offenders' constitutional rights.

The American Bar pointed out that the conditions should be clear, specific and understandable, and entail the following:

Specific employment, the pursual of prescribed vocational or educational training, subject to psychiatric or medical treatment, and maintaining residence in a prescribed area or special facility available for probationers. Probationers should refrain from socialising with certain people or visiting certain places, and pay restitution of the fruits of crime, or reparation for loss or damage caused.

## **3.12 COMMUNITY CORRECTIONS: THE ENGLISH MODEL**

### **3.12.1 The birth of community punishment**

During the era of British Imperialism, laws were harsh and widely noted. The death penalty was unsparingly applied. Criminals were severely punished, killed or disabled (Schwartz & Travis, 1997:20). Before the end of the 19th century, new custodial sentences were limited to fines and release on recognisance. No provision existed for paying of fines in instalments, and many offenders were consequently sentenced to imprisonment.

Changes in Victorian industrial society, and in attitudes towards the poor, gave rise to the development of a punishment approach that focused on social control and the material, social and psychological wellbeing of criminals.

During the second decade of the 20th century, a completely new infrastructure of sentencing came into being. More recent developments in community sentencing prior to the Criminal Justice Act in 1991, were the introduction of conditional discharges, attendance centres (the Criminal Justice Act of 1948, which also abolished benching), police cautioning (Children and Young Persons Act of 1969) and community service (Criminal Justice Act of 1972). In 1988, compensation orders became a sentence in its own right (Worrall & Hoy, 2005:4–5).

### **3.12.2 Development of community-based sentences**

According to Young (1979:9), the development of community-based sentences in England was initiated by a number of events which drew attention to inefficiencies in the existing punishment system. An enormous increase in the prison population was experienced between 1956 and 1996 – the result of exceptional economic growth and development in social society. Human behaviour turned the focus toward social development and the search for alternatives to imprisonment.

An article by Margaret Fray, published in the Observer in 1957, provoked a high level of interest in the position of the victim of crime. It emphasised the inability of the judiciary to deal with victims of crime, and claimed the state to be responsible for this state of affairs. She also suggested that a system of compensation be established for victims of violent crimes (Smit, 1981:20).

The importance of volunteers to deal with social work and other needy services, such as probation and supervising officials, opened yet another field of interest during the early sixties. Hauser (1963:6) was one of the supporters of the principle of rehabilitation of offenders through meaningful work, and of creating the opportunity for offenders to do work to the benefit of the community.

The British Government appointed the Advisory Board on the Penal Code in 1966. A sub-committee was formed under the chairmanship of Lady Barbara Wootton, to investigate suitable alternatives to imprisonment. The report on the investigation, known

as the Wootton Report, was released on 30 June 1970 and covered a variety of recommendations. The most important, however, were the recommendations regarding the establishment of a system of community service directed at rendering services to the benefit of the community (Young, 1979:9).

The recommendations of the Wootton Commission regarding community service were based on the following principles (*Non-custodial and semi-custodial penalties*, 1970: 32–33):

- Cooperation and the availability of facilities by voluntary community service organisations;
- Ascertain the rehabilitative value of community-based sentences and the cooperation of law-abiding citizens and their influence over probationers;
- Community services should be rendered free of charge and in the probationers' free time, and the courts must specify the number of hours of community service to be done;
- The value of community service to young offenders must be determined;
- The courts must, prior to sentencing, determine the willingness and capability of offenders to render community service, while offenders must be carefully selected before the imposition of a sentence of community service.

### **3.12.3 The implementation and organisation of a community service project**

Community service projects have to conform to certain requirements in order to accommodate community based sentences:

**Firstly**, the establishment of a variety of employment opportunities in the community;

**Secondly**, the establishment of facilities through which the offender can be integrated with various service providing organisations; and

**Thirdly**, the creation of control measures to ascertain the execution of court orders relating to community-based sentences (*Non-custodial and semi-custodial penalties*, 1970:33).

### **3.12.4 Conditions of community service**

Richings (1980:44) is of the opinion that the application of a pre-sentence report is strongly recommended, although it was not obligatory while offenders were allowed to perform community service without being supervised by probation officials. Supervision by probation officials is, however, strongly recommended as a means of assistance and support to offenders, and to ascertain the proper execution of community service. Provision should also be made to deal with offenders who do not adhere to court orders in this regard. It is also recommended that community service orders should not exceed 120 hours and that conditions be applied with a measure of flexibility.

### **3.12.5 Selection requirements for community service**

In 1974, offenders who were sentenced to community service in London, had to answer to certain requirements to determine their ability to do community service before they could be sentenced as such. According to Croft (1976:8), the following norms applied:

- Community-based sentences were considered in cases where a term of imprisonment of less than one year would have been imposed;
- The offender had to be employed and have a fixed abode;
- Those who committed aggressive and sex-related crimes, the mentally disturbed, alcoholics and those addicted to drugs, did not qualify for community-based sentences;
- Those who were socially isolated and who had not had the opportunity to make a positive contribution towards society were considered for community service.

A well-researched pre-sentence report by the probation officer played an important role in this process.

## **3.13 COMMUNITY SERVICE LEGISLATION**

The Criminal Justice Act of 1972 was promulgated on 26 October 1972, and all the aspects dealing with alternatives to punishment were vested in the Powers of the Criminal Courts Act of 1973. The most important aspects of this Act were as follows, according to Van Gass (1981:137–138):

In accordance with Article 14(1) of the Act, the court could order a person above the age of 17 years of age to do community service after being convicted for an offence for

which a sentence of imprisonment could have been imposed. Community service would be rendered, without monetary compensation, for a period of not less than 40 and not more than 240 hours.

Article 14(2) of the Act made provision for the circumstances under which community service could be ordered by the court. Some of the most important provisions were that:

- the offender was willing to do community service;
- the court was convinced that the facilities for rendering community services did exist in the district in which the offender resided;
- a report with regard to the offender's circumstances be submitted to the court by the probation officer;
- the court be convinced of the capabilities of the offender to do community service.

Article 14(4) of the Powers of the Criminal Court Act (1973) ordered that a probation official, who could be appointed by a probation or after-care committee, had to ensure that the conditions of community service were complied with.

The court, in terms of Article 14(5), had to explain the purpose and content of community service in clear language to the offender, with the emphasis on the consequences of not adhering to the conditions of the court order. A copy of the court order was to be provided to both the offender and the probation officer in terms of Article 14(6).

The offender is also compelled by the stipulations of Article 15(1)(a) and (b) to notify the probation official of any change of address. The offender is also required to work the full number of hours stipulated by the court and to complete his community service within one year's time. Failure to comply with the conditions of community service could result in the offender being fined to R50,00 or the original sentence being set aside and a new sentence be imposed in terms of Article 16(2) and (3).

### **3.14 SUPERVISORY PENALTIES**

It is more than often assumed that offenders do not have the motivation or further resources to compensate the community for the harm done. However, the most important elements of supervision sentences can be summarised in the following;

- Community rehabilitation orders with additional conditions such as medical treatment, accommodation, programmes or activities;
- The supervision order;
- Curfew order (restriction of movement with or without electronic monitoring);
- Attendance centre order (attendance of session, educational activities, etc.);
- Community punishment order, (doing work without payment);
- Community punishment and rehabilitation order (which is a combination of rehabilitation and punishment);
- The drug treatment and testing order;
- Referral orders, reparation orders and action plans for young offenders between 10 and 17 years (Worrall & Hoy, 2005:6).

### **3.14.1 Other sentences**

Some of these sentences did not fall in the ambit of supervisory sentences, although they also contributed to the category of non-custodial sentences:

- Bending over entails a self-regulatory procedure in that the offender must verbally undertake to adhere to the sentence. Non-compliance led to a financial forfeit;
- The Powers of the Criminal Courts Act of 1973 prescribed a deferred sentence which offered a period of self-regulation to the offender to re-orientate himself, requiring him to go back to court after the period lapsed;
- The suspended sentence did not involve any pain, but the threat of imprisonment for non-compliance served as a suitable deterrent (Worrall & Hoy, 2005:7).

## **3.15 PRINCIPLES OF SENTENCING**

The philosophy of punishment was based on two pillars known as retributivism and utilitarianism. Retribution stemmed from ancient legal systems and was seen to be part of civilised society. Punishment of wrongdoings was a right and moral obligation. A prerequisite to the principles of retributivism was that the offender's guilt be established and that punishment had to be proportionate to the offence.

Utilitarianism, on the contrary, with Jeremy Bentham as its biggest supporter (1748–1832), considered punishment in itself as evil, and it could only be justified if it effected reduction in crime. The most obvious distinction between the two was that retributionists



demonstrated that punishment was deserved, while utilitarianism had to prove that punishment worked.

### **3.15.1 Just desserts**

The main purpose of this sentence was aimed “to denounce the crime and visit retribution on the criminal to the extent they deserve it.” A significant difference between retribution and revenge lies in the fact that the latter is a disproportionate punishment which has no justification in modern society. It also could be associated with the occurrence of violence and frequent feuds, by sectional press reports. Some very important factors under consideration for a sentence of **just desserts** are the seriousness of the crime and the culpability of the offender. It does, however, accommodate aggravating and mitigating circumstances in regard to the offence and the role the offender has played.

The aim of sentences of **just desserts** is “to ensure that convicted criminals are punished justly and suitably according to the seriousness of their offences; in other words, they should get their ‘just desserts’.

Deterrence refers to the application of punishment to deter other people from crime. On the one hand, punishment as a method to deter people is directed at the individual, in order to teach the offender that his actions were unacceptable and not worthwhile committing crime.

On the other hand, it was intended to serve as a warning to other people, the general community, to prevent them from committing crime. The opposers to deterrence as a punishment were of the opinion that it could be disproportionate to the offence, for the sake of proving a point.

Another point of criticism was the fact that too many crimes were being committed as an effect of irrational thinking (Worrall & Hoy, 2005:9).

Barnes and Teeters (1959:317) refer to the value of deterrence as a punishment objective in the case of murder. He points out a number of situations, such as people suffering from serious physical, mental and cultural deficiencies, whose ability to understand, judged by normal standards, is so ill developed that they perceive the killing of a person

as more or less acceptable. The second group consists of those who are physically, mentally and culturally relatively normal, but, due to severe difficulty and/or emotional strain, could commit murder. In the third group there are the gunmen, who resemble the soldier on the battlefield who has no sense of responsibility and value for human life.

It is also a fact from history that severe forms of capital punishment, administered in public, had very little or no deterrent influence. During the 18th century, in England, hangings were executed in public, almost in carnival fashion, but no evidence could be found that the crime rate declined. Pick pocketing became so common a crime at the venue of public executions of pick-pockets that those executions had to be made private (Barnes & Teeters, 1959:318).

### **3.16 REFORM, REHABILITATION AND CORRECTION**

A longstanding aim of utilitarianism has been to develop fundamental changes in the attitudes, personalities and behaviour of offenders, in an effort to guide them to abstain from crime – not out of fear of punishment, but realising the wrong of crime. Reformists are of the opinion that offenders have a free will and are capable of changing their attitudes, with the correct guidance.

Rehabilitation refers to a situation where the individual is influenced by circumstances of a personal, social or medical nature. These factors need to be changed before a change in behaviour can be effected.

Correction, as a term, originated and was imported from America. It is interesting to note that a new post of Commissioner of Correctional Services was established in 2003 in England and Wales (Worrall & Hoy, 2005:10–11). (The same post was established in South Africa in 1990, when the name of the Department of Prisons was changed to the Department of Correctional Services (Researcher's note).

### **3.17 OBSTACLES TO COMMUNITY PUNISHMENT**

As in many other spheres of life, there are obstacles and arguments against community punishment, and also the benefits thereof. Likewise, a perception exists among certain public sectors and the media that the essence of punishment is to be found in imprisonment and (as currently in South Africa) the death penalty. In more general terms,

punishment by the state refers to corporal punishment and incarceration. Everything other than these is considered to be of lesser value and poor substitutes, weaker, and suitable for only a small category of offenders.

According to the Victorian principle “less eligibility”, it was believed that punished inmates should not enjoy a higher standard of life than the poorest “respectable” citizen. This referred to the fact that offenders were being given access to education, work, recreation, etc.

The second obstacle in community sentencing is the perception that only a more exclusive group of criminals normally benefit from community-based sentences. Those who are perceived to benefit from supervision are those with money, who are employed and socially more advanced. In conclusion, community sentences are seen as discriminatory, and justice for whites – “those with homes, jobs and relatively few social problems” (Worrall, & Hoy, 2005:12).

It is interesting to note Latessa and Allen’s view in this regard (1996:165–166): “Granting probation is a highly individualised process that usually focuses on the criminal rather than the crime”.

The general objectives of probation entail the reintegration of amendable offenders in a process to protect the community from further antisocial behaviour and to further the goals of justice. Conditions necessary to change offenders and to achieve the above objectives, must be provided. Probation is granted to specific individuals, and the use of community services is exploited to resolve their problems.

The fourth obstacle is about the enforcement of the conditions and community service as a sentence. It can only be successful if all appointments are kept and probation officers report all incidents where conditions are not adhered to. Some cases resulted in the possibility of establishing a helping relationship with the probationers (Worrall & Hoy, 2005:12–13).

### **3.18 CATEGORIES OF PROBATION**

According to Cromwell, De Carmen and Alarid (2005:40–41), there are four categories of probation:

### **3.18.1 Regular probation**

This is when a convicted offender can be placed out on wider conditions set by the court for a specific period of time, during which the court retains the prerogative to either modify these conditions or resentence the offender if conditions are violated. This type of probation is applied to about 90% of offenders committing misdemeanours or less serious offences.

### **3.18.2 Intensive probation**

Offenders who have behavioural weaknesses, or who show antisocial characteristics disqualifying them from being placed under regular probation, yet whose crimes are not so serious as to warrant their incarceration, are placed under intensive probation.

It was initially implemented in 1980, and was adopted throughout America by 1990. The purpose was to minimise overpopulation and to pursue rehabilitation and public safety. It is also considered to be more cost-effective, while the offender maintains his family ties and employment, not being exposed to the stigma of imprisonment.

The basic characteristics of intensive probation are regular visits by probation officers, random night and weekend visits, strict enforcement of conditions, and random drug tests.

### **3.18.3 Deferred adjudication**

This form of probation is applied in cases where the offender has pleaded guilty. The proceedings are then deferred and the offender is placed under probation. Probation normally entails community service of some form and/or restitution. On successful completion of probation, the charges are dropped, while failure to comply may result in imprisonment.

### **3.18.4 Pre-trial diversion**

As in deferred adjudication, there is no conviction or finding of guilt, but it differs from the former in the sense that diversion could be ordered before a plea of guilt. An argument in favour of this sanction is that rehabilitation programmes now become accessible for those in need of treatment, without them being exposed to criminal prosecution.

Research, on the other hand, has indicated that many persons in need of treatment are prosecuted, due to the unavailability of these programmes.

### **3.19 FACTORS AFFECTING THE GRANT OF PROBATION**

The following factors need to be kept in mind when probation is considered: the offender's eligibility for probation, whether probation or incarceration is the preferred option, and conditions fixed by statute, the unavailability and quality of probation service and of other sentencing options, the methods of developing sentencing information, and whether probation is appropriate for the offender (Cromwell et al., 2002:44).

#### **3.19.1 Eligibility**

Probation as a sentence (option) is authorised by law, and the probationer, as such, has the right to be considered being placed on probation by virtue of the discretion of the court. Therefore, a plea of guilty is not a prerequisite for placement on probation; neither is it a disqualification if an offender stands trial. Another interesting aspect is the availability and quality of probation services as an influencing factor in the consideration of probation.

A judge may not impose probation if he is of the opinion that caseloads are so large that it renders meaningful probation and assistance impossible. The structure of probation services, and the quality of training and the abilities of probation officers, plays an important role in the consideration of probation. The American Probation and Parole Association recommends that probation officers be in possession of a fully completed BA degree at an accredited university or college, supplemented by a full year's course in field experience.

A recent study showed that between 1 501 and 1 874 per 100 000 of population were placed on probation, with more than 3 000 per 100 000 of the population being in Washington and Texas (Cromwell et al., 2002:46).

#### **3.19.2 Probation conditions**

Conditions are divided into two categories: standard and special conditions. Standard conditions are prescribed by law or set by the court or agencies, and include:

- Commit no criminal offence;
- Regular work and support of dependants;
- Submit to drug testing;
- Not to change employment or residence without the intervention of the probation officer;
- Regular reports to probation offices;
- May not leave the area of jurisdiction without permission;
- Probation officer to visit at any time;
- Probationer may not associate with persons who have criminal records.

Special conditions can be set, in addition to standard conditions that are specially designed to fit the particular circumstances of an offender. These conditions are either suggested by law or by virtue of a pre-sentence report by the probation officer, or else based on the judge's assessment of the probationer. The following conditions can be imposed:

- Attend counselling sessions for substance abusers;
- Attend literacy classes if the offender cannot read or write;
- Obtain high school diploma;
- Serve in jail if offender needs exposure to the realities of incarceration;
- Participate in drug or alcohol treatment;
- Refrain from entering designated areas if sentence involves crime against children;
- Pay restitution if damage was caused;
- Seek mental health treatment if suffering from mental dysfunction;
- Obtain gainful employment.

### **3.20 THE POWERS OF THE COURT TO IMPOSE CONDITIONS**

Cromwell et al. (2007:75) acknowledge the wide discretion of judges to impose conditions on probationers, and are of the opinion that they should be wary of certain limitations in their power to set conditions. In this respect, judges are guided by four directive categories, which follow.

#### **3.20.1 Conditions must be clear**

The test for clear conditions is that they should be explicit, precise and easily understandable. If not, they would be unfair and invalid and impair the rights of the probationer.

These principles were clearly outlined in various court cases in which these courts expressed themselves as follows:

Probation conditions must be sufficiently explicit so as to inform a reasonable person of the conduct to be avoided. This followed after a condition prescribed that a probationer must not associate with a person of disreputable character.

In another case it was ruled that probation conditions must be “sufficiently precise and unambiguous to inform the probationer of the conduct that is essential so that he may retain his liberty.”

### **3.20.2 Conditions must be reasonable**

The probationer must be able to comply with the conditions, and the question arises as to what is reasonable or unreasonable. “It would be reasonable to expect from a rich offender to pay \$1 000 each week as restitution fees, but the same condition will be unreasonable if imposed on an indigent probationer.”

In one case, an alcoholic was placed on probation for a period of five years, on condition that he refrained from the use of alcohol. He did, however, at one stage violate this condition, and had his probation revoked because of it. He lodged an appeal against the decision, and the appeal court ruled that the condition was unreasonable – specifically based on the testimony of the psychologist that the offender was a chronic alcoholic and that it “destroyed his power of volition” (Cromwell et al., 2002:161).

Latessa and Allen (1996:112) indicate that, according to case law, any condition may be imposed if it is constitutional, reasonable, clear and related to the same definable correctional goal, such as rehabilitation and public safety.

