

Overcrowding in South African prisons: The reality in the 21st century¹

Shanta Singh
School of Sociology and Social Studies
University of KwaZulu-Natal

Samevatting

Tans is Suid-Afrika se 240 gevangnisse erg oorbevolk. 'n Toename in die gevangenisbevolking oor die afgelope jare het strawwe druk op die Departement van Korrektiewe Dienste se beskikbare hulpmiddele geplaas. Gevolglik dat 'n behoorlike funksionering van dié Departement gekniehalter word. 'n Oorbevolking het noodwendig 'n negatiewe uitwerking op die wyse van opsluiting van, en dienslewering aan, gevangenes. 'n Berekening is gemaak dat daar tussen 2007 en 2008 sowat 200 000 gevangenes sal wees. Die onkoste van die Staat vir die huisvesting van soveel gevangenes beloop ongeveer R25 miljoen per dag. In hierdie artikel word die oorbevolking van Suid-Afrikaanse gevangenes ondersoek.

Historical contextualization of prison overcrowding

The idea of imprisonment as a form of punishment is relatively recent. Commencing with the reign of Edward I of Britain (1239-1307 AD) imprisonment was a common punishment.² The increase of prisons as an organization for punishing convicted offenders was a slow and ongoing process, which extended over numerous centuries, from rudimentary beginnings in the sixteenth century. A distinguishable feature of the earliest prisons is the lack of a systematic policy concerning imprisonment of convicted criminals. For decades, a large variety of buildings were used as prisons, for example, cellars beneath municipal buildings. These buildings as a rule were not fit for habitation. Individuals that the society wanted to get rid of were incarcerated in these 'prisons'. No consideration was paid to sanitary or moral welfare. There

1 The National Research Foundation financially assisted this research.

2 SS Terblanche, *The guide to sentencing in South Africa* (Durban, Butterworth Publishers (Pty) Ltd, 1999), p.543.

was no separation according to sex or age whatsoever, and the herding of men and women together into dayrooms made promiscuity inevitable. The sale of liquor by the warders guaranteed immoral behaviour, and prison fever was virtually widespread.

Not much has changed over the decades. If anything, the situation has worsened in terms of the conditions in prison due to overcrowding. The situation presently in South Africa is that prisons were built to accommodate criminals, to 'satisfy' the objectives of punishment, namely, retribution, rehabilitation, deterrence and protection of society; but this is far from being achieved. In protecting people in society, society must do what is required to discourage those who break its laws and punish those who do so in an appropriate manner. Incarcerating offenders in buildings that are not designed with the purpose, for which it is used in mind, will achieve little or no success. One can barely expect a prisoner to respond positively to the latest and most enlightened rehabilitation if a miserable environment surrounds this program.³

In the history of criminal justice, as fear over crime grew, the concern with community protection reached a crescendo by 1996 worldwide, leading to rates of imprisonment previously unheralded. Prison populations quickly reached breaking point, although few realized that the use of prisons, as places where convicted offenders serve time as punishment for breaking the law, is a relatively new development in the handling of offenders.⁴

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

It is currently assumed that institutional confinement has always been employed as the usual method of dealing with offenders throughout history. This has been assumed, almost universally, because presently offenders are confined within penal institutions, such as, prisons, reformatories, reform schools and jails. However, the use of institutions for the extended confinement of offend-

3 S Singh, "The historical development of prisons in South Africa: a penological perspective", *New Contree*, 50, November 2005, pp.15-38.

4 F Schmallegger, *Criminal justice today. An introduction text for the 21st century* (New Jersey , Prentice-Hall, Inc, 1997), p.432.

ers, as the prevailing method of punishment, is a relatively current innovation and was primarily a product of American influences. The use of the prison as an institution for the detention of offenders for the period of their sentence is approximately two hundred and fifty years old.

To comprehend the magnitude of the problem of overcrowding in penal institutions, it is imperative firstly to have an appreciation of the number of prisoners incarcerated world-wide. In many parts of the world, for example, America, Russia and South Africa, the prison population has escalated during the 1990s. There has been over 20% growth in most of the European states and in the United States of America a growth between 60 and 85%. In other parts of the world, the growth has been over 33 % in South Africa, 50% in Australia, 38% in New Zealand and 10% in Japan. Generally the trend during the 1990s, at least in many of the developed countries, has been a rise in prison populations, often with a 40% growth over the decade.⁵ The World Prison Population List shows that over 9 million people are held in penal institutions throughout the world, either as pre-trial detainees or having been convicted and sentenced.

There are approximately 6.5 billion people in the world, which implies that the world prison population rate is approximately 150 per 100 000 citizens. The United States has the highest prison population rates in the world, some 714 per 100 000 of the national population, followed by Russia (532), Palau (523), U.S. Virgin Islands (490), Cuba (487), Ukraine (417), South Africa (413) and Bhomas (410).⁶ In South Africa, there are far too many offenders in prison.⁷ There were 175 290 prisoners as at 31 December 2001, which means that 4 persons out of every 1000 South Africans were in prison. On the 30 April 2003 there were a total of 190 180 prisoners in prisons with a capacity to hold 111 241 prisoners. This resulted in an overpopulation of 78939. In March 2004 there were a total of 187 640 prisoners in prisons with a capacity of 114 787, resulting in an overpopulation of 72 853. In August 2005 the prison population was 155 858 and on the 31 March 2006 the prison population was 160 213 but had a capacity to accommodate 114 505, resulting in an overcrowding of 45 708.⁸ Thus in global terms, South Africa is not alone

5 R Walmsley, "World Prison Populations: Facts. Trends and Solutions", 2001, (available at: <http://www.prisonstudies.org>), as researched on 24 May 2002, p.3.

6 R Walmsley, "World Prison Populations: Facts. Trends and Solutions", 2001, (available at: <http://www.prisonstudies.org>), as researched on 24 May 2002, p.1.

7 Annual Report of the Judicial Inspectorate of Prisons, 2001/2002 (available at: <http://judicialinsp.pwv.gov.za>), p.7.

8 Statistics received from the Judicial Inspectorate of Prisons, 2006, Cape Town.

in registering a sharp increase in its prison population. In comparison with the other countries, there has to be a concerted effort to reduce the number of prisoners in penal institutions in South Africa.

There is vast variation of prison populations from place to place, region to region, country to country, and continent to continent. The rise in prison populations worldwide is attributed to a variety of circumstances. In some it follows the election of government ministers with a tough on crime agenda, in others it is related to increased use of drugs. In many it occurs despite decreases in crime levels.⁹ The lack of sufficient alternatives to imprisonment manifests itself in overpopulation of prisons with all its negative implications. The United States of America incarcerates five to eight times more citizens per capita than any Western European nation.¹⁰ According to a recent United Nations survey, the United States and South Africa both had among the highest rates of incarceration in the world. The United States was at the top of the list and currently locked up nearly 738 out of every 100 000 citizens (almost 1 in every 100 people), while South Africa had the 23rd highest incarceration rate in the world, at 344 prisoners per 100 000 citizens. The police, courts and prisons simply cannot cope. As the numbers in prison increase, the case backlogs extend further; the police have less time to detect and investigate crime. This both impairs the quality of justice and prejudices the ordinary person's access to justice. Prisons have again become warehouses, albeit modern ones. Despite all the public concern about crime during the 1980s and the 1990s, very little attention has been directed to the inside of the prison or to those who live there.¹¹

Over the past two decades there has been a revolutionary realisation by countries like the United Kingdom, America and even South Africa, that the use of incarceration as a means of punishment is expensive and inadequate to effect positive change in most non-violent offenders. A national survey found that four out of five people favour community corrections programs over prison for non-dangerous offenders, leading to the conclusion that:¹²

Americans are beginning to reformulate their thinking that prison is the only way to punish convicted offenders. It is also becoming increasingly clear that America cannot build its way

9 F Wilkinson, "The Real Cost of Prisons Weblog. South Africa: Prisons Filled to Bursting Point", (available at [http://realcostofprisons.org/blog/archives/2006/01/south africa pr. html](http://realcostofprisons.org/blog/archives/2006/01/south%20africa%20pr.%20.html)), as researched on 5 January 2006, p.1.

