

FIRST THINGS FIRST

Rehabilitation starts with alternatives to prison

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In its recent white paper, the Department of Correctional Services (DCS) takes on the big challenge of rehabilitating offenders. This represents a paradigm shift that will require a concerted effort, not only from DCS, but other departments, families of offenders and the public. Key among these will be the police and courts. Unless alternatives to imprisonment are pursued throughout the justice system, DCS will struggle to manage its workload, keeping rehabilitation out of reach.

South Africa has one of the highest incarceration rates, ranking fifteenth in the world (Figure 1). One reason for this state of affairs is the country's crime levels. The crime situation has placed enormous pressure on the criminal justice system, and has led both the public and government to favour harsh measures to deal with crime. In recent years several pieces of legislation have been promulgated such as those pertaining to minimum sentencing and tougher bail conditions. These new laws have resulted in the often indiscriminate use of imprisonment to deal with those accused and guilty of crime.

Is the use of incarceration in this manner the way to deal with crime? The country's prisons are heavily overburdened and struggle to function optimally. Thousands of people who have been through our prison system are believed to re-offend shortly after their release.¹ This situation creates the impression that, rather than rehabilitating offenders, prisons instead facilitate the 'right of passage' to a criminal career.

The Department of Correctional Services' (DCS) draft white paper released in December 2003 recognises that for rehabilitation to work, the challenges of overcrowding, corruption, awaiting

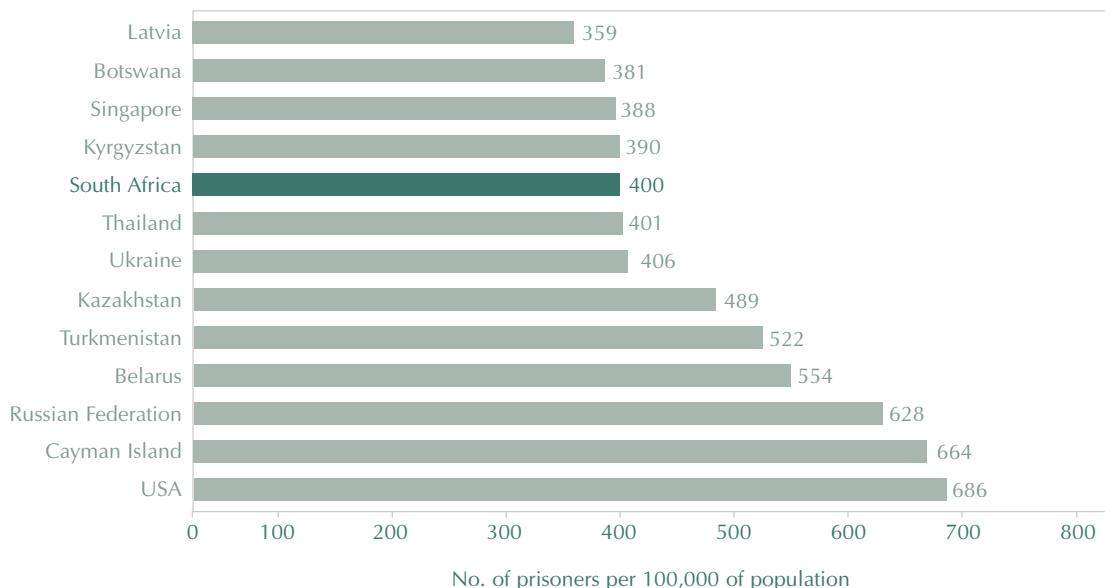
trial prisoners, inmates who are terminally ill, and undocumented migrants among others, will need to be overcome.² But for any programme, including rehabilitation, to be implemented effectively, the prisoner population will need to be significantly reduced. Until this happens, DCS will remain unable to utilise its resources (personnel, accommodation and finances) optimally in pursuit of its policy objectives.

Have early releases worked?