### **3.20.3 Conditions must protect the community or rehabilitate the offender**

The two most important ingredients of probation conditions are that it be directed at the offender’s rehabilitation and at the protection of the community. Despite the fact that these two requirements are wide open to discretionary application, appeal courts have, on several occasions, overruled the discretion of trial courts.

In 1997, an offender was placed on probation, having committed offences against the tax laws. During the course of his probation, he applied for permission to visit Russia.

When his request was denied after the third approach to court, he turned to the Federal Court of Appeal who concluded that his application to visit Russia was not related to his adherence to public safety, but rather that it did influence his position towards rehabilitation (Cromwell et al., 2002:78).

### **3.20.4 Conditions must be constitutional**

The constitutional rights of any offender play a crucial role in the process of completion of probation conditions, and are being upheld by courts, particularly in regard to the basic and fundamental rights of offenders, unless “Government can establish a compelling State interest that would justify the condition.” In line with this approach, the following rights are deemed to be of a fundamental and basic nature:

- Right of freedom of religion;
- Right of speech;
- Freedom of assembly;
- Freedom of the press;
- Freedom to petition the government to redress grievances.

In one case, an atheist offender who had had three violations, in one year, of an alcohol-related offence, was referred to participate in an Alcoholics Anonymous (“AA”) programme, as a condition of his probation. He appealed against this condition on the basis of the religious content of the AA programme. After it was established that the programme literature did indeed refer to God and encouraged prayer, this condition was declared unconstitutional (Cromwell et al., 2002:78–79).

## **3.21 PREFACE**

According to Petersilia (1998:XI–XII), community corrections in America grew very rapidly between 1980 and 1997. The number of persons placed either on probation or parole increased from 1.4 million to just under 3.4 million adults and 600 000 juveniles. Seventy-two percent (72%) of all American criminals were not in prison, but serving sentences in the community.

Together with the growth in the probation population, the offenders’ criminal records show that the crimes are becoming increasingly serious, with almost 40% of the persons



under supervision needing intensive supervision. Funds are inadequate to render proper services to protect the public and to support rehabilitation programmes for offenders, resulting in a situation where less than 10% of the 40% who require intensive supervision, actually receive it.

Despite all the attention paid to probation by the public and the media, very little information is available, specifically, when an offender is arrested for an aggressive crime. Even the most basic questions such as who receives probation, what services are provided, at what cost and to what effect, cannot be answered, due to lack of information and the inaccessibility and inadequate quality thereof.

### **3.22 THE EVOLUTION OF PROBATION**

“Community corrections” is a somewhat ambiguous concept, and for many people it refers to two types of criminal sanctions, such as parole and probation. Parole and probation are commonly confused with each other. Probation is a sentence that the offender serves in the community while under supervision, in lieu of a prison sentence. Parole, on the other hand, is a conditional release of the offender from prison on having served a portion of his sentence in prison. According to Petersilia, (1998:X1–X11), “Community corrections is a legal status, an alternative to incarceration, a service delivery mechanism and an organisational entity”.

Probation and parole were part of sentencing practices since the 1800s, and were always criticised as being too lenient towards criminals, and ineffective. Probation and parole gained in favour, however, during the 1960s when the United States embarked on rehabilitation as the primary goal of corrections.

This approach lasted until the 1980s when probation and parole were losing favour, in exchange for a more positive approach. Emphasis was placed on surveillance and monitoring of offenders, with community safety as the primary goal. This gave rise to intermediate sanctions with stricter supervision.

Dean-Myrda and Cullen (as quoted by Petersilia, 1998:2) are of the opinion that community corrections have not shown good results, due to the fact that practitioners were not spending time assessing their efforts, evaluating their effectiveness and/or taking proactive steps in educating the public about community corrections. A proper plan

with a clear message and a policy readily understood, would, in effect, change the opinion of the public in regard to probation.

### **3.22.1 Community punishment**

The concept of community as a factor in the American criminal justice system dates as far back as the pre-revolutionary period. A religious explanation for the deviance was inherited from the English, who believed criminals to be possessed by evil spirits, influenced by the Devil through witchcraft, black magic, etc. Harsh forms of punishment were applied as a means to proclaim the evil of sin. The majority of these sanctions were carried out in public, providing an opportunity for the community to strengthen social ties while observing the victimisation of an individual being rectified.

Punishment inflicted within the community comprised sanctions such as tarring and feathering, branding, mutilation, famishment and the application of the pillory and the stocks. These sanctions, however, served a purpose within the colonial communities. As colonies were becoming more prosperous and population centres emerged, the colonial approach towards crime causation and suppression began to change. The enlightenment-era philosophy called for the protection of traditional and religious authority.

In 1764, Beccaria published an attack on the existing legal system as being overly severe. “The purpose of punishment should be to serve as deterrent to both offender and potential offenders. The legal code and the penalties for breaking it had to be made public knowledge and had to be universally applied to all citizens without regard for power and wealth. Only if punishment was certain, would it be an effective deterrent” (Petersilia, 1998:4–5).

## **3.23 CHANGING CONCEPT OF PROBATION**

Cromwell et al. (2002:113–119) give a comprehensive overview in regard to the development and adjustment of categories of probation.

### **3.23.1 The case work era since 1939**

In 1939 the Attorney General’s survey of release procedures described supervision as one of the conventional attitudes of the criminal law – it is a form of punishment but

the purpose of it is reformative, reconstructive and educational, to use a scientific term, it is “therapeutic”.

This concept was successfully applied for the next 30 years and entailed the provision of services to probationers, assisting them to lead a productive life. Probation officers were referred to as “case workers and agents for change.” Terms such as “treatment” and “diagnosis” were frequently used, and the development of social work skills during interviews, counselling and modifying behaviour was frequently referred to in literature.

### **3.23.2 Probation as brokerage of services**

The National Advisory Commission on Criminal Justice Standards and Goals reported in 1973 that the goals of probation were no longer being achieved, and that services such as mental health, employment, housing, private welfare, etc. could be rendered much more effectively by specialist services provided in the community. This approach actually paved the way towards the brokerage of services where the probation officer, instead of rendering any services himself, located and referred the probationer to the relevant service agency. Due to this, probation officers were encouraged to differentiate between the services which could be rendered internally and those that needed to be obtained from social institutions. Services that were being directly provided by probation officers were those relating to the reasons why the offender was placed on probation, assisting him/her to adjust to the status of probation, providing information and facilitating referral to community-based services, and helping to create conditions permitting re-adjustment and re-integration into the community as an independent individual (Cromwell et al., 2002:113).

McCarthy and McCarthy (1991:113–114) also emphasise the importance of appropriate community services. The probation officer has to assess and identify the offender’s specific needs, locate the relevant service providers in the community and assist him/her to be accommodated accordingly. For this purpose they compiled an eight-point plan which probation officers have to follow:

- Inventory of resources;
- Develop source bank;
- Prepare the community;

- Develop client contracts;
- Develop plans;
- Refer to community resources;
- Purchase services;
- Follow up and update.

Strong relationships need to be established with the community, in order to involve probationers in educational and social services.

### **3.23.3 Community resource management team**

The difference between this approach and that of the brokerage of services lies in the fact that different probationers developed skills and established contracts with particular community-based service providers, to the extent that one officer was dealing with employment, one with drug abuse specialists and another with family counselling. This resulted in a pool of services where a probationer was assisted by more than one probation officer.

### **3.23.4 The justice model of probation**

The justice model repudiates the idea that probation is a sanction designed to rehabilitate offenders in the community, and, instead, regards a sentence of probation as a proportionate punishment that is to be lawfully administered for certain prescribed “crimes”.

The term “probation” was translated by the public as a token of leniency towards the offender and that he was actually let “to escape” justice, but for those who remain in the community, appropriate penalties must be imposed. Based on this argument, the justice model views probation as a punishment sanction in its own right and, based on two principal components, the restriction of the probationer’s liberty to a certain degree and reparation to the community or victim.

Supporters of the justice model were of the opinion that surveillance, counselling and reporting do not contribute to, and have very little effect on, recidivism. They were rather in favour of monitoring court orders for victim restitution or community services, with the surety that restriction of liberty was carried out. The main objective of the justice model was to assist offenders to comply with their probation conditions, and that other

services such as counselling, alcohol and drug treatment be rendered on a request basis (Cromwell et al., 2002:115–116).

### **3.23.5 An integrated model of probation**

Probation and parole supervision fit in somewhere between the case work approach and the justice model. The mutual application of control and treatment contributes to effective probation; neither the one nor the other, alone, will be sufficient. The basic assumption is that treatment programmes have no value and are unsuccessful in bringing about any change in the probationer. On the contrary, no research has ever proved the justice model approach to be more successful. A suitable strategy will then be one accommodating an active treatment function within the framework of control and discipline. The integrated model is recommended to be the answer.

### **3.23.6 The surveillance function of probation**

The success of probation is vested in proper surveillance. Placing people under probation and parole would be meaningless without the assurance that those released into the community are adhering to the conditions imposed on them. Failure to uphold and maintain proper surveillance or supervision will inevitably harm the credibility of both the probation officer and the system.

It is also rather difficult to obtain assistance from the public insofar as supervision over probationers is concerned, thus underlining the importance of the task of the probation officer (Cromwell et al., 2002:118).

### **3.23.7 The treatment function of probation**

Rehabilitation in supervision requires both development and training to be applied within a well-controlled and disciplinary environment. It is, however, a very difficult task to accomplish these objectives, as it is directed at the removal or elimination of all social barriers, which could enhance recidivism.

To accomplish the successful completion of probation, it is necessary for the probation officer to establish a sound personal relationship with the offender, in accordance with Cromwell et al. (2002:119): “the most effective means of promoting change and ensuring successful completion of the term of probation”.

### **3.24 EMPLOYMENT SERVICES**

Employment plays a very important role in the establishment of the probationer in the community, and represents the major source of financial support, the support of families, and the establishment of personal dignity and self-esteem. An application for employment requires a profile of the applicant, stating his skills, job preferences, experience qualifications and abilities. This is where the probation official should be playing a major role in doing a proper assessment of the offender, to determine his status in this regard. In many instances it would be reasonable to compile a vocational assessment. Many others will require vocational or job-related training when seeking a job. It is obvious then, that the probation official will be playing an important role in assisting the probationer to locate and obtain these services and to monitor progress and participation (Cromwell et al., 2002:119).

### **3.25 CONCLUSION**

The most interesting aspect of the study of the origin and development of community-based sentences is probably the fact that it was imposed and applied even long before the existence of modern society. The principle of *Lex Talionis*, as it was applied in the Mosaic Laws, and which was so saliently described in Leviticus 24:17–21 and Jones (2004:55), was, in effect, the modern-day version of community-based sentences. The stoning of the blasphemer was publicly executed by the entire assembly. There could hardly be a more gruesome and ferocious way to bring someone to death.

The execution of pickpockets on the open plain in England, attended and witnessed by members of the general public, as described by Barnes and Teeters (1959:318), is another clear example of punishment within the community, because prisons as we know them today did not exist. It was, however, due to humanitarians like Augustus, Hill, Beccaria and many others, that the course of approach towards punishment was deviated in favour of imprisonment as a means of protecting society against criminals. Public executions were terminated, and structures for detention of criminals were erected, which soon became the only (and popular) instrument of punishing criminals. This gave rise to another evil phenomenon: overpopulation of prisons.

Most ironically, it is the community-based sentence which is re-invented to deal with the new problem situation. Imprisonment as punishment was gradually adjusted to a

combination of imprisonment and rehabilitation, though not for long, as prison has proved itself to be the most unlikely place to achieve the goals of rehabilitation. Community-based sentences, in the format as discussed above, have added a new dimension to the global penal system. As long as a proper balance between community-based sentences and the management thereof, together with the development of, and support to, offenders can be established, so long will the community-based sentence remain a sustainable option to imprisonment.

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# **CHAPTER 4**

## **THE ORIGIN AND DEVELOPMENT OF COMMUNITY CORRECTIONS IN SOUTH AFRICA**

### **4.1 INTRODUCTION**

During the period prior to the appointment of the Commission of Inquiry into the Penal System of the Republic of South Africa, on 30 September 1976 (Viljoen Report, 1976:1), alternatives to prison sentences in South Africa were restricted to the imposition of fines and suspended sentences, which were used on a very small scale, while there was no community involvement in the application of the existing alternatives to imprisonment.

It was only since the beginning of 1981, and based on recommendations made by several committees and seminars – among others, the first seminar on overpopulation of prisons in South Africa, that the search for other alternatives to imprisonment, and correctional supervision in particular, became a strong focal point of Government, the departments of Correctional Services and Justice, and other relevant departments. In the search for alternatives to imprisonment, objectives such as the interests of the community, the fairness of the sentence to the offender, and the constant overcrowded conditions in South African prisons, had to be calculated.

### **4.2 DEFINITION OF CORRECTIONAL SUPERVISION**

According to Terblanche (1999:330–331), correctional supervision can be defined as a community-based punishment to which a person is subject:

“A community based punishment is referring to a form of punishment which is executed within the community and in cooperation with and/or to the benefit of the community”.

The conclusive definition of correctional supervision, according to Terblanche, can be found in the following:

Correctional supervision is a form of punishment which an offender serves in the community, and during which the offender is not incarcerated in a prison

at any time, subject to the conditions such as the court may prescribe, which invariably will include house arrest and community service, as well as submission to various programmes aimed at the offender's training, rehabilitation and development.

According to Stojkovic and Lovell (1992:536), community corrections can be defined as:

A broad umbrella under which a large array of practices and programmes are generally included. As such, almost any correctional practice or programme other than those carried out within prison facilities can be deemed a community corrections effort. However, making such a gross distinction is unsatisfactory to some and does little to further an understanding of community corrections as a concept.

In South Africa, community-based punishment refers to a concept of a probationary programme directed at the assessment and exploitation of the probationer's rehabilitation potential.

The American model of probation differs substantially from the above, in the sense that it does not involve house arrest and community service. Intensive probation, as applied by the Georgia model at the time when correctional supervision was introduced in South Africa, bears some resemblance (Terblance, 1999:331).

### **4.3 THE SEARCH FOR ALTERNATIVES TO IMPRISONMENT**

Singh (2004:339–340) also came to the conclusion that prison conditions in South Africa became extremely difficult, and the rendering of proper correctional services came hugely under pressure due to the high levels of prison overpopulation. The prison population is exceeding the official capacity by far, which has again resulted in the deterioration of the quality of life inside the prison. The consequences of imprisonment to both the offender and the community have spurred on the search for alternative sentences.

Statistics of the South African prison population in comparison to other countries shows that South Africa has one of the highest prison populations in the world. In November 1990 there were 357 persons out of 100 000 of the general population in South African prisons, compared to the 42 per 100 000 in the Sudan, 71 per 100 000 in France, 96 per 100 000 in England and 426 per 100 000 in America. The cost to detain one prisoner in a South African prison added up to R6 860, 00 per annum in 1991.

Overcrowding had reached unmanageable levels, and South Africa was widely criticised and the prison conditions questioned by other countries and persons. Overpopulation was clearly the result of a lack of alternatives to imprisonment, which, in turn, gave rise to a number of negative implications such as:

- mass handling of individual needs;
- reduction in rehabilitation programmes;
- the earlier release of criminal elements;
- pressure on the Treasury for the supplementation and extension of personnel;
- increase of capital expenditure for creation of accommodation;
- increasing burden on the Treasury for the support of families of the offender.

On 28 November 1990 certain recommendations were submitted to Government, which were approved, based on further investigation. These recommendations were directed at the reduction of the number of awaiting-trial prisoners, as well as that of sentenced prisoners, through the introduction of community-based sentences – and specifically, of correctional supervision. The restructuring of the Department of Prisons, the phasing out of the Central Release Board, and the implementation of strategic management in the Department of Prisons, were also recommended (White Paper, 1991:10).

According to the policy set out for this new endeavour, correctional supervision should form part of community corrections, with the focus on departmental liability and effective centralised control, with ensuing availability of social welfare services. Judicial officials must realise and utilise the advantages and value of the system while it must gain the confidence of the community. Although no information is available in South Africa regarding the cost of detention in comparison to correctional supervision, the following examples may be worth considering:

The average prison population during 1998 in Georgia, America, was 18 565, while the probation population accounted for 108 147 offenders. The per capita cost per annum per offender was US\$13 450 inclusive of capital outlay, and for non-detention sentences only US\$1 730. In Victoria, Australia, it cost 40 000 Australian dollars to detain one person per year, and only 1 800 Australian dollars for those under probation (White Paper, 1991:11).

According to the 1997/1998 annual report of the Department of Correctional Services, five years after having implemented community corrections, the comparative per capita cost of imprisonment to community corrections was R13,07 per person on community corrections, against R71,87 per prisoner in detention. The average prison population during the period under report was 56 857 at a per capita cost per day of R4 086 312, in comparison to R743 121 that it would have cost for the same number of persons under correctional supervision – thus, a saving of R3 343 191 per day.

#### **4.4 PREVIEW OF CORRECTIONAL SUPERVISION**

Correctional supervision as a possible sentencing option came under the spotlight for the first time when the Commission on Punishment and Prison Reform (Landsdown Commission) submitted a number of recommendations in its report.

Proper facilities had to be made available for prisoners released under supervision, while it had to accommodate both adults and juvenile offenders. Probation services were to be made available at the courts, to deal with suspended and postponed sentences, while suspended fines could be incorporated as a condition of supervision. The probationer had to be informed of the contents of any report compiled by the probation officer who, in the opinion of the Commission, should handle between 60 and 70 cases (Landsdown Report:167).

Although the recommendations by the Landsdown Commission laid a rather practical foundation towards the implementation of correctional supervision which is not the same as we know it today, these recommendations did not receive any attention at Government level. It was only with the appointment of the Viljoen Commission on 30 September 1976, just about 29 years later, that a new set of recommendations were compiled and submitted to the Minister of Justice.

The Viljoen Commission recommended that a handbook be compiled for the use of presiding officers in lower courts, directed at the preparation of pre-sentence reports as guidelines for alternative sentences, to contain information on facilities for drug and alcohol-addicted offenders, community-based institutions, day training centres and social welfare institutions to render assistance in rehabilitation and non-custodial sentences. The handbook should also provide for the training of probation officers and the supervision of

probationers placed under supervision of probation officers, as well as those released on parole.

Presiding officers should be encouraged to apply the prescriptions of Article 352(1) of the Criminal Procedure Act 52 of 1955, in regard to the imposition of positive conditions with postponement or suspended sentences (Viljoen Report, 1976:171).

#### **4.4.1 Submission to training and treatment**

Viljoen (1976:172) is of the opinion that Article 352(1) is grouping training and treatment together with supervision by a probation officer. Clause 302 of the draft Act, however, separates training and treatment from supervision by a probation officer and explained as follow.

