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# Development of the Prison System in South Africa

*by*
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## Introduction

President Nelson Mandela commented during his time of incarceration:

> *"Prison not only robs you of your freedom, it attempts to take away your identity. It is by definition a purely authoritarian State that tolerates no independence and individuality. As a freedom fighter and as a man, one must fight against the prison's attempt to rob one of these qualities."* (*ISS Correcting Corrections Monograph No. 29 1998:1*).

The prison systems of most countries, for example, the United States of America, England, Russia and South Africa, are subject to many problems, especially overcrowding. Owing to the recognition by some legal systems that prisoners have rights that can be enforced by the courts, some improvements have resulted, but the appalling conditions in many prisons because of overcrowding are still prevalent.

Historically, the distinguishing feature of the development of South African prisons was its similarity to the mine compound. Such compounds housed mine workers, of whom many were convicts supplied by the prison system. Even today these remnants of the past are discernible in the large communal cells filled with rows of metal bunk beds in which prisoners are housed (*ISS Correcting Corrections monograph No. 29 1998:1*).

It is currently assumed that institutional confinement has always been employed as the usual method of dealing with offenders throughout history. This has been assumed, almost universally, because presently offenders are confined within penal institutions, such as, prisons, reformatories, reform schools and jails. However, the use of institutions for the extended confinement of offenders, as the prevailing method of punishment, is a relatively current innovation and was primarily a product of American influences.

Until the latter years of the nineteenth century, the accustomed method of dealing with convicted offenders was to impose fines or to mete out to them some more or less brutal form of corporal punishment, such as execution, flogging, mutilation, branding and public humiliation in the stocks (*The Origins of Prison [n.d.:1]*) Those confined in a public institution for any considerable length of time were mainly those imprisoned for debt or



accused persons awaiting trial. The use of the prison as an institution for the detention of offenders for the period of their sentence is approximately two hundred and fifty years old.

The suffering and torment of living conditions to which inmates are subjected in overflowing prisons cannot be measured in numbers and graphs. The consequences of housing too many people in too little space means that inmates are doubled-bunked in small cells designed for one, or forced to sleep on mattresses in unheated prison gyms, day rooms, hallways, or basements. Others sleep in makeshift trailers, tents, or

converted ferries. Space that had once been devoted to work, study, and recreational programmes is being turned into dormitories (*DiMascio 1997:4*).

Due to the conditions (mentioned above) as a result of overcrowding, it is not unexpected to find that prisoners have fewer opportunities, from training to visits, rehabilitation programmes, limited facilities and most importantly restricted "space". More importantly there are calamitous health and safety hazards associated with cramming more inmates into less space.

The origin and development of prisons overseas and in South Africa will be given. A historical look into the Department of Correctional Services in South Africa and the change in direction of the penal system during the past century will also be reviewed. An assessment of the overcrowding of penitentiaries over the decades together with the problems experienced will be explored.

**Origin and Development up to 1910**

Significant developments of correctional law occurred in the period immediately after the Union of South Africa. The Department of Prisons formed part of the Department of Justice for a number of years. The author will examine the development of the prison system in the Cape, Natal, Orange Free State and the Transvaal. The British occupation for the Transvaal and the Orange Free State Republics in 1900 led to a major reorganisation of the penal systems in these provinces.

This period is remembered most for an already inflated prison population, due primarily to transgressions of the pass laws, and that mining companies exploited prison labour.

**The Prison System of the Cape**

Jan van Riebeeck, during his stay at the Cape, followed a policy in regard to the punishment of criminals that had its roots in 17th century Dutch judicial practice. The full panoply of punitive measures was presented as a cruel and public spectacle. For example, the execution of convicted persons



by firing squad was preceded by a military parade involving three companies of troops (*Venter 1959:11-12*). This judicial system inevitably had an influence on various aspects of judicial practice, the penal system and the administration of justice in South Africa. The kind of punishment used for offenders was directed at the body-public executions by firing squads and public crucifixion. The imprisonment of convicted persons and the use of such persons for manual labour did not appear to be prioritised. According to Van Zyl Smit (*1992:8*):

> "*Convicted persons were occasionally held in chains in the Dutch East India Company's slave lodge and made to labour in public works…. An attempt was made to extract labour from convicts deported to Robben Island. Deportation removed the criminal from a society which did not have much interest in his welfare.*"

Only after the Fort and the Castle were built in the Cape, was detention possible. Incarceration was reserved mainly for condemned, awaiting trial and judgment-debtor prisoners.

Some of the cruel forms of punishment were abolished during the 18th century, which led to the expansion—however informal of imprisonment. The small existing places of detention were overpopulated with people held for minor offences. Places of detention were also erected for people who had to serve longer sentences. During this period the whole prison system was extremely disorganised with no reference whatsoever to rehabilitation (*Cilliers and Cole 1997:111*).

*Venter in* (*Neser 1993:65*), states that the most important reformations in respect of punishment occurred after the British occupation of the Cape in 1795 to 1803. In 1795 the orientation of the penal system towards physical harm began to decline. Punishment that resulted in physical suffering was abolished and replaced with "incarceration for a fixed period proportionate to the heinousness of the offence" (*ISS Correcting Corrections Monograph No. 29 1998:1*).

In 1807, the slave trade was abolished and full emancipation occurred in 1834. Penal policy began to develop in the Cape. Slavery was a form of imprisonment, and the abolition of slavery caused the supply of labour to the farms to suffer. A rudimentary pass system for indigenous inhabitants later to become a well-known feature of apartheid was introduced. Those who abused the system were put to work as prisoners (*ISS Correcting Corrections Monograph No. 29 1998:1*).

John Montagu had to take control of the local penal system in 1843. Together with Captain Maconochie, they drafted regulations for the functioning of the prison. Provisions were made for the rehabilitation of offenders and



the rewarding of good behaviour. Also a classification system based on the rewarding of good behaviour was implemented.

In 1854 Montagu introduced a form of classification, namely a punishment group, a probation group and a good behaviour group. Prisoners could advance from one group to another on grounds of good behaviour. They could also receive small sums of money, privileges and remission of sentence. At this stage in the development history of the prison, provision was already being made for literacy training and religious instruction. Rehabilitation was also encouraged (*Cilliers and Cole 1997:111*).

Some of the changes implemented by Montagu, are being implemented in prisons presently. Privileges are given to prisoners as incentives for good behaviour: remission of part of a sentence for this good behaviour and the understanding of rehabilitation as the desired outcome of the criminal justice process. Although circumstances in which prisoners were detained were unpleasant, the purpose of detention changed to the principle that the influence of the prison was intended to reform prisoners.

The reform of the penal system instituted by Montagu is regarded as a milestone in the development of South African criminal justice policy. His classification system was fairly sophisticated and similar to what came into later use. After his departure in 1852 the whole prison system went into decline (*Cilliers and Cole 1997:111*).

In 1871, there was a demand for labour in the mining industry. The prison system was used to provide labour and public policy regarding incarceration was adapted. In 1885, the De Beers Diamond Mining Company was the private organisation to employ convicts for labour. The prison supplemented the labour force for many workers spent time in prison because of the pass laws. Violations of these pass laws contributed extensively to the overcrowding of prisons (*ISS Correcting Corrections Monograph No. 29 1998:1*). This early period is remembered for its already inflated prison population, mainly due to transgressions of the pass laws, and the fact that mining companies exploited prison labour at very low rates.

*Van Zyl Smit* (*1992:15*) points out "the role of the State as the provider of unskilled black labour for the mines through the penal system had become manifest". "Another aspect of penal policy that emerged in the 1880's was the first systematic attempt to segregate prisoners on racial lines. *Van Zyl Smit* further states that:

> *"Mine owners treated white workers differently from black workers. White*

*workers were allowed some measure of freedom to organise and campaign for better conditions for themselves. Black workers were tightly controlled in the compounds and the prisons."*

During the British occupation of the Cape in 1806, there was only one

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prison in the country. The control of the prison was vested in the colonial secretary in England, which resulted in the British prison system having a strong influence in the Cape Colony thereafter. By the year 1848 there were already 22 prisons in use outside Cape Town, reflecting the increase in the prison population.