10 JM Pollack, *Prison and prison life: Cost and consequences* (San Marcos, Texas State University, 2004), p.1.

11 JM Pollack, *Prison and prison life: Cost and consequences*, p.8.

12 JB Stinchcomb, & VB Fox, *Introduction to correction* (New Jersey, Prentice-Hall, 1999), p.130.

out of the prison-crowding crisis. Intermediate sanctions are a viable option to imprisonment and are more cost-effective and beneficial to society in the long run.

Approved accommodation versus prisoner population per region, 31 March 2006

Provinces	Capacity	Unsentenced	Sentenced	In Custody Total	% Occupation
Eastern Cape	12717	5340	14306	19646	154.49%
Gauteng	26709	16392	28441	44833	167.86%
Kwa-Zulu Natal	19854	8146	18213	26359	132.76%
Limpopo; Mpumalanga North West	18996	3749	20323	24072	126.72%
Northern Cape & Free State	16807	5480	14921	20401	121.38%
Western Cape	19422	7286	17616	24902	128.22%
TOTAL	114505	46393	113820	160213	139.92%

Table 1 (Source: Department of Correctional Services-2006)

The table on the previous page represents the percentage of overpopulation within prison in the various provinces of South Africa for the year 2006.

Van Zyl Smit states that the true problem of overcrowding at individual prisons is much worse. A national survey of approved accommodation levels and actual prisoner numbers at all South African prisons on 30 June 2002 reveals that only 21 of 236 prisons were not overcrowded. Overall only 6.3 % of prisoners are being held in prisons that are not overcrowded. On June 2002, 46 prisons had more than double the population for which they officially have accommodation. The result was those 46194 prisoners, or 26% of the entire prison population, were held in prisons where the occupancy rate was over 200% of the officially prescribed figure.¹³ From 1994 there have been numerous initiatives to effect substantive changes in the way in which the prison system in South Africa is run, which, implicitly or explicitly, promised to improve conditions for prisoners. The number of prisoners that has been held in South African prisons has been such that, no matter how well the prison system is organised and administered, it is not able to detain these prisoners in conditions that meet the minimum standards set by the Constitution. Judge Fagan states that overcrowding continues to hamper the efforts of the Department of Correctional Services to give effect to its statutory responsibility, namely to detain all prisoners under humane conditions. Thus

13 B Dixon & E van der Spuy, (Eds), *Swimming against the tide. Controlling the size of the prison population in the new South Africa in Justice Gained? Crime and Crime Control in South Africa's Transition*, 2003, pp. 229-230.

overcrowding has a negative impact on the humane detention and service delivery to prisoners.¹⁴

The Measurement of Overcrowding

What are the criteria for the measurement of overcrowding of prisons? It should be noted that Rule 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states that “all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard be paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.¹⁵ Prison crowding can be measured along a number of dimensions¹⁶

- Space available per inmate (such as square feet of floor space);
- How long inmates are confined in cells or housing units (versus time spent on recreation, etc.);
- Living arrangements (that is, single versus double bunking); and
- Type of housing (use of segregation facilities, tents, etc., in place of general housing).

Three forms of prison capacity in terms of which occupancy rates can be expressed have been distinguished:¹⁷

- **Estimated capacity:** This is the number of beds or prisoners authorised by correctional administrators to be assigned to a prison. This is regarded as an adjustable and flexible figure, which tends to be revised upwards.
- **Operational capacity:** This is the number of prisoners that can be accommodated consistent with the maintenance of programmes, institution's staff, and services.
- **Design capacity:** This forms part of the architectural planning of an insti-

14 J Fagan, “Prison overcrowding of our biggest challenges to transformation”, *Track Two*, 11 (2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/112overcrowding.html>, as researched on 19 December 2002), p.3.

15 Discussion Guide 3, “The problem of overcrowding of prisons non-institutional treatment of offenders”, 1999 (available at: <file://CAHOMWPA-1/WC7TH/7WCDiscussionguide3.htm>, as researched on 20 April 2004), p.1.

16 F Schmallegger, *Criminal justice today...*, p.452.

17 R Harding, “Prison overcrowding: Correctional policies and political constraints”, *ANZ Journal of Criminology*, 10, 1987, pp.16-17.

tution. In South Africa, a prison's maximum occupancy rate is expressed in terms of a certified (calculated) detention capacity.

Thus prison over-population results when the number of prisoners in a particular prison can no longer be coped with, within the infrastructure. Estimated capacity usually yields the largest inmate capacities, while design capacity typically shows the highest amount of overcrowding.¹⁸ The following question arises: Is there a level that can be identified as a tolerable overcrowding situation both for prisoners and officers?

Why is overcrowding in prisons considered a serious problem?

Prisons in South Africa remain grossly overcrowded, which adversely affects all aspects of incarceration:¹⁹

- It compromises the safety and security of staff and prisoners;
- It worsens conditions of confinement and reduces access to basic hygiene;
- It affects the delivery and implementation of rehabilitation, work and education programmes;
- It limits access to health care and worsens mental health;
- It weakens family ties already disrupted through imprisonment, as access to visiting rights are curtailed and as incarceration in stressful conditions impacts adversely on prisoners' mental and physical health;
- It decreases pressures on staff thereby aggravating and further threatening professional integrity;
- There may be increases in levels of inmate-on-inmate assaults and self-harm and suicide;
- Since all of the above can be expected to impact on recidivism, overcrowding challenges the ability of the prison system to prevent re-offending and threatens the functioning of the entire criminal justice system.

Prison overcrowding affects the fundamental nature of correctional institutions. Reformatory treatment, humanity, decency and justice remain largely unrealised ambitions, despite the Statement of Purpose and words about vision, goals and values of the Department of Correctional Services. The ambitions for improvement, and even the most basic requirement, the mainte-

¹⁸ F Schmallegger, *Criminal justice today...*, p.452.

¹⁹ Amnesty International, "Forgotten detainees? Prison conditions: Appeals for action", November 2003 (available at: <http://www.amnesty.org>), p.7.

nance of order, are vulnerable to the pressures arising from overcrowding.²⁰ The statement of mission of the Department of Correctional Services in South Africa can be considered in the light of Godfrey's remark:²¹

Vision: Delivering correctional services with integrity and commitment to excellence.

Mission: To deliver a professional Correctional Service in partnership with stakeholders by providing:

- Incarceration of offenders under conditions consistent with human dignity;
- Rehabilitation and reintegration programmes;
- Proper provision of persons under community corrections; and
- Procurement and acquisition of adequate resources, which enable effective response to challenges by means of progressive management, trained personnel, sound work ethics, performance management and good governance

Implications of overcrowded prisons

There are various consequences as a result of imprisonment. There are three crisis categories that are the outcomes of prison overcrowding:²²

- **The material crisis:** This indicates a shortage of resources for providing for the needs of prisoners and maintaining standards of imprisonment. Examples include appalling living conditions for prisoners: a lack of privacy, high temperatures in cells, noise levels, general irritations and arguments about the use of limited space, the spread of diseases and mental illness.
- **The order crisis:** Prison overcrowding undermines the internal social control, creates high stress levels and a potential for conflicts among the prisoners and has a harmful effect on the relationships between warders and prisoners.²³ Overcrowding makes it more difficult for the staff to accomplish their tasks since it generates an unfavourable prisoner-staff relationship, for staff that is pressured feel threatened more easily. Moreover they have problems with controlling prisoners in overcrowded sections; the situation further undermines the development of a healthy morale and creates a high staff turnover.
- **The goal crisis:** This crisis relates to rendering services to realise the pri-

20 D Godfrey, "Getting the size of the prison population under control", *Prison service Journal*. 1996, p.15.

21 Republic of South Africa, Department of Correctional Services, Annual Report, 2002-2003, (Pretoria, Government Printer), p.5.

