Overview of Policy Developments in South African Correctional Services 1994 – 2002

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1. Introduction

This paper has been compiled as a review of trends in the policy area pertaining to corrections in South Africa since the advent of democracy in 1994. The transition from a closed, militaristic implementation agency of some of the apartheid government's harshest responses to the movement for universal franchise in South Africa – including executing political activists, isolating sentenced freedom fighters from their intellectual and social roots and carrying the responsibility in the last instance for people detained without trial – has been especially difficult for this sector. The reasons for this are elaborated more fully below, and constitute some of the causative factors that have given rise to this policy review.

This research was undertaken against a backdrop of significant changes that have taken place in this sector in very recent times. Firstly, the appointment in 2001 of the Jali Commission of Inquiry to investigate corruption in South African prisons has sparked public interest in matters relating to prisons, and the report of this Commission – which is still awaited, as the work of the Commission is not complete – will provide a benchmark for improvements in a number of fields. Secondly, late 2001 saw the appointment of a new Commissioner of Correctional Services, and a number of very senior Departmental staff changes have ensued. Thirdly, early in 2001 the Minister announced that plans were afoot to draft a new Green Paper, followed eventually by a new White Paper, outlining a new vision for a corrections system in South Africa. And finally, while a new Correctional Services Act was approved by Parliament in 1998, it is only being partially enacted at the time of writing.

This paper is intended to contribute to that process. In identifying policy gaps and the wrong roads that have been taken over the past eight years, it is hoped that similar mistakes can be avoided, and that a new vision for Correctional Services can emerge from a firm foundation and deeper understanding of the recent past.

One area that is deliberately not addressed in any detail in this paper is the question of prison overcrowding in South Africa, its causes, effects or any possible solutions. This is not because the author does not regard overcrowding as insubstantial or insignificant. Indeed, it is a source of enormous concern, and the increased overcrowding during the

period under review is a recurring theme in explaining some of the effects of the major policy responses in the corrections field during this period (essentially from 1994 to 2002).

The point is an intractable one, however: At one level, overcrowding is being addressed to some extent through various initiatives, ranging from the prison-building programme described in section 4 below, to the efforts of the Office of the Inspecting Judge of Prisons to encourage the use of new legislation, which permits the release on conditions of awaiting trial prisoners who cannot afford to pay the bail that has been set. The problem with prison overcrowding is that it is by and large the result of other factors in the criminal justice system that fall outside the scope of the Department of Correctional Services. In the absence of comprehensive sentencing reform to restrict the ever-increasing length of custodial sentences being imposed, or the rapid implementation of successful court management improvements to reduce the time that awaiting trial prisoners spend in the prisons system awaiting finalisation of their cases, there does not appear to be much that a policy review of this kind could add to the current debates on overcrowding.

On the other hand, though, some level of overcrowding is "normal" and predictable. Rather than being the leitmotif of any substantive discussion concerning corrections policy, or the disclaimer for introducing improvements that it all too often is, overcrowding may well be considered in this paper as a subtext to all of the other issues dealt with in the paper. It cannot excuse corruption, does not replace the need for proper planning and it dare not be adduced as the justification for wasteful expenditure. Having stated that, however, the challenges posed by the current levels of overcrowding must be firmly recognised. The likely scenario, given the increase in sentenced population caused in part by the introduction of statutorily prescribed sentences in 1998, is that the Department will nevertheless have to confront the Green Paper and White Paper process within the confines of the existing level of serious overcrowding, save where this can be alleviated by building new prisons.[1]

This policy review is also not intended to be exhaustive of all matters and issues that have arisen in the field in the years under review. The issues that were selected for consideration were chosen either because of the significance of their policy impact in the short or the longer term, or because of their importance in affecting correctional practice. The focus, too, is largely determined by the extent to which civil society's role is affected by the issue, as furthering the involvement of civil society in corrections issues is the key objective of the programme for which this report has been compiled.

[1] Or by amnesties, release of awaiting trial prisoners whose bail is below a certain bail, and other limited bursting measures. The present discomfort of the Department around the housing of awaiting trial prisoners is referred to in section 10 (the role of the Department within the government's overall approach to crime prevention and crime reduction).

2. Background

Shortly after the new government took office in 1994, the Department produced a White Paper on the Policy of Correctional Services in the new South Africa.[2] The White Paper has been described as an "immediate response" to the changes brought about by the introduction of the Interim Constitution of 1993, and has been widely regarded as a document lacking in vision, policy direction and stature.[3] The document was narrowly conceived, vague on details and more aspirational than real. It was written largely from a defensive stance, driven possibly by the enormous challenge of transformation facing the Department and individuals within it at the time. It fell far short of providing a blueprint for change and development.

Consequently, policy changes that have in fact occurred during the eight years subsequent to the release of the White Paper cannot for the most part be linked in any way to it. An example in point is the introduction of the concept of unit management as the preferred prison management tool of the late 1990s. There is no mention of this concept in the White Paper. Similarly, the sections dealing with facilities and accommodation are perfunctory, and do not raise questions about public-private partnerships, super-maximum prisons or any other issues that indeed characterised some of the actual policy debates in subsequent years. The paucity of the contribution of the White Paper to shaping policies within Correctional Services is not, however, the only reason why policy development, with hindsight, has been something of a back and forth affair.

A key determinant of some of the most significant leaps and twists was the then Minister of Correctional Services. As is commonly known, the provision for a Government of National Unity, formed after the 1994 elections in terms of the provisions of the Interim Constitution, required that opposition parties that received more than 5% of the vote be represented in Cabinet. The Inkatha Freedom Party's Dr S Mzimela was therefore given the Correctional Services portfolio. A former prison chaplain in the United States, he had his own ideas about what was required in the context of reform.[4] As much as he was a staunch supporter of prison privatisation, he was equally regarded as being antagonistic to outsider influence on corrections policy, and more especially when this came from the non-governmental sector.[5]

However, before the Minister's influence could play out at a practical level, the brief history of the Transformation Forum on Correctional Services needs to be highlighted. The Forum was established after a conference was

[2] Dated 21 October 1994.
[3] See, for example, Penal Reform Lobby Group "An Alternative White Paper on Correctional Services" unpublished, 1995 (copy on file with the author).
[4] C Giffard "Out of Step? The transformation process in the South African Department of Correctional Services" unpublished MSoc Sci thesis, University of Leicester, 1997.

convened by the then Deputy President to debate the nature of civil society involvement in the transformation of Correctional Services. This included reluctant representatives from the Department, the Parliamentary Portfolio Committee, the existing staff/member trade unions, the prisoners' organisation SAPOHR and representatives from the National Advisory Council and NGOs. One key participant at the time has concluded that "on the whole, the Forum's objective of influencing the direction of transformation was a failure".[6]

The Forum broke down because of various factors, including the Minister's unwillingness to engage with it and infighting among participants. The received wisdom could also perhaps be bolstered by the argument that the Forum was over-inclusive in drawing in stakeholders from such diverse spheres of interest, many of whom had "an agenda" of their own: trouble could have been predicted from the start.

As Van Zyl Smit has pointed out, a major difficulty was that the Transformation Forum become "embattled in the internal labour politics of the Department, to which [was] added an overlay of national party political disputes."[7] There was an obvious lack of co-ordination between the Ministry and the Forum, with the Minister failing to attend Forum meetings, and at one point withdrawing the Department as a participant.[8] The representative of the prisoners' union also fell out of favour with Departmental representatives, and the Transformation Forum, which was deeply politicised, was effectively abandoned by September 1996.

It is also well known that relations between the (ANC) Portfolio Committee chairperson (Carl Niehaus) and the (IFP) Minister were strained from the start. The chair eventually stepped down after the controversy surrounding the release of children from prison in 1995, and the subsequent reversal of this by means of a private members bill in 1996.[9] A series of Portfolio Committee chairpersons followed. Less and less contact with civil society organisations took place at Parliamentary level, in part because at least one chairperson actively discouraged the involvement of non-governmental organisations in debates and hearings.[10] A more detailed study of the overall role of the Portfolio Committee in monitoring and providing effective oversight over corrections issues forms the topic of a further research paper in this series, and will not be fully canvassed in this report. However, the Portfolio Committee's role in relation to the specific issues discussed further below will, from time to time, be addressed in so far as this is necessary.

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[5] Ibid.
[6] Giffard op cit p 35.
[7] D van Zyl-Smit "Criminological Ideas and the South African Transition" 39 British Journal of Criminology pp 198-215. A key factor was that the Minister and the chairperson of the Portfolio Committee on Correctional Services (and the chairperson of the Forum) were from different political parties.
[8] Giffard op cit p 35.
[9] See in general J Sloth-Nielsen "The role of international law in South Africa's juvenile justice reform process" unpublished LLD thesis, University of the Western Cape 2001.
[10] Personal communication from the then Parliamentary researcher.

The Department underwent a string of policy and top staff changes during the years under Minister Mzimela. This trend followed the Minister's departure from Cabinet, and the appointment of Minister Skosana on 1 August 1998.[11] The cataclysmic nature of these influences is indeed reflected directly in the Department's own Annual Reports. For instance, 1998 was described by Commissioner K Sithole as "a momentous year". The year following was described by acting Commissioner T Nxumalo as "turbulent", not surprising given that his reign followed a period during which, after extensive allegations of corruption and mismanagement in the media, Commissioner Sithole "voluntarily withdrew"[12] from government service after the press reports culminated in extensive scrutinisation of the Department by the Public Accounts Committee of Parliament. Acting Commissioners were thereafter at the helm of the Department until the appointment of the present Commissioner in 2001, and it is fairly obvious that this has been a department characterised by a crisis of leadership for much of the period under review. The instability in the Department was acknowledged in the Annual Report of 2001 – 2002, the first report in some years to be introduced by a permanent Commissioner (Commissioner Mti, appointed in August 2001).

In this Annual Report he also spoke frankly about the level of corruption, intimidation and mismanagement within the Department of Correctional Services, particularly within the prisons themselves, as well as the inadequacy of the skills and the lack of appropriate training of the staff of the Department, resulting in their inability to carry out the legal mandate and core business of the Department, namely the correcting of offending behaviour.

Consequently, by 2002 there was no evidence that overall prison conditions had improved significantly for the bulk of prisoners.[13] Indeed, prison conditions appeared to have worsened for many, primarily owing to the huge increase in the prison population. The enormous growth in the prison population has been well documented, and the role of overcrowding in hampering Corrections reform ably articulated.[14]

The Department has thus far been unable to convincingly articulate the message that the overcrowding has reached crisis proportions, although there are very recent signs of an increase in media and public awareness in this regard. The reasons for this are probably twofold: first, the punitive public mood that has prevailed for the greater part of the period under review, and second, the evident isolation of Correctional Services within government structures (discussed in more detail in section 10 below). Consequently, messages about overcrowding that have peppered

[11] S Pete "The Good, the Bad and the Warehoused" 2000 (13) South African Journal on Criminal Justice 13 at 22.
[12] The words of Acting Commissioner Nxumalo in the 1999 DCA Annual Report (see www.dcs.gov.za).
[13] D van Zyl-Smit "Swimming against the tide" unpublished 2003, copy in file with the author; see too, S Pete op cit.
[14] See, for example, A Dissel and S Ellis "Reform and Stasis: Transformation in South African prisons" (http://www.csvr.org.za/papers/papd&se.htm accessed 20/01/2003).

public statements[15] on prisons throughout the period under review were a lone voice in the wilderness. The third factor has undoubtedly been the absence of strong leadership, with a commitment to ensuring the humane treatment of prisoners in the Department of Correctional Services.