In 1888 the "Act to consolidate and amend the Law relating to Convict Stations and Prisons," (Act 23 of 1888), was passed by the Cape Parliament. The new Act together with its regulations, followed the Ordinances introduced by Montagu. A system of classification was introduced which revived Montagu's tripartite categories of a penal, a probationary and a good conduct class for the longer term prisoners detained in convict stations (*Van Zyl Smit 1992:17*). There was a move to unite all places of detention under a single prison system. There was also an introduction of gender-based classification and provision for the segregation of different categories of offenders, for example, awaiting-trial offenders.

**The Prison System of Natal**

For a substantial period there was no prison in Natal in the true sense. In 1849 a brick building was established with the provision for ten communal cells. By 1907 due to the increasing offender population this had increased to 260 cells. Proper accommodation was a problem in Pietermaritzburg for a considerable period, but a prison was completed in 1863. The initial number of 25 cells had expanded to 158 by 1907. By this stage there were already 40 prisons in Natal (*Cilliers and Cole 1997:112*).

The prison conditions were deleterious and unhygienic. Prisons were overcrowded and there were fundamental shortcomings in the system. A recurrent problem was that of escapes and attempted escapes.

Due to the overcrowded conditions in prisons, there was no question of classification. Neither was there any other type of institution that could make this possible. Corporal punishment was common and included the use of the whip. Objections were raised against the use of this instrument, however, and the cane replaced the whip. There was no question of reform at this juncture because of the lack of scientific knowledge of crime causation and inadequate facilities in the existing institutions (*Cilliers and Cole 1997:112*).

A lot has changed in Natal since decades ago. Firstly corporal punishment, in South Africa, has been abolished for it goes against the constitutional rights of the individual. Secondly, there is adequate knowledge about crime causation and facilities are being upgraded in prisons so that programmes for the rehabilitation and prevention of recidivism could be implemented. Despite the slow progress, the overcrowding and appalling

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conditions in prisons hampers the efforts that are instituted for transformation.

In 1887 a tripartite classification system of "Europeans"(coloured), "Indian" and "Native" (African) was adopted in a government notice. In 1888 this classification system was applied to labourers. This had a ripple effect in terms of segregation of accommodation for prisoners. Thus there was no major penal reform in Natal before the Union in 1910 (*Van Zyl Smit 1992:18*).

**The Prison System of the Orange Free State and Transvaal**

There is insufficient research into the development of the early prison system in both the Orange Free State (OFS) and the Transvaal. It emerged that in both the Orange Free State and the South African Republic (Transvaal) the early Republican periods were characterised by a low priority being given to the development of a prison system or a legislative framework to encompass it (*Venter 1959:82*).

In the Orange Free State, the first prison was introduced after 1854 in Bloemfontein. By the year 1873 there were thirteen other institutions. The prison system used in the Cape and Natal was also applied here after the British occupation in 1902.

The conditions in the prisons of the OFS were extremely inadequate. Although commissions were appointed to investigate prison conditions, nothing could be done about the matter owing to limited funds for this purpose and the widespread poverty prevailing in the Republic at that time (*Cilliers and Cole 1997:113*).

The constitution at that time laid down that prisoners had to do hard labour in public. During the 1840s and 1850s, offenders were made to particularly build roads and later ships. These prisoners sentenced to hard labour had to be chained and further provisions were made for sentencing prisoners to work for a maximum of five years under contract to a civilian with or without remuneration and with or without prior imprisonment. Section 6 of the Constitution (*Constitutie van die Oranje Vrystaat*) stipulated that if a prisoner refused to comply with the discipline, they could be sentenced to corporal punishment of not more than 25 lashes.

The first prison in Pretoria was built in 1865 and by 1893 there were already 33 penal institutions in the Transvaal. The British system was also applied here. In 1894 the system of internal discipline was reorganised and the local landdrost was given exclusive jurisdiction to try infringements of prison regulations. He could impose corporal punishment of up to 25 lashes, imprisonment, with or without hard labour, of up to 12 months or solitary confinement, with or without reduced rations, of up to seven days. *Van Zyl*

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*Smit* (*1992:19*) states that only one significant alteration was made to regulations.

*Du Pre in Neser* (*1993:66*) states that in 1877 the control of all British prisons was transferred to the Central Government when a union prison system was accepted. The British occupation of the Orange Free State and the Transvaal in the mid 1900 resulted in a reorganisation of the penal systems of both territories. In the Transvaal there was an increase in the prison population and authorities were also faced with the problem of the disorganisation of the availability of labour to the mines. Attempts to control the latter through a system of "pass laws" further increased the prison population (*Van Zyl Smit 1992:19*). A Commission of Inquiry into conditions at the fort in Johannesburg, one of the main prisons in the Transvaal, revealed that the prison system was inadequate and needed necessary changes.

As on the diamond mines in the Cape, the "solution" adopted was to allow a mining company (in this case the ERPM gold mine in Boksburg) to erect a prison for

approximately 800 black prisoners. The company then had to pay the Government one shilling per day per prisoner to be allowed to use the prisoners as labourers on its mines (*Venter 1959:122*).

The resultant change of prison law reform in the Orange Free State and the Transvaal was the introduction of the indeterminate sentences. Section 9 of the Criminal Law Amendment Act No. 38 of 1909 made provision for the indeterminate detention as hard labour prisoners of persons who had been declared by a court to be habitual criminals. They could only be released after a statutory body, the Board of Visitors, which was created for this purpose, had made recommendation. Another requirement of this body was to report to the governor on all prisoners who had served a sentence of more than two years. After the establishment of the Board of Visitors these prisoners could be considered for unconditional release, or release on probation (*Cilliers and Cole 1997:113*).

Thus the early part of last century saw the prison system regulated mainly by various Provincial Ordinances. The British occupation of the Transvaal and Orange Free State Republic in 1900 led to major reorganisation of the penal systems in these provinces. This early period will probably be remembered most for an already inflated prison population, mainly due to transgressions of the pass laws, and the fact that mining companies used prison labour at very low rates (*Department of Correctional Services Draft Green Paper 2003*). The transgressions of "pass laws" were further enhanced by the Natives Land Act No. 27 of 1913 which separated South Africa into areas in which either blacks or whites could own freehold land: blacks, constituting two-thirds of the population, were restricted to 7.5% of the land; whites, making up one-fifth of the population, were given 92.5%.

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The act also stated that Africans could live outside their own lands only if employed as labourers by whites. In particular, it made illegal the common practice of having Africans work as sharecroppers on farms in the Transvaal and the Orange Free State (*US Library of Congress*).

The above factors discussed are a clear indication that this would impact negatively to the overcrowding of prisons.

**After the Union of South Africa**

In the year 1910, the year of the unification of South Africa, there was an endeavour at creating a penal and prison policy for the country as a whole. An attempt at this was embodied in the Prisons and Reformatories Act, Act 13 of 1911, and in the institution of a Department of Prisons. This Act repealed, either wholly or in part, all the legislation concerning the penal systems, which had been in force in the four colonies before Union that is 1902-1910. As the title infers the Prisons and Reformatories Act, Act 13 of 1911, sanctioned the responsibility of the management of reformatories onto the prison system. Courts started playing an increasing role in the development of prison law, inter alia, with findings that it was unlawful to detain awaiting-trial prisoners in solitary confinement and the ruling that prisoners who felt they had been unfairly treated in prison had the legal right to approach courts of laws for intervention (*Annual Report Department of Correctional Services 1999:1*).

In 1908 Jacob de Villiers Roos was appointed Director of Prisons. He was knowledgeable in the international penological ideas of his time. In the first Annual Report for the new prison system of the Union as a whole, *Roos in Van Zyl Smit*

(*1992:23*) paraphrased the key findings of the Congress:

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

Thus rehabilitation is the idea that punishment can reduce the incidence of crime by taking a form which will improve the individual offender's

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character or behaviour and make him or her less likely to re-offend in the future (*Cavadino and Dignan 1992:36*). The system of handling habitual and long-term offenders was part of the new legislation.