22 JJ Naser, AE van der Hoven, A Marce,& DN Swart, Contemporary crime issues and reaction to crime. *Criminology* 202 (Pretoria, UNISA, 2001), p.166.

23 M Welch, *Corrections: A critical approach* (New York, McGraw-Hill, 1996), p.131.

primary objectives of correctional institutions. Overcrowded prison conditions promote, for example, idleness because of a lack of sufficient work programmes. The effective operation of development services such as educational and training programmes are scaled down and the safe custody of prisoners is hampered.

Given the crisis, which is created by overcrowding, the question that arises is whether correctional institutions can still operate their mission statement under these conditions, or whether alternatives to imprisonment should be explored vehemently?

Concerns about overcrowding

Even the best-intended and most sophisticated programs cannot accomplish their objectives in institutions that are severely crowded. In South Africa, interests in international comparisons on the use of incarceration have increased in recent years. Internationally and nationally, for example, America, England and South Africa, high prison populations invariably lead to overcrowding. The state of prisons in South Africa has been an issue of great concern for the criminal justice system, especially the correctional component, the Department of Correctional Services. The most crucial challenges facing Correctional Services today revolve around the serious overcrowding of prisons and the extent to which this state of affairs effectively negates the rehabilitation of offenders. Attempts have been made within the framework of the Justice, Crime Prevention and Security Cluster, to initiate a range of approaches aimed at ameliorating this problem.²⁴ While these have certainly started to make a difference, the reality is that prisons are still overcrowded. It is not possible to manage these prisons in such circumstances thereby rendering the idea of rehabilitating those inside them a pipe dream.

Prisoners are kept in South African prisons without the necessary infrastructure such as toilets, beds, showers and other basic amenities being available to them. Inmates at the Westville Medium B Prison stated that:

The other problem is that since you are in this environment and this jail is overcrowded you find that the cell supposed to accommodate about 20 prisoners but due to overcrowding the cell accommodates more than 50 prisoners.

²⁴ B Skosana, "A new strategy to deal with prison overcrowding and enhance rehabilitation", 23 August 2002 (available at: <http://www.dcs.gov.za/mediareleases/parent.asp>, as researched on 23 July 2003), p.1.

About 56-58 in one cell. All those prisoners are sharing one toilet, one bathroom and we are issued one toilet roll each for a whole month or sometimes five to six weeks.²⁵ This situation is worsened by the uneven distribution of prisoners resulting from the need to separate different genders and categories. While a few prisons are under-occupied, many are over 200% full with one topping almost 400% (Mount Frere Prison).²⁶

Overcrowding exacerbates the intrinsic design problems of prison cells, with the number of inmates in most prisons exceeding their intended capacity. Prison overcrowding, in South Africa and many developing countries is a crucial and pressing problem, which is not only a manifestation of the increasing numbers of prisoners or lack of space. It is a problem of gross inadequacy of basic facilities such as sanitation, water for bathing and washing, medical and recreational facilities. In these crowded institutions, overcrowding becomes more a crisis rather than a simple problem.

Public opinion regarding imprisonment

To a certain extent cognisance must be taken of the fact that the imposition of punishment must keep abreast with the views of the community. It is not so important to the community that harsh penalties are imposed, but *rather* that the punishment is effective and that justice prevails. Punishment must also be fair to the offender as well as serving the interests of the community.

In response to public calls for increased punishment, a minimum sentencing for serious offences was introduced in 1997. The length of prison sentences is increasing, with more prisoners now receiving sentences of more than two years.²⁷ Many accused cannot afford even small bail amounts for less serious offences and thus spend long periods in prison awaiting trial. Furthermore concern about overcrowding was expressed by Justice Chaskalson when he questioned the imposition of lifelong sentences on those found guilty of serious crime, noting that a high proportion of those in the country's prisons were below the age of 25 years.²⁸ He noted that the imprisonment of people for long periods had a

25 S Singh (personal collection), interview with male inmates at the Westville Medium B Prison in Kwa Zulu-Natal, South Africa, on the 10 February 2006.

26 J Fagan, "Prison Overcrowding one of our biggest challenges to transformation", *Track Two*, 11 (2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/112overcrowding.html>, as researched on 19 December 2002), p.3.

27 A Dissel, "Tracking Transformation in South African prisons", *Track Two*, 11 (2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/11-2transformation.html>, as researched on 14 January 2003), p.3.

28 N Bakken, UNSAID, at the Judicial Symposium Banquet, Birchwood Hotel, Benoni, 16 July 2003 (available at: <http://www.sn.apc.org/unsaid/speech54.html>, as researched on 24 December 2003), p.2.

major impact on the prison population and subsequently more money is needed for the construction of new prisons.

Although punishment cannot be customized to satisfy the public, the courts should nevertheless be conscious of public sentiment.²⁹ It cannot be gain if a citizen who has suffered innocently at the hands of a transgressor looks to the court for redress and if the offender is not adequately punished such a person goes away with a feeling of injustice having been done to him. It is not only the particular individual that looks to the court for redress but the whole community affected or likely to be affected by the type of transgression. It follows then that if the cooperation of the public towards law and order is to be retained the courts must act in such a way that those who require to be protected are in fact protected and feel a sense of security while those who are punished should also have no cause for complaint, that is, the treatment meted out to them was unduly harsh. The courts must, therefore, as it were, always have their fingers on the pulse of the crime circumstances and the public feelings about it.

Court backlogs and crackdowns on crime are not exclusively responsible for the continuing rise in the prison population. The implementation of harsher sentencing and the increasing inclination of politicians to espouse 'tough on crime' rhetoric should be considered cause for alarm.³⁰ Part of the rise in prison population is attributed by many experts to an increasing belief in a number of countries that prison is preferable to the alternatives.³¹

Imprisonment as a form of punishment

Imprisonment has been provided for by legislation as a form of punishment. The current provision is contained in Section 276 of the Criminal Procedure Act, No. 51 of 1977. There are certain set of laws and regulations to which the prisoner is subjected. In terms of Section 94 of the aforementioned Act, the State President has wide powers to make regulations there under *inter alia* as to the general government and management of prisons, the preservation of good order and discipline therein, the acts or omissions which shall be

29 MB Avery, "Community service order within a penological perspective" (MA., UNISA, 1987), p. 150.

30 Institute for Security Studies (ISS), "The problem of prisons. Correcting corrections, prospects for South Africa's prisons", Monograph 29, October 1998 (available at: <http://www.iss.co.za/Pubs/Monographs/No 29/Prison.html>, as researched on 14 January 2003), p.1.

31 R Walmsley, "World prison populations: facts, trends and solutions", 2001 (available at: <http://www.prisonstudies.org>, as researched on 24 May 2002), p.3.

deemed to be offences against discipline and the manner in which sentences of imprisonment are to be carried out. For the offender, imprisonment entails loss of freedom of movement and confinement within an institution where his whole life is managed and governed. Confinement in an institution removed from the social order entails the loss of goods and services, the loss of heterosexual relationships and the loss of all autonomy.