The Afrikaans version refers to “opleiding en behandeling”, while in English the expression “instruction” is used which can be translated into Afrikaans as “onderrig” and has a narrower interpretation than the Afrikaans expression “opleiding” which can be translated as training, which indicated that the offender must skill himself under supervision of another person.

Wat die uitleg ook al mag wees maak nie werklik saak nie want die versamelklausule (enige ander geleentheid) sal in ieder geval die bepalings van die voorwaardes insluit dat indien daar beslis sou word dat dit buite die betekenis van die word “onderrig” sou val, dek dit ’n wye gebied van moontlikhede en as die oortreder se rehabilitasie bevorder kan word deurdat hy die een of ander opleiding of onderrig ontvang, en die oorwegings van afskrikking en vergelding nie vereis dat hy in ’n gevangenis aangehou word nie, mag ’n opgeskortte vonnis met voorwaardes van daardie aard daaraan gekoppel, bydra tot voordeel van die oortreder sowel as die gemeenskap.

#### **4.4.2 Day training centres**

The establishment of day training centres, similar to what is available in England for inadequate offenders should seriously be considered by the authorities. Gwynn-Jones has the following to say in this regard:

Without a doubt, the most revolutionary piece of penal reform during the century is the provision of day training centres. We have for years lamented the lack of facilities for rehabilitating offenders and time after time we have drawn attention to the pitiful state of the inadequate offender who forms such a substantial portion of the residence at any local prison. At long last something can be done for this category of offender who is, more often than not, removed from society because of the lack of resources to deal effectively with them (Viljoen Report:117–118).

The placement of offenders under the supervision of a probation officer had been by repetition submitted to the Commission by criminologists and sociologists, as a suitable alternative to imprisonment. A determining factor in probation is the selection of the subject or probationer. Bad selection can, however, render proper control and supervision ineffective. One of the major aspects of supervision should be whether the probationer will benefit from the application of supervision orders.

The Institute for Crime Prevention and the Re-integration of Offenders (Nicro), in a memorandum submitted to the Commission, (Viljoen Report:120), indicated that probation is more suitable as a punishment for the young generation. Many of them would probably not have become criminals if they had been charged and treated at an early stage in their lives when they came into contact with the law for the first time. They could have been rehabilitated if, at that stage, they had been placed under supervision. Nicro also pointed out a number of advantages of a probation system:

- The probationer maintains contact with the family and the normal lifestyle which is not possible in prison. He stays in employment, enabling him to fulfil his family obligations;
- The probationer is not exposed to the negative influences of prison life and the stigma of imprisonment;
- Placement on probation enables the probation officer to utilise the services of external social work services and other support systems;
- Probation will also be much more cost-effective in comparison to imprisonment.

Professor Retief of Unisa is of the opinion that supervision as a process of treatment must contain a specific treatment programme consisting of all the personal and external

environmental factors. The positive characteristics of the offender, not only the negative, should also be taken into consideration, not only to assist the probationer to abstain from crime, but also to guide him towards a law-abiding life.

The probation officer must focus on the interpersonal aspects within the family structure, and the environmental context. Provision should also be made for personal and private interaction and discussion between the probationer and supervising officer. Probationers should be placed in different levels of supervision, some require intensive and others minimum supervision, although those in the minimum category should not be neglected or be given minor attention. The task of the probation officer contains a variety of facts, which, as a whole, is directed at changing the offender's approach and eliminating harmful influences (Viljoen Report:121).

The researcher holds the opinion that, in the spirit of the proverb “woorde wek maar dade trek” (actions speak louder than words), the essence and most basic principle of rehabilitation is vested in a civilised, decent and trustworthy approach and interaction between the probation official and the probationer, and for that matter, also between the correctional official and the offender. The current application of correctional supervision in South Africa is generally based on the principle of intensive monitoring, which is inherited from the Georgia model in America and which leaves little room for the kind of approach suggested by Professor Retief. Based on his personal experience in Correctional Services and as a logical point of departure, the researcher fully supports the views of Professor Retief in this regard.

It is of significance to note that the above approach was emphasised in Ordinance 8 of 1843, ordering the superintendent of the road camp (“padkamp”) to mingle freely with the prisoners under his control, during which interaction with them he would not fail to inculcate incidentally such truths and maxims as were most likely to contribute in each case to generate and arouse moral feelings, leading to the right comprehension of guilt. He also had to gain as much information as possible about the reasons for committing crime, in order to apply corrective measures. This aspect is discussed in more detail in chapter 5, page 165.

#### **4.5 ESTABLISHMENT OF THE PENAL REFORM COMMITTEE**

The Viljoen Commission recommended, among others, that a penal reform committee, established to serve as an advisory board compiled of specialists from both the practical and economic spheres, to advise on penal-related issues, was indispensable, in order to keep pace with penological developments elsewhere in the world.

In October 1979, the Minister of Justice had indeed authorised the appointment of such a committee. The committee was instructed to continually consider and make recommendations towards the improvement of the penal system in South Africa. The chairperson of the Viljoen Commission, Judge G. Viljoen, was again appointed as chairperson of the penal reform committee. Among the persons appointed as members of the committee were Professor P.J. van der Walt from Unisa, Major-general M.C.P. Brink from the Department of Prisons, Mr. B.J. Parsons from the Department of justice, Mr. C.F. Klopper, Regional Magistrate, Pretoria, and Major-general J.F. Kleinhans from the South African Police.

The penal reform committee outlined its objectives in its first annual report to the Minister of Justice in 1979.

Serious attention needs to be given to an investigation into community-based alternatives to imprisonment, to compile a guide to regulate sentencing, training of sentencing officials and criminal statistics to be used in research. The committee will advise the legislator in regard to diversions, compulsory minimum sentences, etc.

The seminar on overpopulation of prisons held on 25 and 26 June 1981 was an outcome of the recommendations of the penal reform committee (Gerber, 1995:95–96).

#### **4.6 HISTORICAL DEVELOPMENT OF COMMUNITY SERVICE IN SOUTH AFRICA**

The practice of sentencing offenders to employment to the benefit of the authorities dates as far back as the colonial era. Evidence of this practice is to be found in cases where offenders were transported to New South Wales and the island of Edam in Bavaria, to perform work for the benefit of the community.



In the case of some long-term offenders, slaves were placed under the supervision of their masters to perform certain duties. Convicts under sentence of long terms and heavy offences were allowed to return to the service of their masters in consideration of the injury sustained by their masters in the loss of their services (Van Gass, 1981:108–109).

Probably the most significant development in the history of penal reform was recorded in the “Wet op Eerste Oortreders (Act 10 of 1906). This Act made provision for first offenders to be placed under probation, providing that they were first offenders, that there were no warranties involved and that the offence committed was not a capital crime. The Act only made provision for first offenders, and also after the court had taken the offender’s age, character and the seriousness of the offence into consideration.

Following on this, the “Wet op Gevangenissen en Verbetergestigting” (Act 13 of 1911) made provision for the appointment of probation officers, while suspended sentences under certain conditions became a reality in the promulgation of the “Kriminele Rechtspleging Act (Act 40 of 1914) which included the payment of compensation to victims of crime.

The Landsdown Commission (1947:77) expressed itself in regard to the destructive nature of short-term imprisonment, and suggested that a labour bureau be established to place offenders in work as an alternative to imprisonment:

By this means a large number of persons who would otherwise be compelled to serve short terms of imprisonment might be drafted into useful and profitable service. While the scheme should be worked under the control and administration of the Department of Labour, the bureau would seek assistance and advice, where needed, from the Department of Native Affairs, the Department of Justice, and the Department of Prisons and Social Welfare.

Arrangements would have to be made with employers for deductions to be made from wages due, for the payment of deferred fines, but deductions in this respect should have regard for the man’s own necessities and such sums as may be necessary for the support of his dependants.

This would entail a certain amount of accounting work, but would not render the working of the scheme unduly difficult, and in any case, the saving of expenses to the state in

imprisoning the man, and other benefits derived from his being kept out of gaol, would made this well worth while (Van Gass, 1981:191).

Although the recommendations of the Commission had a positive impact in regard to the classification and treatment of long-term offenders, community service as an alternative to imprisonment had never been realised. Community service sentences could not be implemented, due to a lack of an organisational structure, and the fact that the judiciary considered community service as a service to be rendered directly or indirectly to the victim of the crime. In addition to this, there was reluctance by the courts to develop community service. The first real application of community service sentences is to be found in the adjudication of the case *S v Bock* 1963 SA (GW) in which Judge De Vos Hugo made an order with regard to community service.

In paragraph 5.1.6.9.5 of its report (1976:125), the Viljoen Commission referred to this order, stating:

Bock is found guilty of culpable homicide by causing the death of a person while recklessly driving a vehicle. The court has sentenced him to 2 years imprisonment, suspended for 2 years on condition, amongst others, that he, without compensation, performs weekend services in the trauma section of a hospital. The learned judge who imposed the sentence was of the opinion that the sentence complied with all the requirements which he had in mind, such as rehabilitation and deterrence.

Community-based sentences only found application in the promulgation of the Criminal Procedure Act 51 of 1997, which stipulates in Article 297(c) that an offender can be ordered by the court to render a service to the benefit of the community. Despite the provisions of the said Act, community-based sentences were seldom used, due to the following reasons:

- The application of this type of sentence was not well received by sentencing officials;
- Uncertainty still existed in regard to the lawful implications of community-based sentences in the case of the selection of offenders for community service;
- A proper probation system was non-existent, in South Africa, to take care of the selection of offenders for community;

- One of the major reasons for the reluctance of sentencing officials to impose community-based sentences revolves around the issue of supervision and control over offenders sentenced to community service.

#### **4.7 PROBATION AND PAROLE**

Probation in South Africa, as it was practised in other countries in the world, was only applied in the case of juveniles. Every offender's crime and previous record was carefully considered before sentence was imposed. Wherever it was possible, offenders were kept out of prison through the application of fine sentences, and where offenders had been given the opportunity to pay it in instalments, while suspended sentences were rather common, particularly in the case of first offenders. In addition, the imposition of sentences could also be postponed for a maximum period of three years on conditions which a court may have deemed fit.

Provision was also made for the submission of reports by trained probation officers. In cases where circumstances necessitated imprisonment, the courts could also impose periodic imprisonment, which provided for someone to be imprisoned over weekends and still be able to maintain employment and family support. Prisoners who were sentenced for up to four months' imprisonment, could also be released on parole, either at admission into the prison or at a later stage during their sentence, and be placed in labour within the community, and, by so doing, avoid the detrimental effects of imprisonment (*Prison administration in South Africa*, 1969:13–14).

#### **4.8 EXPERIMENTAL COMMUNITY SERVICE PROJECT IN CAPE TOWN**

Sentences of community corrections were imposed as early as 1969 and during the 1970s by a certain magistrate F.C. King in Cape Town. He seldom utilised pre-sentence reports in the process of sentencing, and used to approach the various institutions himself in order to arrange for the placement of offenders under supervision. In one particular case, however, he accepted a pre-sentence report on which was recommended as follows:

The accused has been fully assessed and found to be admirably suited for a sentence to be postponed in terms of section 352(1)(a) of the Criminal Procedure Act 56 of 1955,

on condition that he engage willingly in some form of appropriate community service. A registered welfare organisation which desires to remain anonymous is prepared to accept the accused for such community service as the court may order. A letter from this organisation is attached.

After Magistrate King retired from the bench, the imposition of community-based sentences became almost non-existent. He did, however, make the following recommendation to the Viljoen Commission:

The shortage of probation officers and the lack of post-imprisonment supervision is a major problem that must be solved, and to my mind community service combined with voluntary supervision could help probation officers enormously. Let the prisoner on probation, and those given suspended sentences, serve in their own community those less privileged than themselves during their leisure hours (Slabbert, 1980:197–199).

During a seminar on crime prevention held from 15 to 17 February 1997, a presentation was delivered by Mrs. F.A. Gross in regard to the implementation of community service by offenders. On 16 March 1979 a memorandum was submitted to the research committee of the local office of the Department of Social Welfare and Pensions in Cape Town, proposing a community service project for offenders. During a meeting which followed, two important decisions were taken:

- It would be feasible to have discussions with local magistrates prior to the commencement of the project;
- The project should be part of the probation system (Slabbert, 1980:200).

After the initiation of the community service project, only six persons were recommended by probation officers to do community service. Although magistrates were supportive of the idea of community service, only a few were prepared to give such orders, due to a number of problems.

The legal position of those ordered to do community service, was not yet clarified. Magistrates were concerned about the issue of payment of compensation, in case of negligence by offenders doing community service.

The Criminal Procedure Act 52 of 1959 did not contain any provision for the placement of juveniles under the supervision of probation officers, while organisations involved in the community service projects did not make provision for the appointment of additional personnel to carry out supervision over offenders.

Despite these unresolved issues, the first person was ordered to do community service of 80 hours on 13 May 1980 (Slabbert, 1980:216–217).

#### **4.9 RECOMMENDATIONS REGARDING LEGISLATION ON COMMUNITY CORRECTIONS IN SOUTH AFRICA**

The existing Article 297(c) of the Criminal Procedure Act 55 of 1959 provides for a court to give an order with regard to the placement of an offender under community service. The researcher is of the opinion that this stipulation of the Act is vague and undefined. The success of community corrections in England can be ascribed to the existence of clear and unambiguous legislation. This, according to the researcher, necessitates the following amendments to the stipulations of Article 297(c):

That the court should be able to order any offender over the age of 16 years to do community service. However, before an order to do community service could be issued, the court must ascertain whether suitable facilities do exist to render community service, and only after a report by the probation office has been submitted. The offender must also confirm his preparedness to abide by the order of the court, in writing. Every order of community service must contain a time limit in regard to the number of hours of community service to be served. It is recommended that between 60 and 300 hours be deemed appropriate. It is also important that the offender understands the context of the legislation, as strict action could be taken against those who do not adhere to the conditions of an order of community service (Slabbert, 1980:218).

#### **4.10 THE SEARCH FOR ALTERNATIVES TO IMPRISONMENT**

According to Cilliers (as quoted by Gerber, 1995:66) various commissions of inquiry were appointed and numerous other measures implemented over the past 40 years, in an effort to deal with the problem of overpopulation of prisons. Alternatives to sentences

of imprisonment need to be found, in order to avoid imprisonment. The search for alternatives cannot, however, be separated from the negative influences which are associated with imprisonment, which again puts pressure on the search for alternatives.

In 1956, an interdepartmental committee was appointed by the Minister of Justice to investigate and make recommendations regarding amendments to the penal system, and was tasked with identifying the problem areas in the existing penal system, to recommend measures to improve or replace the existing system, and to indicate what improvements would be brought about by the new system (Avery, 1989:70).

In 1979, at a symposium on sentencing, Judge G. Viljoen expressed himself as follows:

Imprisonment is a traditional sentence but it should not be resorted to where there is a feasible alternative. There are other forms of punishment or, if there are not, such forms should be created. All over the western world the hunt is now on for alternative sentences.

Judge Viljoen also deliberated on the justifiability of imprisonment as a sentence for certain categories of offenders, and added:

But that does not apply to all types of offenders and it is for the very reason that we must provide accommodation for criminals who belong in gaols, that we must unabatedly search for alternatives to imprisonment as disposition for those who do not belong there (Avery, 1989:72–73).

The application of sentences similar to the current sentences of correctional supervision is a long-standing practice in South Africa. Various examples of such sentences exist, and are, among others, the suspension of a sentence on conditions such as community service, house arrest and submission to treatment and training programmes.

This, however, was not a suitable option, due to the lack of probation officers or agents. As a result, the interdepartmental working group on overpopulation of prisons was appointed by the Minister of Justice in the late 1980s. The Department of Prisons became an independent state department and was renamed the Department of Correctional Services in 1991 which was embodied in the Correctional Services and Supervision Amendment Act 122 of 1991. This Act also made provision for correctional super-

vision as a sentencing option, which was systematically implemented from August 1991 (Terblanche, 1999:327).

#### **4.10.1 The role of the judiciary in the development of correctional supervision**

Judge Kriegler (as quoted by Terblanche, 1999:328–329) delivered the first sentence of correctional supervision almost a year after it was made available, and expressed himself as follows:

The legislator has unequivocally indicated by the shift of emphasis, which is apparent from the amendment act as a whole, that punishment reformative but if necessary, highly punitive, is not necessarily or even primarily to be achieved by incarceration.

The shift towards the application of correctional supervision was increasingly challenged in 1997. High crime rates were putting enormous challenges on courts by the community, and any punishment other than long-term imprisonment was being seen as a soft approach by the courts. This led to the importance of correctional supervision for non-violent crimes only.

#### **4.10.2 Correctional supervision as alternative sentencing option**

The interdepartmental working group on community service was, as an initial step, appointed in 1983 under the chairmanship of the regional court president, Mr W.F. Krugel, to investigate community service as an alternative sentencing option in South African criminal law, and to establish community service orders as a meaningful and viable sentencing option.

Based on the recommendations contained in the report of the working group, the Criminal Procedure Act of 1959 was amended in 1986 to establish community service as a sentencing option. Although this led to a significant increase in the imposition of community service, it was still not being properly utilised. This could probably be ascribed to a lack of community involvement, a lack of suitable placement institutions and the fact that presiding officials were not really familiar with this option. In addition to this, control and supervision arrangements were still inadequate.

Following on the outcomes of the working group and the enactment of the Probation Services Act 98 of 1986, the focus was shifted towards other forms of punishment, such as correctional supervision and supervision, which subsequently gave cause for the appointment of the working group “Probation Services and Supervision”, by the Minister of Justice, under the chairmanship of Mr. F.W. Krugel, the regional court president. The terms of reference of this working group were to investigate the viability and feasibility of correctional supervision as a further sentencing option, as well as the viability of supervision services (White Paper, 1991:21–22).

#### **4.10.3 The meaning and forms of correctional supervision**

On 27 October 1990 a planning session was conducted by the top management of the South African Prison Services at Leeuwkop Prison, to determine and plan future strategies. Three different strategies were identified:

- (a) When the prison population will be regulated artificially by means of amnesty and bursting, the daily average prison population will accumulate to 135 604 by the year 2000;
- (b) If the prison population will be allowed to grow uncontrolled, it will rise to 161 215 by the year 2000;
- (c) If existing homelands such as Transkei, Venda, Ciskei and Bophutatswana are incorporated into South Africa, it could result in a prison population as high as 207 589 over the same period of time.

In order to deal with these options respectively, the following number of personnel and budget will be required:

- Option 1: 33 912 members and a total budget of R3,5 milliard
- Option 2: 40 304 members and R4,2 milliard
- Option 3: 51 897 members and R5,4 milliard

After thorough deliberations, top management concluded that the cost of imprisonment was high and would keep on increasing. South Africa was not in step with worldwide developments, and, specifically, in the field of community-based sentences. A dire need for change prevailed, and new objectives and the implementation of community-based sentence options were urgently required.



