

Racism and Discrimination in the South African Penal System

By Amanda Dissel and Jody Kollapen

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Centre for the Study of Violence and Reconciliation
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Racism and **Discrimination** in the South African Penal System

Foreword

The momentous events of 1994 that set our country on the path of what we all hope will be a sustained democracy, saw us inherit a host of challenges, all of them formidable and all of them central to the transformation of our society. Without a doubt racism was the hallmark of the system of governance and the defining feature in the social relationships that evolved between the government of the day and the people, as well as between the people themselves. Eight years later we are reminded, virtually on a daily basis, of both the legacy of that past as well as the ongoing manifestation of thoughts and deeds premised on the belief that one race is inherently superior to another.

To its credit, much of the efforts of this society has been geared towards fighting racism and making good on the constitutional guarantee of 'equality for all'. In the realm of the criminal justice system, there is acceptance that just as it was pivotal in maintaining the apartheid juggernaut, so too must it now become pivotal in the attempts at transforming and reconstructing society. While much attention, including media attention, has focused on racism within the justice system, the focus has largely remained on the courts and the police. The penal system has rarely been a focus - perhaps consistent with the current thinking that once a person has been incarcerated, the adage 'out of sight, out of mind' tends to apply.

Given the history of the penal system, a history of separateness, a history of abuse and the denial of the humanity of millions of our citizens, it was important that measures were taken to transform it into an institution worthy of taking its place in a democratic landscape. Much work and effort has gone into that process and much success has been achieved under difficult circumstances.

This study, an examination of racism within the penal system, seeks to contribute to a better understanding of the operation and influence of race within the penal system, to offer recommendations and suggestions that can advance the cause of anti-racism and hopefully contribute to

ensuring that our penal system reflects the values underpinning this society - equality and human dignity.

Shirley Mabusela

Chairperson: South African Human Rights Commission

An exploration of the impact of past injustices on the South African penal system

Introduction

I can claim neither uniqueness nor courage. What happened to me could happen to anybody and it will, I am sure, happen to a lot more people. That will be good: it was only as a prisoner - as a bandit in a South African jail - that I could begin to realize what life is like for most South Africans. I am white. I had to go inside to know what it's like to be black.

Hugh Lewin, political prisoner. (Lewin, 1989, p.14)

The right to be protected from racial, sexual and religious discrimination is a fundamental human right and widely recognised as such by international law. Yet, during the apartheid era the South African government flagrantly discriminated and implemented policies on the basis of race in the interests of white supremacy. South Africa was much criticized for its policies, finally resulting in a unanimous vote in the United Nations General Assembly for adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1965. State parties to the Convention condemn racism and undertake to take steps towards the elimination of racial discrimination. The Convention defines racism as:

Any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

(CERD, Article 1)

As with many former colonies South Africa has had a long history of discrimination based on race (it was colonized first by the Dutch and

later the British). However, what set it apart was the formal implementation in 1948 of the National Party's policy of apartheid, which was only finally dismantled in 1994. For almost 50 years South Africa was ruled by a supremacist white minority, while those classified as 'Asian', 'Coloured', or 'African'¹, were categorized as second class citizens and excluded from the political, social and economic life of the country. Laws were defined to regulate and control 'non-whites' interaction with 'white' South Africans.

The results of apartheid in South Africa are wide-reaching and grave. The country remains in transition and much work has to be done to eradicate the damage of the past.

The Third World Conference against Racism and Discrimination (WCAR), held in Durban in September 2001, aimed to review and assess the manifestations of racial discrimination, xenophobia and related intolerances in the international community, and to seek solutions to end these injustices. One of the results of the findings presented at the WCAR, and of particular relevance to this research project, is the WCAR's Declaration and Programme of Action that directly addresses racism and intolerance in the criminal justice system, with specific focus on penal systems. The Declaration repudiates racism and related intolerances that persist in the functioning of some penal systems, as well as in the application of law. It also focuses on the actions and attitudes of institutions and individuals responsible for law enforcement, especially where these have contributed to certain groups being over-represented in detention or prison (Paragraph 25). It also highlights that political and legal structures have been inherited from the past and often do not correspond with the multi-ethnic and multi-cultural characteristics of the population, leading to discrimination against indigenous peoples (Paragraph 22).

The Programme of Action urges States to design and implement strategies to prevent misconduct by law enforcement personnel motivated by racial discrimination (Paragraph 71), and to investigate possible links between

1. Different terms have been used to describe people of colour at different times in South Africa's history. 'Asian' was the category which included people of Indian and Chinese descent; 'Coloured' was used to describe people of mixed descent, usually from Malaysian, African and European ancestry; 'African', or 'Bantu' was used to refer to people of indigenous African descent. 'White' or 'European' referred to Caucasian people of European descent. These terms are still used in South Africa today, although people are no longer strictly categorized into these categories. The term 'Black people' is generally used to describe all people of colour in South Africa.

criminal prosecution, police violence and penal sanctions, and racism, racial discrimination xenophobia and related intolerances. It is believed that such investigations may well provide evidence for taking steps towards the eradication of discriminatory practices (Paragraph 85). At the organisational level, States are urged to ensure a diverse personnel corps that is free from racism and discrimination (Paragraph 74(a)).