Advantages/disadvantages of imprisonment

Terblanche postulates that imprisonment has only two real advantages:³²

- It removes the offender from society, with the result that society is then protected from that offender for the duration of incarceration; and
- It provides the sentencing court with an appropriately severe punishment to impose on an offender deserving of severe punishment.

Prisons, even the most reformed ones, produce damage and disease, in varied forms and intensity; they produce damaged and ill people”.³³ This suggests that harm is inevitable and too extreme for an imprisoned individual. Although many may argue that it is what offenders deserve, the risk of psychological and physical harm to an inmate must be acknowledged, knowing that such ‘damaged’ individuals will return to society.

Prisoners are eventually released when they have served their sentence, or occasionally when there is an amnesty. This turnover and continual movement in and out of prison makes it even more important to control any contagious disease within the prison so that it does not spread into the community. Prisoners are sent to prison as punishment, and not for punishment (the author’s underlining), implies that a loss of an individual’s right to liberty is enforced by containment in a closed environment.³⁴

32 SS Terblanche, *The guide to sentencing in South Africa*, p.244.

33 S Oppler, “Assessing the State of South African Prisons”, *African Security Review*, 7 (4) (available at: [http://www.iss.co.za/Pubs/ASR/7 No 4/SA Prisons.html](http://www.iss.co.za/Pubs/ASR/7%20No%204/SA%20Prisons.html), as researched on 14 January 2003), p.5.

34 H Reyes, “Health and Human Rights in Prisons”, Extract from *HIV in Prisons : A Reader with particular relevance to the newly independent states*, Health in Prisons Project, 2001 (available at <http://www.icrc.org/web/eng/siteengO.nsf/iwplList302/AAC9DBC954AEAC1256BAA001FC31D>, as researched on 20 April 2004), p.1.

According to Terblanche imprisonment has many potential disadvantages. The following are considered to be some of the disadvantages:³⁵

- Financial costs;
- Most prisoners in South Africa spend a considerable number of hours per day in the cell, doing nothing. Due to a lack of funds there is a shortage of the resources which are required for the treatment and training of prisoners, and only a small percentage can be taught manual labour skills, or have access to books to read or from which to study;
- Most prisoners are kept in communal cells, which hold up to 40 prisoners in one cell. This situation also leads to an almost total loss of privacy;
- Prisoners are removed from the 'normal' society and placed into an abnormal society, which operates along different rules and principles to those which exist outside the prison walls... In this process they become institutionalised, which means that they lose the ability to cope in a normal society, where they have to make their own decisions; and
- Prisoners are also removed from the positive influences and love that are experienced within the family environment.

The effects of overcrowding are felt not only in the area of space required for prisoners, but also in various other sectors, for example, discipline, control, hygiene and the implementation of effective treatment programmes. Adaptation to imprisonment is difficult for virtually everyone. It can create habits of thinking and acting that are extremely dysfunctional in periods of post-prison adjustment. At the very least, prison is painful, and this compounded by overcrowded facilities exacerbates the long-term consequences of having been subjected to this pain.³⁶ The term 'institutionalisation' is used to describe the process by which inmates are shaped and transformed by the institutional environments in which they live. Sometimes referred to as 'prisonization' when it occurs in correctional settings, it is the shorthand expression for the broad negative psychological effects of imprisonment.³⁷

In reality, prisons are far from comfortable institutions. Most prisoners live in large overcrowded communal cells often controlled by prison gangs. Rape and other forms of violence and coercion are rife. Many prisoners spend 23 idle hours a day in these cells, and some the entire day. Very few prisoners

35 SS Terblanche, *The guide to sentencing in South Africa*, p.244.

36 C Haney, *The psychological impact of in correlation: implications for post-prison adjustment* (Santa Cruz, University of California, [n.d.]), p.1..."

37 C Haney, *The psychological impact...*, p.10.

have the opportunity to work, and to learn skills. Only the privileged receive assistance from social workers or psychologists. No formal programme exists to 'rehabilitate' the prison population.³⁸

The consequences of imprisonment

Overpopulation in prisons continues to be an ongoing problem and a serious threat to the recognition of the basic rights of prisoners. The adverse psychological effects of imprisonment and also the social effects of imprisonment on persons, is an area of great concern for social scientists. There are certain inevitable consequences of the implementation of imprisonment as a form of punishment, for example, contamination, psychological effects, stigma and disgrace, etc. These consequences which are dysfunctional and negative in character, are enhanced due to the overpopulation.

Oppler contends that at Pollsmoor Prison, the worst is the Admissions Centre, where prisoners awaiting trial are held:³⁹

One enters a Dickensian world when walking into the complex; the passages are long and dark with a minimal amount of daylight. All areas are lit with artificial light. Several of the cells are in darkness as inmates who seem to prefer semi-darkness regularly destroy lights. Many of the single cells, designed for one inmate, measure 8 x 6 feet and are occupied by three inmates. Three bunk beds with a negligible amount of space between them hang on the walls. The communal cells, which are built for nine prisoners, are overflowing with fifteen. In Pretoria Central Prison, cells designed for between 28 and 30 inmates hold 50 and 55. Blankets are hung along the width of the walls to serve as additional dividers.

Prisons aim to cure criminals of crime.⁴⁰ However their record has not been encouraging. Instead prisons do more harm than good. The pains of jail confinement affect all prisoners in different ways. To begin with prisoners need to withstand the entry shock by adapting quickly to prison life. Prisoners are exposed to a new culture, which is very different from their own culture.

The plight of awaiting-trial prisoners is even worse. They are not afforded

38 A Dissel, "South Africa's prison conditions: The inmate talk", Centre for the Study of Violence and Reconciliation, *Imbizo* (2), 1996, p.1.

39 S Oppler, "Assessing the state of South African prisons", *African Security Review*, 7 (4) (available at: [http://www.iss.co.za/Pubs/ASR/7 No 4/SA Prisons.html](http://www.iss.co.za/Pubs/ASR/7%20No%204/SA%20Prisons.html), as researched on 14 January 2003), p.5.

40 J Kreteev, P Prokipidis, & E Sycannias, "The psychological effects of imprisonment," (available at: [http://www.uplink.com.au/lawlibrary/ documents/docs.doc82.html](http://www.uplink.com.au/lawlibrary/documents/docs.doc82.html), as researched on 20 November 2002), p.2.

the 'privileges' of sentenced prisoners. Much of their time is spent playing *karum*, a popular game, and smoking marijuana, which is readily available. Idleness leads to further problems: frustration fights and attempts to escape. Some prisoners stay in such an environment for months, perhaps, even years waiting to appear in court, because of the overloaded system of justice.⁴¹

Primary consequences of imprisonment

The primary consequences are extremely detrimental because they impact the most in areas such as the prisoners' work and family. These consequences emanate from the negative nature of imprisonment and the removal of the offender from society, as indicated above.

The rate of death, suicide, homicide, inmate assault, and disturbance increase as prison population density increases.⁴² The incidence of colds, infectious diseases, tuberculosis, sexually communicable diseases, psychological disturbances, and psychiatric crises is also related to overcrowding. The reality is that the more overcrowded the institution, the higher the incidence of medical problems.

Prison housing conditions may be 'restrictive and even harsh', for they are part of the penalty that offenders pay for their crimes.⁴³ However, overcrowding combined with other negative conditions may lead to a finding against the prison system. While there are no more chain gangs, no more floggings, and no physical tortures, and although in general, material conditions have become more humane, the "pains of imprisonment", are still very acute.⁴⁴ Sykes states that in the Western World, material possessions are a fundamental part of the individual's self-conception, and that, depriving an offender of these means to attack him 'at the deepest layers of personality'. A standard of living constructed in terms of so many calories per day, so many hours of recreation, so many cubic yards of space per individual, and so on, misses the central point when discussing the individual's feeling of deprivation.