One way of achieving a reduction in prisoner numbers is through early releases. However, past experiences both locally and in other countries such as in Nigeria and Malawi, indicate that early releases do not necessarily provide a lasting solution.³ This is particularly true if the police continue to make numerous arrests for petty offences like urinating in public, or if the courts continue to send people to prison at the same rate as they did when the early releases were implemented.

During 1998, a presidential taskforce on prison overcrowding in South Africa recommended the early release of certain categories of prisoners. Between 1998 and 2000 over 8,000 prisoners were released but the relief was short-lived, with prisons

Figure 1: Prison population rates, selected countries, 2003



Source: International Centre for Prison Studies, 2003

soon as overcrowded as before. In Malawi, a study conducted by paralegals recommended the closure of the juvenile section in Zomba prison. Yet within two months the section had been reopened and the population remained more or less the same as before the facility was closed.⁴

The early release of prisoners, while potentially a good short-term measure, does not seem to solve the problem of overcrowding. Rather, it may actually foster feelings among the public that the justice system is treating offenders too leniently, despite the fact that those released pose no threat to the society and have often committed minor offences. Admittedly in South Africa, the public were justified in this reaction considering that during the first batch of early releases, an administrative glitch resulted in a few serious and violent offenders being let out along with the majority who had committed minor offences.⁵

Should prison sentences be so popular?

The situation in South Africa necessitates asking the question: does imprisonment work? And should it be the main form of punishment handed down by the judiciary? Given our apparently high

recidivism rate, it could be argued that if less offenders are sent to jail, the chances of them re-offending as a result of their experiences in prison will reduce – which ultimately means lower prisoner numbers. And more careful application of prison sentences will mean that DCS will have more time and resources to ensure safe and humane detention, and increased capacity to rehabilitate inmates. It is only under these conditions that one can realistically think of rehabilitation.

It does not, however, appear that all criminal justice agencies are giving equal attention to these questions. Instead, indications are that prison sentences are becoming more popular and – judging by the length of the sentences handed down between 1995 and 2002 – a more punitive approach now prevails (Table 1). It is of course possible that longer sentences are being handed down because criminals have become more violent since 1995, or because there are more serial offenders now than before. But the extent of the increase in sentences of ten years or more reflected in Table 1 suggests that other more significant factors are at work.

*Table 1: Change in length of prison sentences,
1995-2002*

Length of sentence	1995	2002	% change
2-10 years	61,181	68,418	11%
10-15 years	6,168	18,956	67%
15-20 years	2,660	8,355	68%
+ 20 years	1,885	7,885	76%

Source: Office of the Inspecting Judge

Although the number of prisoners serving short prison sentences (less than ten years) has also increased, what is concerning is the large number of prisoners in that category (Table 1). This suggests that a significant number of offenders (who committed less serious crimes) could have been given alternative sentences instead of being sent to prison. For example, in 1999 almost 70% of prisoners in this category were serving sentences of less than five years, with the largest number (49%) serving less than six months.⁶

Even more alarming is the increase in the number of prisoners serving long sentences. This trend, although not a direct result of the promulgation of the minimum sentencing legislation, is likely to continue with the existence of this piece of legislation.⁷ Longer sentences will also probably result from the hiking of the sentencing jurisdiction of both district and regional courts. Together these courts hear 94% of all criminal cases – most of which are in the district courts. The sentencing jurisdiction of the district courts has been increased from one to two years, while that of the regional courts has risen from ten to 15 years.⁸ Both minimum sentencing and the increased sentencing jurisdiction could hamper measures to reduce prisoner numbers, such as early release and increasing the available accommodation.

Alternatives to imprisonment

Both the police and the courts have a number of alternatives other than imprisonment that can be applied when dealing with offenders. The police, for

example, have some powers that enable them to grant bail.⁹ Where the courts are concerned, the accused can be discharged with a reprimand, be granted affordable bail or have sentences postponed or suspended with or without conditions. Such cases would include minor assault, very minor theft, and urinating and drinking in public. Where conditions are attached, these could include compensation to the victim in money or service, community service, or submission to treatment. There is also the option of periodical imprisonment.¹⁰ For example, a person arrested on drinking and driving charges, can be compelled to spend weekends in prison instead of awaiting trial for months.