A Prison Board was instituted under Section 45 of the Prisons and Reformatories Act No. 13 of 1911, to ensure more effective treatment of convicts and prisoners and to provide better guidance concerning the conditions on which prisoners should be granted remission of sentence (*Cilliers and Neser 1992:177*). Section 25(3) of the new Act made provision for the isolation of prisoner's awaiting-trial and their subjection to mechanical restraint 'if the isolation or restraint is requested by the police authorities in the interests of justice'. The guiding principles of the Union penal system was to rescue the child from a criminal environment and prevent it from becoming a criminal; to build up and supplement in the criminal the elements necessary to prevent a recurrence of crime; and if all else fails, by means of the indeterminate sentence to remove the habitual criminal from society and prevent his remaining a menace to it; but even then to allow him an opportunity of self-redemption (*The Official Year Book of the Union of South Africa 1918:362).*

It can be seen that certain elements contained in the Prisons Act have formed an integral part of the present prison policy. This period saw the introduction of a system that allowed for the remission of part of a prison sentence subject to good behaviour on the part of the prisoner and the system of probation that allowed for the early release of prisoners, either directly into the community or through an interim period in a work colony or similar institution (*Department of Correctional Services Draft Green Paper 2003*)

Both these elements, remission and probation, should therefore contribute to a lessening of the prison population and thus help the problem of overcrowding, which prevails in South African prisons today. However, this is not the case.

With regards to rehabilitation, although there was much speculation, very little really materialised. Within the prison system, punishment for transgressions was extremely severe and harsh. It included whipping, solitary confinement, dietary punishment and additional labour. Law prescribed racial segregation within the prison and throughout the country it was rigorously enforced. Section 91(1) of the Prisons and Reformatories Act No. 13 of 1911 provided:

*"In any convict prison or goal … as far as possible, white and coloured convicts and prisoners shall be confined in separate parts thereof and in such manner as to prevent white convicts or prisoners from being within*

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*view of coloured convicts or prisoners. Whenever possible coloured convicts or coloured prisoners of different races shall be separated."*

Prisons that were built in the last century are still operational. These prisons were not designed to cater for the rehabilitation of offenders but the more cardinal reason of prisons remaining foremost as places for punishment was that, to a considerable extent, the system set-up by the 1911 Act remained captive of its legal and social history. It was designed to imprison offenders and efforts were made to segregate prisoners along racial lines. Undoubtedly, this lead to the overcrowding of prisons because majority of the general population consisted of non-whites. In May, 1910 there were 4 million Africans, 5,00,000 coloureds, 1,50,000 Indians, and 1,275,000 whites (*US Library of Congress*).

Whenever imprisonment was employed, it was imposed disproportionately against the poor, the powerless, the marginalised or those whom the repressive government deemed expedient to eliminate from society.

The Prisons and Reformatories Act No. 13 of 1911 consolidated earlier colonial legislation, and strict segregation was enforced throughout the system. Thus, some of the most punitive features of prison systems of the four colonies survived unscathed (*Van Zyl Smit 1992:24*). The development of the prison system was closely linked to the progressive institutionalisation of racial discrimination in South Africa, from the time that widely enforced "pass laws" were introduced for Africans in the 1870's, to the elaboration of an official theory and systematised practice of apartheid following the victory of the national party in the election of 1984 (*Human Rights Watch 1994:1*).

**Later Developments in the South African Prison System**

The continued incarceration of Africans for failing to pay taxes and for pass offences meant that men were still available for work in the road camps. Prison populations continued to rise. Prior to unification of South Africa on 31-5-1910, each of the four provinces had its own prison system and own laws and directives regarding the control of prisons as well as the treatment of prisoners. On unification, a Union prison system was established. The Prisons Act has been amended from time to time to meet the demands of circumstances and to keep pace with modern developments in penal reform.

All the laws have been repealed and replaced by the Prisons Act, Act 8 of 1959. The Act was amended slightly by Prisons Amendment Act No. 75 of 1965. This meant that South Africa had a new Prisons Act, which was to a certain extent based on previous legislation but also incorporated new elements conforming to modern penological thought and the *Standard Minimum Rules for the Treatment of Prisoners* which was passed by the

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First United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Geneva in August and September, 1955 (*Cilliers 1992:178*).

A new, and more individualised system of classification of prisoners came into use in 1958. *Neser* (*1993:70-71*), states that according to this system, prisoners were classified under four groups: (*a*) ultra-maximum, (*b*) maximum, (*c*) medium and (*d*) open prisons and observation centres were instituted.

- **Group A:** This group was regarded as the least dangerous of the prison population and could receive actual training in a variety of fields. The group included a considerable number of first offenders, as well as prisoners from the other groups who had shown over a period that they would like to improve themselves.

The overcrowding in this group was extensive due to the fact that the "pass laws" was implemented and because the majority of the population comprised of non-whites.

- **Group B:** These were the hardened criminals who were detained in medium and maximum security prisons.
- **Group C:** This group included offenders who had committed aggressive crimes.
- **Group D:** These prisoners were detained in ultra-maximum security prisons. Their criminal background and behaviour in prisons was of such a nature that the focus was mainly on protecting the community against them.

Classification really meant segregation-by race, age, and sex, for decades. There was no attempt to ascertain the problems of a specific offender within the context of a treatment program. From 1-1-1958 the privilege system was linked to the various types of prisons and therefore eventually to groups into which a prisoner was classified.

The principle of classification of prisons and the effective separation of prisoners according to levels of security risk is embodied in the present Correctional Services Act No. 8 of 1959. It is generally accepted that a good security classification system forms the backbone of good prison administration. Due to overcrowding and the lack of resources, although the classification of prisoners is implemented, the overload of prisoners in the system makes it almost impossible to administer the system effectively.

**The Lansdown Commission on Penal Reform 1945**

In 1945 progress of special significance was made with the appointment of the Penal and Prison Reform Commission—the Lansdown Commission.

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The impetus for its appointment had come from the Penal Reform Committee of the South African Institute of Race Relations (SAIRP). The objectives of the Penal Reform Committee *Van Zyl Smit* (*1992:26*) included:

- urging greater use by the courts of remedial and rehabilitative measures in place of imprisonment;
- demanding the abolition of racial discrimination resulting in unequal sentences; and
- suggesting improvements in prison regulations and the abolition of spare diet, solitary confinement, and corporal punishment.

This programme implied that unjust racial discrimination rather than the justifiable shouldering of the "white man's burden" was the underlying approach of the State to prisoners.

The Commission warned against militarisation. The Lansdown Commission found that the Prisons and Reformatories Act No. 13 of 1911 had not introduced a new era in South African Prisons but that it had in fact been a vehicle for maintaining the harsh and inequitable prison system that preceded (*Department of Correctional Services Draft Green Paper 2003*). Africans continued to be incarcerated for failing to pay their taxes and for pass offences, which meant that imprisoned men were still available for work.

The Commission held the conviction that prisoners should not be hired to outsiders. An increased emphasis on rehabilitation also found favour with the Commission, which recognised the need for making a major effort to extend literacy, in particular to all blacks (*Van Zyl Smit 1992:28*).

The Commission was critical of the Government's decision to reorganise the prison service on full military lines, which was seen to be an attempt to increase the control it had over prison officials. It explained that the Commission was not in accord with this view [that is the need for complete militarisation], but on the contrary holds the opinion that senior officers are better able, when not vested with military rank and clothed in military uniform, to hold the balance between the subordinate officers and the inmates of the institution, and themselves are far more accessible to the inmates than they would be as military officers. Nor, in the opinion of the Commission, under a scheme of military ranks and discipline, would that human contact between officers and inmates exist enabling the former to apply to the latter the various rehabilitative influences which modern views deem essential (*Van Zyl Smit 1992:29*).

The Nationalist Government, which came into power in 1948, had great hostility to the general approach of the Commission. At the same time the

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fragile social consensus around prisons was breaking down in other aspects. Defiance of the pass laws, of the kind that the Lansdown Commission had warned against, increased. It impacted directly on prisons (*Van Zyl Smit 1992:30*). The first instinct of the government was according to (*Van Zyl Smit 1992:30-31*):

> *"'tighten up' the prison administration. Thus, the control which it exercised above prison officials at all levels was increased by reorganising the service on fully military lines, notwithstanding the explicit recommendation of the Lansdown Commission that this should not be done. Moreover, the use of prison labour on private farms was increased during the 1950s by allowing "bona fide Farmers Associations" to build "prison farm outstations" which were then handed over to the Department of Prisons to manage. Farmers who contributed were allowed to employ convicts in proportion to their contribution to the construction of the prison."*

Thus the Government of the time was not sympathetic to the Commission's proposals (*ISS Correcting Corrections Monograph No. 29 1998:1*). Lansdown recommended that rehabilitation of prisoners should be the focus of the Prisons Department, which would be enhanced by the civilian accoutrements, and administration of senior officials. On the question of statutory offences applicable only to Africans, the Commission was more evasive. It acknowledged that these offences led to many short sentences of imprisonment being imposed and agreed that such sentences not only caused overcrowding, but also held the danger of criminalising a large section of the population (*Van Zyl Smit 1992:28).*

As a result of the recommendations of the Lansdown Commission relating especially to alternatives to imprisonment through community-oriented sentences, Section 352

(1) of the Criminal Procedure Act No. 56 of 1955 came into being. These recommendations were made because of the extreme overload and the chronic conditions of the penal system.