A conclusive submission was made to Cabinet on 20 December 1990, which resulted in the Department of Prisons being renamed the Department of Correctional Services, under the management of the Commissioner of Correctional Services. A system of supervision had to be implemented by the new department (referred to as “correctional supervision” in the Prisons Act (Neser, J.J., 1993:416:417).

#### **4.11 THE KRUGEL COMMITTEE**

In 1981 it became evident that prison populations all over the world were growing steadily and needed to be curbed. Due to this, the Minister of Justice appointed the Krugel committee to investigate overpopulation of prisons, known as the “Probation and Supervision Work Group”, with the objective to determine the viability and implementation of supervision in South Africa (Neser et al., 1993:417–718).

#### **4.12 THE MEANING OF CORRECTIONAL SUPERVISION**

A correctional official is defined as a member of the Department of Correctional Services.

Correctional supervision is a community-based sentence to which a person is subjected, in accordance with chapter VIII A of the Correctional Services Act 8 of 1959 and the regulations promulgated there under, if:

- he was placed as such in terms of Article 6(1)(c); it was imposed on him in terms of Article 274(1)(h) or (i) and been placed under (i);
- his sentenced had been converted in terms of Article 276A(3)(a)(ii) or 287(4)(b) or in terms of Article 287(4)(a);
- it was a condition for postponement of sentences imposed in terms of Article 297(1)(a)(i) (cc A);
- as a condition under which the whole or partial suspension of his sentence in terms of Article 297(1)(b) or (4) could be imposed.

The Correctional Services Act 111 of 1998 describes a probationer as a person subjected to correctional supervision (Neser et al., 1993:417:418).

#### **4.13 DIFFERENT FORMS OF CORRECTIONAL SUPERVISION**

In terms of the Criminal Procedure Act 5 of 1977, correctional supervision made provision for both sentenced and unsentenced persons.

### **4.13.1 Deviation**

In terms of Article 6(1)(c) of the Criminal Procedure Act, court procedures could be suspended and a person placed under correctional supervision at any stage before judgment. A criminal record in such an instance would not be recorded.

Deviation could only be affected when the accused submitted a written acknowledgement of guilt, and on submission of a report by a probation or correctional official in regard to the feasibility of this sentence option. It also had to be recommended by a correctional official, and the conditions and period of supervision be accepted by the accused.

This specific section of the Criminal Procedure Act was not included in Proclamation No. 2043 of 14 August 1991 for implementation on 15 August 1991. Nesor et al. (1993:418) ascribe this to certain practical problems encountered by the attorney-general which needed to be clarified. Although it formed part of the already published Act, it was still invalid.

### **4.13.2 Juveniles**

The SAPS are compelled by article 50(4) and (5) of the Criminal Procedure Act to inform the probation officer of the detention of a juvenile, immediately after arrest. If the probation officer is not available, a correctional official must be notified, who, in turn, will inform the probation officer. According to Nesor et al. (1993:418), provision is made by virtue of Article 62(F) and 71 for the placement of juveniles under the supervision of a probation or correctional officer as a fail condition or instead of failure.

The inclusion of correctional officials in handling unsentenced juveniles adds a new dimension to the function of the departments. It also gives rise to the question whether all the relevant correctional functions have not been placed within a single department.

### **4.13.3 Correctional supervision as sentence**

In terms of Article 274(1)(h) of the Criminal Procedure Act, correctional supervision as a pure sentence option by the court is authorised on submission of a report by a probation officer (Nesor et al., 1993:419).

## **4.14 CONVERSION OF A SENTENCE OF IMPRISONMENT INTO CORRECTIONAL SUPERVISION**

Courts can impose sentences of imprisonment to the maximum of 5 years, by virtue of Articles 276(1)(i) and 276A(2) of the Criminal Procedure Act. According to these stipulations, the Commissioner of Correctional Services can place such a person under correctional supervision as he deems fit. In terms of Article 276(3), sentences of both imprisonment and correctional supervision can be imposed simultaneously (Neser et al., (1993:420).

### **4.14.1 Referral to court**

Article 276A(3) also contains provision for referral of prisoners to the court *a quo* who were sentenced to imprisonment prior to the implementation of these amendments. On the strength of these stipulations, the Commissioner of Correctional Services can apply for reconsideration of the following sentences of imprisonment to the respective courts *a quo*:

Those who were sentenced to more than 5 years' imprisonment, whose date of release, on the strength of the Correctional Services Act and regulations, is less than 5 years;

After consideration of the application by the Commissioner, the court can:

- confirm the sentence or order *a quo*;
- convert the sentence into correctional supervision on certain conditions, or impose any other suitable sentence.

Should the court decide to impose another sentence, it should not exceed the remaining part of the initial sentence. The court also maintains the final decision to convert a sentence of imprisonment into correctional supervision (Neser et al., 1993:420).

### **4.14.2 Conversion of fines into correctional supervision**

Fines are imposed in cases where the courts do not consider imprisonment as a feasible option. Imprisonment remains as an alternative to non-payment or partial payment of fines. Article 287(4) of the Criminal Procedure Act 51 of 1977 makes provision for the

conversion of such sentences of imprisonment into correctional supervision as the Commissioner of Correctional Services deems fit, providing the sentence does not exceed five years. If so, the sentence should be referred to the court *a quo* for consideration of conversion (Neser et al., 1993:420–421).

#### **4.15 THE SOUTH AFRICAN MODEL FOR CORRECTIONAL SUPERVISION**

Correctional supervision, by definition, is a sentence option imposed by courts and which is served in the community under strict supervision of correctional officials. Neser et al. (1993:429) also maintain that criminals, who belong in prison due to their crime patterns and seriousness of offences, should be removed from the community. Those who do not fit into this description should rather be dealt with within the community.

#### **4.16 PREREQUISITES FOR SUCCESSFUL CORRECTIONAL SUPERVISION**

Correctional supervision in South Africa is based on 5 prerequisites as indicated by Neser et al. (1993:429–431). It also entails a stable involvement on the part of the community, and the provision of job opportunities to probationers. The system should also adhere to high standards and be trusted by courts to the extent which enhances the imposition of sentences of correctional supervision.

##### **4.16.1 Community involvement and acceptance**

The community must be actively involved in the system. Proof needs to be rendered to the community that the courts approach this sentence option in a responsible manner, and that the Department of Correctional Services can apply it in a firm and diligent manner. The acceptance of this sentence option will result in active participation by the community.

##### **4.16.2 Courts have to trust the system**

By executing correctional supervision in the system in a proper manner, the Department of Correctional Services can instil trust in, and goodwill for, the courts to impose correctional supervision.

### **4.16.3 Community stability**

It is very difficult to implement the system in an unstable community. The probationer is required to stay at a specific place where he can be visited. On the other hand, correctional officials must be able to access areas where probationers are staying, in order to visit them regularly, without their safety and freedom of movement being at risk.

### **4.16.4 Availability of work**

Probationers need to be cared for by family or friends. Although they are not excluded from probation if not having work, it is a preference.

### **4.16.5 System must comply with international standards**

International standards in regard to correctional supervision are currently in a process of consideration, and are referred to as the Tokyo-rules, which is already accepted by the United Nations. The policies in regard to correctional supervision are based on these rules.

## **4.17 THE IMPLEMENTATION OF CORRECTIONAL SUPERVISION AS AN ALTERNATIVE TO IMPRISONMENT**

On 14 June 1991, Parliament approved the amendments of Article 276 and 278 of the Criminal Procedure Act 51 of 1977, as well as amendments in regard to the Prison Services Act (Act 8 of 1959), in order to accommodate the imposition of sentences of correctional supervision. On 15 August 1991, correctional service as a sentence option was lodged in the magisterial districts of Pretoria and Wonderboom, as a pilot project.

On 20 March 1992, correctional supervision was further extended to five other around Pretoria, magisterial districts as well as to the Cape Peninsula. By the end of December 1992, this sentence option was deployed in 206 magisterial districts throughout the country, with 3 046 correctional supervision cases already in the system. Two hundred and ninety-two cases had completed their sentences, while 311 cases had been revoked and converted into imprisonment, as a result of violation of their conditions, having committed other crimes, and absconding (Gerber, 1995:106–107).

The success rate during this period was 89,79% (Department of Correctional Services annual report, 1991–1992:9). According to the 1993 annual report of the Department of

Correctional Services (1993:3), the system of correctional supervision was fully implemented at all magisterial districts in the county.

#### **4.17.1 The contents of correctional supervision**

According to Kriegler (1993:670), there are important aspects about correctional supervision which require further explanation:

It is a new sentence option and altogether different to the existing approach.

The initial purpose of correctional supervision was to fill the gap which occurs worldwide between imprisonment and other forms of punishment outside prison. These sentences are, moreover, insufficient in fulfilling the expectations and objectives of punishment. Along with that, there is a wide awakening in regard to imprisonment, in as far as the reformatory and deterring value thereof is concerned. The enormous cost of monetary and human resources to keep a person in prison emphasises the fact that prisons should be reserved for those who need to be imprisoned.

#### **4.17.2 Community-based characteristics of community corrections**

Correctional supervision as a concept is falling short of defining its objective. However, the reference to **community-based sentence** is much more descriptive, and a substantial part of correctional supervision. With correctional supervision comes the awareness that prison is the only suitable place for offenders, and secondly, that the community is involved and made aware of the offender and his participation in the process of punishment.

According to Kriegler (1993:670), a clear indication existed at this early stage, that it could be predicted with confidence that correctional supervision would have a significant and lasting influence on the fixing of punishment.

#### **4.17.3 Application of correctional supervision**

One of the most interesting and rather unfamiliar explanations in regard to the application of correctional supervision in Article 84(1) of the Criminal Procedure Act of 1977 is the fact that the term “correctional supervision” is merely a collective approach towards a wide variety of measures which could be applied in numerous combinations. In no instance did the legislator attach a particular meaning to the terminology used in this regard. References such as **house arrest** and **monitoring** are without restriction, as with other

stipulations such as **enige ander vorm van behandeling** (any other form of treatment), and it leaves the door wide open to interpretation (Kriegler, 1993:472).

According to Kriegler, J. (as quoted by Du Toit et al., 2006), South Africa entered a new phase, in regard to sentencing, with the introduction of correctional supervision as a sentence option. He pointed out that correctional supervision offers a wide variety of measures which find application outside the prison.

What is important is the fact that none of these measures, such as monitoring, house arrest, community service and placement in employment, is defined in the Correctional Services and Supervision Matters Amendment Act 122 of 1991, and from this it may be inferred that the legislature has left it to sentencing officials to give content and form to the concepts within the parameters indicated by the generic terms.

From the viewpoint of the researcher, this specific passage quoted could add a new dimension to, and open the door for, specific labour-related training and development in skills of persons placed under correctional supervision, as part of the content of their conditions. The Department of Correctional Services is probably the most strategically positioned department in the entire Civil Service echelon, to give effect to, exploit and explore the training and development of people placed under its care, by virtue of correctional supervision. In addition to this, South Africa is currently experiencing developments and presenting opportunities of invaluable magnitude in the construction industry (training of artisans in the various fields of building and construction) and the agricultural industry (development of skills and training as farm workers in a wide variety of farming activities) to support the current practice of land restitution and the establishment of small farming units. "Prison Farms" exist at various correctional centres throughout the country, rendering it the most ideal situation for such a development. This however, opens an opportunity for further research in this field.

#### **4.17.4 Severe punishment but no imprisonment**

According to Kriegler, J. (as quoted by Du Toit et al., 2006), it is quite clear that it is now possible for a trial court to impose severe punishment upon even very serious offenders, without making use of imprisonment and without thereby sometimes, if not most of the time, destroying whatever good characteristics remain, as far the person is concerned. It

is now possible to impose a severe punishment, and to serve the interests of the community, by imposing a deterrent and strict sentence other than imprisonment. It is to be hoped that, unlike with community service under section 297, courts of law will make full use of this innovative sentence option.

#### **4.18 THE IMPOSITION OF CORRECTIONAL SUPERVISION AS A SENTENCE**

According to Kriegler (1993:673), any crime can be punished with the imposition of correctional supervision, given the circumstances in which the crime has been committed. It is, however, the offender rather than the crime, which is the major issue under consideration, and whether the offender's situation requires supervision and if he will benefit from it.

Correctional supervision could therefore be an appropriate sentence, unless the crime committed is of such a serious nature that only imprisonment or the death penalty should be imposed. Correctional supervision as such, is, however, not a soft option, and is specifically an appropriate option in cases where the application of stricter measures is needed, without applying the option of imprisonment.

Before a sentence of correctional supervision can be imposed in terms of Article 276(1)(h), there are two requirements which should be adhered to, as prescribed by the Criminal Procedure Act 51 of 1977.

A report must be submitted to the court by a probation officer in regard to the circumstances of the offender. Such a report can be compiled in brief. Information furnished to the court should be verified and correct, and should reflect the fundamental facts regarding the offender, and the opinion of the author in regard to the suitability of correctional supervision. The court must determine the term of supervision, which should not exceed three years.

#### **4.19 APPLICATION OF CORRECTIONAL SUPERVISION AS A SENTENCE OPTION**

Every person who is sentenced to correctional supervision will be subject to specific conditions as ordered by the court of sentence, as well as to any other conditions which



will be implemented by the correctional officials. These conditions form part of the recommended framework outlined in the White Paper (1991:16–17), and relate to the following aspects:

#### **4.19.1 Monitoring**

The person sentenced to correctional supervision will be under the control of monitoring officials from the Department of Correctional Services, who will maintain personal contact with the person placed under supervision, by means of personal visits to the person's residence or to his workplace. The probationer could also be required to visit his monitoring official at an office of the Department of Correctional Services, or to keep in touch by means of telephonic contact. He could also be visited by volunteer monitoring officials.

#### **4.19.2 Community services**

Every person placed under correction supervision will be obliged to perform a specific number of hours of community service to the benefit of institutions funded by public funds and which are serving the interests of the community as a whole, such as hospitals, schools, municipalities, etc.

#### **4.19.3 House arrest**

Probationers (persons placed under correctional supervision) will also be required to be at home during specific periods of time; this is specifically directed at those placed under intensive supervision. The probationer will be visited at irregular times at his home by monitoring officials from Correctional Services, or by volunteers. Electronic monitoring is being applied in the United States and could be implemented in South Africa as well, in the near future.

#### **4.19.4 Obtaining employment**

It is the responsibility of probationers to obtain employment, although the Department of Correctional Services will assist them in this regard. A probationer may, however, not leave or resign from existing employment without permission of his supervision official.

#### **4.19.5 Victim compensation**

The earnings of a probationer, who is ordered by the court to pay compensation to his victims, will be administered in such a way that he can both meet his obligations towards his family and himself, and also pay compensation to his victims by means of monthly instalments.

#### **4.19.6 Programmes**

The Department of Correctional Services will provide a variety of training programmes, in collaboration with the Department of Welfare, in which the probationer will have to take part. Programmes such as drug and alcohol abuse, interpersonal skills, and training with the objective to find jobs, will be presented.

### **4.20 DEGREE OF CORRECTIONAL SUPERVISION**

In order to meet the requirements of the community and the high level of expectation to be protected against the criminal, different levels of control will be exercised on certain categories of criminals. For this purpose, an appropriate system of classification will have to be developed to accommodate persons placed under correctional supervision. The following degrees of correctional supervision are thus to be applied, based on the recommendations in the White Paper (1993:17–18):

#### **4.20.1 Intensive correctional supervision**

This category of supervision will be strongly enforced by Correctional Services, with the emphasis on house arrest, restriction of movement, work attendance, participation in programmes, regular reporting and community services.

#### **4.20.2 Medium intensive correctional supervision**

After having proved themselves under intensive supervision, probationers will be reclassified to the medium category. Persons can also be placed under medium correctional supervision, based on their criminal record, work reference, domestic circumstances, and the remarks of the courts during sentencing. The same conditions as in intensive supervision are applicable in this category, with a more flexible degree of movement.

### **4.20.3 Minimum intensive supervision**

To be classified in this category of supervision, the person has to be near the end of his term of correctional supervision, have completed the required programmes, have maintained a stable work record and possesses a low risk of relapsing into crime again (White Paper, 1991:17).

### **4.20.4 Adjustment degree of supervision**

The level of correctional supervision can be adjusted at any time, according to the requirements based on the person's cooperation, and risk involved, to a more or less stringent level of supervision.

### **4.20.5 Personnel**

Members and officers of the Department of Correctional Services will be utilised for correctional supervision. The Department has well-trained, experienced members in handling offenders, and the selection of these members will be aimed at personnel with qualifications in criminology, penology, social work, etc. Special training courses will be developed for volunteers and members. Correctional supervision will also be carried out by personnel with general penological experience and proven ability, and not only by graduates. They will, however, work under the supervision of more highly qualified and senior personnel, with experts available at each section where the function of correctional supervision is dealt with, to render assistance in the handling of cases where necessary.

## **4.21 COOPERATION WITH OTHER DEPARTMENTS**

Close cooperation with other departments is envisaged, in running programmes and to fulfil their professional role towards those sentenced to correctional supervision (White Paper, 1993:18).

Cooperation in this context refers to assistance rendered by non-governmental organisations (to be discussed in more detail in chapter 5), who are supporting Correctional Services in the presentation of development and rehabilitation programmes, the implementation of electronic tagging, etc.

## **4.22 PRE-SENTENCE ASSESSMENT**

Pre-sentence assessment will be dealt with by members of the Department of Correctional Services (White Paper, 1991:18).

## **4.23 VIOLATION OF CONDITIONS OF CORRECTIONAL SUPERVISION**

The following options can be exercised by a correctional officer when a person violates his conditions:

- Warning;
- Adjustment of the conditions of correctional supervision;
- More stringent monitoring, house arrest and additional community service;
- Arrest and admission to prison for a period not exceeding three days where-after such a person will again be placed under correctional supervision;
- A request to the court to cancel the order of correctional supervision and to impose another suitable sentence, in which case such a person will be subjected to the provisions of the Prison Act 8 of 1959 (White Paper, 1993:18).

## **4.24 PREREQUISITES FOR EFFECTIVE CORRECTIONAL SUPERVISION**

Correctional supervision entails two prerequisites over and above infrastructure, funding, etc. As a community-based sentence, correctional supervision must be applied within a stable community. The effectiveness of correctional supervision is adversely affected when the person under supervision is unemployed or becomes unemployed. If unemployed, victim compensation and fines cannot be paid, and the family cannot be supported (White Paper, 1991:18–19).

## **4.25 IMPLEMENTATION OF CORRECTIONAL SUPERVISION**

If legislation is approved, correctional supervision will be phased in as pilot projects at certain pre-sentence centre, and not simultaneously at all centres. It will thereafter be implemented progressively, countrywide. It is envisaged that this will have an impact on the growth pattern of the prison population (White Paper, 1991:20).

### **4.25.1 Community involvement**

A community corrections function is based on the approach that the community will be involved and understand the system. The necessary statutory structures should be created, in which the community will be represented, such as correctional boards – which will consist of representatives of that particular community, together with members from Correctional Services.