The safe keeping of prisoners comprises of keeping inmates locked away, counted, and controlled whilst allowing for isolated moments of welfare ac-

41 S Oppler, "Assessing the state of South African prisons", *African Security Review*, 7 (4) (available at: [http://www.iss.co.za/Pubs/ASR/7 No 4/SA Prisons.html](http://www.iss.co.za/Pubs/ASR/7%20No%204/SA%20Prisons.html), as researched on 14 January 2003), p.5.

42 JB Stinchcomb, & V.B. Fox, *Introduction to corrections* (New Jersey, Prentice-Hall, 1999), p. 229.

43 F Schmallegger, *Criminal justice today...*, p.453.

44 GM Sykes, *The Society of captives* (New York, Princeton University Press, 1971), p.68.

tivities to satisfy needs through recreation, education and counselling. Unfortunately, the welfare and psychological freedom of the individual inmate does not depend on how much education, recreation, and counselling he receives but rather, on how he manages to live and relate with the other inmates who constitute his crucial and only meaningful world.⁴⁵

Upon imprisonment, restrictions are placed on the offender. When he is released these restrictions fall away. The constant fear that upon release, he will have to live amongst people other than fellow-prisoners and warders is daunting. Therefore it is the task of the prison authorities to use specific programmes to let certain convictions take root in the prisoner. He has to be made to feel accepted, to show willingness to acknowledge his autonomy and security, to protect his intimacy and to activate his urge for self-fulfilment.⁴⁶

Contamination

Over half a century ago Sykes wrote that 'life in the maximum-security prison is depriving or frustrating in the extreme.'⁴⁷ Very little has changed to adjust this perspective. The prolonged conditioning to the deprivations and frustrations of life inside prison, what are commonly referred to as the 'pains of imprisonment', carries with it certain psychological cost. Not only are there psychological costs but also physical repercussions due to worsening overcrowding.⁴⁸

The Viljoen Commission stated that when prisons are overcrowded with short-term prisoners there is a danger of recidivism arising from their contact with and contamination by professional criminals and the prison environment. One of the main consequences of imprisonment is that prisoners are housed in the company of other criminals and are therefore exposed to further anti-social norms (such as drugs, sodomy and extreme violence). In South Africa due to crowding and a lack of space, different categories of offenders are often housed together. Classification and segregation become impossible. Contamination of first offenders and non-violent prisoners from violent and hardened criminals cannot be avoided and this has adverse effects on inmates.

45 J Kretev, P Prokipidis, & E Sycamnia, "The Psychological Effects of Imprisonment" (available at: <http://www.uplink.com.au/lawlibrary/documents/docs.doc82.html>, as researched on 20 November 2002), p.1.

46 JJ Nesor, *Pentitentiary penology* (Isando, Lexicon Publishers, 1993), p.411.

47 GM Sykes, *The Society of captives: A study of a maximum security prison*, p.53.

48 C Haney, *The Psychological impact...*, p.10.

Due to this, the offender may return to society more embittered and anti-social than before incarceration.

Overcrowding in prisons contributes to the spread of communicable diseases such as TB, skin infections, sexually transmitted infections and other diseases.⁴⁹ Those with Human Immunodeficiency Virus/ Acquired Immuno-deficiency Syndrome (hereinafter referred to as HIV/AIDS) infection are appearing more frequently within institutional populations. With the spread of HIV/AIDS throughout society, it is not surprising to find that this disease is on the increase among inmates, particularly those convicted of drug offenses that are likely to be sentenced to prison or jail terms. Drug abusers represent another component of correctional population that is growing at alarming rates.⁵⁰ In addition, the closed, often vastly overcrowded living conditions also lead to hostilities between inmates. The tedious prison environment, lack of occupation of mind and body and just plain boredom, lead to accumulated frustrations and tensions. This environment leads the way to high-risk activities, such as the use of drugs, sexual activities between men, tattooing and other 'blood brotherhood' style activities. Some indulge in these activities to combat boredom. Others, however, are forced to engage in them, in a coercive play for power or monetary gain. Risky lifestyles can lead to the transmission of diseases from prisoner to prisoner, and pose a serious health risk due to contamination.⁵¹ Unprotected sexual acts with exchanges of potentially contaminated human secretions pose a real risk. Prisons are often the scenes of brutality, violence and stress. Prisoners are faced with incidences of violence and are constantly concerned about their safety. Thus prisoners may resort to violence as a means of protection and survival.

As far back as 1986, during the course of his speech reading of the *Criminal Procedure Amendment Bill*, 1986 in the House of Delegates, the Minister of Justice reiterated the necessity of avoiding contact between hardened criminals and young people.⁵² This contact leads to the contamination of young people. In South Africa's prisons such contact cannot be avoided, thus leading to the effects such as, disruption of family life, loss of employment, etc. A

49 Republic of South Africa, Department of Correctional Services, "Annual Report, 2001-2002" (Pretoria, Government Printer, 2001-2002), p.1.

50 JB Stinchcomb, & VB Fox, Introduction to corrections, p.494.

51 H Reyes, "Health and Human Rights in Prisons", Extract from HIV in Prisons : A Reader with particular relevance to the newly independent states, Health in Prisons Project, 2001 (available at <http://www.icrc.org/web/eng/siteengO.nsf/iwpList302/AAC9DBC9B9954AEAC1256BAAOO1FC31D>, as researched on 20 April 2004), p.2.

52 Republic delegates, Debates, 3, (609), 1986.

number of case studies on the effects of prison life have indicated that imprisonment can be brutal, demeaning, and generally psychologically a devastating experience for many individuals. Psychological symptoms described in these studies include psychosis, severe depression, inhibiting anxiety, and complete social withdrawal. The damage caused by institutionalisation is generally in direct relation to the length of incarceration. Some groups of people are more vulnerable to the pains of imprisonment than others. The coping strategies of inmates in several Canadian penitentiaries and discovered that emotional disruption and adjustment were clearly problems for most inmates during the early stages of their sentence, resulting from the dramatic disruptions of their life caused by the many restrictions, deprivations and constraints inherent in prisons.⁵³

Prisons are not closed systems. What happens to prisoners inside prison has a direct impact on the community. Sometimes, an individual entering prison to await trial for a minor offence might return to the community a 'hardened criminal' (more aggressive and prone to violence and crime), having been affected by the violence associated with gang rule in prison.⁵⁴ South African prisons are a breeding ground for criminals because of the inhumane conditions and violence rife in prisons.

Imprisonment and its effect on family life

The transgression of a law results in there being victims other than the primary victim(s). These secondary victims include the families of the primary victim and another often overlooked group of victims, family members of the person who has committed the crime. The families of inmates are often overlooked in research and in designing social programs, yet many suffer devastating consequences as a result of a loved one's incarceration.

Cesare Beccaria in his book on *Crime and Punishments*, states that while innocent people can suffer when a criminal is punished, the "families of criminals are especially harmed by certain types of punishment which are meant only for the family head. He also points out that imprisonment is the most common type of punishment used today, and the separation not only pun-

53 J Kretev, P Prokipidis, & E Sycamniyas, "The Psychological Effects of Imprisonment" (available at: <http://www.uplink.com.au/lawlibrary/documents/docs.doc82.html>, as researched on 20 November 2002), p.4.