However, Lansdown failed to recognise the role, which the ordinary warder could play in "rehabilitating" prisoners, instead confining that role to the senior officers and professional staff. In reality, it is the warder who interacts with the prisoner on a regular basis, and few prisoners ever have access to the "treatment orientated" staff. Disregarding Lansdown's recommendations, the Department of Prisons was fully militarised with the rewriting of the Prisons Act No. 8 of 1959 (*Dissel 1997:3*).

**Developments since 1959**

With the introduction of the Prisons Act, No. 8 of 1959, the former South African Government introduced legislation, which effectively provided for the application of the policy of apartheid in the then Prisons Service. On

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1-9-1959 the new Prisons Act 8 of 1959 was amended and this resulted in a completely new dispensation. The department's responsibilities were described in Section 2(2) of the above act as follows:

- safe custody of prisoners;
- treatment and rehabilitation of sentenced prisoners;
- efficient management of prisoners; and
- other duties charged from time to time.

New laws were introduced which were based on the policy of apartheid and entrenched the racial segregation of prisons. This resulted in not only the segregation of whites and blacks, but also the ethnic separation of black prisoners. The Act not only implemented a two-stream correctional policy for Bantu and European offenders, but also (so far to a lesser extent), special arrangements for members of different Bantu nations in one institution. Placing the Bantu offender in a correctional institution for people of his own group and race not only recognises existing ethnological differences but also is in accordance with the national policy of differential developments (*ISS Correcting Corrections Monograph No. 29 1998:1*).

The Act abandoned the "nine pennies a day" prison labour scheme and replaced it with a system of parole. It entrenched the military character of the prisons management, and made provision for commissioner and non-commissioner officers. Although staff members were defined as civil servants, their status was that of paramilitary personnel (*ISS Correcting Corrections Monograph No. 29 1998:1*).

Before the establishment of the new Prisons Act No. 8 of 1959, the department's most important function was the safe custody of prisoners. In the light of the important social services, which were expected of prison, personnel, recruiting and training methods had to be changed drastically (*Neser 1993:69*). In addition, all prisons became closed institutions: all media and outside inspections were prohibited: that is, the reporting and publishing of photographs. The consequence of this was the entrenchment of a relatively closed institutional culture within the prison service and as a consequence the norms of prison law were relatively remote from everyday practice (*Department of Correctional Services Draft Green Paper 2003*).

There were also attempts to gain international acceptance for the South African prison system. At the centre of this was the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva from 22-8-1955 to 2-9-1955.

The Director of Prisons, Mr V.R. Verster, who was also a member of the International Penal and

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Penitentiary Foundation, represented the Union of South Africa. Mr Verster, in 1958, produced a booklet in which he made an analysis of the existing system in relation to international standards (*Van Zyl Smit 1992:32*). He claimed that:

> *"the prison system of the Union of South Africa is conducted in conformity with the basic principle of non-discrimination on grounds of race, colour, sex, language, religion, political outlook, national or social religion, birth or other status. All laws, regulations, etc, pertaining to penal institutions and the manner in which prisoners confined therein are to be treated, refer specifically to "prisoners" in the widest sense of that word without any discrimination whatsoever…."*

At the congress a large variety of resolutions were adopted, the most important being related to the following matters, (*Annual Report of the Director of Prisons 1955-56:5*):

- the establishment of standard minimum rules for treatment of prisoners;
- standards for the selection and training of prison personnel;
- the establishment of open prisons;
- prison labour;
- the prevention of juvenile delinquency;
- technical assistance in the prevention of crime; and
- the treatment of offenders.

The Standard Minimum Rules, which was also supported by South Africa, was faced with the challenge of putting the newly accepted ideas on the treatment of offenders into action and bringing them into line, taking into consideration local conditions and the local prisons administration. Due to the fact that the old Prisons and Reformation Act (Act 13 of 1911) had become obsolete and was inadequate in terms of the new international idea of punishment and reform, drastic steps had to be taken. The new Prisons Act No. 8 of 1959 was promulgated. In this Act ample provision was made for implementing the new international ideas in the fields of criminology and penology, especially regarding the treatment of offenders. The parole system was introduced.

With regards to imprisonment, a shift in emphasis would now occur from retaliation and punishment to detention and reform or rehabilitation. The renewed emphasis on rehabilitation was reflected in the introduction of further indeterminate sentences in terms of the existing sentence under which the offender could be declared a habitual criminal. Thus the Criminal Law Amendment Act No. 16 of 1959 made provision for imprisonment for corrective training and imprisonment for the prevention of crime. The Prisons Act followed suit as it did for the new sentence of periodical imprisonment

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*(Van Zyl Smit 1992:32)*. Other important aspects, such as the prohibition of corporal punishment for prison offences were ignored.

Post 1959, prisons were managed under the rules of apartheid and the militaristic approach increased. At first, prisons were not used on a large-scale to control political

unrest. However, this soon changed in the post-Sharpville period of the early 1960's, when the incarceration of political detainees and sentenced political prisoners became a characteristic of South African prisons (*ISS Correcting Corrections Monograph No. 29 1998:1*). Thus from the 1960s an even-larger number of political prisoners were added to the South African prison population. The written documentations and legal protests to the authorities contributed to an international disapproval at prison conditions. This led to an increasing attack on the legitimacy of the prison system. The incarceration of high profile prisoners raised great concern among international organisations such as the Red Cross, Amnesty International and the United Nations. The response of the Government at the time was to grant even wider powers to prison authorities.

In addition, there were gross human rights violations in South African prisons. Most prisoners were held in overcrowded communal cells, a situation which persists even today. The South African Government's policies, influenced as they were by the doctrine of apartheid, had a major impact on the budgetary allocations, which the department received. Limited funds and the disparity in the provision of services provided to "white" and "non-white" South Africans resulted in inadequate rehabilitation programmes being made available (*ISS Correcting Corrections Monograph No. 29 1998:1*).

During the 1970s there were other changes to the prison legislation, which were not associated with the political changes. The Mental Health Act No. 18 of 1973 made provision for the treatment of psychopathic offenders in special prison hospitals. The Prisons Amendment Act No. 88 of 1977 made provision for the establishment of special prison hospitals for psychopaths.

The Viljoen Commission proposed another important "agent of legislative change" in 1976. This Commission had some impact on the evolution of prisons. The Viljoen Commission was appointed to inquire into the penal system of the Republic of South Africa and to make recommendations for its improvement, provided that the question whether the death penalty should be retained shall not be inquired into.

In Paragraph 1.1 of Part 2 of its report, the *Viljoen Commission* (*1976:3*) perceived the reasons for its appointment to be the following:

> "*While the Commission is conscious of the fact that an important motivating cause for the appointment of the Commission was that the penal*



*system could with advantage be submitted to a broad investigation in the light of constantly altering circumstances and approaches and new knowledge that became available since the last comprehensive report on penal reform and prison reform, the Lansdown Commission report, was published as long ago as 1947, it also believes that a precipitating cause for the appointment was the alarmingly high prison population of the Republic, a matter which has evoked the concern not only of the general public but of the Government of the RSA. For this reason the Commission will devote considerable attention to the causes of this unhealthy condition in the penal system and make an effort to find solutions therefore and to recommend steps to be taken for the amelioration and relief thereof.*"

Therefore it is deduced that overcrowding in South African prisons today is not a new problem, but rather, it is an on going problem, inherited from past Governments.

The Viljoen Commission pointed out the importance of Section 352 of the Criminal Procedure Act No. 56 of 1955 within the punishment sphere since it made provision for a number of alternatives to imprisonment and provided the sentencing officer an

opportunity "to exercise his inventiveness and ingenuity in devising alternative sentences".

In 1977, as a result of the Commission, imprisonment for corrective training and imprisonment for the prevention of crime were abolished. Another important amendment to Article 212 of the Criminal Procedure Act No. 51 of 1977 allowed social workers, correctional officers, criminologists, psychologists and other behavioural scientists who play an important role in assisting the Court in the sentencing process, to make recommendations for an appropriate sentence by means of a sworn statement, instead of giving oral evidence (*Naude Acta Criminologica Vol. 4: 1991*).