Nevertheless, part of the problem with the deteriorating climate of South African prisoners must also be attributed to the personalities that have driven prison policy-making in the period until 2002, and the constantly varying direction that these pronouncements and initiatives have taken, as will be illustrated further below. There has been a crisis of vision and, for several crucial years, a leadership vacuum. There is, however, an expectation that the tide has turned in so far as the new appointments to senior ranks in the Department are concerned. Therefore, the initiative to review prisons policy and strategy in the Green Paper process is timely and necessary: As the chequered path of recent policy highlighted further in this report shows, a longer-term vision and plan are required, coupled with sound research and evaluation as new projects are under way, and linked to realistic and measurable time frames for implementation.[16]

The task that lies ahead for the Department of Correctional Services is to formulate a long-term strategic vision for prisons within the broader context of crime reduction, a plan that is in step with the realities of the South African situation. It is therefore imperative that the new strategic vision be translated into action, and does not (as has been the case over the last ten years) remain an unattainable set of desired circumstances unsupported by political will and resources.

3. Demilitarisation

The 1994 White Paper on Correctional Services recognised that the military character of the Department was to be reconsidered.[17] This was also regarded as "a sensitive issue that cannot be dealt with high-handedly or overnight", because of the fact that the existing staff who had joined the Department as a paramilitary organisation obviously associated themselves with that "long-standing tradition and culture".[18] This statement on demilitarisation has been described as an attempt to bury the debate[19] altogether, so grudgingly was the possibility of demilitarisation couched.

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[15] See for example S Pete "The politics of imprisonment in the aftermath of South Africa's first democratic election" (1998) 11 South African Journal on Criminal Justice 51 at 71 and S Pete 2000 op cit, as well as the Annual Reports of the Office of the Inspecting Judge of Prisons.
[16] For example, regarding the implementation of the 1998 Correctional Services Act, discussed more fully in section 9 below.
[17] Par 3.6.5.
[18] Ibid.
[19] Giffard op cit at 38.

According to Giffard, the Minister and his adviser simply wanted the military character to disappear. "For the Departmental officials involved in the planning … the important issues were etiquette, insignia, awards and decorations, dress and forms of address." But according to Giffard, communication to members of the Department as to why demilitarisation was necessary or how it was to take place was not prioritised. The Department demilitarised virtually overnight, on 1 April 1996. In effect, all insignia were removed, military attendance parades ceased, rank was abandoned as a form of address and a "new" civilian character was espoused. The manner of implementation was crude, and it was a huge shock to individuals used to working in a highly regimental militaristic system. Luyt was of the view that the whole demilitarisation debacle caused turmoil, which originated from the uncertainty it caused: "[t]here was no proper contingency planning and correctional officials were not sure about their roles and responsibilities."[20] Not only did inmates seize the opportunity to manipulate staff, but the system of disciplinary measures against staff themselves had to be reworked to do away with the vestiges of military disciplinary procedures and to embrace new labour legislation. This, however, has taken some time to put in place. The retraining and reskilling of staff only commenced some three years after the demilitarisation itself occurred, and has been of rather limited reach and scope.[21]

Writing as early as February 1997, Giffard describes the failure to address the management issues simultaneously with demilitarisation, and also points to the depth and nature of the military character of the prison services as a whole. He concludes that demilitarisation was at best "partial", as it was conceptualised in a narrow and mechanistic manner.[22]

According to Luyt,[23] a new corporate dress was supposed to have been introduced (following the abandonment of the old uniforms) in 1998. Later, it appeared that this would occur only at the end of 2000. Only in mid-2002 was progress made on this front, as described further below. The negative effects of the instantaneous collapse of their identity have thus pervaded Corrections for the better part of the period under review.

Most commentators agree that demilitarisation has been responsible for a host of other ills that have befallen the Department. Staff discipline, it has been alleged, was dramatically affected by the removal of the rigid strictures of the military regimen. Dissel comments that "it took time for staff members to become familiar with the changes. Many

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[20] "The Transformation of Corrections in the new South Africa" vol 14(3) *Acta Criminologica* 2001 at 27.
[21] Retraining commenced with "training of trainers" in 2001, during which year 400 staff received training along human rights-based lines. See, for example, Kriel "Training and Development Curricula for Correctional Staff" vol 15(1) *Acta Criminologica* 2002, and DCS Annual Report 2001 – 2002.
[22] A Dissel and S Ellis support these views. See "Reform and Stasis: Transformation in South African Prisons" at www.csvr.org.za/papers/papad&se.htm.
[23] "The transformation of Corrections in the new South Africa" vol 14(3) *Acta Criminologica* 2001.

exploited the gap, which resulted in lax discipline".[24] Absenteeism, a poor labour relations environment and the evident growth of corruption at prison floor level have all, it has been suggested, been (at least in some part) influenced by the especially rapid transition from one system to another, without the underpinnings of the climate necessary for this radical type of transformation having been put in place. It has also been alleged that demilitarisation has not significantly changed the culture of the Department.[25]

Even if the removal of the ranks, uniforms, insignia and parades was not responsible for declining staff performance, lack of discipline and a decrease in morale generally, the fact remains that this has been the perceived result of demilitarisation in Correctional Services. It is not clear that the Department has made a concerted effort to introduce new management styles to replace the military management style of the past either, and if the Department is serious about the goal of rehabilitation, it is essential that all staff be trained in a management ethos that facilitates this aim.

The issue of new uniforms was never actually off the agenda. The Portfolio Committee was informed on 9 May 2000 during discussions on this issue that a survey had been conducted that suggested that only cosmetic changes were required.[26] The design appears to have been internally agreed on, and despite a concern being raised by a Portfolio Committee member about the militaristic colour of the proposed uniforms, the Department does not appear to have taken this view into account. The Portfolio Committee does not appear to have been rebriefed on the issue.

In April 2002 uniforms for staff were again introduced, first at Head Office, and this is presently being rolled out at provincial level.[27] The uniforms, while attractive, are nevertheless undeniably reminiscent of the military. They espouse practical yet rather army-like colours and fabrics, such as brown and khaki, and, in addition to this, rank is to be communicated by insignia placed on the shoulder epaulets à la military. Although is has been denied by Departmental officials that this in any way heralds a return to the militarisation of the past, and it is asserted that the Department still fully supports a civilian ethos, at the same time there is the notion that the clock is being turned back by the return to the chosen form of identity.

Conclusion

It is conceded that identifiable rank appears to be a key issue for the Department: for example, prisoners need to know to whom they can complain when a complaint has to be lodged with an official of a definite status, according to

[24] A Dissel "Tracking Transformation in South African Prisons" vol 11(2) April 2002 Track Two at 13.
[25] A Dissel "Tracking Transformation in South African Prisons" op cit at 14.
[26] www.pmg.org.za (accessed 3 June 2003).
[27] During 2003. As an arguably rather major policy decision, it is surprising that the return to uniform matter was not placed before the National Council on Correctional Services, as required by the provisions of Act 111 of 1998.

regulations. Nonetheless, it is obvious that the whole demilitarisation process was exceptionally badly implemented, and that despite numerous warning signs from the very beginning, obvious problems were not timeously sorted out in a planned and programmatic fashion. Indeed, the policy response can only be described as tardy – it took six years to respond to the need for uniforms, and what has now been implemented is not ideal.

Nevertheless, it is probably too late at this point to turn back the clock on design and colour issues, given the resource implications involved. The implementation of the uniform policy and the corporate identity was, broadly speaking, not very well communicated internally or externally (for example, shared with the Portfolio Committee, which, as stated earlier, does not appear to have been briefed on the issue after the evidently heated encounter in May 2000).

Perhaps addressing the consequences of demilitarisation in the period 1996 to 2001 was overshadowed by the ever-spiralling fashions that sprung up in other policy areas (as discussed further in the sections below).

However, the recent initiative to inject some "corporate identity" through a return to uniform may bring about some positive changes regarding staff discipline and morale. The Department is adamant that the move is not a return to militarisation and, although it is suggested that many may perceive it as such (especially given the "look" of the uniforms), it seems clear that the parades and other militaristic practices are gone for good. However, the demilitarisation saga and return to uniform represent something of a lost opportunity to inject and infuse within the DCS corps the outward physical signs of transformation.

4. New Modes of Prison Governance: Unit Management and Privatisation

4.1 Unit management

In the traditional situation, three core services to prisoners – security, education and social and therapeutic services – are allocated to three different and distinct categories of staff. In this division of labour, it has been the security function that has taken precedence, with education and social and therapeutic services assuming a much lesser role.

In contrast, unit management as a concept within Corrections requires that correctional officials become actively involved in the holistic day-to-day management of each of the offenders under their supervision, as opposed to merely being responsible for their safety and overseeing the fulfilment of their immediate physical needs. It is supposed to ensure that each individual receives attention and focuses on the role of the "warder" as a change agent in the process of prisoners' development and reintegration. The correctional official thus has to be intimately involved in the

daily routines of each offender, as opposed to simply the person responsible for locking up and maintaining control. It requires the prisoners to be housed in smaller units (no more than 60 people per unit) to facilitate direct supervision and to contribute to rehabilitation.[28]

According to Luyt,[29] the philosophy of unit management comprises four pillars, which include case management, architecture, security management through direct supervision and risk management. The approach has gained enormous ground internationally.

As mentioned previously, the White Paper makes no evident mention of the introduction of unit management as a concept for policy development. Writing in 1997, Giffard talks of study tours to the United States and some European countries by management to study unit management, and mentions that this had been chosen as the future management structure of the Department at prison level. (Dissel states directly that the unit management concept was inspired by American developments.)[30] Giffard noted at the time that "there is still confusion at all staff levels as to exactly what unit management and dynamic security are, and more especially how these can be implemented in prison structures that have been described as 'cattle sheds'".[31] The Department's 1998 report does not refer to the concept in any way at all.

However, the 1999 – 2000 Annual Reports conveys the following information:

> "During June of this year the Management Board of the Department reconfirmed a previous decision that the concept of unit management, which allows for the management of prisoners in smaller clusters with greater interaction between correctional officials and prisoners, is the way to go with regard to the administration and management of prisons. Extensive consultative workshops with the various provincial commissioners have resulted in a strategy that will see the system of unit management being implemented at 27 prisons countrywide during the early part of the year 2000."

Luyt[32] describes the advent of unit management as a management tool in South African Corrections as follows:

> "Transformation processes in South African corrections not only influenced the normal hard issues of imprisonment and related aspects such as community corrections. They also necessitated a broadening of the traditional incarceration paradigm to ensure that emphasis is placed on humanity and offender development, rather than on safe custody alone. Unit management in prison became the elected

[28] A Dissel and S Ellis "Reform and Stasis: Transformation in South African Prisons" op cit.
[29] "The Transformation of Corrections in the new South Africa" vol 14(3) *Acta Criminologica* 2001 at 31.
[30] A Dissel and S Ellis "Reform and Stasis: Transformation in South African Prisons" op cit.
[31] Giffard op cit p 40.
[32] "The Transformation of Corrections in the new South Africa" vol 14(3) *Acta Criminologica* 2001 at 31.

management tool to achieve this broadening paradigm and to ensure that crime and criminal activities could be reduced."