This will promote the interests of the community in correctional matters, and the boards will advise the Minister on matters to be considered by the national advisory boards on correctional services and will also form a direct link between the community and prison management (White Paper, 1991:20).

## **4.26 ROLEPLAYERS IN THE SENTENCING PROCESS**

Corbet, J.A. (as quoted by Terblanche, 1999:14) has the following to say in regard to sentencing:

A judicial officer should not approach punishment in a spirit of anger, being human, that will make it difficult for him to achieve that delicate balance between crime, the criminal and the interests of society, which is the task and the objectives of punishment demanded of him. Nor should he strive after severity; nor, on the other hand, surrender himself to misplaced pity – while not flinching from firmness, where firmness is called for, he should approach his task with humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.

### **4.26.1 Training of presiding officers**

The Viljoen Commission has drawn the attention to the rapid changes that are taking place in the approach towards sentencing, away from imprisonment in favour of alternative sentencing options, and sentencing officials should be kept informed in this regard. The Commission expressed the important influence of the penal theory which should likewise being kept in mind, and that “the sentencer must apply drawn attention to the rapid changes that are taking place in the approach towards sentencing, away from imprisonment, in favour of alternative sentencing options, and sentencing officials

should be kept himself to the study of the extent to which any particular theory of punishment is borne out by empirical evidence, either generally or in relation to a particular context” (Terblanche, 1999:19–20).

#### **4.26.2 The probation officer**

The functions of the probation officers are very important in the sentencing process, both before and after sentencing. Firstly, they are the best positioned to prepare a pre-sentence report containing information in regard to the childhood, the schooling process, work history, etc. of the offender, and could make useful suggestions to the court in regard to sentencing.

Secondly, the probation official has an important role to play in supporting and guiding the offender who is placed under his supervision by the court.

The courts are, however, rather reluctant to utilise the services of probationers – firstly, because of an ensuing shortage of probation officers, and secondly, due to the fact that the judicial officials, in many instances, do not have faith in the abilities of probation officers. It happens that probation officers are sometimes lenient in their approach towards the offender, are not always well-experienced, and their suggestions in regard to sentencing do not always reflect the nature of the crime, as in serious cases (Terblanche, 1999:20).

#### **4.26.3 The Department of Correctional Services**

The Department of Correctional Services is a major roleplayer in the sentencing process, with a twofold responsibility: firstly, to execute sentences of imprisonment, and secondly, to render correctional supervision, and it has a huge influence in the way in which offenders will experience their sentences.

Correctional officials normally have very little knowledge of the nature of the crime committed, and tend to focus mostly on the offender and his circumstances. The basic requirement of Correctional Services is to treat prisoners in such a way that it could lead to their reform and rehabilitation. Although this approach has long since been abandoned, due to a lack of resources and the ongoing overcrowding of prisons, the “medical model” of treatment is considered to be outdated. Instead, they are focusing on the training of

prisoners, despite the fact that only a small percentage of the total population can be accommodated (Terblanche, 1999:22).

#### **4.26.4 Application of section 276(1)(i)**

Section 276A(1) of the Criminal Procedure Act 51 of 1977 stipulates that punishment could only be imposed under section 276(1)(i):

- (a) If the court is of the opinion that the offence justifies the imposing of imprisonment, with or without the option of a fine, for a period not exceeding 5 years, and;
- (b) For a period not exceeding 5 years.

The implication of this Act is that this sentence may only be imposed if the offence justifies imprisonment of not more than 5 years. This serves as a limitation on the application of section 276(1)(i), that a court may not impose this section for any length of time if it considers a sentence of imprisonment for longer than 5 years as an appropriate sentence (Terblanche, 1999:288).

#### **4.26.5 Decision to impose**

A sentence in terms of section 276(1)(i) is directed at serious crimes, as it is a sentence of imprisonment. It does, however, exclude very serious crimes, due to the limited period of application. A sentence of imprisonment in terms of section 276(1)(i) can be suspended under suitable conditions. The question arises, however, regarding the manner in which such a sentence can be suspended. It is clear that prison officials can only consider the effective term of the sentence when dealing with the release of the prisoner. In the case of a five-year sentence in terms of section 276(1)(i), and two years thereof suspended for 3 years, the effective term is 3 years and should be dealt with as such (Terblanche, 1999:284).

### **4.27 THE VARIOUS FORMS OF CORRECTIONAL SUPERVISION**

Correctional supervision as a sentence can, according to Terblanche (1999:332), be imposed under numerous circumstances. It can be imposed as a substantive sentence, as a postponed sentence, or as a condition to a suspended sentence.

A person can be placed under correctional supervision by the Commissioner of Correctional Services or the Correctional Supervision and Parole Board, without the involvement of the court. It can also be imposed by a court, after consideration of an ordinary sentence of imprisonment.

Correctional supervision can also be imposed by a court, after consideration of a sentence of indeterminate imprisonment, following the declaration of the offender as a dangerous criminal.

## **4.28 ADVANTAGES OF CORRECTIONAL SUPERVISION**

Correctional supervision is a sentence with a high punitive value, while it also has the potential to promote the offender's rehabilitation. In the case of section 276(1)(h), the offender is not exposed to imprisonment and all the accompanying negative influences, while it is also much more cost-effective than imprisonment (Terblanche, 1999:333).

### **4.28.1 The rehabilitative potential of correctional supervision**

Although punishment, in general, is not likely to bring about the rehabilitation of the offender, it is more likely to do so in the case of correctional supervision, than with imprisonment. Those who have high expectations that correctional supervision has a rehabilitative value, should also bear in mind that many offenders placed under supervision will eventually commit further crimes. It is, therefore, essential to deal with rehabilitation, as an outcome of correctional supervision, within realistic levels (Terblanche, 1999:333).

### **4.28.2 The realistic expectations of rehabilitation through correctional supervision**

Rehabilitation can hardly be effected by punishment, although it is more likely an outcome of correctional supervision, than imprisonment. If somebody committed a crime as a result of alcohol dependency, the possibility is relatively good that he will abstain from crime, once the dependency is successfully treated. On the other hand, the possibility of rehabilitation is rather slim where a person does not realise that his actions are morally wrong and needs to be convinced to change his approach (Terblanche, 1999:334).



### **4.28.3 Flexibility of the sentence**

Correctional supervision is a flexible sentence, in the sense that programmes can be set for individual cases and circumstances. Terblanche (1999:235) is of the opinion that it also provides for adaptation of programmes in relation to changing circumstances. The Commissioner of Correctional Services should therefore be empowered to bring about these changes.

### **4.28.4 Severity of the sentence**

The value of a sentence of correctional supervision as a punishment is clearly described in expressions such as “an appreciable sentence, suitably severe even for serious crime”, “it is not a soft option” and a “substantial and effective punishment”.

A sentence of correctional supervision can also be combined with another sentence, such as a suspended prison sentence, a fine, or any other measure which the court may deem necessary to increase the severity thereof. Correctional supervision is not, however, a sentence which readily lends itself to the very serious categories of crime, and should not be too lightly imposed in such cases (Terblanche, 1999:336).

### **4.28.5 Distinguishing offenders**

Distinguishing between offenders has become a rather controversial issue, in the sense that the legislator has distinguished between offenders who have to be removed from society, and those who merely deserve to be punished but not removed from society.

According to Kriegler, J. (as quoted by Terblanche, 1999:339), correctional supervision is a unique sentencing option, and probationers differ materially from sentenced prisoners. To distinguish between those who need to be removed from society and those who need to be punished, is therefore a useful yardstick in the imposition of both imprisonment and correctional supervision.

### **4.28.6 Correctional supervision as a substantive sentence**

The Criminal Procedure Act 51 of 1977 specifically provides for the imposition of correctional supervision as one of its sentencing options, in section 276(1).

#### **4.28.7 Limitations of correctional supervision**

A sentence of correctional supervision may not be imposed in terms of section 276(1)(h) unless a report by a probation or correctional official has been furnished to the court. The duration of such a sentence is also limited, as it can only be imposed for a period not exceeding three years (Terblanche, 1999:340).

### **4.29 THE PRE-SENTENCE REPORT**

Section 276(1)(h) of the Criminal Procedure Act 51 of 1977 states that the report has to be provided by a probation officer or correctional official, because they have the necessary information with regard to the availability of facilities for correctional supervision, and are able to speak on behalf of the authority responsible for the execution of the sentence. The initial approach was that the report should be brief, stating whether the offender is a suitable candidate for correctional supervision, with the advantage that it restricted unnecessary delays in the sentencing process. A more detailed pre-sentence report would be more ideal, as it could lead to stricter requirements for correctional supervision (Terblanche, 1999:341).

#### **4.29.1 Content of the report**

Although there are no prescribed guidelines concerning the content of the report, judges have indicated some aspects that should be dealt with in it. These aspects revolve mostly around the conditions which should be set for a particular sentence, and how they would support the objectives of the sentence. In some instances, judges require more detail concerning the placement of the offender under house arrest, community service, reference to the seriousness of the crime committed, family background, and to what extent the sentence makes provision for the retributive and deterrent values thereof.

It is nonetheless the responsibility of the court to consider these factors in sentencing (Terblanche, 1999:341–342).

#### **4.29.2 The evidential value of the report**

The author of the report will be required to give evidence in cases where facts or recommendations are disputed, and may be required to explain some of the suggested conditions (Terblanche, 1999:42).

#### **4.30 CRIMES FOR WHICH CORRECTIONAL SUPERVISION CAN BE IMPOSED**

There is no specific, described number of crimes for which correctional supervision can be imposed. It should, however, not be imposed in cases where the seriousness of the crime is such that imprisonment remains the only suitable sentence. Neither should it be imposed in cases where punishment will best be served by a fine affordable by the offender. The most important aspect is the seriousness of the crime in comparison with its own facts and features, and not so much the name or type of crime committed (Terblanche, 1999:346).

#### **4.31 CONCLUSION**

The preceding chapters of this study have presented a relatively broad and detailed analysis of the crime situation in South Africa, with specific reference to issues such as the origin and development of prisons and the ever-prevailing phenomenon of over-population, the random application of sentences of imprisonment for the most minor crimes such as pass laws, being drunk in public, ordinary and non-intentional trespassing, etc. and the complete lack of empathy towards non-white offenders as it was practiced during the earliest colonial times and thereafter. The chapters have also drawn attention to the indisputable lack of interest and political drive to find appropriate solutions to these problems and inhumane prison conditions.

The findings of the Landsdown Commission, (Gerber, 1995:73) were brushed aside in 1948, when the United Party was defeated by the Nationalists who were not in favour of the spirit of the recommendations made (Van Zyl Smit, 1992:30). Almost ten years later, the report of the Viljoen Commission, and, subsequently the recommendations therein, were left to gather dust, not having received the required and well-meant attention by the judiciary of the time (*Minutes of seminar*, 1981:8–9). It was only during the period of the late 1980s and the beginning of the 1990s that real effort, driven by sheer desperation was made to address these problems as described in the preceding chapters.

Correctional supervision is now well-established and has been practiced for more than sixteen years in South Africa. When looking back on the intentions and goals of alternative forms of punishment, as initiated and practised under the Mosaic laws and by individuals

such as Augustus, Hill and many others after them, one cannot neglect to notice the striking similarities between the situation then and that of today.

It took many centuries for this initiative to find a place in the South African judicial system, and the question now arises: to what extent have Correctional Services and its counterparts succeeded in developing correctional supervision, after having been implemented? Did the judicial system in South Africa actually accomplish the outcomes envisaged? And, to what extent was correctional supervision promoted to the judiciary as a sentence, and sentence option, which can still be imposed, without doubt, as being the answer and solution to the increasing negative effects of imprisonment? The time has come to evaluate the value of these developments against the current practices and application of correctional supervision in South Africa. These aspects are touched on in more detail in chapter 5, although the magnitude thereof will require further research.

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# **CHAPTER 5**

## **THE RECENT APPLICATION OF CORRECTIONAL SUPERVISION IN SOUTH AFRICA**

### **5.1 INTRODUCTION**

The basic characteristic of community-based sentences as practiced during the era of the Mosaic laws was the fact that it was accompanied by the most cruel and ferocious punishment methods. Sentences were executed in public – events which were marked by an almost carnival-like atmosphere (Barnes & Teeters, 1959:218). Public executions also took numerous forms, such as hanging, flogging, stocks and pillory, etc. and attracted large numbers of onlookers. In some instances, members of the community have taken part in these executions (Leviticus 24:13). Community-based punishment was practised, due to non-existence of structures for the detention of criminals.

The phenomenon of overpopulation is vested in the penal system, along with the establishment of prisons, which soon proved itself as the one most prominent problem area in the management of prisons. Again, the focus fell on community-based sentences as the most obvious option to imprisonment, community-based sentences without cruel physical punishment and public audiences. It does, however, maintain its status as a punishment imposed within the community, yet with a vastly different approach towards the application thereof. In this chapter the researcher endeavours to put the rationale of modern-time community-based sentences in full perspective as it is currently practised in South Africa.

### **5.2 COMMUNITY CORRECTIONS: STIPULATIONS OF THE CORRECTIONAL SERVICES ACT 111 OF 1998**

#### **5.2.1 Objectives of community corrections**

The objectives of community corrections are, firstly, to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in the future (these objectives do not apply to restrictions imposed in terms of sections 62(f) or 71 of the Criminal Procedure Act 51 of 1977); and secondly, to ensure that persons subject to community corrections abide by the conditions imposed

upon them in order to protect the community from offences which such persons may commit (section 50(1)).

### **5.2.2 Persons subject to community corrections**

- (1) Persons subject to community corrections are those –
  - (a) placed under correctional supervision in terms of sections 6(1)(c), 276(1)(h), 276(1)(i), 276A(3)(a)(ii), 276A(3)(e)(ii), 286B(4)(b)(ii), 286B(5)(iii), 287(4)(a), 287(4)(b), 297(1)(a)(i)(cc A), 297(1)(b) or 297(4) of the Criminal Procedure Act 51 of 1977,
  - (b) who have been granted temporary leave in terms of section 44 while out of prison,
  - (c) placed on day parole in terms of section 54 while out of prison,
  - (d) placed on parole in terms of section 73 of the Correctional Services Act 111 of 1998,
  - (e) placed under the supervision of a correctional official in terms of sections 62(f), 71, 290(1)(a) and 290(3) of the Criminal Procedure Act.
- (2) No order imposing community corrections may be made unless the person who is to be subjected to community corrections agrees that it should be made according to the stipulated conditions, and undertakes to cooperate in meeting them.
- (3) Before the consideration of the placement of a child, the parent or guardian, where practical, must be informed of the proposed placement (read together with section 51 of the Correctional Services Act 111 of 1998).

### **5.2.3 Conditions relating to community corrections**

When community corrections are ordered, a court, the Correctional Supervision and Parole Board, the Commissioner of Correctional Services, or another body which has the statutory authority to do so, may order a probationer to be subjected to the following conditions:

- (a) is placed under house arrest;
- (b) does community service;



- (c) seeks employment;
- (d) takes up and remains in employment;
- (e) pays compensation and damages to victim;
- (f) takes part in treatment;
- (g) participates in mediation between victim and offender or in family group conferencing;
- (h) contributes financially towards the cost of community corrections to which he or she has been subjected;
- (i) is restricted to one or more magisterial districts;
- (j) lives at a fixed address;
- (k) refrains from using or abusing alcohol or drugs;
- (l) refrains from committing a criminal offence;
- (m) refrains from visiting a particular place;
- (n) refrains from making contact with a particular person;
- (o) refrains from threatening a particular person or persons by word or action
- (p) is subject to monitoring;
- (q) in the case of a child, is subject to additional conditions as contained in section 69 (Correctional Services Act (Act 111 of 1998));

When comparing these conditions to those proposed by the Landsdown Commission, as discussed on pages 31 and 32 of chapter 2, the similarity between the two sets of conditions become quite evident. Nothing has really changed over the past fifty-two years, as far as the primary framework of correctional supervision is concerned. It is also very interesting to note that little, if any, comments were made about the imposition of case-specific conditions. These are the conditions which are aimed at the personal composition of the offender's situation, and could entail aspects such as specific development and support programmes, the type of community service that fits the background, training and interests of the offender, or, in the case of juveniles, a condition to attend school or the completion of a specific grade in school.

This aspect also relates to the discussion under the heading "Submission to training and treatment", paragraph 4.4.1 of chapter 4, where case-related conditions are applicable to contribute to the process of rehabilitation and development of a probationer.

## **5.2.4 Supervision**

All persons subject to community corrections must be supervised in the community by correctional officials, to ensure compliance with the conditions of community corrections, and must not invade the privacy of the person concerned

If, during such supervision, it is reasonably necessary to ensure the safety of a correctional officer or any other person, a correctional officer may search a person subject to community corrections, and confiscate any weapon found.

A person subject to community corrections must facilitate the supervision process, and must not threaten abuse, obstruct or deliberately avoid a correctional official, and must not be under the influence of alcohol or any other drug to the extent that it impairs the process of supervision.

A person subject to community corrections may be required to attend and participate in meetings with the correctional official(s) responsible for supervising his or her behaviour, or with a supervision committee (section 57).

## **5.2.5 Supervision committee**

The supervision committee, as outlined in section 58, consists of correctional officials involved in the supervision of persons subject to community corrections, as well as, if practicable, a person or persons from the committee. The purpose of the committee is to determine the level of supervision for each person subject to community corrections, and it must review its determination at regular intervals.

The extent to which the objectives of community corrections are being achieved in respect of each person subject to community corrections, must be reviewed on a regular basis. Additional reviews may be held at the request of the person subject to community corrections, or that of the correctional official directly responsible for the supervision of such a person.

During such a review, the supervision committee may decide whether the means and level of supervision applied to such a person should be modified, whether a report must be submitted to the Commissioner to advise him on the desirability of a change in the conditions of the community corrections imposed on such a person, or whether a warrant of arrest should be issued.

### **5.2.6 House detention**

Where a condition of house detention is set, in terms of section 59 of the Correctional Services Act 111 of 1998, it must stipulate the hours to which the person is restricted daily to his or her dwelling, and the overall duration of the limitation.

### **5.2.7 Community service**

Where a condition of community service is set as part of community corrections, it must stipulate the number of hours which the person is required to serve, which shall not be less than 16 hours per month, unless the court has otherwise directed.

The court, the Correctional Supervision and Parole Board, or another body which has the authority to impose community service, may specify where such community service is to be done. Section 60 dictates that such an order may not be changed without the matter being referred back to the court, or another body which set the conditions, unless it provides that the order may be changed by a supervision committee.