In addition, the system of releasing prisoners was recognised as a response to the Commission's proposals that a "parole board" be introduced. However, the new system was not designed to limit the power of the executive to release prisoners to the extent that an independent parole board may have done (*Van Zyl Smit 1992:37*).

**Developments in the Prison System in the 1980s**

After the uprisings of the 1976-1977 and 1980, when youth protested against Bantu education, prisons were used to detain political activists. A vast majority of the prisons were filled with youths who were treated in the same way as adult prisoners. This resulted in an even greater overload to the correctional system. The legitimacy of the prison system was further questioned in the 1980s. On 1-11-1980 the Department of Prisons once again became part of the Department of Justice. The prison service, with its assignment of protection and security service, its semi-military



character and military ranks still continued to exist independently within the new and larger department (*Neser 1993:72*).

During the early 1980s there were a number of disclosures about the conditions in prisons near the town of Barberton in the Eastern Transvaal. A committee of inquiry was appointed to investigate conditions in prisons in and around the Barberton area. In 1984 a major autobiographical account of life in prison, Breyten Breytenbach's *The True Confessions of an Albino Terrorist*, was published in South Africa and not suppressed. It conveyed the shortcomings of the South African prison system in a manner which no publication allowed in South Africa before had been permitted (*Van Zyl Smit 1992:38*).

In South Africa by 1981 the State acknowledged that drastic steps were necessary in order to restrict the prison population figures, which had grown disproportionately world-wide (*Neser 1993:415*). The Krugel Committee was appointed to examine the overcrowding problem, yet it took 10 years before correctional supervision could be legally implemented. There were amendments to the law for the imposition and implementation of correctional supervision in the Criminal Procedure Act, Act 51 of 1977, and the Prisons Act 8 of 1959 were approved during the 1991 Parliamentary Session. The amended Correctional Services and Supervision Matters Amendment Act 122 of 1991, which made provision for the treatment of sentenced and unsentenced offenders was approved by the State President in August, 1991. It would have been beneficial if the State and other decision-makers acted swifter in legislating or implementing recommended changes and policies to ease the current overcrowding crisis (*Neser et al 2001:5*).

Since the beginning of the 1980's a start has been made in investigating community-based forms of punishment and placing these alternative penalty options on the Statute Book. The Interdepartmental Working Group on Community Service

was appointed in 1983 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.

The *Krugel Working Group* (*1984:26-33*) in Paragraphs 10.2 to 10.4 of its report highlighted the fact that in light of the Republic's overpopulated prisons, there was a need for alternatives to imprisonment. As a result of the Working Group's report and recommendations, the Criminal Procedure Act No. 51 of 1977 was amended in 1986 to establish community service sentences as a viable sentencing option.

In 1984 the judicial inquiry into the structure and functioning of the Courts reported that the incarceration of prisoners as a result of influx control

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measures was a major cause of the overcrowding in prisons and it condemned these measures. Judged by civilised norms these people are not real male factors. They are the needy victims of a social system that controls the influx of people from rural to urban areas by penal sanctions. The reason for this virtually unstemmable influx is poverty (*Van Zyl Smit 1992:38*).

It could be debated that at one time, penal reformers honestly believed crime to be a product of poverty, and they therefore pinned their hopes on the eradication of poverty. They also hoped to combat crime through education of prisoners. Today, large areas of the world are prospering, and education and culture are widely prevalent, but none of these developments have managed to halt the increase in the crime rate (*Cilliers 1998:23*). Thus the increase in the prison population was uncontrollable making overcrowding inevitable.

Progressive changes started taking place with the closing down of prison outstations and a general decline in the use of prison labour for agricultural purposes. The system of paroling prisoners under paid contracts was also phased out. When the Abolition of Influx Control Act No. 68 of 1986 finally abolished the pass laws in 1986, a further factor inhibiting the normalisation of the prison system was removed. Thus prisons were mainly regarded as overcrowded places of security (*Department of Correctional Services Draft Green Paper 2003*). Despite the many rehabilitative changes taking place, they were minimal.

In 1985 top management held a strategic planning session during which organisational planning and long-term strategies were formulated. It was decided that the prisons service should plan and create its own future. On 20-5-1988 management decided that the prisons service belongs to the security field rather than to the social field of the Government sector. The purpose of the prisons service was adjusted accordingly to promote community order and security by dealing with prisoners according to statutory directives (*Neser 1993:73*). The mandate with which this objective was to be attained was described as the detaining of prisoners safely and with dignity until they are legally released and to run programmes to promote community integration.

These marginal improvements in the prison system were however soon overshadowed by the declaration of the State of Emergency on 21-7-1985, which lasted until 1990. This resulted in the incarceration without trial of a large number of persons. The mass detention of political prisoners during this period further inflated the already problematic prison population (*Department of Correctional Services Draft Green Paper 2003*). The State of Emergency also had a ripple effect on various other aspects and brought with it further restrictions on news reporting, including that of

prisons.



Gradually amendments to the specific emergency regulations reduced the differences between the conditions of detention of detainees and prisoners awaiting trial (*Van Zyl Smit 1992:39*).

During 1988 important amendments were made to prison legislation. By excluding all references to race, a reversal of the almost total racial segregation of the prison population was brought about although it took some years before it was implemented. The infamous prison regulation that ruled that "white" staff members automatically outranked all "non-white" staff members was also repealed (*Department of Correctional Services Draft Green Paper 2003*).

Overcrowding for many years has plagued South African prisons and this problem has not been adequately addressed. Community Service Orders was introduced as a sentencing option to alleviate the pressures on the already overcrowded prisons and also to present magistrates with another sentencing option (*Muntingh 1996:1*).

**Developments in the Prison System in the 1990s**

During the late 1980s and the early 1990s there were extensive reforms in the prison system. The political changes, which began in 1990, had a direct impact on the prison system in South Africa. Reference to race was removed and prisons were desegregated. The gradual release of political prisoners during the course of 1990 and 1991 meant that the prison authorities could look forward to a period in which prison management would not necessarily be linked to major national political questions (*Van Zyl Smit 1992:40*).

After the release of Nelson Mandela and the unbanning of the African National Congress in the early 1990s, steps were taken to restructure and reform the department. The Criminal Procedure Act was amended in 1990 in order to restrict the imposition of the death penalty. There was also the lifting of the State of Emergency in 1990 and the Internal Security Act No. 74 of 1982 in 1991, was modified. Amendments to the Prisons Act No. 8 of 1959 to the (Prisons Amendment Act 92 of 1990), looked at the abolition of apartheid in the prison system. Most fundamental in this respect was the removal of the requirement that "white" and "non-white" prisoners had to be housed separately (*Van Zyl Smit 1992:40*).

A key factor in change is the Police and Prison Officers Civil Rights Union (POPCRU). This organisation was committed to the recognition of the civil rights of all prisoners. POPCRU was perceived as a threat to the emerging but still fragile consensus surrounding prisons. The Government moved simultaneously to (re-) legitimate the prison system and to isolate



critics such as POPCRU who would demand more radical change. Thus the 1990 amendments to the Prisons Act, also outlawed strikes by members of the Prison Service (*Van Zyl Smit 1992:41*).

In the latter part of 1990 the Prison Service was separated from the Department of justice and renamed the Department of Correctional Services. The new Department was now responsible for the supervision of offenders in the community as well as

operating the prison system. An important milestone in this period was the introduction of the concept of dealing with certain categories of offenders within the community rather than inside prison, a system known as non-custodial 'correctional supervision'. The introduction of correctional supervision allowed for the possibility of a reduction in the prison population and also acknowledged the limited usefulness of custodial sentences.

During 1990 the Minister of Justice and of Correctional Services and senior officers of the departments of Justice and Correctional Services went overseas in order to investigate, amongst others, ways in which correctional supervision is dealt with and addressed in other western countries. It was found that the search for another form of punishment has taken place worldwide and that it has led to an international move towards community-based sentences (*White Paper 1991:22*).

Thus, correctional supervision was introduced as a more cost-effective way of implementing corrections. It was introduced as a response to the gross overcrowding of the South African prisons. This would have the supposed effect of minimising the increasing prison population.