Following the policy process as described in the official communication channels, it is noticeable that the next Annual Report of the Department was somewhat more cautious and less ambitious as regards the planned roll-out of unit management than the previous one. The Department's Annual Report of 2000 – 2001 describes the process of introducing unit management into the South African correctional environment as follows:

"The Department had decided to run a pilot project on the concept of unit management as an approach to prisoner management at the newly build (sic) (1997) Malmesbury and Goodwood prisons outside Cape Town. It was also decided to expand it to other identified prisons, should it prove successful. Following the positive results in terms of lower levels of aggression, a more disciplined environment, improved focus on the development of individual prisons and a higher staff morale, it was decided to expand the concept to three prisons (one large, one medium and one small prison) in each of the nine provinces."

The above positive conclusions about the effects of more dynamic official-prisoner interaction are not in any way denied, and indeed, it would appear at face value[33] that prisons where unit management has been introduced provide a more positive environment for staff-prisoner interaction, and probably also for potential reintegration. However, the impetus and origins of the notion of introducing unit management as the management philosophy of South African corrections remain obscure. This clearly necessitates a major reorientation for staff, and the extent to which it can be effectively managed in existing, old-style prisons is questionable. This view is shared by Dissel and Ellis, who point out that "[u]nit management is supposed to allow ordinary warders to play a role in the development of prisoners, but overburdened as they are by the numbers of inmates, they are unlikely to have sufficient time for this role. It is likely that in many prisons the concept will mean only that warders are renamed unit officers".[34] Moreover, overcrowding aside, the realities of the physical architecture at most prisons militates sharply against the successful introduction of unit management.

It is not clear that proper research was conducted to underpin the conclusion that the positive effects experienced in those prisons – Malmesbury and Goodwood – were indeed a spin-off from the introduction of unit management. For one, these brand-new buildings, conceptualised around a high-technology environment, were in any event far more conducive to staff and prisoner satisfaction and improved morale all round than the dilapidated and overcrowded prisons that generally characterise this sector.

[33] Based on personal observation.
[34] A Dissel and S Ellis "Reform and Stasis: Transformation in South African prisons" op cit.

Nevertheless, it was reported that 550 personnel from 41 prisons were trained in the concept of unit management in the 2000/2001 year, and that orientation was scheduled to be extended to 101 other prisons. It was conceded, though, that the Department would have "to overcome a multitude of obstacles before the objectives of unit management can be realised. These include: overcrowding, lack of sufficient multi-skilled staff, traditional prison structures that do not complement the unit management concept, the difficulties with regard to the creation of an environment that is conducive to change, restructuring the staff establishment and chain of command as well as classification of prisoners".[35] It is not clear at this stage how many officials have been introduced to unit management, nor the extent to which it has become embedded in prisons on a widespread basis. Nor does the introduction of unit management appear to have been explicitly linked to demilitarisation.

The concept of unit management has nevertheless become a permanent feature of correctional policy. The new-generation prisons (discussed below) have been conceptualised as demanding a design premised on unit management. That this is intended to become the operating practice of the Department therefore seems assured. However, as with so many of the matters discussed in this paper, unit management was introduced amidst great fanfare, without the required underpinnings in terms of internal communication, clarity of focus, training and (above all) concrete recognition of the limitations that would certainly be imposed by existing prison infrastructure and culture. The conduct of proper research in this area, and the production of reliable qualitative information on the kind of unit management techniques best suited to reintegration of prisoners, could have dispelled the notion that unit management was just another "fad". Indeed, it is strongly recommended that the Department encourage a research project that can investigate the efficacy of unit management as a management method that promotes prisoner reintegration.

While the unit management policy decision appears to be a worthy way to proceed to transform the role of staff from mere guards to agents of change, it is probably necessary that clearer common understandings of the concept be developed and communicated widely within the Department. A hard look must also be taken at the introduction of unit management in existing old-style facilities – it may well serve no purpose in prisons such as Pollsmoor, Westville, St Albans and so forth.

4.2 Privatisation

Privatisation of State assets was explicitly part of the government's overall economic programme in the period following 1996, and indeed remains part of government's chosen strategy. Correctional Services decided to explore

[35] DCS Annual Report 2001 – 2002 (accessed on 13 May 2003).

the possibility of privatisation as part of a new prisons-building programme, one key aim of which was to address overcrowding, inter alia through the more rapid construction of new facilities.[36] The move was clearly influenced by the practice of the United States and, as pointed out earlier, by the then Minister's preference for privatised prisons. The decision regarding privatisation was made after a visit by senior Departmental officials to the United States.

The mechanism by which this was to be achieved was a process called the "Asset Procurement and Partnership System" (APOPS), which entailed outsourcing the construction and day-to-day management of the applicable prisons. Berg notes that "[t]his is privatisation in its fullest sense" or "operational privatisation" as opposed to nominal privatisation, where the contractor does not become involved in the internal operations of the facility once it is built".[37] In the South African scenario, the entire operation was contracted out, from design and construction to management.[38] Further, APOPS entails the private sector owning the facility, but selling it to the government on an instalment basis, in such a way that at the end of the agreed contract term, government will have paid off the capital costs and will take ownership of the building. Clearly there is a short-term benefit to government in this arrangement, in that private sector financing pays for the costs of the erection of the prison building, and government can then pay this back through lease payments over a substantial period of time. However, the flip side of the coin is that government may pay far more in the longer term to own the building at the expiry of the contract term.[39]

Apart from cost driver-based arguments, which are often cited to justify prison privatisation, it has also been alleged that there are other spin-offs for Corrections. One of these, not an insignificant rationale in the South African context, is "to bypass powerful unions and thus avoid labour problems".[40]

By contrast, though, the private prisons were obviously going to be an improvement on public prisons – for one, the terms of the contracts specifically prohibit the privatised prisons from accepting more than the agreed number of prisoners, thereby eliminating the possibility of overcrowding.[41] Furthermore, the agreements stipulate a range of education, therapeutic and health services that the contractors are required to provide.

Initially it was announced that contracts for seven private prisons would be awarded. However, only two have been constructed and are now operational. The first prison is the Mangaung Maximum Security Prison in Bloemfontein,

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[36] Luyt op cit at p 31.
[37] J Berg "Private prisons: The International Debate and its relation to South Africa" vol 14 (3) *Acta Criminologica* p 4.
[38] See further KC Goyer "Prison privatisation in South Africa – Issues, Challenges and Opportunities", Institute of Security Studies 2001.
[39] Op cit. The contract terms are 25 years.
[40] J Berg op cit p 6.
[41] A Dissel and S Ellis "Reform and Stasis: Transformation in South African prisons" op cit.

which was officially opened on 1 July 2001. The contractor (a consortium led by UK-based Group 4) received its first intake of prisoners on 2 July 2001.

The prison became fully operational on 14 January 2002. The Department has since transferred 2 928 prisoners to this prison and is effectively utilising all the available prisoner places as provided by the contractor. The output for this programme, with specific reference to available prisoner places, was achieved as planned.[42]

The second prison, also a maximum-security facility, is in Louis Trichardt in the Limpopo province. The contractual opening date of the prison was 19 February 2002 and the first intake of prisoners took place on 20 February 2002. In the 2001 – 2002 Annual Report the Department recorded that it aimed to utilise the facility to its full capacity of 3 024 prisoners by 3 September 2002.

The philosophical debates about the propriety of prison privatisation aside,[43] some comments on the *process* by which this important policy was introduced require mentioning. Berg alludes firstly to the rapidity with which the decision to enter the private prison market was made.[44] She notes that the process was in fact initiated before legislation permitting the outsourcing of prison services was introduced into Parliament. She also points out that this "apparent hastiness" tended to suggest that the whole issue had not been adequately researched and discussed. Certainly, it also appears that the Portfolio Committee on Correctional Services was not timeously briefed, as the first five tenders were awarded months before the enabling legislation was tabled in Parliament.[45]

Secondly, the involvement of the ANC Youth League in one of the bidding consortia *did* raise questions in Parliament. This called into doubt the transparency of the process and raised questions, too, about the connections between political parties and the profit-making private prisons industry.

Thirdly, the selection of maximum-security prisons as the two pilot projects in privatisation has also been criticised. One commentator pointed out that it would have been preferable to use the opportunity of "utilising foreign money and expertise in the new-generation structures to break the cycle of crime for first offenders".[46] Another writer was of the

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[42] DCS Annual Report 2001– 2002.
[43] Such as whether it is morally defensible to make a profit out of prisoners, whether adequate controls have been put in place to ensure the protection of prisoners' human rights, whether the profit incentive will not result in short cuts to the detriment of prisoners, and so forth. See in general, J Berg op cit.
[44] J Berg "Accountability in private corrections: monitoring the performance of private prisons in South Africa" 2001(14) *South African Journal on Criminal Justice* 327 at 329.
[45] Ibid.
[46] Luyt op cit at p 31.

view that South Africa should rather have entered this terrain with juvenile detention facilities or immigration detention facilities as the pilot, before embarking on ”hard-core” maximum facilities for adults.[47]

Fourthly, as Berg points out, internationally the phenomenon of privatised prison has been extremely controversial, at an ideological level and in some instances in practice.[48] In her assessment, the Department “has not encouraged informed debate on the topic”, such was the hurry to finalise contracts and award tenders. Also, she refers to research or investigation being discouraged for fear of disrupting the negotiations.[49]

Finally, it has been noted with some acrimony by the Department that the people who were involved in the project design, drafting of the contracts and the negotiations left the Department soon after the process was concluded – to take up senior positions in the companies that had successfully bid for the contracts.[50] Again, this gave rise to considerable suspicion about the integrity of the process itself.

Once the erection of the two privatised prisons was almost complete, the debate turned almost immediately to issues of cost. It soon became public knowledge that there was going to be a huge discrepancy in the projected costs compared with the actual costs. Writing in 2001, Luyt mentions that ”what should have been a less expensive alternative to accommodation erection, turned out to be so expensive that the development of two more joint-venture prisons has been discontinued”.[51]

Once the figures surfaced, it became clear the privatisation was going to cost more than bargained for. In 2001/2002, it was projected that by 2004/2005 the APOPS projects (only the existing ones) would cost the Department R538 million, up from projections of R143 million in 2001/2002.[52] Speaking at a conference in 2002, the Minister[53] noted that the projects were planned and procured prior to the establishment of the Treasury regulations for Public Private

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[47] J Berg “Accountability in private corrections: monitoring the performance of private prisons in South Africa” 2001(14) *South African Journal on Criminal Justice* 327 at 329. It must be pointed out, though, that juvenile detention facilities (or secure care facilities) for awaiting trial children are currently managed by the provincial departments of Social Development rather than the national Department of Correctional Services. Two such facilities are indeed privatised (in the Western Cape and in the Free State, and one in Gauteng and one in Limpopo are also managed by a private sector company. The Western Cape facility is managed by one of the firms that successfully tendered for the private prisons contract.

[48] Leading to the closure of some facilities abroad, for example. See in general Prison Privatisation Report international electronic newsletters at www.psiru.org.