### **5.2.8 Seeking employment**

A person subject to community corrections, who is required, in terms of section 52(1)(c) of the Correctional Services Act 111 of 1998, read together with section 61, to seek employment, must make a reasonable effort to find employment and must furnish evidence to the commissioner of the attempts that he or she has made in this regard. The commissioner must assist in the attempts to find employment. (In this regard, the “commissioner” refers to an official from Correctional Services who is authorised to act on behalf of the Commissioner.) The subsection “integration” is assigned to deal with address confirmation of people to be placed out on parole and correctional supervision, as well as to assist the probationer in seeking employment. In practice, however, very little, if anything, is done to secure employment for probationers. (Also refer to chapter 6, paragraph 6.3.3 for a more detailed discussion on the section on integration) (Researcher’s note).

### **5.2.9 Employment**

A probationer may not change his or her employment, or leave the place of employment, without the permission of the Commissioner, and must perform the work to the best of his or her ability and comply with the conditions of the contract of employment (section

62). (The issue of employment must also be read in conjunction with seeking employment, discussed above, as well as with the discussion on integration).

### **5.2.10 Programmes**

According to section 52(1)(f) of the Correctional Services Act 111 of 1998, both the court and correctional supervision and parole boards are authorised to impose treatment, and development and support programmes, and may specify what programmes the person subject to community corrections must follow (section 64).

Where the conditions imposed on a probationer provide for the possibility that they might be changed by the supervision committee, it need not be referred to the court or the correctional supervision and parole boards. In cases where neither the court nor the Correctional Supervision and Parole Board do not specify what programmes the probationer should follow, it should be specified by the supervision committee. Such a person is compelled to attend every programme and for the full duration of every session.

According to the above stipulations, the assumption can be drawn that ample provision has been made with regard to the imposition of treatment, development and support programmes for those offenders placed under probation. It is when looking at the real application of correctional supervision, the administration of development programmes, and the resources to ensure continuous availability and accessibility of programmes to probationers, that a different picture surfaces – one which has left a shadow of doubt over the quality of support that is rendered, not only to probationers, but parolees as well. The reader is also referred to the discussion in paragraphs 5.13.3 and 5.14.

### **5.2.11 Non-compliance**

As in the case of programmes, ample provision was made in the Correctional Services Act 111 of 1998, with regard to those offenders who, for some or other reason, fail to comply with the conditions of probation imposed on them (section 70).

In the event of non-compliance with their conditions, probationers could be reprimanded, they could be instructed to appear before the court of sentence or correctional supervision and parole board, or a warrant for their arrest could be issued, depending on the nature and seriousness of the non-compliance.

Again, the administrative and legal arrangements in this regard are hampered by the lack and/or absence of proper development and support structures and programmes within the community, to contain and limit the occurrence of the current high levels of non-compliance and abscondence of probationers and parolees from the community corrections system. A detailed discussion of this phenomenon follows in paragraph 5.9.

### **5.3 CORRECTIONAL SUPERVISION AND PAROLE BOARDS**

Section 74(1) of the Correctional Services Act 111 of 1998 authorises the Minister of Correctional Services to appoint and specify the seat of correctional supervision and parole boards, which must, among others, consist of a chairperson, vice-chairperson, an official of the SAPS, (nominated by the National Commissioner of the SAPS), an official from the Department of Justice and an alternate, both with a legal background, nominated by the director-general of the Department of Justice.

Five people constitute a quorum for a meeting, of whom either the chairperson or vice-chairperson and an official from the Department of Justice must be present. Every decision of the board must be taken by resolution of the majority of the board.

The conclusion of the stipulation, with regard to the quorum as set out above, implies that where or whenever a sitting of the Correctional Supervision and Parole Board takes place, or is in operation, and which is not attended by either the official from the Department of Justice or his alternate, both with legal backgrounds, such sitting is in contradiction to the stipulations of the said Act, and the legality of such proceedings are questionable.

### **5.4 CORRECTIONAL SUPERVISION AND PAROLE REVIEW BOARD**

The Correctional Supervision and Parole Review Board is selected from the National Council to deal with disputes originating from decisions made by the correctional supervision and parole boards. The chairperson of the committee must be a judge, assisted by a director of Public Prosecutions, a member of the Department of Correctional Services, and two more persons from the public (section 76).

## **5.5 THE CURRENT APPLICATION OF CORRECTIONAL SUPERVISION**

Correctional supervision was initiated in South Africa on 15 August 1991 as a pilot process, according to the Georgia model of intensive supervision. In March 1993 it was implemented countrywide to 194 offices and satellite stations (*Position paper on social integration:6*).

The purpose of correctional supervision was to create an alternative to imprisonment, through which offenders could be dealt with within the community, to establish a reliable and credible sentencing option to the judiciary, which also could address the problem of overpopulation of prisons. After 17 years of practising correctional supervision, the system revolves around the original principles of administrative management, the application of intensive monitoring, and the spending of huge amounts of time, energy and financial resources in tracing absconders (*Position paper on social integration:1*).

Apart from the magnitude of absconders from the system and the huge input towards tracing them, the system of correctional supervision is also hampered by limited counselling possibilities, due to a shortage of skills. Collaboration with the various relevant organisations in society, and clearly-defined roles which members of the family have to play, are almost non-existent. The relationships with societal organisations do not complement the aims of correctional supervision, while a tendency to “compete” with one another exists. What can probably be seen as the major factor in this regard is the fact that correctional supervision came into being as an antipode for overcrowding of correctional centres. The facilitation of social integration and the provision of alternatives to imprisonment were therefore ill-considered (*Position paper on social integration:5*).

### **5.5.1 Tracing units**

During the period of the researcher’s active involvement in Correctional Services, the establishment of “tracing units” within the correctional supervision system was not an uncommon practice. This, however, requires an additional few members from the existing understaffed component, which has a negative impact on the core business of the correctional supervision office. At a meeting of the steering committee of the National Forum to Address Overcrowding in Correctional Facilities, held in October 2006, which was

attended by the researcher, the representative of Correctional Services reported a shortage of about 1 000 members in the community corrections component.

### **5.5.2 Dumping of personnel**

Page 1 of the Position Paper refers, apart from the limited scope, to “the increasing trends of dumping ineffective personnel from correctional centres in the correctional supervision system”, which is rendering the system unreliable, with consequent reluctance among magistrates to impose community-based sentences. The “dumping” of personnel onto the correctional supervision system does not seem to be merely coincidental, but the outcome of an alternative to suspension of members whose continuous presence within the correctional centre is no longer feasible. Paragraph 5 of the suspension policy (2001) deals with the procedure of suspension of members. Paragraph 5.4 prescribes the following:

“Consider alternatives to suspension, i.e.

- 5.4.1 The temporary transfer to another post in the management area;
- 5.4.2 The permanent transfer to another post in the management area with the consent of the member.”

This practice also falls within the ambit of the researcher’s experience, as many a member of the Krugersdorp correctional centre was transferred to the community corrections office in town, (most of them on a permanent basis) instead of being suspended, while many cases of misconduct against members were taking months and, in some instances, years, to be concluded. The same applied to some members with sub-standard functioning at the correctional centre.

According to Virginia Keppler (*Beeld*, 2007:5) 1 145 correctional officials were suspended during the period between April and September 2007, while 75 were dismissed. To read this in the context of the above procedures leaves the question of how many of these members were eventually transferred to correctional supervision offices, to the detriment of the aims of correctional supervision and the probationers.

Consideration also needs be given to the fact that transfers of members in management areas with single correctional centres are restricted to one post only, which is the correctional supervision office (referred to as community corrections). In management areas

with more than one correctional centre on the same premises, it provides a situation of transferring a member to another correctional centre, for example, Johannesburg management area, which consists of four correctional centres, such as medium A, medium B, medium C and the female correctional centre, and, of course, community corrections. The community corrections components in Correctional Services are situated in the respective towns. In the case of prison farms, the community corrections offices are situated in the nearest town, such as Grootvlei correctional centre 20 km outside Bloemfontein, with its community corrections offices situated in the city (Researcher's note).

## **5.6 CHARACTERISTICS OF THE IDEAL CORRECTIONAL OFFICIAL**

Correctional officials find themselves in a relationship between staff members and offenders and probationers, which is the most important aspect in pursuance of rehabilitation and the general management of corrections. The competencies required of the ideal correctional official consist of a unique combination of characteristics, such as personal qualities, experience, professional ethics, personal development and being well skilled (White Paper on Corrections, 2005:111).

### **5.6.1 Work style of community corrections officers**

The role of community corrections encompasses a variety of facets. Community corrections officers need to deal with a number of roleplayers in the community, such as the law enforcement component, the judiciary and prisons. They also have to interact with employers, families, treatment specialists and other members of the community – a task which requires flexibility and an ability to adapt from one situation to another. In this regard, Klockars (as quoted by Jones, 2004:175–176) has identified four different work styles in correctional officers, which complement the general characteristics outlined in the White Paper, emphasising the characteristics less needed.

#### **5.6.1.1 The law enforcer**

This kind of person places so much emphasis on enforcing the conditions imposed by the court, that rehabilitation and assistance receive little attention. Compliance with court orders is monitored very closely by means of intensive supervision, and officers sometimes proactively pursue violations. They maintain a close relationship with police,



prosecutors and sheriffs, while dealing with community professionals in a rather formal and unfriendly manner.

#### **5.6.1.2 The therapeutic agent**

The therapeutic agent applies a social work approach, and would rather help probationers instead of locking them up if they have violated their conditions. This approach is in line with the original ideas of John Augustus. Their point of departure is to aid or assist the probationer towards rehabilitation, while law enforcement is of less priority. The approach of the superintendent of the road camps, discussed in chapter 2, paragraph 2.1.2, actually complements the attitude of the therapeutic agent. In a natural and unforced manner they contribute towards the change of attitude within people. This is probably the single factor most valued in the interaction between people – more so than many a programme delivered in the pursuit of statistics and administrative requirements.

#### **5.6.1.3 The time server**

This is the kind of person who considers probation as just a job. He is doing what is required of him and has little or no interest in either law enforcement or the rehabilitation of the offender. He represents the so-called “clock watcher” who believes in spending the minimum of time and effort in his work.

#### **5.6.1.4 The sympathetic officer**

This is the kind of person who maintains a balance between law enforcement and the therapeutic functions of probation. He normally has a good relationship with all the roleplayers in the probation process, and also maintains a rather professional attitude towards probationers. The assumption that relationships between law enforcement and probation officers are of a conflicting nature, is mostly untrue.

### **5.7 DEFINING REHABILITATION AND CORRECTIONS**

According to the White Paper on Corrections (2005:71), rehabilitation is defined as an inclusive process of correcting offending behaviour, human development and the promotion of social responsibility and values. “It is the desired outcome of processes that involved both the departmental responsibilities of government and the social responsibilities of the nation. Rehabilitation should therefore be seen as a holistic phenomenon which

incorporates and encourages social responsibility and justice. Self-empowerment by means of skills development, and active participation in activities, contributing to a better lifestyle”.

## 5.8 CORRECTIONAL AND PAROLE SUPERVISION

Correctional and parole supervision serve as alternatives to imprisonment and are collectively referred to as community corrections. The objectives of community corrections are to enable offenders to lead a socially responsible and crime-free life and to protect the community. The purpose of community corrections, on the other hand, is manifold, and comprises exercising control over offenders who have been sentenced to correctional supervision and also those placed out of prison under correctional supervision. Prisoners placed out on parole are also accommodated in the system (Department of Correctional Services annual report, 1997).

Correctional supervision also serves as an alternative detention option for awaiting-trial prisoners, in terms of sections 62(f), 71 and 72 of the Criminal Procedure Act 51 of 1977. A total of 4 228 awaiting-trial prisoners were placed under correctional supervision during the period 1 January 2001 to 31 December 2002 (Department of Correctional Services annual report:2003).

## 5.9 COMMUNITY CORRECTIONS POPULATION

The daily average community corrections population during 1997, was 56 857. Tables 5.1 and 5.2 give a comparative analysis, indicating a growing trend in the community corrections population. Supervision was provided by 1 136 members of the Department of Correctional Services (Department of Correctional Services annual report, 1997).

**Table 5.1:** Daily average community corrections population during 1997

	Probationers under supervision		Absconders being sought		Total
	Male	Female	Male	Female	
<b>Probationers</b>	10 916	1 688	3 995	333	16 932
<b>Parolees</b>	22 652	862	16 090	321	39 925
<b>Total</b>	33 568	2 550	20 085	654	56 857

The conclusion drawn from table 5.1 shows that out of a daily average of 12 604 male and female probationers in the correctional supervision system, 4 328 were being sought for having absconded. This constitutes 34,3% of the total daily average of probationers under supervision at this particular stage. In addition to that, a total of 16 411 male and female parolees, or 69,8% of the daily average, were being sought for having absconded.

**Table 5.2:** The supervision population as at 31 December 1997

	Under supervision			Absconders being sought		Total
	Male	Female	Youths	Male	Female	
<b>Probationers</b>	10 105	1 614	840	4 232	360	17 151
<b>Parolees</b>	23 139	844	232	16 687	336	41 238
<b>Total</b>	33 244	2 458	1 072	20 919	696	58 389

The statistics for the supervision population on 31 December 1997 also include the number of youths placed out on correctional supervision. Again, the number of absconders reflects a rather negative picture. Out of 12 559 probationers in the correctional supervision system, 4 592 absconded and were being sought – which represents 36, 6% of the total number of probationers. The number of probationers in the system decreased by 855, excluding the youths. The number of parolees, on the contrary, showed an increase of 479, excluding the youths. A total number of 23 983 parolees, excluding the youths, were in the correctional supervision system, while 17 023 (or 72,9%) absconded.

**Table 5.3:** Absconders during the period 1 January 1997 to 31 December 1997

	Correctional supervision		Parole supervision		Total
	Male	Female	Male	Female	
<b>Placement</b>	19 505	2 800	47 552	2 526	72 383
<b>Abscondence</b>	2 434	174	6 937	121	9 702
<b>Absconders traced</b>	2 562	176	5 973	105	8 816
<b>Absconders untraced</b>	4 232	360	16 687	335	21 614

(The figures in respect of untraced absconders are for the period 1 January 1992 to 31 December 1997.)

The manifestation of absconding among probationers is 11,07%, while 12,36% of absconders were traced. The number of untraced absconders represents 20,6% of the total number of probationers within the system during the period in question. When the

percentages of absconding and absconders untraced are added up, it confirms that a total of 7 200 or 32,3% of probationers absconded from the system. In the case of parolees, the percentage of absconding is 14%, with 12% traced and 34% untraced. The total of absconding and parolees untraced adds up to 24 080 (or 48,1%) (Department of Correctional Services annual report, 1997).

When absconded probationers are apprehended, they are dealt with as follows:

- Those sentenced under section 276(1)(i) are taken back to prison to serve the remaining part of their original sentence(s).
- Those sentenced under section 276(1)(h) are taken back to court to have their sentences revoked and an amended sentence imposed in terms of section 70(2)(a) of the Correctional Services Act 111 of 1998. In these cases the normal application of natural justice prevails (the right of a person to state his case and to be heard).
- When absconded parolees are traced and apprehended, they are taken back to prison to serve the outstanding part of their original sentence (the sentence on which they were paroled).

Immediately after being admitted to prison, these persons appear before the Correctional Supervision and Parole Board which deals with every case individually. Potentially, they all form part of the prison population. The question arises whether this category of offenders is classified under the definition of “recidivists” when readmitted to prison. At the point of re-admission into prison, they are, in actual fact, cancelling out the achievements of depopulating the correctional centre (Researcher’s note).

The annual report of the Department of Correctional Services (2003) indicates the number of persons who absconded from the system of community corrections over the past three years, with an indication of the number of absconders traced per year. (Absconders traced in a particular year do not include the persons who absconded during that particular year.)

**Table 5.4:** Persons who absconded from the system of community corrections

	<b>Persons absconded</b>	<b>Absconders traced</b>
<b>1-4-2000 to 31-3-2001</b>	5 912	7 036
<b>1-4-2001 to 31-3-2002</b>	13 367	5 413
<b>1-4-2002 to 31-3-2003</b>	6 747	4 598

The conclusion drawn from these figures shows that 26 126 persons absconded from the correctional supervision system during these three years, while 17 077 were traced. This represents a total number of 43 203 probationers and parolees who absconded from the system during the three years. During 2001, 39 368 probationers/parolees were admitted into the correctional supervision system, with a daily average of 27 975 probationers, while 13 367 (or 34%) absconded during the same year (South Africa Year Book, 2001/02). During 2002, a total of 45 154 probationers were admitted into the community corrections system, with a daily average of 21 659 probationers under supervision (South African Year Book, 2002/03).

The development and implementation of intermediate punishments and early release procedures became inevitable, to alleviate the pressures of overcrowded prisons on offenders, families and communities. According to Lorigio (2005:15), “[a] prisoner re-entry crisis of enormous proportions and with lasting repercussions, was a corollary of the imprisonment boon. Tougher parole and probation requirements led to more programme failures, which turned probation and parole violations into one of the fastest growing segments of the prison population”.

### **5.9.1 The recent correctional supervision population**

**Table 5.5:** The daily average number of probationers in the correctional supervision system in February 2007

	<b>Under supervision</b>	<b>Absconded</b>
<b>Probationers</b>	17 340	5 742
<b>Parolees</b>	29 218	18 403
<b>Total</b>	46 558	24 145

(South Africa Year Book, 2007/08:392.)

“During February 2007, 1 706 officials at 194 community corrections offices managed a daily average of 46 558 active offenders” within the community corrections system, of which 29 218 parolees and 17 340 probationers. A total of 18 403 parolees (or 63%) and 5 742 (or 33,1%) of probationers had absconded and were in the process of being traced. Firstly, the question could be posed whether the current method of application of correctional supervision is beneficiary to the high levels of overpopulation of South African prisons and the execution of justice. Is it not a situation of the goalposts being shifted?. Secondly, it creates the impression that far too many offenders in an already crime-infested country are escaping the arm of justice in the inexhaustible pursuit of the “depopulation” of the correctional centres (Researcher’s notes).

## **5.10 CONCERNS WITH REGARD TO CORRECTIONAL SUPERVISION**

In its 1997 annual report, the Department of Correctional Services expressed its concerns with regard to the problems linked to the absconding of offenders from the correctional supervision system. A number of problem areas or causative factors contributing to the high level of abscondence, were identified. These factors can be divided into two categories – one in which the probationer plays an active part, and another in which the Department of Correctional Services plays the dominant role.

As far as probationers are concerned, many of these problems can be attributed to the unendurable conditions in informal settlements under which many a probationer is living, moving from one place to the other. Unemployment is rife and the situation is frequently aggravated due to lack of skills and low levels of literacy. These factors, in turn, contribute to ignorance and a lack of responsibility on the part of probationers.

As far as the Department of Correctional Services is concerned, the question exists whether release preparation is sufficient, together with the lack of adequate support and care systems.

In its attempts to deal with these problems, the Department launched special actions through community corrections, to trace absconders and to prevent absconding. The Department of Correctional Services also undertook to increase the number of personnel in community corrections by 838 posts, with effect from 1 April 1998, in order to alleviate

the shortage of personnel. Community involvement will be enhanced by the establishment of a sub-directorate: community involvement (Department of Correctional Services annual report, 1997).