In 1991, the Correctional Services and Supervision Matters Amendment Act No. 122 of 1991 undertook a far-reaching revision of the Prisons Act No. 8 of 1959. The changes of categorisation were confirmed, the title of the Commissioner of Correctional Services and the Correctional Services Act of 1959 respectively. Legislative changes were introduced. In October, 1989 the Government decided that all State departments should be managed according to business principles. These gave effect to the newly announced policy of running the prison system on business principles by removing many of the restrictions on the use of prison labour (*Van Zyl Smit 1992:42*). *The White Paper* (*1991:9*) states that this strategy focuses on, the development and implementation of a management model based on business principles and makes provision for the division of the Department of Correctional Supervision into strategic management units with the accompanying of responsibilities to the lowest possible levels of management together with an appropriate procedure and control framework.

Despite the changes, the growing prison population was becoming a



serious problem. The release policy and the automatic system of remission were revisited and a system of credits, which prisoners could earn for appropriate behaviour, was introduced. At the same time, in the face of rising challenges to the racial barriers on promotion of black members into the officer ranks in the Department, the Prisons Act No. 8 of 1959 was amended to make it illegal for warders to become union members without the permission of the Commissioner, and made it an offence to strike (*Department of Correctional Services Draft Green Paper 2003*).

On 27-4-1990 the Minister of Justice and Prisons announced that the creation of alternative community-based sentence options should be researched and developed. On 25-10-1990 the mission statement of the prisons service was formulated to promote community order and security by the control over, detention and dealing with prisoners and persons under correctional supervision in the most cost-effective and least restrictive manner (*Neser 1993:73-74*).

In 1990, apartheid in the prison system was formally abolished, with the repeal of the section requiring black and white prisoners to be housed separately. The Prison Service was separated from the Department of Justice and renamed the Department of Correctional Services and on the 21 September it was re-instituted as a fully-fledged

State Department. The Prisons Act No. 8 of 1959 and the Criminal Procedure Act No. 51 of 1977 were amended during 1991 to provide for the imposition and execution of correctional supervision. The Prisons Act was renamed the Correctional Services Act No. 81959 in 1991. The Department of Correctional Services activities were adapted as follows (*Neser 1993:74-75*):

- every prisoner who is legally detained in a prison, is kept there in safe custody until he is legally released or removed therefrom;
- convicted prisoners and probationers should receive treatment so that they can rehabilitate and can internalise habits of diligence and labour;
- correctional supervision is applied to probationers;
- prisoners must be self-sufficient as far as possible by the optimal application of production resources based on business principles;
- all work necessary for, emanating from or in connection with the effective management of the department must be performed; and
- any other duties that the Minister of Correctional Services gives to the department from time to time must be performed.

In 1991 a Probation Services Bill was prepared wherein provision was made for correctional supervision as a sentencing potion. Furthermore in 1991 there was a mass release of approximately 57,000 prisoners. *Giffard in* (*ISS Correcting Corrections Monograph No. 29 1998:2*), highlights



that approximately 94,000 sentenced prisoners were granted "special remissions" between 1-4-1990 and 30-6-1994. These "goodwill" or "bursting" remissions were granted in December, 1990, April, 1991, July, 1991 and January, 1994. Although general amnesties had been granted in the past, the scale of these releases caused public concern. The overriding impression was that the authorities, who, in a White Paper released in May, had expressed concern about the high rate of incarceration in South Africa and the inability of the State to provide adequate accommodation for increased numbers of prisoners, had decided to reduce the prison population drastically before the new legislation took effect (*Van Zyl Smit 1992:42*).

In addition the Department's release policy was changed to its present format. In striving towards greater efficiency and a more effective service to the community, the Department of Correctional Services did a critical analysis in respect of its mission and mandate in relation to results achieved. At the same time it made a study of the penological systems, which are applied in various countries abroad. In conjunction with this and in reaction to the Government's call for a more cost-effective Public Service a comprehensive study was undertaken into the increasing prison population and accompanying escalating detention costs (*White Paper 1991:5*).

The introduction by the Government in 1993 of the Public Service Labour Relations Act brought about further transformation. This Act was introduced as a result of continuous pressure on the Government to grant public service employees protection from unfair labour practices. The scope of the Act was made applicable to the Department of Correctional Services in 1994. This was an important development as it allowed employees of the Department to belong to trade unions, to engage in collective bargaining with the Department as employer and to declare and refer disputes to Conciliation Boards and to the Industrial Court for adjudication and settlement (*Department of Correctional Services Draft Green Paper 2003*).

Although the release of large numbers of prisoners to relieve the overcrowding in

the prison system was welcomed in opposition circles, the release of security and other prisoners proved controversial amongst white South Africans. Moreover, when combined with the publicity about release of political prisoners, it provoked an outburst of discontent in the prisons themselves amongst prisoners left out of the process. In 1991, hundreds of prisoners went on hunger strike demanding political status and early release; various prisons were hit by severe rioting. Hunger strikes by prisoners claiming political status continued, although they reduced in frequency and determination after the last large group of security prisoners were released by the Government in late 1992 (*Human Rights Watch 1994:2*).



Despite the release of these prisoners having brought about the restoration of some humanity and relief to the overcrowded prisons, the total prison population still remained unacceptable.

**Transformation of Correctional Services in Democratic South Africa**

In 1993 the Interim Constitution and the post-election Constitution introduced in 1996, embodied the fundamental rights of the country's citizens, including those of prisoners. The result of this was the introduction of a human rights culture into the correctional system in South Africa, and the strategic direction of the Department was to ensure that incarceration entailed safe and secure custody in humane conditions (*Department of Correctional Services Draft Green Paper 2003*).

The democratic elections of April, 1994 brought with them the ANC's commitment to transform South African society at all levels. The Reconstruction and Development Programme (RDP), introduced in 1994, was the policy on which such a transformation would be based. Apart from the fact that the document highlighted the need for the implementation of non-racial and non-sexist principles, it also focused on human rights, the rehabilitation of offenders, as well as the effective implementation of demilitarisation (*ISS Correcting Corrections Monograph No. 29 1998:29*).

Section 35 of the Constitution specifically provides for the rights of detained, arrested and accused persons to the extent that they have the right to (*Annual Report 1999:xi*):

- be informed promptly of the reason for detention;
- be detained under conditions that are congruent with human dignity;
- consult with legal practitioner;
- communicate with and be visited by a spouse or partner, next of kin, religious counsellor and medical practitioner of the prisoner's own choice; and
- challenge the unlawfulness of his or her detention before a court of law.

The dawn of the Government of National Unity in 1994 meant that the Department of Correctional Services could look forward to a future where it will never again be misused to further policies that are in conflict with the standards of the international community.

In October, 1994, the Department released the White Paper on the Policy of the Department of Correctional Services in the New South Africa. Its aim was to "stimulate debate on correctional matters and redefines

priorities that will eventually lead to where we should be, coming to grips with a correctional model for the new South Africa". "On 21-10-1994, a White Paper on the Policy of the Department of Correctional Services recognised the fact that the legislative framework of the Department should provide the foundation for a correctional system appropriate to a constitutional state, based on the principles of freedom and equality (*Department of Correctional Services Draft Green Paper: 2003*). The transformation of the Department in the first five years of the new democracy entailed:

- significant changes in the representativity of the DSC personnel and management;
- the demilitarisation of the correctional system in order to enhance the department's rehabilitation responsibilities on 1-4-1996;
- progressive efforts to align itself with correctional practices and processes that have proved to be effective in the international correctional arena;
- The introduction of independent mechanisms to scrutinize and investigate its DCS activities, such as the appointment of an Inspecting Judge.

The White Paper failed to address the central problems of the correctional system of South Africa. The White Paper fell woefully short of mark, "merely [attempting] to couch departmental policy in new rhetoric" (*ISS Correcting Corrections monograph No. 29 1998:2*). On the 16 February an Alternate White Paper on Correctional Supervision was written by the Penal Reform Lobby Group, (PRLG-1995), setting out reforms to be considered for future legislation.

In addition to ensuring the protection of human dignity, liberty and equality of all people, and the general protection against cruel, inhuman and degrading treatment or punishment, the Constitution provides specific protection for detained, accused and arrested persons. Section 35(2), for example, deals with the rights of detained and arrested persons, including the right to "conditions of detention that are consistent with human dignity; including at least exercise and the provision, at State expense, of adequate accommodation, nutrition, reading material and medical treatment" (*Dissel 2002:1*).