54 R Nair, "Towards Prison Transformation in South Africa", *Inside Track Two*, Vol. 11(2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/11-2/inside.html>, as researched on 14 January 2003), p.2.

ishes the inmate, but also the family.” The loss of contact with family and friends outside prison is a source of stress for all prisoners, but long-term inmates fear that these relationships will be irrevocably lost and this creates concern. While relationships with spouses, family members, girlfriends, and others may withstand enforced estrangement for a few years, the prospects for maintaining these relationships over the long-term become faint.⁵⁵

Prisons directly produce delinquents by throwing the inmate’s family into impoverishment. The same order that sends the head of the family to prison reduces each day the mother to destitution, the children to abandonment, the whole family to vagabondage and begging.⁵⁶ It is in this way that crime can take root. To the majority of the prisoners, the major source of stress would include the loss of contact with family and friends outside the prison. Imprisonment of an offender involves enforced separation from all those who are close to him-his wife, his children, his parents, his relatives and his friends. According to Fox, in female institutions, inmates frequently invent ‘families’; the value of family life is so firmly established in American culture that reformatory inmates frequently attempt to construct some facsimile of it. Female inmates try to shake off the alienating and disorganizing experience of imprisonment by creating family structures.⁵⁷

The incarceration of an individual in prison inevitably places a severe strain on his or her family relationships. The Florida House of Representatives Justice Council Committee on Corrections contends that:⁵⁸

While separation from a parent can be difficult for a child under any circumstances, losing a parent to incarceration can be especially problematic. Not only do children suffer the burdens of incarceration along with the rest of the family, but the removal of the inmate family member may even place children at a greater risk of someday becoming involved in the criminal justice system themselves.

Due to the feeling of social disrepute, the family is most often denied the normal social outlets for grieving the loss of a loved one from the family. The adjustment for a child with a parent in prison seems to be much harder for

55 TJ Flanagan, *Long-term imprisonment, policy, science, and correctional practice* (California, Sage Publications, 1995), p.112.

56 L Muntingh, “Tackling recidivism. What is needed for successful offender reintegration?”, *Track Two*. Vol. 11(2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/11-2/recidivism.html>, as researched on 6 January 2003), p.1.

57 V Fox, *Introduction to corrections* (New Jersey, Prentice-Hall, Inc, 1985).

58 Florida House of Representatives, “Maintaining family contact when a family member goes to prison”, [n.d.] (available at: <http://www.fcc.state.fl.us/fcc/reports/family/famiii.html>, as researched on 24 May 2002), p.4.

those who have a good relationship with a parent before incarceration. The child mourns the loss of their parent often worrying about how they are doing.⁵⁹ Losing a loved one to prison is “even more demoralizing to wives and children than losing a loved one to death.”⁶⁰ Throughout their lives women have been confronted with difficulties arising from male criminality. These problems do not simply vanish when the men disappear behind prison walls. Husbands continue to have a significant impact on their wives’ daily lives, which is as important as that generated by dramatic encounters with police, courts, and prisons. Prisoners’ wives are not simply ‘separated’ from their husbands, although they share similarities with others facing “crises of separation.”⁶¹ The family is in fact sentenced by the incarceration of the offender. The family will do the same amount of ‘time’ as the incarcerated person, and usually harder time. In many cases, families face financial difficulties, emotional trauma, assumption of a single parent lifestyle, community ostracism and uncertainty and fear in dealing with an intimidating correctional system.

Loneliness is probably the hardest stress to deal with on a day-to-day basis. If the relationship was a close one, the wife misses being able to share the everyday happenings with her partner. It is further postulated that one of the greatest stressors for both the inmate and the rest of the family to deal with is the change in the family roles. The wife now becomes the head of the household. The husbands do sometimes try to maintain control as the head of the family, but at the same time, they lose touch with day-to-day realities. This can be a frightening experience for some wives who were very dependent on their husbands. The wife becomes responsible for daily decisions in not only the mother-role, but in the father-role as well.⁶²

According to the United States Department of Justice, one of the greatest needs of families is the need for information. Families can feel helpless and frustrated in the first few confusing months of a loved one’s incarceration. Another major need was a need for temporary lodging while visiting. Families with already tight budgets and limited financial resource were paying a great deal for lodging. Some would sleep in cars and at bus stations. Although this is costly and unsafe, these conditions limit the number of times family mem-

59 E Hostetter, & D Jinnah, Research summary: families and adult prisoners (Prison Fellowship, 1993), p.3.

60 BE Carlson, & N Cervera, “Incarceration, coping and support”, *Social Work* (36), 1991, pp.279-285.

61 TJ Flanagan, Long-term imprisonment, policy, science, and correctional practice, p.149.

62 J Howard, “Effects of incarceration on families of male juveniles”, 1994 (available at: <http://216.239.33.100/effects.htm+effects> as researched on 22 May 2002), p.3.

bers are able to visit. They also maintain that the incarceration of a loved one can be a major hardship for a family. The offender may have been the main source of income and thus in addition to the lost resources upon incarceration, the family take on additional expenses in order to maintain contact: including expenses relating to visiting, accepting phone calls, providing writing materials, and funding the inmate's institutional account.⁶³

Compounded with financial difficulties, families may find other difficulties in attempting to maintain a relationship with the offender, or even just to keep in touch. The physical isolation of the inmate from the family means that families must make active efforts to maintain relationships. An important concern for many prisoners is disassociation from their families and friends. The pain of separation is often profound, and with the passing of time, the probability of continuing to maintain contact, becomes an important concern. As inmates watch relationships between other prisoners and their families diminish, fears of their own betrayal and complete abandonment arise. Worries about their children's schooling and behavioural problems, the financial situation at home, transportation to visit, and divorce are ever present.⁶⁴ The pre-trial phase is a very confusing time for families because everyone else is too busy to explain how things work to the families. This is the first crisis period for a family beginning with the arrest and separation from the loved one for the first time. The family is experiencing shock, denial and a lot of pain. The second period of crisis comes on sentencing day when on many times the family is totally unprepared. When the sentence is pronounced, often the inmate is whisked away and the family is left in a state of shock.⁶⁵ Thus the disruption of family life is a negative consequence of imprisonment that is desirable to be avoided. The experience of incarceration weakens the prisoner's family structure that may lead to increased criminality in the second generation.⁶⁶

63 J Howard, "Effects of Incarceration on Families of Male Juveniles", 1994 (available at: <http://216.239.33.100/effects.htm+effects>, as researched on 22 May 2002), p.3.

64 TJ Flanagan, Long-term imprisonment, policy, science, and correctional practice, p.42.

65 J Howard, "Effects of incarceration on families of male juveniles", 1994 (available at: <http://216.239.33.100/effects.htm+effects>, as researched on 22 May 2002), p.4.

66 Florida House of Representatives, "Maintaining family contact when a family member goes to prison", [n.d.] (available at: <http://www.fcc.state.fl.us/fcc/reports/family/famiii.html>, as researched on 24 May 2002), p.1.

Stigma and Disgrace

The entire experience of being arrested, appearing in front of a court and being sentenced to prison is a traumatic experience, especially for first offenders. It is a deeply humiliating and degrading ordeal for many. The perception of the public is that prison is a place where evil persons are kept in order to protect society. The offender who is sentenced to prison is further aware of the low status to which he has sunk. He is aware of the stigma that is attached to imprisonment, and, to a certain extent, he views himself as society sees him, as a worthless, evil being. To many offenders, being sent to prison is the ultimate rejection; which often starts in early childhood and continued throughout a prisoner's life.

Involvement with the criminal justice system affects the inmate's social relationships in various ways. Each arrest and conviction brings with it a certain social stigma that would ordinarily make former friends and family less willing to become involved. The extent to which the inmate is ostracized in this way varies with the degree of stigma of the particular crime and the cumulative effect of repeated charges and convictions. Some distinctions in the extent of ostracism are also related to the different degrees of stigma different groups attach to various crimes.⁶⁷

In Schuttle (1995) Steyn declared:⁶⁸

“[There] can be little doubt that the fact of incarceration and the deprivation of freedom, the awesome discipline of the prison within the impersonal institutional environment, the stigma of having been in jail and the separation from family and friends are consequences of a prison sentence which almost all accused persons try anxiously to avoid.”