It is not clear to the researcher what the Department had in mind when referring to special tracing actions and the method to be implemented to prevent absconding and the tracing of absconders. It could be possible that this announcement included electronic monitoring. This aspect is discussed in more detail further on in this chapter.

## **5.11 EVALUATE PROGRESS**

At the time of printing this report, it was indicated that 1 136 members of the community correction component were rendering supervision services, with the increase of a further 838 posts. This implies that there would be a total of 1974 members employed in the community corrections component, with 36 774 probationers within the system and 21 615 absconders – an active personnel:probationer ratio of 1:32,4 (excluding the 838 posts) (Department of Correctional Services annual report, 1997).

In comparison, ten years later, in February 2007, there were 1 707 members working in community corrections (267 members less than in 1997), with 46 558 active offenders in the correctional supervision system, as well as the tracing of 24 145 absconders – an active personnel:probationer ratio of 1:27,3 (South Africa Year Book, 2007/08:392).

If the above is taken as a measure to determine the basic progress made in community corrections since the identification of these problem areas in 1997, the following conclusions can be drawn from these figures:

- (a) The number of members decreased by 267 (or 15,6%);
- (b) The number of active probationers increased by 9 783 (or 21%);
- (c) The member:probationer ratio decreased from 1:32,4 to 1:27,3;
- (d) The number of absconders increased by 2 530 (or 10,5%) (50% of the number of increase in the probationer population);
- (e) When the number of absconders of both probationers and parolees is added to the active totals of probationers, the member–probationer ratio changed from 1:51,4 to 1:41,4;

- (f) 10 years have gone by;
- (g) The problem areas are familiar to Correctional Services.

The most obvious assumption is that Correctional Services did not succeed in improving the level of service delivery in respect of developing the offender through the existing release preparation programmes. Apart from a number of service providers who are delivering programmes within the correctional centre, which is discussed hereafter, the researcher could not find any proof of, or reference to, any programmes within the community to which a probationer could be referred, or any service provider he could resort to when in need.

Correctional supervision is a hard-driven entity, with the main objective being to counter overpopulation, with little empathy for the offender. Monitoring as the main objective would rather scare people off instead of rendering any support, as shown in the high percentage of absconders. The outcomes, as envisaged in the White Paper on Corrections, are hard to find in correctional supervision. There seems to be no balance between the objective of curbing overpopulation in South African correctional centres by means of correctional supervision, and that of the integration of the probationer into the community, and assisting and supporting him towards a law-abiding existence.

### **5.11.1 Evaluating community involvement**

Menninger (as quoted by Munting, 2008:1) expresses himself in regard to the process of sentencing and incarceration by saying:

After a solemn public ceremony we pronounce them enemy of the people, and consign them for arbitrary periods of institutional confinement on the basis of laws written many years ago. Here they languish until time has ground out so many weary months and years. Then with the planlessness and stupidity only surpassed by that of their original incarceration they are dumped back on society, regardless of whether any change has taken place in them for the better and with every assurance that change has taken place in them for the worse. Once more they enter the unequal tussle with society. Proscribed for employment by most concerns, they are expected to invent a new way to make a living and to survive without any further help from society.



According to the Fagan Report (2005:13), 358 436 prisoners circulated through the prison system during 2004, of whom 64 947 sentenced prisoners were released on parole, probation, expiry date of sentence, fines paid, etc. This implies that approximately 5 400 sentenced prisoners are released on a monthly basis. During 2005, an average total of 6 914 prisoners were released per month, which also includes those released due to amnesty on 24 May 2005.

The magnitude of the turnover of human beings through prison gives meaning to the words of Menninger, emphasising the fact that prison is by far not an ideal place to rehabilitate offenders. The role of correctional supervision seems then to be greatly underestimated. Against this background it seems to be appropriate to weigh the basic principles of the White Paper on Corrections (2005:54–55) against the realities of the “in the correctional centre” application of development programmes, the constraints which service providers encounter on a daily basis, the unanticipated factors and outcomes, and the role of community corrections, which will be dealt with in sequence.

An extensive survey was conducted under the auspices of the CSPRI (Civil Society Prison Reform Initiative), in conjunction with the ISS (Institute for Security Studies), among 21 participating organisations working in the field of offender reintegration and prisoner support. The research report was distributed at the steering committee of the National Forum to Address Overcrowding in Correctional Centres, on 27 November 2008. Some of the organisations involved were, among others, Damascus Ministries, Khulisa-Gauteng, Lotsha Ministries, Mangaung Correctional Centre, Street Law-Durban and Creative Education for Youth at Risk.

### **5.11.2 Constraints**

During discussions with the respective service deliverers, it became evident that all of them are experiencing problems in their interaction with Correctional Services. It is frequently difficult to gain access to prisoners, due to staff shortages which create security concerns and result in overriding of programme delivery. They are confronted with poor communication between themselves and the Department, and lack of respect and support for the programmes and their objectives. Beaucratic “red tape” and conservative attitudes of uncooperative, disorganised staff members and a high administrative load due to submission of reports on each programme, are having an aggravating effect on service delivery (Muntingh, 2008:20).

### **5.11.3 Unanticipated factors and outcomes**

It frequently happens that the planning and execution of programmes are disrupted, due to a variety of unforeseen causes. Prisoners are frequently transferred while still participating in programmes. Prisoners become dependent on organisations for their needs. Certain expectations are created with regard to possible employment, and prisoners leave the prison with great enthusiasm, but are unable to cope with the pressures and demands of outside life. The social standing of prisoners participating in programmes changes rapidly when entering these programmes (Muntingh, 2008:21).

## **5.12 CHALLENGES OF WORKING IN A PRISON ENVIRONMENT**

A variety of views were expressed by the organisations in regard to the challenges they are facing when working in the prison environment. Life in prison is regulated, and activities have to fit into specific time schedules. For this reason the service providers have to deal with a number of constraints. Muntingh (2008:21) discusses four major constraints encountered within the prison environment:

### **5.12.1 Time constraints**

The prison day is very short. Searches are conducted at any time and it interrupts the smooth running of programmes. Social workers are sometimes not available to prepare the venue for programme delivery. Prisons are centres for punishment and not for training and group sessions.

### **5.12.2 Noise and environment**

The physical environment in prisons, excessive noise, freezingly cold conditions and continuous interruptions are not conducive to the delivery of programmes. Inhuman treatment of offenders, and violence, impact negatively on the atmosphere of programme delivery and people's emotions.

### **5.12.3 Programme continuity and content**

Individual needs of prisoners may be conflicting with the programmes. Prisoners are frequently bullied and teased by other inmates, specifically when participating in substance abuse programmes. Lack of motivation and interest in programmes is a common occurrence (Muntingh, 2008:21).

At this stage the researcher needs to point out that although these constraints and un-anticipated factors are applicable to the general prison population, it prejudices the majority of prisoners, as they are to be placed out on parole into the community corrections system and eventually became the parole absconder or parole breaker. It also includes all those offenders sentenced under section 276(1)(i) of the Criminal Procedure Act 51 of 1977, which stipulates that an offender can be sentenced to a maximum of five years' imprisonment and can be placed out under correctional supervision,, after completion of  $\frac{1}{6}$  (one sixth) of the sentence, on the discretion of the Commissioner of Correctional Services.

#### **5.12.4 Lack of resources and support**

The service deliverers also mentioned the lack of Government support they are experiencing, as well as from the community. A big gap exists between Government policies and practice.

Although the Department of Correctional Services has established a significant component of service providers rendering services within the correctional centres, the creation of a community-based support system, accessible and marketed to probationers, and aided by the correctional supervision component, appears to be a dire necessity.

### **5.13 THE ROLE OF CORRECTIONAL SUPERVISION**

The current status and credibility of correctional supervision has already been discussed elsewhere in this chapter. (Refer to paragraph 5.5.) The community corrections component of the Krugersdorp management area is well known to the researcher, based on his term of duty at Krugersdorp correctional centre. There are in excess of 1 000 probationers and parolees within the system, with only one social worker to attend to the needy and the various programmes. The presentation of programmes is restricted to weekends only, due to the fact that probationers are not readily available during weekdays. The officials working at community corrections, as in the case of the correctional centre, are divided into two divisions, and each division works every alternate weekend. This implies that the social worker also works every second weekend, with the effect that programmes are only presented on four days per month. Needless to say, no one can really benefit from this service.

### **5.13.1 Imposition of correctional supervision**

In terms of section 276(1)(h) of the Criminal Procedure Act 51 of 1977, punishment will only be imposed after a report by a probation officer or correctional officer has been placed before the court, and only for a fixed period not exceeding three (3) years. The implication of a sentence imposed under this section is that such an offender is not admitted to prison. Immediately after imposition of the sentence, such a person must report to the community corrections office where he will be admitted into the system to serve his sentence in the community.

These offenders are not exposed to programmes presented within correctional centres on the same basis on which sentenced prisoners are. The only source available to them is social work services at the community corrections office, which is, considering the member:probationer ratio of about 1:1 000 at the Krugersdorp management area, for all practical purposes, non-existent. The situation at other management areas is not known to the researcher, though it could, with a reasonable measure of certainty, be accepted that the position at other management areas will be similar to that of Krugersdorp.

## **5.14 ELECTRONIC MONITORING**

Electronic monitoring refers to a device which is to be attached to the ankle of the offender, through which the community corrections personnel will be able to track the offender's movements. The objectives of the tracking device are to create effective control over offenders in the system, as a means to protect the community and contribute towards alleviating overpopulation in correctional centres. An electronic monitoring research programme was lodged between September 1996 and 31 August 1997, involving 141 probationers, parolees and cases placed out on bail into the correctional supervision system. Electronic monitoring is believed to have a number of advantages:

- Supervision effectiveness would be improved, as more offenders could be placed on community corrections.
- Immediate detection and reaction to violations would be possible, while more personnel would be available to render supportive and treatment services to probationers.

To be able to monitor 10 000 offenders during the first year of implementation, would cost the Department of Correctional Services R68 million. The cost implication for the next two years would be R95 million and R127 million, respectively. The management board of the Department of Correctional Services approved the implementation of electronic monitoring, and Cabinet was to be approached during the first quarter of 1998 to arrange financing (Department of Correctional Services annual report, 1997).

On 4 March 2008, Correctional Services Chief Deputy Commissioner, Teboho Motseke, addressed the National Assembly's committee on correctional services in regard to electronic monitoring, stating that the department was currently completing "aspects" of electronic monitoring. He did not elaborate on the issue of the "aspects". The Deputy Commissioner Jack Shilubane informed the committee that the department, in conjunction with the Council for Scientific and Industrial Research (CSIR) was still in the process to determine the best practice review and cost analysis.

Mr. Shilubane expressed the hope that the planning process for the implementation of electronic monitoring would be completed in time to be incorporated into the 2009/10 financial budgeting process. The daily average number of probationers in the system of correctional supervision in January 2008 were 52 148, all candidates for electronic monitoring. The electronic monitoring process is posing a number of challenges, such as coverage and reach of information communication technology, lack of electricity and telephone infrastructure in some areas, and offender stigmatisation.

According to Mr. Shilubane, similar programmes were successfully implemented in Canada, the United Kingdom, Australia, Singapore and other countries. Mr. Shilubane did not, however, give an indication of how and when the challenges would be overcome, as it is perceived to be quite significant while another ten years have gone by (Presentation to the portfolio committee, Parliament:2008).

The presentation to the portfolio committee on correctional services was made 11 years and seven months after the first research project, and yet no final conclusion has been reached. There is no indication of how long this process is still going to take, although the hope is expressed to have it ready to be incorporated during the 2009/10 budget process. Yet again, the question could be asked whether electronic monitoring is at all a

priority issue to the Department of Correctional Services. If electronic monitoring will play such an important role in increasing the effectiveness of supervision, as the portfolio committee was told, then surely the high number of abscondents from the community corrections system must present an overwhelming motivation to finalise the project?

### **5.15 PROBATION AND COMMUNITY SUPPORT**

The researcher has had the experience of offenders who involve themselves in social work programmes and other development activities rather soon after their detention. Consequently, they complete these processes at an early stage of their sentence and have to wait out the time to be released. A specific offender was sentenced to 20 years for murder. After completion of 12 years, strong arguments were put forward, motivating his release. He had completed all the possible courses and programmes available during the first few years of his incarceration. He was eventually released on parole during his thirteenth year for a parole period of more than six years.

During a discussion with Professor Cilliers (researcher's study leader), the dilemma of long-term offenders came under the spotlight. On a continuous basis the researcher receives letters from these offenders informing him that they have completed all available programmes within the first 18 months of their sentences, and want to know what they must do during the rest of their time.

According to the inspecting judge of prisons, Judge Fagan, (Annual report, 2005/2006:15), a total number of 70 405 prisoners are serving sentences of longer than ten years, while 18 218 are serving sentences in the time category of 7 to 10 years. 16 216 offenders in both these categories are in the age group of 20–25 years.

They are most likely to complete all the required programmes within the first two years of their sentences. For the rest of the time they are caught up in the prison system with all its negative influences. What will the world out there be like when they are eventually released? Is the Department of Correctional Services geared to deal with this scenario, and are the existing programmes and efforts compatible to guide and support people in this situation? The researcher is quite convinced that offenders in the categories discussed above would need all the support and assistance available to survive their “unequal tussle with society”.

## 5.16 STRATEGIES TO ENHANCE REHABILITATION

Chapter Two of the White Paper on Corrections (2005:54–55) deals with the transformation of the correctional system and the identification of rehabilitation as a key starting point in contributing towards a crime-free society. In order to achieve the goals of creating a crime free society, individualised needs-based rehabilitation programmes must be developed and marketed to offenders, in order to enhance participation.

Partnerships must be established with the community to strengthen rehabilitation programmes and to increase common understanding and cooperation between the Department of Correctional Services and the community. Production should be increased, in order to enhance a greater level of self-sufficiency and to contribute to the Integrated Rural Strategy.

Although it is not specifically mentioned, the reference to “the increase of production”, to the understanding of the researcher, refers to the production of agricultural commodities such as vegetables, meat, milk, etc. as a means to maintain self-sufficiency. To read this against the concept of the Integrated Rural Strategy, clearly there is huge scope in pursuing the training of shorter-term offenders in the field of agriculture and food production. Self-sufficiency does not necessarily apply to the Department of Correctional Services, but, more specifically, to the development and training of farm workers as skilled labourers in areas where land restitution is practised – skilled workers, whose farming abilities could be employed and applied within their own communities and to the benefit of their communities and the successful running of up-and-coming farming entities. The reference to “shorter-term offenders” is directed at those sentenced to community corrections in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977, and also other offenders fitting this description.

As far as the increase of training facilities is concerned, it is the opinion of the researcher, based on personal experience, that there is no other institution or department better equipped, and with better facilities, to achieve just that. The Department of Correctional Services possesses a great number of prison farms situated all over the country, such as Zonderwater, Bavianspoort, Grootvlei, Goedemoed, Voorberg and many others, which can facilitate sophisticated agricultural training and development, referred to above, under the mentorship of trained personnel in the field of agriculture.

In his address to the Alliance of the Green Revolution in Africa, Kofi Annan, a former secretary-general of the United Nations said: “Africa’s road to prosperity begins on the arable land of its small farmers” (Visser, 2007:5).

## **5.17 EFFECTIVENESS OF OFFENDER REINTEGRATION PROGRAMMES**

In comparison to America, Australia and Europe, where extensive research has been done with regard to what works and what does not work in the reintegration of offenders, very little has been done in South Africa, which leaves a big knowledge gap to fill. Muntingh (2008:2) refers to the fact that imprisonment has not proven itself to reduce recidivism.

This statement was confirmed in a personal discussion between the researcher and Professor Cilliers. According to Professor Cilliers, the current phenomenon of recidivism (the rate of offenders who return to crime) is as high as 84%.

The Department of Correctional Services claims to have consistently reduced overpopulation by 4,77% per year over the past six years as a result of the 8-pronged strategies which are implemented to reduce overpopulation of correctional centres. This achievement has increased to 15,72% and 10%, respectively, over the past two years. (The past two years apparently refers to 2005 and 2006) (South Africa Year Book, 2007/2008:385). During March 2007 the South African correctional centres were about 40% overpopulated, with a total population of 161 023 offenders in detention. The 40% overpopulation constituted a total of 45 696 people. At almost the same period, during February 2007, the total number of probationers and parolees within the correctional supervision system was 46 558 – which almost equals the number overpopulated. At the same time, a total of 24 145 (or 51,8%) of probationers and parolees were being traced for absconding.

The number of absconders (24 145) represents 15% of the total prison population of 161 013. Based on the procedures in regard to absconders, it is an offence to abscond from the correctional supervision system, and if found guilty, such an offender could be sentenced for up to ten years’ imprisonment. Technically speaking, these absconders actually form part of the percentage of the overpopulation in correctional centres (Researcher). The sentenced prison population substantially decreased during 2005, with the announcement of amnesty on 24 May 2005, due to which almost 30 000 sentenced



prisoners were released (Fagan Report, April 2005 to 31 March 2006:17). The researcher therefore holds the opinion that these variables, among others, could have a negative effect on the claim by the Department of Correctional Services with regard to the diminution of the prison population.

## **5.18 CONCLUSION**

It took a long time for correctional supervision to be established in South Africa as an alternative sentence option which could be applied to counter overpopulation in prisons, and was received with great expectations. The implementation of correctional supervision also coincided with the changes made in the release policy. Prior to 1992, the release of prisoners was governed by Regulation 119(2), which made provision for special remission of sentence to be granted to prisoners within the prescribed maxima, immediately on or after admittance to prison. Remission to the maximum of one third ( $\frac{1}{3}$ ) of sentence in terms of Regulation 119(1), was granted, which in terms of Regulation 113(1) applied to both prisoners serving sentences of two years or more, and to prisoners serving sentences of less than two years. Release of prisoners in this event was unconditional (Van Zyl Smit, 1992:351).

With the implementation of correctional supervision as a new sentence option, prisoners are released on parole and placed on probation into the community corrections system, after completion of part of their sentence in prison and based on certain conditions. Correctional supervision provides the medium through which the overpopulation of prisons can be alleviated, as it is known today. Over the period of 18 years, literally thousands of prisoners were placed out on correctional supervision, with the belief and expectation that it is beneficial to the high levels of overpopulation, and that it enhances the rehabilitation of the person in the community while it contributes to the general safety of the community.

During the evaluation of correctional supervision after 18 years of application, it is evident that numerous problems exist regarding the quality of the interventions of the community-based service providers to correctional centres. Too much emphasis is placed on the intensive monitoring of probationers, while rehabilitation programmes and support and guidance by probation officials to probationers are almost non-existent. Community infrastructure to provide and supplement the required efforts towards rehabilitation within

the community is insignificant, and failing not only the objectives of this sentence option, but also the confidence of the judiciary in correctional supervision. The extremely high level of absconding, particularly amongst parolees, renders the gains with depopulation of correctional centres null and void.