[49] J Berg “Private prisons: The International Debate and its relation to South Africa” vol 14 (3) *Acta Criminologica* 2 at p 11.

[50] This point is alluded to by the Minister in the speech described at note 49 below where, after citing affordability constraints attached to the private prisons, he mentioned that ”in addition, key members of the Department’s original negotiating team were recruited by the private consortia and now play operational roles in the private prisons”. The inference to be made from the assertion is not clear, but at minimum it would appear that the desertion rankles.

[51] Luyt op cit 31.

[52] DCS Annual Report 2001 – 2002.

[53] Speech presented at the 3rd Annual Public Private Partnerships Global Summit, The Netherlands, 6 – 8 November 2002.

Partnerships, which were published for the first time in May 2002. These regulations emphasise affordability and value for money as key.

In this context, he noted that the Department was experiencing significant affordability constraints in meeting its contractual obligations in respect of the two private prisons.
"Furthermore, it appears that the output specifications set for these prisons put higher construction and operational standards in place than are the norm for South Africa's prisons, resulting in a lack of parity in the country's correctional system".

Parliament was finally given proper insight into the private prisons issue in November 2002, when a task team consisting of representatives of the Department and of the State Treasury presented a report to Parliament on the difficulties associated with the financial arrangement pertaining to the private prisons.[54] For a start, the official view appears to be that the contracts were awarded without proper homework having been done. The costs were worked out based on "input specification" (for example, the size of cells, number of beds per cell, number of hours that prisoners have to be productively engaged outside of their cells, a higher standard of medical services, five layers of security, etc). This has meant an actual cost per prisoner per day of R132,20 at the private prison in Bloemfontein, in comparison with R93,67 per day for prisoners in public facilities.[55] The budget for the private prisons for 2003/2004 is R492 million[56], or six percent of the overall budget of the Department.

In addition, reference was made to the higher than normal return on equity for the private prison contractors (29% and 25% respectively), leading the task team to conclude that the existing contracts should be renegotiated.[57] Provision appears to have been made in the contracts for real increases above inflation in the fee structure, and different provisions concerning increases were put in place in respect of each of the two facilities, a complicating factor when attempting to analyse the actual and projected overall costs of these facilities. The task team reported further to the Portfolio Committee on 18 March 2003 that no feasibility studies had been undertaken before the contracts were negotiated to determine affordability limits, optimal value for money and optimal risk transfer.[58]

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[54] The Task Team's report is available at www.pmg.org.az/doc/s/2003/viewminutes.php?id=2562 (accessed on 22 May 2003).
[55] Ibid. The operating fee is but one component of the fee structure, as the government also pays a fee for the construction debt, which is R83,50 per prisoner per day in Bloemfontein and R84,34 per prisoner per day in Louis Trichardt. The total at October 2002 was given as R215,70 and R170,70 per inmate per day respectively for each prison.
[56] Minister of Correctional Services budget speech delivered on 31 May 2003.
[57] See in this regard http://www.psiru.org/justice/ppri52.asp (accessed on 22 May 2002).
[58] http:/www.psiru.org/justice/ppri52.asp (accessed on 22 May 2003).

The Prison Privatisation Report International Newsletter summarises some the concerns inherent in the above under the heading "Mystery over history of SA prison contracts".[59] The newsletter reports that the Department had informed the Portfolio Committee on Correctional Services at the meeting on 23 October 2002 that the APOPS programmes were costing half of DCS's entire annual budget, compromising the affordability of other programmes such as filling frozen staff posts. PSIRU reports further that, when questioned as to the wisdom of the decision-making regarding the private prison contracts, the Department agreed that the decision had been unwise, and that Treasury had at the time advised against the transaction. The decision to undertake the APOPS projects was, however, a political one according to the Departmental spokesperson. Alluding directly to the question of corruption ("illegality") in the awarding of the tenders, the chairperson then asserted that the corruption issue had to be investigated and the perpetrators dealt with accordingly.[60]

Indeed, the official position currently appears to be that no more private prisons will be contemplated, owing to the inordinate and unforeseen expense. Again, it is questionable whether sufficient (and accurate) research has been undertaken on any number of issues surrounding the costing issues, the extent of profits being made, the real benefits to local contractors and consortia (and individuals?), and other human rights concerns. A debate about the morality of housing 6 000 prisoners in the undeniable (comparative) luxury of uncrowded new facilities, while 182 000 remaining prisoners are left to languish in cells where sleeping by rote is the order of the day, is also required.

It has been conceded, though, that the capital repayments should be excluded when comparing private and public prisons and there is an indication that, should the comparison prove favourable from a budgetary point of view, the star of privatisation might again be on the rise.

Recommendation

Prisons privatisation is an emotive and controversial matter, both here and abroad. Because the contracts were negotiated and concluded in an atmosphere of secrecy, and suspicions about the rectitude of the process linger, this is a matter on which proper public debate should take place. It is one that should be at the forefront of civil society advocacy and debate.

The Portfolio Committee, which was originally left somewhat in the dark concerning the contracts and the processes of negotiation, has failed to grasp the issue of how the existing contracts came about in a firm and decisive way. It is inexplicable that faced with the Department's admission of impropriety in the privatisation process, matters have not

[59] http:/www.psiru.org/justice/ppri51.asp (accessed on 22 May 2003).
[60] Ibid.

been taken further. If this matter is not being taken up by any other investigative authority (the Jali Commission or the Special Investigating Unit), this should be a priority of the Committee in the same way as the arms investigation has been dealt with. If indeed State officials (or former State officials) benefited materially from the privatisation processes, this must be exposed and if necessary criminal charges lodged.

The privatisation of facilities is taking place outside of the Correctional Services field (for example juvenile secure care facilities and immigration facilities) in South Africa, and there are reports of privatisation debates occurring outside South Africa's borders in other African countries.[61] If future correctional private facilities are to be commissioned, this broader context should be borne in mind, as it is likely that the same operating companies are going to be players in this market. For this reason, it would also be highly desirable for contracts to be open to public scrutiny.

5. New Models of Prison Design: C Max, Kokstad, and the introduction of New-Generation Prisons

5.1 C Max

Reference has already been made to the US-based experience of the first Minister of Correctional Services in the post-apartheid South Africa. His regime was definitively characterised by the influence of American ideas in the penal sphere. This was no more evident than in 1997, when the first C Max prison was opened within the walls of Pretoria Central Prison, in the old accommodation for death row prisoners. C Max as a concept was founded on both physical and psychological elements. The physical elements included single cells, exercise "baskets" covered in wire grating, X-ray machines for all goods going in or out of C Max, and "stun" instruments for use when a prisoner from C Max was outside the prison (for example, to go to court). This stun instrument, activated by means of a waist/kidney belt worn by the prisoner, could be used at 50 metres to bring a prisoner trying to escape to the ground. Prisoners would also be handcuffed at all times when outside their cells. Psychologically, the effects of C Max were dramatic, as prisoners were kept in isolation for 23 hours a day. The SA Human Rights Commission was concerned about the psychological effects upon prisoners incarcerated in C Max since its inception.[62]

The intention was to create more of these facilities. One was to be launched in Helderstroom prison in the Cape interior and another was apparently planned for the Free State. The C Max policy attracted a great deal of media attention, and appeared to be a prime policy initiative of the Department. However, rumours started to be bandied about that even some staff members felt that the C Max conditions were too extreme. These facilities are also very cost-intensive, owing to the high staffing requirements. The selection criteria for prisoners qualifying to be sent to C

[61] Two main companies, Wackenhut and Group 4 Falck, appear to be actively pursuing further contracts.

Max were also unclear – for instance, renowned prisoner Eugene de Kok was placed there despite his being a model prisoner.[63] The lure of expansion of the C Max programme therefore dimmed. By 2001, the C Max programme was deprioritised by the incoming Commissioner[64], although the C Max at Pretoria remains operative. Nevertheless, considerable energy was wasted on this policy programme, and it dominated news reports on prisons for some time. This serves as yet another example of a correctional policy launched amid great fanfare, only to be abandoned within a fairly short period of time.

5.2 Super-maximum prisons

Even more lasting in its testimony to the influence of American corrections philosophy and practice is the super-maximum prison that opened in 2002 in Kokstad. Its location (in rural KwaZulu-Natal) is one obvious result of Ministerial involvement. Legend has it that the then Minister stood on a hillside a few kilometres from the little country town and with an expansive gesture, simply proclaimed it to be the site of the future prison. No impact analysis or land survey preceded this designation, which explains why the facility has been built without a kitchen to serve the inmates – the site is too steep to transport food in the normal manner. A second (local) prison in town is also home to an extra-large kitchen, where meals for both prisons are prepared. The food is then transported "prepacked"' to the super-maximum prison some 10 km away.[65]

The prison in Kokstad is characterised by unusually high building costs – from a budgeted R232 million, construction costs eventually totalled R360 million (155% over budget). This was caused not only by the severe difficulties as a result of the original identification of the steeply sloping site, necessitating copious corridors and passageways, which, as they descended, consumed more and more materials, but also by the "high-tech" approach in kitting out the prison itself. Operated on a "no key" system from centralised computers, the features include unique and evidently hugely expensive doors (obtainable only from one overseas US-based manufacturer). There have been persistent rumours of corruption in the awarding of contracts, and appointment of subcontractors.

The prison is characterised further by single cells (grouped in units) with a closed exercise courtyard available to each section. The intention is that prisoners never need go out of the prison's walled areas, even for exercise. This is also the first cashless prison, a measure designed to prevent corruption and possible escapes. It is available to receive prisoners from all provinces who met the (strict) qualifying criteria – prisoners regarded as an escape risk, prisoners

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[62] See A Dissel and S Ellis "Reform and Stasis: Transformation in South African prisons" op cit for an account on how the then Minister dismissed the concerns of the South African Human Rights Commission.
[63] S Pete "The Good, the Bad and the Warehoused" op cit at p 6.
[64] A Dissel, Tracking Transformation in South African Prisons in April 2002 Track Two
[65] Personal observation, based on a visit prior to the opening of the facility in September 2001.

with known connections in the police or prisons environment, prisoners likely to foment trouble and so forth. A veritable ”Robben Island on land” in terms of inaccessibility for family visits, for example, the intention was precisely to effect the kind of isolation that would cut problem prisoners off from their normal channels.

There were many delays before this 1 400-bed facility was able to open. One of the causes of this was the fact that the local authority did not have the funds to lay on the requisite water connection to accommodate a prison with more inmates than the total town population. This hurdle was eventually overcome, but only after many months.

The difficulty, though, is that nearly a year after opening to receive inmates, the Department was struggling to find the ”bad eggs” in sufficient numbers to fill the prison. Supermax in Kokstad can only be regarded as a pointless expenditure. Again, the choice of policy regarding the building of Supermax, and the venue selected for it, was personality driven, this is yet another example of a critical event in the period under review for Correctional Services that has not panned out the way envisaged.

5.3 New-generation prisons

Under the former Minister’s replacement, Minister Skosana, a new project in prison architecture has been embarked upon. Presented in concept form to the National Council on Correctional Services in July 2002, and released to the press a short while later, the project involves taking ownership of prison design (away from the Department of Public Works-appointed designers) in order to achieve a replicable, more affordable prison unit design that can be expanded to accommodate fewer or larger numbers of prisoners, depending on the geographical area it serves. A key element is reliance on local resources, which is partly also an empowerment initiative. Furthermore, in sharp contrast to the policy direction of the immediate past, the focus was on ”low-tech” architecture, with the emphasis on ”people-centred” security as opposed to dollar-priced, First World equipment.