In 2003, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) handled the diversion of 17,724 offenders.¹¹ Another 6,000 were handled through other institutions.¹² In addition, the latest statistics from the National Prosecution Authority (NPA) show that over 50,000 offenders have been diverted to date.¹³ This is further testimony that imprisonment is not the only option for dealing with offending behaviour. It also sends a message to other criminal justice agencies to reinforce the efforts of the prosecution service and non-governmental service providers to apply non-custodial options.

Of course these measures are not, and should not, be applied without careful consideration. There are factors to be taken into account such as the nature of the offence, whether it is the first offence, and the willingness of the offender to reform and participate in rehabilitative programmes.

But most importantly, there must be incentives for police and prosecutors to apply measures other than arrests and jail sentences. Such incentives should not be provided on an *ad hoc* basis, but should be built in to the official performance indicators of the department concerned. In order to talk about a truly integrated justice system that has a sustainable impact, it is imperative that performance indicators of the police, courts and prisons are aligned to achieve common goals. Currently this does not appear to be the case, with the police aiming to make as many arrests as

possible and the courts sending more and more people to prison. This makes it virtually impossible for DCS to achieve its goal of rehabilitating offenders.

DCS takes up the challenge

"At least 95% of all prisoners will be released back into the community to continue with their lives. Through some miracle, they are expected to fit in as if nothing has happened and to continue with their lives as constructive citizens contributing to the common good."¹⁴

It is clear from the Department of Correctional Services' recent white paper that the need for a paradigm shift has been recognised: "We believe that rehabilitation and the prevention of recidivism are best achieved through correction and development as opposed to punishment and treatment".¹⁵ The Department's view is that rehabilitation requires correcting the offending behaviour, human development and the promotion of social responsibility and positive social values.¹⁶

The white paper goes beyond conceptualising the process, with a focus on the following aspects of corrections:

- correction of offending behaviour;
- development of the offender;
- security (for inmates and correctional officials);
- care of the offender (health, physical and psychological needs);
- facilities;
- after care (needs in terms of support after release, ie. reintegration).

While DCS has clearly taken up the challenge, rehabilitation is not just about offenders and changing their behaviour. Upon completion of their sentences and programmes, offenders return home. What happens to them then? Another crucial part of rehabilitation is the education of communities to which offenders must return. The public needs information on how prisons work, how rehabilitation works, and the fact that offenders have served their sentences under programmes that

prepared them for their return to society. This will go a long way in preventing stigmatisation and reducing the chances that rehabilitated offenders will lose hope and return to crime.

Endnotes

- 1 L Muntingh, *After Prison, The Case for Offender Reintegration*, ISS Monograph No 52, March 2001, Pretoria, p 6.
- 2 Draft White Paper on Corrections in South Africa, December 2003.
- 3 Draft report by Penal Reform International, 2003.
- 4 Ibid.
- 5 <http://iafrica.com/news/sa/77213.htm>
- 6 M Sekhonyane, Emergency Measures: Early releases to alleviate prison overcrowding, *SA Crime Quarterly* 1, July 2002, Pretoria, p 17.
- 7 J Sloth-Nielsen, *Overview of Policy Developments in South African Correctional Services, 1994-2002*, Civil Society Prison Reform Initiative Research Paper Series No 1, July 2003, Cape Town.
- 8 Ibid.
- 9 Interview with Judge Fagan, Inspecting Judge of prisons, 12 February 2004.
- 10 Office of the Inspecting Judge, Annual Report 2002/2003, Cape Town.
- 11 Interview with Deon Ruikers, NICRO Cape Town, 16 February 2004.
- 12 Office of the Inspecting Judge, op cit.
- 13 NPA statistics, 1999-2003.
- 14 L Muntingh, op cit, p 6.
- 15 Draft white paper, op cit.
- 16 Ibid.