In 1995 the death penalty was repealed. On 1-4-1996 the correctional system was demilitarised, a step that was necessary for the department to be able to carry out its responsibilities with regard to the development and rehabilitation of offenders. The National Crime Prevention Strategy (NCPS) approved by Cabinet in 1996 adopted an Integrated Justice System (IJS) approach that aimed through Pillar 1 of the NCPS at making "the criminal justice system more efficient and effective. It must provide a sure and clear deterrent for criminals and reduce the risks of re-offending" (*Department of Correctional Services Draft Green Paper 2003*).



In 1996 the Constitution was passed and this provided the overall framework for governance in a democratic South Africa. It enshrined the Bill of Rights, and all Government Departments had to align their core business with the Constitution and their modus operandi with the framework of governance. The New South African Constitution embodies fundamental rights of citizens, including prisoners (*Oliver and McQuoid Mason 1998:25*).

Transformation has occurred in various parts of the Department. The Transformation Forum on Correctional Services precipitated such changes. Focus areas were prioritised, including demilitarisation, prisoners' health, independent inspection, human resource management, and the establishment of a management team (*ISS Correcting Corrections Monograph No. 29 1998:2*).

The forum's aim to influence the transformation process was a failure. Some of the recommendations made were: the establishment of an independent prison's inspectorate, a lay visitors scheme and a change in management team. The forum ceased its operations in September, 1996 because of withdrawal of the Department and conflict caused by political arguments.

The National Programme on Appropriate Community Sentencing indicated that available correctional resources must be used in a targeted way to deal more effectively with serious offenders. The imposition of prison sentences on minor offenders reduces the likelihood of reintegration into society and further burdened the criminal justice system. Increasing the availability of community sentencing options on conviction increases humane treatment of minor offenders and improves the effectiveness of corrections more widely by reducing the burden on the correctional services department. This will also reduce recidivism within the sector (*Department of Correctional Services Draft Green Paper 2003*).

The imposition of prison sentences on minor offenders contributes to the overcrowding of prisons. By the same token it also stigmatises the offender and prevents large-scale reformation among inmate population.

A milestone in the history of the Department was the promulgation of new legislation in the form of the Correctional Services Act, Act 111 of 1998. According to this legislation, there had to be a total departure from the 1959 Act and it embarked on a modern, internationally acceptable prison system, designed within the framework of the 1996 Constitution (*Annual Report 1999:xii*).

The most important features of this Act are:

- the entrenchment of fundamental rights of prisoners;



- special emphasis on the rights of women and children;
- a new disciplinary system for prisoners;
- various safeguards regarding the use of segregation and force;
- a framework for treatment, development and support services;
- a refined community-involved release policy;
- extensive external monitoring mechanisms; and
- provision for public and private sector partnerships in terms of the building and operating of prisons.

It recognises international principles on correctional matters and establishes certain mandatory minimum rights applicable for all prisoners that cannot be withheld for any disciplinary or other purpose (*Dissel 2002:1-2*).

The Correctional Services Act No. 111 of 1998 led to the establishment in 1998 of independent oversight of prisons through the Independent Judicial Inspectorate, which is headed by an Inspecting Judge. This office is mandated to inspect prisons and report on the treatment of prisoners and conditions in prisons. Mr Justice Fagan, the current Inspecting Judge, has prioritised the reduction of the population and

instigated early releases in 2000 (*Dissel 2002:3*). The Judicial Inspectorate is also entrusted with the appointment of Independent Prison Visitors (IPVs) from the community. One, or more, IPV will be appointed for each prison. They will make regular visits, interview prisoners and deal with their complaints by reporting these to the head of the prison, and monitor how they are dealt with. The author will expand on the complaints of prisoners in chapter four of this thesis.

**The Department of Correctional Services since 2000**

The overpopulation of prisons continued to be a problem. During the period between 2000 and 2003 there has been continuous engagement with the strategic direction of the Department. Various role players have tried to interpret the purpose of the correctional system and decide on the policy direction, which was essential for successful delivery on rehabilitation and the prevention of recidivism (*Department of Correctional Services Draft Green Paper: 2003*).

On the 1-8-2000, 2-8-2000, the Department hosted a National Symposium on Correctional Services. The need to promote a collective social responsibility for the rehabilitation and reintegration of offenders into the community was recognised. The establishment of a "Partnership Forum for Correctional Services" was also recommended. The National Symposium focused on the following objectives (*Department of Correctional Services Draft Green Paper 2003*):

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- to develop a clearly articulated national strategy to attain the desired fundamental transformation of correctional services;
- to create a common understanding of the purpose of correctional system;
- to create a firm foundation for coherent and cohesive role-playing by all sectors of society;
- to achieve national consensus on the human development and rehabilitation of all prisoners and their integration into community as productive and law abiding citizens.

**Strategies Employed to Reduce Overcrowding in Prisons**

The escalation of the prison population persisted to be a problem and it was clear that the unacceptably high occupancy rate was going to continue to be a burden in the foreseeable future. Different strategies were employed to curb the problem of overpopulation but they did not have lasting long-term effects. During September, 2000, 8262 awaiting-trial prisoners who were accused of less serious offences and had been granted bail of less than R1000-00. An additional 8678 prisoners were placed into the system of community corrections earlier than usual through the advancement of the approved parole dates of certain categories of prisoners (*Department of Correctional Services Annual Report 2000-2001:7*).

The Department commissioned the new Qalakabusha Prison at Empangeni on the 4-11-2000 in order to expand the accommodation capacity but although existing prisons are overcrowded, new ones are extremely expensive to build.

On 22-1-2001 and 23-1-2001, the Department committed itself to step up its campaign to put rehabilitation at the centre of all its activities, by identifying the enhancement of rehabilitation services as a key departmental objective for the Medium Term Expenditure Framework (MTEF) period. This was due to the re-examination of the Department's strategic role in the fight against crime within the broader context of the criminal justice system and in terms of the priority programmes presented by the

Justice, Crime Prevention and Security Cluster to the Cabinet Lekgotla (*Department of Correctional Services Draft Green Paper 2003*).

The Department identified the enhancement of rehabilitation services as a key starting point in contributing towards a crime free society. The following strategies were developed for the implementation of the enhancement of rehabilitation (*Department of Correctional Services Draft Green Paper 2003*):

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- the development of individualised need-based rehabilitation programmes;
- marketing rehabilitation services to increase offender participation;
- establishment of formal partnerships with the community to strengthen the rehabilitation programmes and to create a common understanding;
- promotion of a restorative approach to justice to create a platform for dialogue for victim offender and community facilitating the healing process;
- combat illiteracy in prison by providing ABET to offenders;
- increase production to enhance self-sufficiency and to contribute to the Integrated Sustainable Rural Development Strategy; and
- increase training facilities for the development of skills.

In the year 2001, amendments were made to the Correctional Services Act 111 of 1998. The Correctional Services Amendment Act 32 of 2001 was instituted to fully implement the principal Act as well as be more compliant with the provisions of the Constitution. Central to the Amendment Act was:

- the treatment of prisoners;
- accommodation of disabled offenders and gender considerations;
- disciplinary procedures for prisoners;
- new parole systems;
- treatment of child offenders; and
- use of firearms and other non-lethal incapacitating devices.

The Mvelaphanda strategic plan for 2002-2005, adopted by the Department in October, 2001, put rehabilitation at the centre of all DCS activities. The Department continues to refine the Strategic Plan by further developments of concepts and components of the strategy (*Department of Correctional Services Draft Green Paper 2003*).

In South Africa, in addition to the various strategies undertaken to manage the challenge of "overcrowding", which is an occurrence throughout the world, prototype designs for the construction of cost-effective new generation prisons were instituted. The so-called "new generation prisons" would offer the department the facility to effectively carry out the rehabilitation mandate within the principles of unit management.

Unit management was identified as the missing component in the transformation of the South African prison system. This is an approach that makes provision for:

- the division of the prison into smaller manageable units;

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- improved interaction between staff and prisoners;
- improved and effective supervision;
- increased participation in all programmes by prisoners;
- enhanced teamwork and a holistic approach; and
- creation of mechanisms to address gangsterism.

It can be seen that this approach will not be a workable one while conditions of overcrowding persists.