According to the Minister, the Department has unveiled an expansion strategy for the reduction of overcrowding, destined to increase bed capacity by 30 000 beds during this MTEF period, which ends in 2005. It was this envisaged building programme that provided inspiration for a fresh look at the interplay between security, rehabilitation and desired government objectives around economic empowerment. The new-generation prisons are specifically for medium- and low-risk prisoners, and it is planned to situate them strategically around the country in the areas most affected by overcrowding.[66] As the intention was to develop a ”prototype”, this model would be replicable for the country as a whole, irrespective of the actual geographical or local environmental conditions. It was predicted that

[66] Speech by Minister B Skosana on the receipt of the Law Society of SA’s prison visits report (20 March 2003).

standardisation of design would save costs in a number of ways (architects' fees, materials, etc). It could also be expanded in a modular way to accommodate varying numbers of prisoners.

Further guiding factors were:

- The requirement of a design based on unit management and direct supervision of prisoners as the key to enhancing a facility's potential for rehabilitation;
- The requirements of acceptable standards of humane incarceration (space norms, etc);
- the requirement that facilities be developed which are not expensive to maintain in the longer term[67];
- The need for rapid construction and diverse procurement methods (the matter of utilisation of prisoner labour and products has been specifically put on the agenda in this regard); and
- The need to reduce operating costs.

Overriding all of these, however, was the objective of reducing capital costs, such as the vast sums incurred in building the new facilities at Goodwood [68] and Kokstad. In this regard, a much lower status for technology-driven security[69] is a key element.

The prototype was developed by a consultant engaged by the Minister. In July 2002, when the plans were presented to the National Council on Correctional Services, the estimations were that it would cost one-third of the current costs per prisoner to build a new facility.[70] Independent of the cost saving factors already referred to in preceding paragraphs, a further significant strategy was said to be the elimination of expensive and ultimately unnecessary "non-beddable" spaces, such as corridors and stairwells. Thus the total floor space of the prototype facility to house 3 000 inmates would be 30 000 square metres (15 000 for the housing area and 15 000 for the support area), while a comparable new facility with an equivalent level of service comprised 80 000 square metres (64 000 for the housing area and 16 000 for the support area). The cost per prisoner was estimated to be R50 000 for the prototype, compared with at minimum of R110 500 for the existing commissioned facilities.[71]

[67] Called "Low Life Cycle Costing: Briefing to the NCCS", document on file with the author.
[68] Although prisons are unfairly compared to five-star hotels, it is worth noting that the building costs per bed at these facilities are far in excess of the costs of a bed at a newly built five-star hotel. (It is internal and perimeter security costs, rather than luxury fittings, that drive the differential, though).
[69] Centralised security and inner door control, remote surveillance cameras and so forth.
[70] Based on the recently completed facilities already mentioned, as well as the prison recently opened in Empangeni.
[71] Based on a cost comparison of the 3 000-bed facility in Bloemfontein in May 2002. See "Presentation on the development and the implementation of the new-generation correctional facility prototypes", copy on file with the author. Actual costs per prisoner may well be far higher in other recently completed facilities.

The building of the first "new-generation" prisons is reportedly currently under way. According to recent reports, the first four will be ready for commissioning in 2004/2005.[72]

Conceptually, there can be little difficulty (given the immediate history of expensive mistakes evident in the C Max initiative and the Kokstad expenditure) in giving support to these ideas. There has been disapproval of the fact that the model rests on the notion that accommodation be provided in cells housing eight to ten prisoners, rather than the ideal of single cell accommodation, but this is probably linked to the way in which the marketing (public presentation) of this facet of the proposal was dealt with.[73] It cannot be a realistic objection in the face of the reality that many prisoners are currently accommodated together with 80 to 90 others (in cells designed for half that number).

What is most appealing about the plans is the use of local content, as well as the low (imported) technology requirements, as it is these (expensive) factors that have arguably featured most inappropriately in the contracts awarded over the past ten years.[74]

Also welcome is the broad focus on the fate of the ordinary prisoner, rather than all energies being focused on small (or relatively small within the overall prisoner population) classes of designated groups: those in C Max, those in the super-maximum and those fortunate enough to be accepted at the two privatised facilities. The promise of this initiative lies in the potential to positively affect the daily lives and humane containment of 30 000 prisoners within a reasonably short period of time. This is no mean feat.

But, as with other initiatives discussed in this review, the proof must lie in the pudding: the workability of a uniform design in practice for every hill and dale, desert and grassland, storm and wind; the realisation of actual capital cost savings through the mechanisms proposed; and the direct benefit to community empowerment and economic upliftment without sacrificing either the deadlines for completion of projects or quality of construction.

Because, as is evident from this report, so many substantial policy changes have occurred in the short period in the South African correctional sphere since the advent of democracy, it must be concluded that dramatic solutions should be approached cautiously. This is all the more so when they are still largely paper based. The initiative to revamp prison architecture seems to be a positive development, but the jury must remain out until implementation shows whether the promise is kept.

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[72] Speech by Minister B Skosana during the policy debate on the budget in the National Council of Provinces on 24 June 2003.
[73] There was some mention of offensive cultural stereotypical assertions that communal living is more culturally suitable.
[74] Which does not imply that this is solely an issue that can be placed at the door of DCS: the Department of Public Works is responsible for recruiting designs and overseeing the specifications upon which tenders are awarded.

6. Non-Custodial Sentencing as well as Issues Pertaining to the Release of Prisoners

6.1 Non- custodial sentencing

Although non-custodial sentencing has long been possible under various sections of the Criminal Procedure Act, No 51 of 1977, and although legislation to implement the sentence of correctional supervision predates this report, research[75] indicates that in practice there is a low take-up rate on the part of criminal justice officials with regard to the use of alternatives to imprisonment. The overwhelming majority of correctional supervision sentences are conversions of direct imprisonment by the Department of Correctional Services.

It is clear that the law gives sentencing officers a very wide discretion to suspend and postpone sentences and use innovative options as alternatives to imprisonment. There is, it has been argued, no need for further *legal* provisions to improve access to alternative sentencing. Instead, what is required is a creative attitude on the part of sentencing officials,[76] coupled with the necessary infrastructural and administrative support.

Judges have described correctional supervision as a milestone in "humanising the Criminal Justice System".[77] Correctional supervision consists of a ”basket” of measures involved, for example, house arrest, monitoring, community service, placement in employment, payment of compensation to the victim, rehabilitation or other programmes or treatment (s 84 of the Correctional Services Act, No 8 of 1959). Indeed, the Appeal Court has said that although the legislative framework regarding correctional supervision lacks detail, courts should use their discretion to fill in the gaps where necessary. In the new Correctional Services Act, No 111 of 1998, correctional supervision falls under a dedicated chapter called ”Community Corrections”.

In a study undertaken in Gauteng in 2002 on the diversion and alternative sentencing based on interviews with various role-players in seven magisterial districts in the province, the following findings were recorded:

“It appears that the use of alternative sentences is currently proceeding from a low base. Apart from correctional supervision, implemented by the Department of Correctional Services, little in the way of creative alternative sentencing appears to be occurring. This is at least partially due to the shortage of probation officers, and delays that courts experience in obtaining pre-sentence reports. NICRO reports that its services are seldom required for offenders aged over the age of 18 years, either at the pre-trial or at the sentencing stage. Some role-players felt that

[75] J Sloth-Nielsen ”Diversion and Alternative Sentencing” (unpublished report prepared for the Department of Safety and Liaison, Gauteng, July 2002).
[76] Ibid.
[77] S v Williams, 1995 BCLR 861 (CC).

alternative sentencing, even correctional supervision, was not the ideal way to address other problems in the criminal justice system, such as overcrowding in prisons. While being of the view that there are many people in prison who do not need to be there, the point was made that placement in community corrections must always be done after carefully analysing the risks and carrying out a detailed assessment of the candidate.[78]

"Some magistrates expressed the high case loads of Community Corrections staff as reasons for their not wanting to use correctional supervision as a sentence option. However, in contrast, where Justice staff had been invited to accompany correctional officials on monitoring activities, a much higher degree of willingness to use correctional supervision as an option was noted."

The report also provided details of the cumulative totals for correctional supervision for the previous year, 2001, for the area falling under the provincial commissioner, Gauteng:

Section 276(1)(h)	Section 276(1)(I)[79]	Section 276A(3)[80]	Section 287(4)(a) converted to section 276(1)(I)[81]	Section 287(4)(b) converted to section 276A(3)	Other, including pre-trial and section 297
829	551	39	782	10	60

A clear point that emerges from the above table is that many sentences of correctional supervision are initiated (or converted) by Correctional Services itself, rather than being imposed directly by the courts. The report also provides comparative data[82] supplied in relation to the use of correctional supervision in the other provinces. This shows that 7 377 persons were admitted to serve a sentence of correctional supervision imposed by the courts under section 276(h). A further 4 712 cases nationally in 2001 involved correctional supervision converted from a prison sentence. There is also widespread provincial disparity in the use of correctional supervision relative to the size of the population. For example, Gauteng does not appear to be utilising this option to the same extent that it is being used in other provinces, as the Western Cape statistics are almost double those of Gauteng, and even small provinces such as the Free State use correctional supervision in almost as many instances as Gauteng, which has a much larger offender population.

[78] J Sloth-Nielsen "Diversion and Alternative Sentencing Report", p 78.
[79] Converted from imprisonment.
[80] Converted from imprisonment.
[81] Converted by the Commissioner of Correctional Services.
[82] See Appendix 1.

From the Gauteng diversion and alternative sentencing report and other sources it seems that the entire parole and correctional supervision system is undermined by a shortage of supervisors, lack of resources and inadequate management of the alternative sentencing system. Pete,[83] reporting on the period until the second democratic elections in 1999, details widespread problems reported in the press relating to the abscondment of persons on correctional supervision because of inadequate monitoring. He noted that reports appeared in the press that the entire parole system in the Durban area was collapsing owing to insufficient staff numbers, infrequency of supervisory visits and abscondment. In 1997 it was reported that more than half of the 7 000-odd prisoners undergoing correctional supervision in the Western Cape had been classified as absconders. Lack of vehicles and fear of entering certain townships at night also played a role in the general lack of supervision in "danger spots".[84] Pete also records that the then Commissioner of Correctional Services, Khulekani Sithole, told the Portfolio Committee on Correctional Services that community supervision in South Africa was "a joke".[85]

With this kind of press, it is not surprising that judicial officers have little faith in non-custodial sentencing as a viable alternative to imprisonment. The recommendations provided here (see page 41 of this report below) reiterate the conclusions arrived at in the report on alternative sentencing and diversion in Gauteng referred to above.

It can be concluded from the paucity of information on non-custodial sentencing, its absence in correctional debates and the low usage of community corrections as a sentence (as highlighted in Appendix 1), that community corrections has taken a back seat in Departmental policy-making and implementation over the period under review. Although some experts would doubt that greater recourse to community corrections would have any meaningful impact upon rates of incarceration (or prison overcrowding), this negates the undeniable value in promoting greater use of non-custodial sentences for other reasons (for example, to minimise convicted persons' contact with prison life).