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# CHAPTER 6

## CONCLUSIONS AND RECOMMENDATIONS

### 6.1 INTRODUCTION

Overpopulation of prisons in South Africa is not a new phenomenon, neither is it a phenomenon restricted to South African prisons. Singh (2004:501–503) has reported on the state of overpopulation in a number of European and other countries, such as England, Scotland, Wales and America. Each country, amidst the similarities among them, also has its own particular factors which contribute to the state of overpopulation experienced at any given time. The history of the South African penal system, as discussed in chapter 2 of this research, has shown that overpopulation of lock-ups originated as long ago as 1828. It is, though, an ever-present problem which steadily increases in magnitude on an almost annual basis.

The purpose of this chapter is to explore those events in the South African penal system which has contributed significantly towards, and to some extent “invented”, tools for inflating the prison populations. In her study, “Prison overcrowding: a penological perspective”, Singh (2004:500–501), as well as elsewhere, discusses the causes of overcrowding and the possible reasons that contribute to the growth of the prison population. Nowhere, however, during the course of her study does she refer to those statutory and political interventions which, over decades, played such a significant role in the “creation” of prison populations. This statement is related to what could possibly be explained by what Hospers (1969:502) refers to when he says that “[e]verything that happens has a cause. Everything that happens is an instance of some law.”

The conclusions drawn from this study are focused on those unspoken exploitations of the past, which were deliberately orchestrated for economical and personal gain, to the detriment of prison populations as well as communities, and the creation of the most horrific prison conditions. This study is not about detention and politics, however. Still, the role of politics cannot be ignored, as politicians have played playing such a far-reaching part in this regard.

(Also refer to the discussions about this, in chapter 2, paragraphs 2.2 and 2.5.2, and chapter 6, paragraphs 6.2.1 and 6.2.2).

Through evaluation and recommendations with regard to correctional supervision as a counter-agent to overpopulation, the interaction between these two scenarios and the application thereof, and the current low levels of judicial credibility in the correctional supervision system, the researcher endeavours to draw the attention of the correctional services authorities to the existing problem areas, and provides suggestions towards greater effectiveness.

## **6.2 CONCLUSIONS**

### **6.2.1 The impact of pass laws**

One of the most significant discoveries of this study is certainly the blatant exploitation of the potential workforce in South Africa, which dates as far back as 1809, when pass laws were implemented to supplement the growing demand for labour on farms. These pass laws were abolished in 1829. The establishment of the Kimberley prison paved the way towards the provision of prisoners as labour to the De Beers diamond mine. By 1882, the Kimberley prison became the biggest single provider of labour to the mine. Again, the pass laws were instated as a means of “trapping” the black people into committing infringements of these laws, only to be sent to prison and detained under horrendous conditions as supplementary labour.

In 1943, Ballinger and Simons prepared a memorandum with regard to the need for prison reform in South Africa, clearly stating that unjust racial discrimination underlay the state’s approach to prisoners. They bluntly argued that the major reason why the South African prison system had not undergone radical change was because of the fact that about 85% of the prison population was non-Europeans or blacks (Van Zyl Smit, 1992:26–27).

In 1947, Dr Nicol (as quoted by Cronje et al., 1947:18,162;192) described the situation which prevailed during 1900, with the influx of foreigners to South Africa and the impact it had on the local labour situation of the time. The people (whites) in the countryside were no longer able to take care of the natives (black people), while the city dwellers were only interested in hiring the “black man’s hands” without showing any further interest in

him. The advantages of black labour were that it was cheap and available in abundance. The white man quickly realised that by using cheap black labour, he did not have to work so hard, himself. This, again, was a strong motivation for the influx of black people to the Reef, as described in chapter 2. This influx of black labour into the white communities necessitated strong control to be exercised. Only those blacks who were considered as a necessity and who could not be replaced, were allowed to stay and work in the white areas. Yet again, a situation arose where the need of the white man created an opportunity for blacks to earn a living. Again, the pass laws were applied as a control measure.

The recommendations of the Commission on Punishment and Prison Reform, the Lands-down Commission, were presented to the government in 1947. The National Party, which became the ruling party after the 1948 elections, was positively hostile towards the approach of the Commission, and none of its recommendations were realised (as discussed in chapter 2, paragraph 2.5.2).

### **6.2.2 Sharpeville**

After 1923, the movement of all blacks was restricted by virtue of the pass laws. Dr H.F. Verwoerd, Prime Minister of the Republic of South Africa from 1961–1966, enforced these laws to establish greater segregation between whites and blacks. On the 21st of March 1960, between 5 000 and 7 000 blacks marched to the local police station in Sharpeville, Vereeniging, in protest of the pass laws, by means of a ceremonial burning of their pass books. The conclusion of this protest action was that 69 black people were shot and killed by the police. This incident has been commemorated on that date each year, since 1994, in South Africa (Internet, 2006).

According to Van Zyl Smit (1992:38), the tide was beginning to turn. Government policies directly undermined the legitimacy of the prison system. In 1984, the Judicial Commission of Inquiry into the Structure and Functioning of the Courts reported that the incarceration of “hordes of blacks” as a result of influx control measures was the major cause of overcrowding of prisons. “Judged by our civilized norms, these people are not real malefactors. They are the needy victims of a social system that controls the influx of people from rural to urban areas by penal sanction. The reason for this virtually unstemmable influx is poverty”. The pass laws were abandoned in 1988.

### **6.2.3 Inefficient justice system**

Singh (2004:500) refers to the fact that the inefficient functioning of the criminal justice system is a causative factor of overcrowding in prisons. This is an unqualified statement, in that the result of inefficiencies in the criminal justice process is, in fact, having the opposite effect.

The closing down of no less than 76 specialised crime units in the Department of Safety and Security, as discussed in chapter 2, and incompetence among police officers, will obviously not contribute to better policing methods. As much as 80% of armed robberies reported to the police are never solved, while there are 176 651 cases outstanding in the various levels of the courts. A mere 14% of all people arrested are eventually sentenced, which implies that 86% of criminals are still roaming around, committing crimes. If this situation were turned around into an efficient state of functioning, these statistics would become people in prison.

The position regarding awaiting-trial prisoners is far more serious, and does indeed contribute, by an enormous percentage, to the levels of overpopulation of prisons. According to the Fagan Report (2005/2006:13), 246 912 awaiting-trial prisoners were released during 2005 as “not return from court”. This presents a total of 20 576 prisoners per month. “Not return from court” implies that the cases against these awaiting-trials were either withdrawn or scrapped from the court roll. This kind of situation generally refers to incompetence of investigating officers, missing dockets and ill-prepared cases by the prosecutors.

### **6.2.4 Length of sentence versus rehabilitation**

The abolishment of the death penalty inevitably led to an enormous increase in the imposition of long-term sentences by the courts, as has been discussed in chapter 5. Almost 65% of the total prison population during 2005 has served sentences longer than seven years. The efficiency of the current approach towards rehabilitation, and the effect of the application of rehabilitative programmes under circumstances of the imposition of long-and ultra-long-term sentences (longer than 20 years), are not yet known. The question whether the Department of Correctional Services is geared to deal with this scenario, could possibly only be answered through extensive research in this regard.

As much as this problem exists with regard to long-term sentences, as much is it a point of dispute with regard to short-term sentences. The basic rule is that prisoners serving sentences of two years and less are not involved in the rehabilitation process, due to the short time which they spend in prison. Prisoners in this sentence category do not stay in prison for longer than half of their sentences (only in most exceptional cases). When taking sentences in terms of section 276(1)(i) as a point of departure, (sentences not exceeding five years, of which  $\frac{1}{6}$  (one-sixth) has to be served within a prison, and the remaining part in the correctional supervision system, on probation), no prisoner sentenced as such stays longer than ten months in prison, and does not become actively involved in the rehabilitation process – and if so, not for in-depth assessment and intervention. The critical state of overpopulation and the shortage of personnel rule out any such possibility.

Prisoners sentenced in terms of section 276(i)(h) do not go to prison, but are admitted directly into the correctional supervision system with no exposure to structured social work intervention. The facilities and personnel to render these services to a person sentenced as such are practically non-existent.

With the realities on ground level in mind, the question can rightfully be posed as to why the most essential aspects of correctional supervision as a sentence option (community safety, rehabilitation within the community, maintenance of family ties and employment, support and assistance while under probation, etc.), are not realised?

Is the current approach towards correctional supervision one of depopulating prisons and the application of intensive monitoring only?

What has been done over the past ten years to improve on the average of about 33%–35% of abscondence among probationers (excluding parolees, because they are benefiting from programmes during their term of imprisonment)?

### **6.2.5 Parolees under supervision**

The researcher is aware of the fact that probationers (this collectively refers to sentences in terms of section 276(1)(i) and (h) of the Criminal Procedure Act 51 of 1977) and parolees cannot be separated from each other, as they are all under correctional supervision and regulated by certain conditions. There are, however, specific characteristics which rather prominently differentiate the one from the other.



Parole becomes effective after a person sentenced to ordinary imprisonment has served at least one half of his sentence in terms of the new release policy promulgated on 1 October 2004. During the term of such a sentence (again with the exclusion of sentences of two years and less), the prisoner becomes involved in social work and other development programmes, when it is assumed that his sentence does allow ample time for him to be properly assessed and subjected to treatment programmes.

The extremely high percentage of abscondence under parolees (more or less 70% on average) places them in a different category with regard to the justifiability of parole versus meeting the ends of justice. The perception which exists among prisoners is that they are eligible for parole after completion of the required programmes (because then they consider themselves to be rehabilitated) and at the stage when they are to be considered by the correctional supervision and parole board, irrespective of the length of sentence, the seriousness of the crime, etc. An enormous amount of pressure is placed on correctional supervision and parole boards, due to these demands.

This is probably the same reason why so many prisoners are now lately approaching the courts in class actions, in order to realise their release from prison. The researcher, as acting chairperson of the Parole Board, was involved in a class action by 31 prisoners in September 2004, at a stage when similar actions were lodged from the Johannesburg, Leeuwkop and Boksburg prisons. The major question is whether there is a relation between this manifestation and the extremely high percentage of parole absconders.

### **6.2.6 Validity of the correctional supervision and parole boards**

According to section 74(5) of the Correctional Services Act 111 of 1998, five members constitute a quorum of the Correctional Supervision and Parole Board, and “must include the chairperson or vice-chairperson and an official from the Department of Justice (an official nominated by the director-general of the Department of Justice).

The stipulation of this section of the Act is unambiguous with regard to the fact that a person with a legal background must be present during sessions of the board. It further implies that a sitting of the Correctional Supervision and Parole Board will be invalid if the said official from the Department of Justice is not present.

The conclusion can also be drawn from this situation that many of the problems discussed in paragraph 6.2.5 could be avoided through relevant legal inputs by the representative from the Department of Justice. This would also establish a relationship between the judiciary, the Correctional Supervision and Parole Board, as well as the Department of Correctional Services, which could add a much better understanding towards, and establish a strong interaction among, the roleplayers of the integrated justice system, in relation to the application of the release policy.

### **6.2.7 How to change attitudes**

While studying the establishment of the road camps (“padkampe”) by John Montagu, the then colonial secretary of the Cape, as discussed in chapter 2, paragraph 2.1.2, the researcher realised that through the application of the most basic requirements in human relationships such as decency, human dignity, etc, attitudes can be positively influenced. The person in command of the road camp was instructed to apply a humane attitude towards the offenders, to make time to talk to them, to find out about their well-being, and render assistance where needed.

The basic approach towards gaining respects from people, and to inspire them to change attitudes and perceptions is through kindness, to listen to people, to be humane, and to set positive examples through firmness and credibility. This also was the experience of the researcher during his interaction with personnel and offenders. To invest in the development of these characteristics will deliver higher dividends than could be achieved by any programme or development effort, and should be motivated and encouraged by managers at all levels of Correctional Services.

## **6.3 RECOMMENDATIONS**

Recommendations made by the researcher are directed at a few important aspects discussed during the course of this study. When formulating the conclusions derived from the study, the researcher touched on a number of aspects which can be applied as correcting “tools” on a day-to-day basis by correctional authorities and officials. It is the researcher’s firm belief that they could contribute largely towards the improvement of the basic administrative environment in which officials and offenders are caught up.

### **6.3.1 Management of offenders sentenced in terms of section 276(1)(i)**

Offenders sentenced in terms of section 276(1)(i) are those who have to serve a  $\frac{1}{6}$  (one-sixth) portion of their sentences in prison before they are placed out on correctional supervision. They are currently detained among a variety of other offenders serving a variety of sentences inclusive of all categories of crime. They are fully exposed to the subcultures within the prison, gangsterism and all the other negative influences of prison life.

They were selected to be sentenced as such, due to the better prognosis and composition of their personal circumstances, and should be detained separately from the general prisoner population on a similar basis to those whose dates of parole have been approved and who are currently detained separately from other prisoners.

O-block in the Krugersdorp correctional centre, which was previously the female section and completely segregated from the rest of the prison, serves as a perfect example of the logic behind this recommendation.

During their term of detention (the longest being a period of ten months), they should undergo basic development courses directed at the personal needs and requirements of each individual. Proper reintegration into the community requires the confirmation of family ties, provision of employment and confirmation of previous employment, and social work support through community corrections. Support systems within the community, and the methods to access these facilities, should form a crucial part of their orientation and development. Serious consideration should be given to the establishment of a helpline through which those in need (or family members) can seek help from the authorities. These are the offenders who have the better prognosis to abstain from future crime, and are fully deserving of all possible assistance to abstain from crime and stay out of prison.

#### **6.3.1.1 Community corrections personnel**

The work style of community corrections officers, as discussed in chapter 5, could serve as an appropriate point of departure, in terms of what is expected from a correctional official and what is not. The researcher has identified a few aspects which need to be reviewed in order to improve the status quo.

Firstly, the stipulations of paragraph 5 of the suspension procedure of the Department of Correctional Services should either be reviewed, or the custom of “dumping” incompetent members into the correctional supervision system should be terminated. The purpose of correctional supervision is elevated far above the interests of an individual who has abused or allegedly abused the interests of the Department of Correctional Services.

Secondly, the issue of understaffing, with regard to social workers in the community corrections system, is of the utmost concern, and needs to be reviewed. The task description of these social workers needs to be reviewed, with reference to expansion of services to probationers, continuous accessibility, and most of all, the recruitment of social workers and available posts and monetary recourses. Approaches such as services that can be rendered only over weekends, require a speedy intervention.

Thirdly, it is suggested that consideration be given to the recruitment of new members who possess the skills and the interest required to meet the demands of the community corrections component. No longer can it be considered as merely an extension of the general function of Correctional Services, but should be regarded as a professional entity requiring members with special (professional) characteristics. During the placement of members to the correctional supervision component, attention should be given to members with relevant qualifications and interests.

### **6.3.2 Parolees within the community corrections system**

All offenders in prison, except those sentenced in terms of section 276(1)(i) of the Criminal Procedure Act 51 of 1977, are eventually to be released on parole and taken up into the correctional supervision system, after completion of at least half the period to which they were sentenced. By the time of their release, they all have had to be exposed to, and involved in, one or more of the various social work and other programmes presented by external service providers and personnel of the Department of Correctional Services, and as such, are the offenders who have taken part in the rehabilitation process.

In chapter 5 of this study it became clear that the majority of parolees who were placed out were either traced and apprehended after they had absconded, or reported as absconders, or listed as absconders untraced. Figures have shown that as much as  $\pm 70\%$  of the number of parolees in the correctional supervision system at a given stage, are linked

with abscondence. The implication of this scenario is that, technically speaking, about 70% of parolees can be classified as recidivists. These figures do not, however, include those who have committed further crimes or breached their parole conditions other than that of abscondence.

The benefits that are obtained from the parole system in regard to the depopulation of prisons certainly call for separate research, together with the possibility of dealing with parolees and probationers on a collective and separate basis.

#### **6.3.2.1 Section: Integration**

The function of the section: Integration is to go out into the community and search for employment for offenders who are to be released from prison. This section is also charged with the responsibility to go out into the community and do address confirmations of those offenders to be released. This is an enormous task. Members of the office are also tasked to be present at sittings of the case management committee, leaving rather little time left for the core functions which they have to fulfil.

According to the stipulations of the Correctional Services Act 111 of 1998, every offender who is to be released into the correctional supervision system must have a fixed address where he or she is going to reside. The practical implication of this stipulation is that an offender's address must be confirmed by the member working in the section: Integration. The people residing at that address must, by means of a sworn affidavit, confirm that such an offender is welcome to stay there and that he will be taken care of.

The demands of overpopulation of correctional centres are placing enormous pressure on this section to get addresses confirmed. It sometimes has to be done at very short notice, based on the stage when an offender's date of release has been approved and the time left before actual release. It is the experience of the researcher that much more emphasis is placed on address confirmation than on the search for employment.

In order to maintain a proper balance between address confirmation and the search for employment, it is suggested that the management of both the correctional centres and correctional supervision control and maintain this function from a basis of mutual interaction between them. These aspects play a basic, though very important, part in the

successful placement of offenders – which will subsequently contribute to a decrease in abscondence.

## **6.4 CONCLUSION**

The purpose of this study was to analyse the role of correctional supervision as a sentence option through which the critical state of overpopulation of correctional centres world-wide, and specifically in South Africa, can be counteracted. The diminution of the population of correctional centres gradually became the sole focal point in this striving. It became more important to get an offender out of prison than to maintain the infrastructure within the community corrections system, in respect of sufficient capable personnel, support systems to aid probationers in the community, social work services, and assistance by supervising officials.

Luyt (1996:187) points out that the results obtained through rehabilitation are relatively few, although it is not proven beyond any doubt that imprisonment does contribute towards recidivism, despite the fact that the percentage of recidivism in South Africa is round about 84%.

The recommendations made in this study are therefore directed at the role of correctional supervision as such. Enormous problems are encountered with regard to the administration of parolees in the correctional supervision system, which certainly requires specific research to resolve it. Probationer administration, on the other hand, shows significant promise which, with a positive and firm approach, could be overturned into in a more viable option and one which could be applied by the judiciary with a higher level of credibility, enhancing a process from which the prison population, the community and the application of justice could benefit. The necessity for further research in respect of the treatment, development and programme application of offenders sentenced to long terms of imprisonment, is also pointed out by Luyt (1996:204), although from a different perspective.

Over the years, much research has been conducted, and multiple recommendations made, on a wide range of topics. On the other hand, the purpose of research is to investigate a particular phenomenon and to make recommendations towards the improvement and further development of a subject area. When reading Luyt's recommendation with regard

to long-term offenders, the researcher realised that it has the same inclination as the recommendation made by himself, almost thirteen years later. This gives rise to the question of what actually happened to the recommendations made by researchers, and whether those recommendations are ever applied in practice. Finally, to what extent do companies and institutions benefit from these research endeavours?

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