Furthermore in 2001 the Department had a three-pronged Anti-Corruption Strategy to tackle the problem of corruption and mismanagement within the Department focusing on (*Department of Correctional Services Annual Report 2001-2002:11*):

- the investigation of allegations of corruption and mismanagement;
- disciplinary sanctions against corruption and mismanagement; and
- the prevention of corruption by adopting a style of management that creates an environment that is not conducive to either corruption, non-compliance with policy or indiscipline.

Upon the request of the Minister of Correctional Services, the President appointed the Honourable Mr TSB Jali as the chairperson and sole member of a Commission of inquiry into allegations of corruption and mismanagement in the Department. The Jali Commission was duly constituted in terms of Proclamation 135/2001 dated 27-9-2001 (*Department of Correctional Services Annual Report 2001-2002:14*).

On the 26 November, 2001, the Minister of Correctional Services, Mr Ben M Skosana launched the Restorative Justice approach to bring together the offender, the victim, families and the community into the mediation process for purposes of repairing the harm created by the crime. The aim for this was also to create an environment of reparation and forgiveness, thereby bringing along healing in the community and effective reintegration of the offender upon release.

In 2002, the Department recognised the incompleteness in the transformation of the Department, which resulted in a lack of coherence of paradigm, and the lack of a common understanding of the meaning of rehabilitation across the entire Department. A concept document called "Conceptualising Rehabilitation" was developed for internal discussion in all components of the Department (*Department of Correctional Services Draft Green Paper 2003*).

Between 1-4-2001 and 31-3-2002, the Parole Boards considered 59, 179 cases for conditional/unconditional release. The Department's Asset



Procurement, Maintenance and Operating Partnerships Programme, resulted in the commissioning of two public-private partnership prisons during 2001-2002 (*Department of Correctional Services Annual Report 2001-2002:13*).

The Department of Public Service and Administration began the implementation on a Public Service Central Bargaining Chamber Resolution, No. 7 of 2002, which facilitated the overall transformation and restructuring of all Government departments within specific time frames. At the beginning of 2003, all of these have consolidated into an understanding of corrections not merely as the prevention of crime, but as a holistic phenomenon incorporating and encouraging social responsibility, social justice, active participation in democratic activities and contribution in making South Africa a better place to live in (*DCS Draft Green Paper 2003*). Government recognised the

family as the basic unit of society and as the primary level at which correction takes place; the community, including schools, churches and other organisations as the secondary level at which correction takes place and recognises the state as the driver and overall facilitator of correction and the Department of Correctional Services as the State's agency for rendering the final level of correction.

Thus a combined strategy is required in order to address the issue of overcrowding in correctional facilities, to resolve the crosscutting responsibilities in respect of overcrowding and to monitor the criminal justice processes in this regard. The Departmental approach to resolution of overcrowding has tended to move away from a reactive crisis management approach, such as bursting strategies that often contradict the essence of rehabilitation for release and reintegration, to concentration on crime reduction and expansion strategies, such as improved efficiency of the criminal justice processes, strategies to get those who are incarcerated by default through poverty and lack of legal access out of DCS facilities, and a capital works programme to build appropriate and cost effective facilities (*DCS Draft Green Paper 2003*). The following are some of the initiatives adopted within the Cluster to reduce overcrowding:

- the awaiting trial prisoner project, which is meant to reduce the detention cycle of time of awaiting trial prisoners in an integrated manner;
- the Department's involvement in the Saturday courts project, which was introduced in ninety-nine courts countrywide as one of the major factors that can reduce the number of unsentenced detainees;
- the establishment of a departmental task team to liase with a task team working on overcrowding within the security cluster at implementation level;



- the utilisation of Sections 62(*f*) and 63(*a*) of the Criminal Procedure Act by the Heads of Prisons in court applications which resulted in the release of prisoners; and
- the use of the amendment of Section 81 of the Correctional Services Act to allow the release, under specific conditions, of awaiting trial prisoners who have been allowed bail but could not afford to pay due to the prisoner's personal social conditions.

Despite the implementation of all these initiatives the overcrowding in prisons remains one of the most crucial challenges facing the Department of Correctional Services today. Although in theory the above stated initiatives should be implemented, in reality various practical hurdles exist.

To further try and reduce overpopulation the Department adopted a new approach to a cost effective expansion strategy by building low cost "New Generation" prison facilities for medium and low risk prisoner categories, who are the majority of the country's prison population. Inspecting Judge of prisons, *Judge Hannes Fagan* (*The Mercury July, 2003:6*) stated that reducing the 190000 prison inmates by 70,000 was the answer to prison overcrowding not building new prisons. Correctional Services Minister Ben Skosana said four new prisons; each housing 3000 inmates would be built. Judge Fagan pointed out that what was needed was not more prison but to get the number of prisoners down.

The author will elaborate on the abovementioned facts in chapters four and five of this thesis. Some aspects of the prison system are unlikely to change in the short-term because South Africa has an extremely high rate of violent crime. Well over

20,000 people are murdered every year, roughly fifty for every 100000 of the population (the figure for the United States is 17.2 per 100000). Statistics for rape and other violent offences are at similar levels. These are unlikely to change until the economic and social crisis in the townships can be addressed something that will take many years. In the meantime, there is little alternative to incarceration for violent offenders. The prisoner-to-population ratio will remain high and overcrowding will remain the norm for most prisons (*Human Rights Watch 1994:3*).

The author is of the opinion that there has to be a reduction in the prison population, and the target for this reduction should be the reduction of the inflow of the number of petty offenders and the number of awaiting-trial prisoners through the criminal justice system. Alternatives to incarceration should be explored and implemented extensively.

**Resume**

Dutch colonists introduced prisons in South Africa, but it was after the



British occupation that the penal policy, including incarceration, began to take shape. Historically in South Africa, as in England, the duty of the prison administration to reform criminals was interpreted in order to accommodate the economic needs of the age (*ISS Correcting Corrections Monograph No. 64 Sept 2001:1*).

Imprisonment began in the eighteenth century by the Pennsylvania Quakers as a humane way to treat lawbreakers. Instead of being subjected to public humiliation, being mutilated or flogged, offenders were given the Bible to read and placed in solitary confinement to do penance. Over the decades, despite the changes and improvements in the prison systems of most countries, imprisonment has still remained an instrument of retaliatory punishment rather than an instrument of rehabilitation. History has indicated that prisons that are focused on punishment to the exclusion of everything else fail miserably in their attempts to reform and rehabilitate offenders. The same applies to prisons where discipline and control are absent (*Cilliers 1998:31*).

The pre-election period in 1994 was characterised by simmering prison disturbances. While the political context has changed dramatically, continued overcrowding, poor relations between wardens and prisoners and the availability of few alternatives to imprisonment, means that there is a possibility that prisons can once again be characterised by unrest.

Despite formal demilitarisation, the military culture is still evident in the Department. Prison officials do their work behind closed doors both literally and figuratively. Although the recent process of transformation enforces equality, transparency and democracy, it will take many years to dissipate such a deeply entrenched culture (*ISS Correcting Corrections Monograph No. 29 1998:15*).

Political changes require adjustments in the present Public Service as well as in that of the future. Actions such as privatisation, commercialisation, corporatisation, deregulation and greater management autonomy have also created new challenges. Managing the department according to business principles accorded a special contribution to cost-effectiveness. Another important aspect, which was demonstrated, was the department's ability to accept the various challenges with confidence.

Dealing with change will be an essential aspect of the new South Africa and of the Public Service of today and the future. Many of the historical features of the South African prison system will continue to exercise an influence on the development of

prison law in South Africa for many years to come (*Van Zyl Smit 1992:43*).

Thus there are various factors that contribute to the crisis in South



African prisons. The problem of overcrowding stems from the criminal justice system as a whole. To transform prisons involves all of society not just the correctional services. The prison system that is in place in the twentieth century is in line with modern correctional practice and it is acceptable to the international community. This does not mean that the Department of Correctional Services do not face any difficulties (*DCS Annual Report 1999*). The challenge facing it is to ensure that the new legislation and principles that have been established are upheld and enforced.

These often-contradictory historical fluctuations make it difficult to forecast just where corrections will be tomorrow, as society again re-evaluates its priorities. In the meantime, the challenge is to adapt to more punitive sanctions without abandoning more positive solutions (*Stinchcomb and Fox 1999:120*).

Overcrowding remains one of the greatest challenges to continue to confront corrections. This impacts negatively on all aspects of corrections, on staff morale, on the health of offenders, on the effective safe custody and on the ability of the Department to allocate resources effectively for the rehabilitation of offenders.

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