One issue that may explain the low visibility of community corrections in policy formulation over the period under review may well be the issue of electronic monitoring, which has raised its head from time to time. A pilot study on the use of electronic means of monitoring persons on parole or serving a sentence of correctional supervision was tested in Pretoria in 1997. It was apparently successful in reducing abscondment, and the day-to-day cost per person was far less than the daily cost of keeping a person in prison.[86] On the downside, though, there were concerns that start-up

[83] S Pete "The Good, the Bad and the Warehoused" (2000) 13 South African Journal on Criminal Justice 13 at p 28.
[84] S Pete "The politics of imprisonment in the aftermath of South Africa's first democratic election" (1998) 11 South African journal on Criminal Justice 51 at 71.
[85] S Pete "The Good, the Bad and the Warehoused" (2000) 13 South African Journal on Criminal Justice 13 at p 30.

[86] The cost was R14 per day, as opposed to the 1997 cost of R70 per prisoner per day (Pete (2000) op cit). This comparative equation must, however, be treated with some circumspection: it is a crude figure arrived at by dividing the total DCS budget by

costs would be phenomenal, that the cheaper option of telephonic monitoring would not be available to many potential candidates living in informal settlements without telephonic access, and that this was possibly another fruitful area in which corruption[87] could raise its head, as the contractors involved were private sector operators.

Electronic monitoring would greatly reduce staff supervision costs and the ongoing subliminal notion that this might yet be on the cards may have played an important role in dampening potential debates about the efficacy and value of correctional supervision as a sentence. It appears that electronic monitoring is to be investigated and implemented by the Department within the next few years. Given the need to seriously tackle the delivery of community corrections, and the relatively low budget accorded this section (growing at only 3,9 % to R290,5 million in the 2003/2004 budget year – well below the amount being spent on the 6 000 prisoners accommodated in the two private prisons), it is hoped that the introduction of a system of electronic monitoring of parolees and those serving correctional supervision will make a positive contribution to the development of non-custodial sentencing practice.

Recommendations

There is no "lead Department" driving the development of adult diversion and non-custodial sentencing, as is the case with the diversion of children. The Department of Correctional Services should ideally play the role of prime motivator encouraging alternative sentencing. This requires advocacy, marketing of correctional supervision, and liaison with other departments. It also requires the Department to deliver on the required services, and staff the system adequately, as there does not appear to be much public confidence in the efficacy of community corrections at present. Vacancies in the community corrections sections of DCS should be filled as a matter of urgency, and appropriate community corrections officer ratios formulated and adhered to.

DCS at provincial level should take steps to "market" community corrections to courts. Initiatives such as the one reported by interviewees in Benoni,[88] where Justice personnel were invited to go along and see for themselves what level of monitoring and supervision occurs, should be encouraged.

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the daily average number of prisoners. This obscures the fact, though, that the bulk of DCS spending is on staff costs, which would not diminish with a reduction in the number of prisoners – in other words, whether a member has 80 prisoners or 50 under his or her control, the salary costs remain the same.

[87] The issue of corruption in the awarding of tenders to consultants on the electronic monitoring project was raised in the *Sunday Times* of 5 March 2000 – see www.psiru.org/justice/ppriarchive/ppri34-03-00asp (accessed on 22 May 2003). The issue does not appear to have been further probed, however.

[88] J Sloth-Nielsen "Diversion and Alternative Sentencing Report", p 78.

Research on the effectiveness of community corrections and the capacity of correctional supervision to rehabilitate and prevent recidivism should be undertaken. The results of this research should be disseminated to Justice personnel.

The budget for community corrections should be examined with a view to appropriate allocations to further non-custodial sentencing. Once the decision to proceed with electronic monitoring has been approved at the highest level, time frames for implementation should be developed and adhered to.

6.2 Issues pertaining to the release of prisoners

Several special amnesties and pardons were granted in the period following 1994. One was granted just after the inauguration of the new government and another took place to mark the occasion of Nelson Mandela's 80th birthday.[89] Following pressure from the Inspecting Judge of Prisons in 2000, 3 000 prisoners whose dates of parole had already been approved were released.[90]

Amnesties and pardons were not very well executed, and met with fierce public resistance. Even the threat of a suggested amnesty or bursting has drawn virulent attacks from the media.[91]

The Kriegler Commission of Inquiry into unrest in the prisons (appointed on 27 June 1994) found that the amnesty granted just after the inauguration of the new government in 1994 had been a contributing factor in the unrest that followed.[92] The National Advisory Council on Correctional Services (NACOCS) was thereafter tasked with drafting a new release policy. NACOCS recommended that all prisoners should serve at least half their sentence, only after which could parole be considered.[93] At the same time, it was suggested that executive interference with the terms of sentences by means of amnesties should be halted, for fear of incurring the public wrath on this emotive issue.

The use of amnesties and other bursting provisions has thus largely been thwarted by the fear of public resistance, and despite tentative suggestions that this policy should be reconsidered,[94] it is unclear what the executive response is at this stage.

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[89] A Dissel and S Ellis "Reform and Stasis" op cit at p 9.
[90] A Dissel and S Ellis "Reform and Stasis" op cit at p 9.
[91] S Pete "The politics of imprisonment in the aftermath of SA's first democratic election" (1998) 11 South African Journal on Criminal Justice 51 at 58.
[92] All prison sentences were reduced by six months, and special concessions were made for women prisoners with minor children.
[93] Adopted in law as the Parole and Correctional Supervision Amendment Act, No 87 of 1997, but never brought into effect, as its provisions have been largely superseded by the Correctional Services Act, No 111 of 1998.
[94] The suggestion has been made that an amnesty should be granted to coincide with the 10th anniversary of democratic governance. See *Die Burger* 24 May 2003.

Apart from the danger of public backlash to widespread releases from prisons, it must be pointed out that amnesties in the past have provided only temporary respite to prison overcrowding, and prisons have filled quickly thereafter. It is therefore arguably unwise to link civil society advocacy initiatives surrounding prison transformation aimed at the longer term to the question of one-off or short-term amnesties. Rather, civil society should focus more broadly on transformation and public participation in release processes.[95]

7. Staff, Labour Relations and Transformation

There can be no doubt that the period under review has seen massive transformation of the DCS personnel corps. DCS has at the same time experienced severe staff shortages, and numerous posts remain unfilled. As stated before, demilitarisation occurred in a vacuum and resulted in uncertainty about roles, as well as a loss of motivation and discipline. Generous packages were accorded staff who wished to leave, to make way for transformative appointments. These packages were explicitly designed to promote representivity in relation to senior posts, but there are suggestions that there was some manipulation: the matter of one staff member receiving a severance package after only 17 months of service was raised in Parliament, but not vigorously pushed.[96] The Portfolio Committee at the same time voiced concern about the manner in which voluntary severance packages had been offered and given to employees.

The result has been a large new corps of staff, especially in the upper echelons. The extent to which adequate training for the new era has been provided and is being developed is not clear, and it would appear that training is limited.[97]

Over the years under review there have been many reports of union members belonging to Police and Prisons Civil Rights Union (POPCRU) being given preferential treatment, and some of these claims have surfaced at the Jali Commission of Inquiry, according to press reports. Reports of nepotism in appointments of new staff have also hit the newspapers, based on evidence given before the Jali Commission of Inquiry. The assassination of a senior staff member of DCS in Kwa-Zulu-Natal who had been appointed to investigate corruption and nepotism allegations pertaining to the infamous Deputy Director in that province (Russel Ngcobo) was in fact a key factor that gave rise to the appointment of the Jali Commission of Inquiry.

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[95] The new parole boards envisage significant civilian participation.
[96] See the Parliamentary monitoring group's unofficial minutes of the meeting of the Correctional Services Portfolio Committee of 27 October 1999 at http://jutastat.com/CGI-BIN/om-isapi.dll? (accessed on 6 March 2003).
[97] Department of Correctional Services Annual Report 2001 – 2002 (section on Training).

Despite the fact that the prevalence of corruption was well known in the period between 1994 and 2001, the Department appeared to make no tangible attempt to address this. By way of example, Dissel and Ellis cite news reports concerning the purchase of prostitutes and alcohol by prisoners, syndicates between warders and prisoners to steal State property, and prisoners being offered keys (for a price) to secure their release.[98]

The Office of the Inspecting Judge of Prisons was initially tasked with investigating corruption in addition to unresolved prisoner complaints, but refused on the basis that it had inadequate resources to undertake this, and that it would hinder the primary objective of dealing with prisoner complaints.[99]

Recommendations with regard to staff skills development, corruption and nepotism and untoward practices in the making of appointments are likely to form an integral part of the recommendations of the Jali Commission of Inquiry, and it is concluded for the purposes of this report that those recommendations should be awaited. The Jali Commission may also address labour-related issues, especially the suspension and dismissal of members against whom disciplinary charges have been laid. It is encouraging that even while the Commission is progressing in its review, charges are being brought against offending members and offenders are being brought to book.[100]

8. Legislation and General Sentencing Policy

8.1 Legislation

In line with the Constitutional mandate of 1996, a new Correctional Services Act was drafted and passed by Parliament in 1998.[101] While the provisions relating to the establishment of the Office of the Inspecting Judge of Prisons were put into effect promptly and efficiently, the greater part of the legislation has not yet come into effect. The National Council on Correction Services is, however, operating under the auspices of the 1998 legislation.

The legislation was drafted by a small team requested to do so by the then Commissioner, in order to align the principal act with the provisions (most especially the human rights-related provisions) of the 1996 Constitution. The team was assisted by Departmental legal service providers, who have continued to take the process forward.

The legislative drafting process was indeed a necessary and timely occurrence. In retrospect the consensus view appears to be that there was ample opportunity for public consultation, and various experts and bodies were

[98] A Dissel and S Ellis "Reform and Stasis" op cit at p 12.
[99] Ibid.
[100] These actions are regularly announced on the Department's web site.
[101] Act No 111 of 1998.

approached for their views. However, public participation in and engagement with legislative reform appear to have dwindled virtually immediately after the Act was introduced.

There is broad agreement that the new Act is a distinct improvement on the 1959 Act, that it will promote improved access to rights for prisoners and that it provides a coherent framework for reform of a range of institutions (for example, the parole boards), not to mention setting standards that are internationally acceptable for the humane confinement of prisoners (including the intervals between meals, acceptable access to exercise, and so forth). The difficulty, though, is that the Act has by and large not yet been promulgated, and despite oft-made promises that implementation would follow shortly, the delay now seems somewhat unreasonable, as it is nearly five years since the passing of the Act by Parliament.

Three official reasons have been cited in defence of this lengthy wait:

Firstly, the need to draft regulations to underpin the application of the Act, which has indeed been effected, and the necessary documents have been provided to the Portfolio Committee on Correctional Services. The regulations do not, however, appear to have been considered by this committee yet: At its March 2003 meeting with the Department, the fact that the regulations had not been studied by the members after allegedly having been distributed in November 2002 appeared to cause some conflict.

Secondly, there was need for ”work study” to redefine staff levels and shifts so as to be able to serve three meals at reasonable intervals each day (rather than the current practice of serving the notional three meals on only two occasions, with a long wait between lunch/supper in the early afternoon of one day, followed only by breakfast the next morning).