Wives become labelled because of the crimes committed by their spouses. The stages in the criminalization process, from arrest to sentencing, incarceration and release, set up a series of changes in the roles the wives found themselves enacting: 'wives of accused', 'prisoners' wives', and finally 'wives of ex-convicts'. It is assumed that whenever wives fill these roles, they become stigmatised unless they live in crime familiar communities.⁶⁹ “Social stigmatisation” is probably the most damaging effect on children whose parents are

67 N Holt, & D Miller, “Explorations in juvenile family relationships: Research report No. 46”, Chapter IV. California Department of Corrections [S.a.] (available at: <http://www.fcnetwork.org/readily/holt-miller/holt-miller4html>, as researched on 24 May 2002], p.2.

68 *S v Schuttle*, 1 SACR 344 (C) 350b-c. 1995.

69 TJ Flanagan, Long-term imprisonment, policy, science, and correctional practice, p.149.

incarcerated. The report goes on to say that the children are often ostracized or made fun of by other children and even adults. These children often exhibit aggressive behaviour, may withdraw or become very depressed.⁷⁰ Children may keep their parent's incarceration a secret and become quite and reclusive.⁷¹ They may carry around a load of guilt because their parent is in prison or because they may not want to visit the parent. Sometimes the children are not told the truth about where their father is. This lie compounds the problem when they later discover the truth. Often the embarrassment is too strong and wives or parents of inmates will lie to friends and other family members, saying he is away for a while. Sometimes a family will move in order to get away from the feeling that they are stigmatised. This causes even further disruption of the family structure. Another area where the family may experience the feelings of guilt and shame is during visits to the correctional facility. Often they are subjected to humiliating searches, regarded with suspicion, and subject to rules that may change at any time. The process of stigmatisation and disgrace continues as the prisoner enters prison. Many prisoners have described the routine of stripping off one's clothes, and with them one's identity as a free person; then come the regulation bath and issue of prison uniform and the symbolic prison number. This indignity, depending on the social standing of the offender, gives rise to differing degrees of disgrace to the prisoner.⁷²

The implications of prison overpopulation

The South African Prisoners' Organisation for Human Rights (SAPOHR) stated that it would take the government to court for violating prisoners' rights unless it urgently addressed overcrowded prison conditions.⁷³ SAPOHR said that overcrowding contributed to the spread of HIV/Aids and other infectious diseases. It further went on to say that conditions in prisons were inhumane and undermined human dignity as enshrined in South Africa's constitution. The infringement of prisoners' basic human rights caused by overcrowding is tremendous.

Conditions in prison are such that HIV easily takes advantage of its victims. Although, in theory, prisoners have access to medical care, in reality there is a massive shortage of medical staff because of the overpopulation problem. Prisons are also said to be a breeding ground for opportunistic diseases, which

70 E Hostetter, & D Jinnah, Research summary: families and adult prisoners (Prison Fellowship, 1993), p.7.

71 J Howard, "Effects of incarceration on families of male juveniles", 1994 (available at: <http://216.239.33.100/effects.htm+effects>, as researched on 22 May 2002), p.2.

72 JM Pollack, Prisons and prison life. Cost and consequences (San Marcos, Texas State University, 2004), p. 43.

73 S.A. News, "Prison overcrowding is 'a violation'", 10 June 2003 (available at: <http://iafrica.com/news/sa/243716.htm>, as researched on 5 August 2003), p.1.

tend to shorten the progression from initial HIV infection to full-blown, AIDS.⁷⁴ In May 2006 15 prisoners applied to the Durban High Court for the right to anti-retroviral (hereafter referred to as ARV) treatment. The court battle has been going on since April 2006 when the Aids Law Project (ALP) which represents prisoners, lodged an urgent application for the removal of all obstacles preventing 15 men and all prisoners who needed treatment, from getting ARV's and for the government to table their treatment plan in court.⁷⁵ According to the said media, one of the 15 prisoners, known as MM died three weeks ago. The Department of Correctional Services has known since November 2004 that MM qualified for ARV treatment yet he was not given ARV's until July 2006. The government's treatment guidelines recommend patients start ARV's once their CD4 count (which measures immunity) drops below 200. In April 2006 three prisoners had CD4 counts of five.

At the time of writing this article the ALP on the 26 September 2006 challenged the governments ARV treatment plan for inmates. They alleged that the health of the 38 HIV infected prisoners at Westville Prison is being jeopardised by inadequate medical treatment by the state.⁷⁶

Prison cells are overcrowded, especially the awaiting-trial section. Awaiting-trial prisoners do not receive the privilege of recreational activities. They are subjected to gross human rights violations; for example, all awaiting-trial prisoners returning from court are subjected to being searched naked in full view of everyone. Within a period of seven months one offender was subjected to this humiliation for 32 times. Upon their return from court offenders were required to remain in a cell, referred to as "a box" that accommodated 180 offenders. Offenders had to stand or sit until the following day due to the lack of space. These conditions deprived them of sleep and exposed them to individuals who appeared to have had a penchant for mocking, belittling and robbing others of everything they had. Drug usage, sodomy (which was often used as a form of revenge on other inmates) and assaults within the prison was rampant. It was "an accepted part of life" within the institution.⁷⁷

Conditions under which awaiting-trial prisoners were being held remained appalling. Often one toilet is shared by more than 60 prisoners. an over-

74 K Hlela, "Iron Cage? Combating HIV/AIDS in South Africa's prisons", Policy Brief (Centre for Policy Studies) 25, 2002 (available at: <http://www.cps.org.za>, as researched on 14 February 2003), p.2.

75 The Sunday Tribune - 27 August 2006, p.7.

76 The Daily News - 26 September 2006, p.2.

77 S Singh (personal collection), interview with post-released male prisoners, Khulisa crime preventative unit, Pinetown, KwaZulu-Natal, 19 September 2005.

whelming stench of blocked and overflowing sewage pipes; shortage of beds resulting in prisoners sleeping two to a bed while others slept on the concrete floors, often with only a blanket; insufficient hot water, no facilities for washing or drying clothes, broken windows and lights; and inadequate medical treatment for contagious diseases rife in prison.⁷⁸ The extreme levels of overcrowding are harmful to inmates in various ways. Firstly the inmates are subjected to brutality, extortion, and rape at the hands of cellmates. Secondly, personal living space allotted to inmates is severely restricted. Inmates are in constant presence of others, inmates sleep with the knowledge that they may be molested or assaulted by their fellows at any time. Thirdly, they must urinate and defecate in the presence of others.⁷⁹

Measures to Control Overpopulation

The problems of overcrowding in South African prisons have been addressed since the beginning of 2000. The various Departments; Justice, Correctional Services and Welfare and the South African Police Service worked as an integrated justice system, and commenced projects to reduce the cycle of people held in custody awaiting-trial. On 31 January 2000 the National Council for Correctional Services recommended the advancement of the parole date of certain categories of sentenced prisoners and called for the urgent awareness to be given to the steep increase of awaiting-trial prisoners.⁸⁰ Judge Fagan, Judicial Inspectorate of Prisons, suggested the release of some awaiting-trial prisoners. This was based on the following:

- Prisoners were detained under inhumane conditions;
- The spread of disease had to be curtailed;
- The enormous stress facing prison staff had to be relieved; and
- The state could not afford to pay for the accommodation of so many prisoners.