Thirdly, changes to the legislation had to be accommodated regarding the composition of the to-be established parole boards, after other Departments that were supposed to have nominees on each board realised that this would be too cost-intensive an exercise. It must be noted, though, that the legislative changes to remove the compulsory representative from other departments have already been in place for some time. Until recently, it appeared that little progress had been made in putting a plan together to have the new parole boards in place ready for the promulgation of the 1998 Correctional Services Act. In April 2003, however, some movement was made with the convening of a workshop between DCS officials and the NCCS committee on the issue of the new parole system, and how representatives of civil society should be recruited.

The conclusion that must be drawn is that there appears to have been little political will to drive the promulgation process forward. Indeed, a lingering suspicion exists that there is possibly some Departmental resistance to the new legislation, for whatever reason.[102] The Portfolio Committee has seemingly played a low-key role with regard to the legislative process, and has not urged progress towards implementation. It appears that the Committee has not (at the time of writing) engaged with the content of the proposed regulations,[103] which will serve to flesh out minimum norms and standards in greater detail. The regulations have the potential to play a powerful role in establishing a human rights-based correctional system for South Africa, and therefore deserve serious scrutiny.

Recommendation

Civil society should actively lobby for promulgation of the legislation, and endeavour to involve itself in the content of the regulations when they are scrutinised in the Parliamentary process. The Department should be asked to set a realistic and achievable deadline for implementation, and should be called to account if this deadline is not met.

8.2. Sentencing policy

As regards sentencing policy generally, the most significant issues that have arisen over the period under review relate to the increased use of long-term sentences, brought about by three key factors. Firstly, public concern about rising crime rates has affected sentencing, with several notable public debates having occurred where judges were seen to have sentenced too lightly. Although this is not possible to prove empirically within the scope of this study, it appears from apparent statistics that the sentencing "tariff" has shifted upwards in response to community pressure. Secondly, the fact that the sentencing jurisdiction of courts has been increased has had a dramatic effect on the length of sentences. This is most notable at regional court level, where the maximum sentence that could be imposed was hiked from ten years to 15 years. The third factor has been the introduction of prescribed minimum sentences for certain serious offences, by Act No 105 of 1997. Originally intended as a stop-gap measure to address public concern about serious and violent crime, the sentencing legislation was supposed to be reconsidered after the expiry of two years. It has, however, been extended at the expiry of the two-year period, and at present seems set to be a permanent feature on the statute book.

The results of the above are clearly evident in the increased numbers of prisoners serving long-term sentences. According to data furnished to the National Council on Correctional Services in February 2003, the population of

[102] For instance, that the Act was formulated by an "elite" who were outsiders, or that the impetus for drafting commenced under the old regime.
[103] According to the minutes of a Portfolio Committee meeting held in April 2003, available at www.pmg.org.za (accessed on 14 June 2003).

prisoners serving ten to 15 years has increased by 204% since 1995, and the population of prisoners serving sentences of 20 years to life has increased by 325,90%.[104] The sentence categories of two to five years and five to seven years have shown a decrease of 18,27% and 15,25% respectively, clearly indicating that the sentencing tariff has ballooned.

A South African Law Commission Report on sentencing[105], which was finalised in 2000 and would have provided for a new sentencing framework for South Africa, has proceeded no further than having been tabled with the Minister. It does not appear that there are "drivers" of this attempt at providing a more coherent sentencing policy, and it has also been alleged that there is opposition among sectors of the judiciary to the notion of a sentencing council that would set guideline sentences for certain offences, as this is seen as an unwarranted intrusion on sentencing discretion. In any event, given the lengthy time lapses between Departmental processes and the tabling of legislation,[106] it can be predicted that Parliamentary consideration of these proposals is a long way off.

In the absence of a more coherent public and Parliamentary debate about sentencing, and especially given the sharp rise in the length of prison terms that is being experienced, the quest for a more structured sentencing system is likely to remain elusive. Minimum prescribed sentences appear to be here to stay. This is all the more so in the light of the punitive public mood and the upcoming elections in 2004.

Recommendation

The whole issue of sentencing reform should not be addressed directly by civil society, as it remains sensitive. Rather, the focus should be on promoting non-custodial sentencing as much as possible. It is unclear at this stage whether lobbying for the legislative advancement of the proposals developed by the Law Commission would be useful or not, as there appears to be no constituency backing this endeavour.[107]

However, civil society should continue to focus on the ever-increasing length of sentences, in the light of the burgeoning prison population and the budgetary implications for DCS in the future. We have to ask what size of prison population the nation is prepared to afford, and whether we should not rather allocate increases to poverty alleviation and social grants.

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[104] The increase for the category 15 to 20 years was 211,50%.
[105] South African Law Commission (2000) *Report on Sentencing: A new sentencing framework*.
[106] The Child Justice Bill, produced by the SA Law Commission in 2000, was tabled only in August 2002, and is only being debated now (mid-2003). After the draft legislation left the SA Law Commission, a significant driving force to push towards furthering the legislative process was the technical assistance provided to government through the UN Office for Child Justice, which was established specifically for this purpose.

9. Restorative Justice

Restorative justice was introduced to the public as a "key priority" of DCS in November 2001.[108] Given the systemic problems embracing Correctional Services, the chronic overcrowding of the country's prisons and the significant changes in leadership experienced over the years since 1994, not to mention the lack of reference to restorative justice in any prior policy documents, this new direction came as something of a surprise. The Departmental web site now includes a dedicated link to restorative justice, and many of the Minister's speeches allude to the adoption of a restorative justice approach. According to the Mvelaphanda strategic plan of DCS, restorative justice was already embedded in Departmental thinking and was officially part of DCS policy plans by April 2002. The restorative orientation has been presented to the Portfolio Committee on Correctional Services. One Parliamentarian (perhaps influenced by the litany of policy ideas that have characterised this sector in the years under review) cautioned against "rushing this plan, because otherwise if too much is done in order to impress, mistakes might occur".[109]

Clearly, restorative justice links with the overall trend that has developed within the correctional sphere (especially since the departure of Mr Khulekhane Sithole, the supporter of prisons in mine shafts, prison hulks moored at sea and suchlike) to at least in official documents and speeches refer to the mission of the Department to rehabilitate prisoners. For example, restorative justice, together with the notion "rehabilitation", underlies the Mvelaphanda policy document[110]. In general, at least in official documentation, there has been a very clear recognition of the need to move beyond the limitation of providing only "safe custody". In this context, a restorative approach has obvious benefits for prisoner rehabilitation and reintegration. In addition, it is possible that it was thought that the victim-centred focus of restorative justice would enhance the public image of the Department and its charges[111] among society at large, given the punitive attitudes that generally prevail in society.

However, what is entirely unclear is whether the paradigm shift has any measurable impact upon either the public perception of DCS or upon practice at the level of the individual prisoners. Certainly, the school-building programme undertaken by prisoners in Limpopo province in 2002 can be (and was) described as restorative, in that it provided services to repair the harm caused to the community at large, but this is possibly merely a media convenience.[112]

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[107] Compare, for example, the involvement of NGOs in the process of juvenile justice reform, inter alia through the Child Justice Alliance, representing a broad range of civil society stakeholders.
[108] www.dcs.gov.za/speeshes/November2002.htm accessed on 27 May 2003.
[109] www.pmg.org.za/docs/2002/viewminutes.php?id=2176 accessed on 27 May 2003.
[110] Mvelaphanda: strategic plan of the Department of Correctional Services for the period 1 April 2002 – 31 March 2005, pp 5, 7 and 32.
[111] The Department has been increasingly concerned about its poor public and media image, leading the Commissioner to advise the Portfolio Committee that contact with the media was to be reduced owing to negative reporting.
[112] Put more simply without theoretical constructs, it is using prison labour for community projects.

There is no doubt that adopting a restorative justice approach can do no harm (and it is indeed one of the cheaper policy initiatives undertaken by the Department in recent times), but how effective restorative justice will be in improving prisoner reintegration cannot be determined. It is not even particularly clear whether there is a coherent and common understanding of the theory or theories of restorative justice within DCS, and it does not appear that training in the techniques of mediation, conferencing, victim involvement and so forth is on the cards. It must also be pointed out that the budget for rehabilitation, including programmes, is limited: Less than R400 million was put aside in 2003 for rehabilitation, for upwards of 135 000 prisoners. (This is the total budget for rehabilitation programmes, of which restorative justice forms a tiny part.)

The most recent philosophical orientation, evident from various statements by DCS officials in Parliament and elsewhere, focuses on the term ”corrections” rather than referring to restorative justice. It is not clear that the concepts restorative justice, corrections and rehabilitation are at all coterminous, and there may well be tension between the restorative justice philosophy (and its advocates?) when contrasted with the statements to the effect that the core mission of the Department is to correct offending behaviour. Alternatively, since the Corrections aspect is intended to take place after, among other things, assessment and the development of individual plans for prisoners, it may be that restorative justice sits ”next to” correction as a distinct policy initiative.

In either event, although restorative justice has been hailed as the new paradigm for Correctional Services, this shift is identifiable chiefly through public statements and speeches, and it is to be doubted whether it goes very much beyond that. While a restorative justice orientation is personally firmly supported by the author of this report, this new paradigm must at the same time be seen as yet another policy shift that has been introduced, fêted and lauded without very much substance to back it up.

Recommendation

If the restorative justice initiative is to be sustained in the years ahead, far better communication to members and other stakeholders needs to take place. This should be based on a fairly clear idea of the actual role that restorative justice will play practically in shaping prisoners' lives in the future, and with a clear grasp of the theoretical premises that underlie restorative justice.[113] It should also be accompanied by a series of identifiable practical mechanisms for implementing a restorative justice approach. The Department should also encourage research to illuminate whether restorative justice techniques are effective, both in addressing victim needs and in promoting the reintegration of offenders.

[113] There is no one version or definition of restorative justice, which is also notorious for lending itself to interpretation by both the left and the right in society.

10. Overall Analysis of the Role of DCS within the Government

Over the greater part of the period under review, the issue of corrections seems to have been thought of as rather marginal to criminal justice and government's crime prevention strategy. Perhaps there is more than one root cause of this.

Firstly, the potential role of Correctional Services receives no mention in the Constitutional framework. Secondly, Correctional Services is accorded an extremely minor role in the 1996 National Crime Prevention Strategy. Thirdly, and possibly most prominently, a political isolation developed as a result of the difficulties experienced between the ANC-led Portfolio Committee and the IFP ministry in the period immediately after the first elections in 1994. Fourthly, the major focus of the Department in the context of its perceived role in providing primarily safe custody was self-limiting as far as interaction with other facets of the criminal justice system is concerned. By focusing on security issues and the reduction of escapes, the vision communicated was of a receiver Department, rather than having an integral role to play in the overall reduction of crime (through improved rehabilitation efforts, or at least by ensuring that prisoners did not become further enmeshed in criminal activity). Even the adoption of restorative justice as a guiding philosophy for the Department, as recently as November 2001, could be viewed as setting DCS somewhat apart from other role-players in the security cluster, as it is unlikely that much support for this can be garnered for restorative justice in SAPS or Justice circles at present.