The targets of the awaiting-trial prisoners for release were those who were poor and could not pay bail amounts of R1000 or less. These offenders were found by magistrates to pose no danger or harm to their communities if they

78 J Fagan, "Prison overcrowding one of our biggest challenges to transformation", *Track Two*, 11 (2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/112overcrowding.html>, as researched on 5 August 2002), p.17.

79 ST Reid, *Crime and criminology* (USA, McGraw Hill, Education Group Inc. 1997), p.554.

80 J Fagan, "Prison Overcrowding one of our biggest challenges to transformation", *Track Two*, 11 (2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/112overcrowding.html>, as researched on 5 August 2002), p.17.

complied to the bail amounts and were released. This was not an amnesty and offenders had to appear in court when their cases had been remanded for hearing.⁸¹ The implementation of this policy would result in many advantages:

- Offenders could be reunited with their families;
- They could return to their employment and contribute to their families' upkeep;
- Juvenile offenders could return to school; and
- Would result in daily savings of accommodation costs.

On 27 September 2000, 8451 awaiting-trial prisoners were released and these brought albeit slight humanity to the overcrowded prisons. Flood and Grosfeld point out that strategies for solutions are seldom applied in isolation and suggest three measures for controlling prison over-population:⁸²

- Maximum use of alternatives to imprisonment, such as the release of awaiting-trial prisoners on bail and on their own recognizance, day-parole and placement under correctional supervision;
- Ensuring that the construction of new institutions and the expansion of penitentiary capacity keep pace with increases in prisoner numbers; and
- Establishing and specifying maximum occupancy levels and using early release mechanisms for low-risk prisoners.

There are two private prisons at Bloemfontein and Makhado (Louis Tri-chard) which caters for approximately 3000 prisoners each. The building of more prisons through privatisation is high on the governments agenda, but this raises a number of issues of political and moral principles, which go beyond questions of performance or cost.⁸³ Four more prisons are being built at Kimberley, Klerksdorp, Leeukop and Nigel to be completed by March 2007. This will provide 12 000 further places which will provide a total prison accommodation of 126 000.⁸⁴

81 J Fagan, "Prison overcrowding one of our biggest challenges to transformation", *Track Two*, 11 (2), April 2002 (available at: <http://ccrweb.ccr.uct.ac.za/two/112overcrowding.html>, as researched on 5 August 2002), p.18.

82 JJ Neser, *Penitentiary penology*, p.285.

83 Institute for Security Studies (ISS), "The problem of prisons. Correcting corrections, prospects for South Africa's prisons", Monograph 29, 29 October 1998 (available at: <http://www.iss.co.za/Pubs/Monographs/No 29/Prison.html>, as researched on 14 January 2003), p.1.

84 Annual Report of the Judicial Inspectorate of Prisons, 2004/2005 (available at: <http://judicialinsp.pwv.gov.za>, as researched on 14 January 2003), p.17.

The cost factor

Ten years ago during the financial year 1991/92 the cost to the taxpayer to run the prison amounted to R1 337 777 612,08 compared to the cost for the 2001/2002 year that was about R6 549 314 000,00. This is an increase of about 380% bringing the cost of keeping prisoners locked up to a staggering amount of R18 million per day.⁸⁵

The costs of imprisonment are high. In most cases there are other costs to the taxpayer and the economy besides those of prison operation: where the prisoner would otherwise be working, supporting his family, paying taxes, and perhaps making reparations for his offence by paying off a fine, court costs, or restitution. There are no more funds available for building more prisons; alternative methods of sentencing must be sought. We do not need more prisons; we need fewer prisoners.⁸⁶ In consideration of the enormous costs involved in building new prisons, which amounts to about R200 000 per prisoner, the answer is not merely to build more prisons.

Since violent crimes create the greatest single concern in the community, it is unavoidable that the State creates and maintains the necessary means effectively to keep violent offenders out of the community, in other words, to detain them in prison. Similarly, it is also logical that less serious offenders should rather be kept out of prison in order to utilize the limited prison accommodation for those criminal elements that can, in the interests of the proper protection of the community, not be dealt with other than by imprisonment.

Due to overcrowding, resources that might have been devoted to prisoner programs, mental health and drug treatment services; are being spent on creating bed-space because of the enormous increase in the number of prisoners.

Conclusion

The rate of incarceration in South Africa continues to remain extremely high. Four out of every 1000 South Africans are in prison. This is among the

85 Annual Report of the Judicial Inspectorate of Prisons, 2002/2003 (available at: insp.pwv.gov.za), as researched on 14 January 2003), p.2.

86 B Skosana, "On Africa Day – From 40 Years of Solidarity in Struggle to a Century of Unity and Peace", 27 May 2003 (available at: <http://www.dcs.gov.za/speeches/27may2003.htm>), as researched on 24 July 2003), p.1.

countries with the highest prisoner numbers per population in the world.⁸⁷ There are various reasons for the resultant overcrowding in prisons and one of the main problem stems from the criminal justice system as a whole. The overwhelming number of cases flooding the courts has created a tremendous backlog and large numbers of accused are being remanded in custody to already overcrowded prisons. It is a serious problem that hinders the department's ability to achieve its goals of safe custody and rehabilitation. This compounds the security and safety problems of staff and inmates. It concentrates the minds of administrators on the mundane operational tasks of transportation, feeding and bedding. More importantly it undermines internal social control, creates high potential for conflict and can negatively influence the relationship between staff and inmates.⁸⁸

Imprisonment presents certain unavoidable consequences of a negative or dysfunctional nature that affect the prisoner during his institutionalisation and hamper his re-absorption into society. An alternative to this form of punishment has to be implemented in earnest, in order for the legislation to overcome the problems associated with imprisonment and overcrowding. Prison accommodation must be used effectively through the selective application of imprisonment and as an incapacitating measure. Prison should be reserved only for the most serious of cases and should only be used as a last resort.

Although imprisonment fulfils an important social function it offers only temporary relief. Thus overcrowding adversely affects living conditions jeopardizes prisoner safety; compromises prison management, and greatly limit the prisoner's access to meaningful programmes. Overcrowding is a serious problem for which no straightforward and acceptable solutions have been found. The greatest challenge posed to prison capacity is that of awaiting-trial prisoners. The increase in the number of awaiting-trial prisoners is due to the pace in which cases are processed by the police and courts, as well as the inability of many alleged offenders to pay bail, even the smallest amounts. The resultant financial cost to the state is tremendous. The social cost of incarceration of these awaiting trial prisoners, who according to the law are presumed to be innocent, and of whom only about 35% will be convicted, in the "universities of crime", is inestimable.

87 Republic of South Africa, Annual Report of the Judicial Inspectorate of Prisons, 2002/2003 (available at: insp.pwv.gov.za), as researched on 14 January 2003), p.26.

88 JJ Naser, & D Takoulas, "Bursting at the seams: Prison overcrowding. A brief overview", 1995 (available at: <file:///A:\Bursting at the Seams Prison Overcrowding-A Brief Overview htm>, as researched on 29 June 2001), p.2.

There is no doubt that overcrowding is the main challenge facing South Africa's Department of Correctional Services. An interdepartmental strategy, involving more stakeholders than merely the Department of Correctional Services is needed urgently. The use of alternative mechanisms to reduce the overcrowding of South African prisons needs to be researched. Imprisonment as a sanction remains a reality, which cannot be wished away. All transgressors who pose a real threat to the community and who do not qualify for community-based sentences, for some reason or another, should still be dealt with within the prison context. Community-based sentences do however ensure that a significant number of offenders can be dealt with in a more balanced manner. This approach goes a long way to satisfy the need to limit the growth in the prison population and to provide a more affordable system, which will be to the benefit of everybody in South Africa.