In addition, any potential intersectoral collaboration between DCS and Justice officials was hampered soon after 1994 by the public pronouncements of the first Minister of Correctional Services regarding the proliferation of awaiting trial prisoners. Pete records public press statements by the then Minister indicating a lack of faith in the magistracy, and insisting that legislation was needed to limit the period of time a person could spend in prison awaiting trial to a maximum of six months. The Minister reportedly also commented negatively on the investigative ability of the South African Police Service.[114]

The first obvious break with this isolationist past really only became evident upon the appointment of the present Commissioner, no temporary caretaker and, by repute, a political insider with clout. Because this only occurred in the second half of 2001, it must be apparent that much time has been lost in initiating improvements to multicultural delivery of integrated justice services.

This issue appears to be most visibly acute as regards the rising numbers of awaiting trial prisoners, because the interface between court management and prisons is most obvious as far as improving turnaround times is concerned.

The number of awaiting trial prisoners has doubled since 1995. This has caused serious strain on DCS resources and prisons, which in turn has affected staff morale and human resources, not to mention the rapidly deteriorating state of many of the nation's jails.

Signs are emerging that the Department is not happy with the fact that it hosts unsentenced prisoners who are awaiting trial at the whim of the justice system, with no control over intake. (There is an emerging disjuncture between the DCS focus on "corrections" as its core mission, and the "warehousing role" required of it in respect of awaiting trial prisoners, who are presumed innocent until convicted and are not beneficiaries of reintegration services. As pointed out in the introduction to this report, much effort has been expended in the last couple of years on attempts to reduce the numbers of awaiting trial prisoners, chiefly under the auspices of the Office of the Inspecting Judge of Prisons. The Department is in reality fairly powerless when it comes to the management of awaiting trial prisoners – it cannot grant them amnesty or remission of sentence, or place them on parole or out on community corrections as long as they are still presumed innocent. It is well known that court cycle times have lengthened considerably since 1996.[115] Over this, too, the DCS has no influence. The recent unease occasioned by the questioning as to whether housing unsentenced prisoners was in fact within the DCS core business has led to recent statements suggesting that alternative avenues (which are not yet clear) are being explored. "This has become a cluster challenge. The DCS, SAPS, Justice and Constitutional Development and the National Prosecuting Authority will take joint responsibility for managing the awaiting trial detainees. In addition, an integrated policy process will be embarked upon to plug identified policy gaps within the system."[116] There are thus emerging signs of far greater intersectoral collaboration between Correctional Services and other Departments in the security cluster.

But it is equally important for the less visible issue of where improved intersectoral co-operation may affect sentenced prisoners to enter the debate. As pointed out above, however, the crucial discussions on sentencing law, policy and practice and what level of prison population South Africa can afford and desires to have, are not yet on the cards.

The correctional system should be (and is) integral to the criminal justice system as a whole, and it is unfortunate that for so long, correctional policy-making has been conducted in isolation from government's overall crime prevention strategies. Seen the other way round, it is also unfortunate that the subject of corrections appears to have been excluded from mainstream debates about the functioning of the courts and sentencing policy in particular. It is

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[114] S Pete ' The Good, the Bad and the Warehoused' op cit at pp 15-16.
[115] From an average of 76 days in 1996 to an average of 136 days in 2000. See M Schonteich "Lawyers for the People: The South African Prosecution Service" (Institute for Security Studies, 2001). Data presented to the National Council on Correctional Services during 2002 indicated that for regional court cases, the average cycle time was 275 days – or nine months.
[116] Speech by Minister B Skosana, 24 April 2003.

recommended that the integration of correctional policy with other aspects of criminal justice be furthered wherever possible, and that this form a focus of civil society advocacy.

11. Conclusions and Recommendations

In a recent speech, the Minister of Correctional Services articulated the view that "until recently, the Department of Correctional Services was completely inward-focused, operating in isolation without any direct supervision from Cabinet and the Minister. This led to a situation where officials were left to their own devices, resulting in a number of improprieties. This also led to a blurring of the executive powers and functions of the Minister to develop policy for the Department, with the Department assuming this role for itself".[117]

The survey that has been undertaken in this report highlights and emphasises the veracity of this comment. Four main themes can be identified from the policy changes that have occurred. Firstly, the question of prisoner accommodation. The period under review was, for the initial part, characterised by the DCS focus on safe custody, building of high-security facilities for the most risky prisoners, knee-jerk and widely reported press statements about mine shafts and prison hulks. Many much-vaunted projects were unsuccessful (for example, the roll-out of C Max, which has been abandoned as a policy priority). The supermaximum facility at Kokstad remains an expensive and badly conceptualised white elephant, its existence peripheral to the mainstream and everyday issues affecting the Department. The private prisons contracts seem set to be renegotiated, as they are proving to be beyond the affordability capacity of the Department. There is now new policy on the table regarding new-generation prisons, but the viability of this programme has yet to be tested.

The second recurring theme relates to management and staff-related issues. The policy-making process was eclectic and personality driven under the reign of Dr Mzimela and Mr Sithole, whereafter policy decision-making seems to have stalled to a large extent. Very few advances were made under the caretaker Commissioners,[118] and indeed it is clear that DCS suffered under a management team characterised by inertia brought about by constant policy shifts and changes associated with the transformation process. Demilitarisation was not implemented thoughtfully, and unit management imported and grafted onto the system without an existing skills base being present. Corruption proliferated, and Departmental officials were rarely brought to book in any way. New uniforms have now been introduced, but they are unfortunately still very reminiscent of military-style clothing.

[117] Speech by Minister B Skosana, 24 April 2003.
[118] Who were at the helm from the time of the departure of Commissioner Sithole in 1999 until the appointment of the present Commissioner in August 2001.

A third theme that can be identified relates to the implementation of the Constitutional rights accorded prisoners by means of legislation. Despite the unanimous approval granted the 1998 Correctional Services Act, it remains for the large part not in force. Efforts to put in place the structures and processes required for implementation of the bulk of the Act were weak, the regulations only reaching Parliament at the end of 2002, and the measures to put in place the new parole system remained undeveloped until very recently. Although commencement of the Green Paper and White Paper processes were announced in 2001, it seems that only now is some progress towards this goal being made.
The fourth theme concerns programmes and services. What is most notable here is the question of the likely fate of electronic monitoring as a facet of community corrections. Electronic monitoring was piloted by DCS and private stakeholders during the periods under review. Although it was evidently successful, plans have remained on hold. In the period under review, community corrections languished, with seemingly little policy development occurring in this area. The heralding of restorative justice as a key mission of the Department in 2001 does not appear to have permeated deeply.

Over the period reviewed in this report, there was little transparency in the policy-making process. External stakeholders were either not involved, or appeared to be consciously left in the dark. NGOs lost their foothold with the Portfolio Committee and became marginal to correctional issues and policy. Nor did the Portfolio Committee apparently have very much effect in holding the Department to account. The ”voluntary resignation” of Commissioner Sithole was not pursued by this Committee, and it cannot be concluded that the Portfolio Committee dealt with the privatisation issue with the diligence that this sort of undertaking required, although it may well be that the Committee was not put in a position to make an informed contribution. However, even when confronted with indications of impropriety in October 2002, the Committee appears to have failed to grasp the nettle. The fact that privatisation and public-private partnerships may still be considered for future prison-building initiatives and for the contracts that may be awarded to implement electronic monitoring, suggests that the Committee should equip itself to play a far more proactive role in overseeing these crucial outsourcing endeavours.

It is only since the advent of the millennium that a new drive towards policy formulation has emerged. Firstly, there are the policy changes announced by the Minister (for example, restorative justice and the ”new-generation prisons” concept). As stated earlier, restorative justice cannot be regarded as having been mainstreamed in DCS practice at this stage, and how it ”fits” with other aspects of DCS policy (for example, ”rehabilitation” and ”corrections”) is not altogether clear. The ”new-generation prisons” concept, while correctly focusing on the ordinary prisoner and on cost-effective design, is yet to prove that it can deliver on the promise that the theoretical model holds.

As regards Departmental policy formulation, a clear strategy has been mapped out since the release of the planning document Mvelaphanda in 2001.[119] The main thrust is a return to what has been described as the "core business" of imprisonment, namely correction of offending behaviour. This recognition of the role of prisons in not only providing safe custody, but also returning improved individuals back to communities, bodes well for the Green Paper and White Paper processes that lie ahead, in that it communicates the message to the public at large that corrections are linked back to communities, rather than being the point of final destination for the country's detritus. An added plus is the newly emerging integration of corrections issues within the criminal justice sector – there is now some prospect that the overcrowding issue may be addressed within a more coherent and systemic framework.

Another positive trend is the rooting out of corrupt officials by the Jali Commission, and the fact that Department is taking active steps to publicise suspensions and dismissals that are following this process.[120]

However, these positive steps are to a great extent eclipsed by the enormity of the task that still lies ahead in turning the situation in South African Correctional Services around. Civil society should be a key partner in that process.

[119] Subsequent to the completion of this report, a revised strategic plan for 2003/2004 and 2005/2006 was released.
[120] See the regular bulletins in this regard on the Departmental web site (www.dsc.gov.za).

APPENDIX 1

Community Corrections Statistics – Cases Sentenced Admitted Converted:

Conditions = (Measures: Total Periods Cumulative: 2001)

		ARTICLES			
	RSA	Section 276 (1) (h) Admitted	Section 276 (1) (i) Converted	Section 276 A (3) Converted	Section 286 B (4)
1	*PC Eastern Cape*	1025	272	2	0
2	*PC Free State*	758	365	4	0
3	*PC Gauteng*	829	551	39	0
4	*PC Kwa Zulu-Natal*	1078	479	45	2
5	*PC Mpumalanga*	558	123	7	0
6	*PC North West*	864	187	15	0
7	*PC Northern Cape*	313	195	4	0
8	*PC Northern Province*	448	116	2	1
9	*PC Western Cape*	1504	1293	13	0
10	*All RSA*	7377	3581	131	3

APPENDIX 2

Tabular synopsis of significant policy events

Policy development	Date	Status
White Paper on Correctional Services	1994	To be reviewed
Transformation Forum on Correctional Services	1994 – 1996	Disbanded
Demilitarisation	1996	See introduction of uniforms below
APOPS (two contracts awarded)	1996 – 2003	Contracts to be re-negotiated; status of privatisation generally not clear
C Max	1997	Deprioritised
Supermaximum concept announced	1997	Deprioritised
Electronic monitoring Pilot	1997	Not yet implemented
Act 105 of 1997 concerning minimum prescribed sentences	1998	Renewed
Correctional Services Act 111 of 1998 passed	1998	Only partially promulgated
Commissioner "voluntarily resigns"	1999	
Unit management adopted	1999	Retraining ongoing
SA Law Commission Report on sentencing finalised	2000	Still with the Department of Justice

Policy development	Date	Status
Jali Commission appointed	2001	Hearings ongoing
Permanent Commissioner appointed	2001	
Mangaung private prison opens	2001	
Mvelaphanda strategic plan released	2001	Will form backdrop to Green Paper and White Paper process
Restorative justice policy announced	2001	Not clear
Introduction of new-look uniforms	2002	Roll-out complete
Private prison in Polokwane and supermaximum in Kokstad open	2002	Completed
New-generation prison policy launched	2002	Yet to be evaluated