The WCAR NGO Forum developed a Declaration and Plan of Action that more comprehensively deals with racism, xenophobia and discrimination within the criminal justice system. It calls for the appointment of an independent judiciary taking account of previously excluded groups (Paragraph 257 and 258). It calls for effective mechanisms, including data collection, to prevent racial profiling and reliance of race, ethnicity or group identity by officials, particularly in prisons and other places of detention (Paragraph 259). It also calls on States to ensure that strict and regular monitoring and control mechanisms are in place at all places of detention to end labour exploitation, and to ensure access to educational programmes and facilities that are intended to be preventative, diagnostic and curative, and to focus on the eventual reintegration of offenders into the communities on release from prison (Paragraph 262).

The WCAR conference and its declarations provide the context from which one can examine the evolution of the South African penal system from one inherently biased and racist, to one purporting to exist within the current democratic framework of South Africa's new democracy.

Impact of the past on the penal system and its current functioning

This research report focuses on the experiences and needs of one of the most vulnerable sectors of society - prisoners. It aims to investigate the impact of past injustices on the South African penal system, as well as to look at the current functioning of the system - in particular the attitudes and actions of the Department of Correctional Services.

The criminal justice system was responsible for the administration of apartheid penal laws and for dealing with offenders. Thousands of black people were tried and convicted of apartheid offences and then sent to

racially segregated prisons where they were held in conditions inferior to those where white prisoners were held. Although in recent years facts regarding prison conditions during the apartheid years are coming to light, during this regime and due to the closed nature of prisons, little was known of the conditions and treatment meted out to prisoners.

Despite the fact that nowadays prisons are marginally more open to public scrutiny, the prison community remains largely closed and as such prisoners are subject to the whims and control of the correctional system. Today, the system is governed by South Africa's Constitution and principles of humane incarceration, but the question is whether this has yet had much impact on the dark and lonely spaces behind bars.

It would seem that whilst prisons have been desegregated, incidents of racism in prisons continue. For instance, racism was alleged to have been the cause of the hostage drama at St. Albans prison in May 1998 (Pete, 2000, p. 25). According to a report in the Eastern Province Herald, a notorious inmate of the prison alleged that racism was alive and well in prisons resulting in differential treatment for black and white prisoners. He warned that 'something big' was going to happen in the prison if conditions and the situation were not improved.

This report aims to consider some of the implications of the new Constitution and democracy for the South African correctional services. Has the prison system changed from one that was inherently racist, to one that is respectful of the principles of equality and human dignity? The report begins by briefly outlining the racial history of the criminal justice system and the prison system. It then goes on to look at in more detail the legislative and policy transformation of this institution and the impact on prisoners and staff.

For the purposes of this report a statistical analysis was conducted on the numbers of people sentenced to imprisonment in order to determine whether there was racial bias (intentional or unintentional) in sentencing, or release from prison. These figures were examined from 1989 (in so far as accurate statistics were available), and from 1994 when more reliable figures were available, to 2001. Finally, the report looks at the experiences of staff and prisoners in three prisons in the country in relation to racism and discrimination.

Today's correctional services in context

The last decade has seen substantial shifts in the prison system occasioned by increasing awareness of human rights and in latter years, by South Africa's new Constitution. The prisons were desegregated in 1990, and efforts were made to create a more humane system of incarceration. However, this has occurred within a context of phenomenal growth in the size of the prison population. At the end of May 2001, the prison population stood at 170 044, a growth of 122 percent since 1994 when the population was 80 301. This growth has not been matched by a growth in cell accommodation, which had only increased to 102 048.

Most prisons in the country were designed and built some years ago based on models which facilitated the warehousing and control of large numbers of prisoners. Consequently most of the cells are communal cells designed to hold up to 23 prisoners. Last year the Judicial Inspectorate reported on prison conditions:

Conditions in prison, more particularly for unsentenced prisoners, are ghastly and cannot wait for long-term solutions. [For example, one toilet is shared by more than 60 prisoners; [there is a] stench of blocked and overflowing sewage pipes; shortage of beds resulting in prisoners sleeping two on a bed whilst others sleep on the concrete floors, sometimes with a blanket only; inadequate hot water; no facilities for washing clothes; broken windows and lights; insufficient medical treatment for the contagious diseases that are rife. The list of infringements of prisoner's basic human rights caused by overcrowding is endless.

(Judge Fagan, 2000)

As a result of chronic overcrowding, prison conditions remain largely the same as those in the later apartheid years, although all races of prisoners now experience them. Up to 60 people share communal cells designed to hold 23 inmates. The prisons are understaffed. While the overall staff prisoner ratio is 1:5, this number includes administrative personnel, and is not a reflection of warder to prisoners within the prison.² Services to prisoners are limited, with insufficient education and vocational training opportunities. These factors contribute to the high levels of frustration and aggression in prison.

² There are 32 572 people employed by the Department of Correctional Services (DCS Annual Report, 2000/2001).

Prisons in this country are largely ruled by a prison gang system that has been in place for over 100 years. The predominant gangs are the 'numbers' gangs organised along paramilitary lines, each with its own specific identity and function within the prison. For example, the 26s are associated with obtaining money and other goods by means of theft and cunning; the 27s protect and enforce the codes of the 28s; and the 28s are organised around the keeping of sexual partners or 'wyfies'. There are also the Big Fives who collaborate with the authorities as informers, and the Air Force gang whose job it is to organise escapes. The gangs' level of control varies, but in some institutions their power and structures are so strong that they govern every aspect of prison life including the allocation of accommodation, beds, food, and the trade of drugs and sex.

The correctional department has, to date, been unable to control these gangs which continue to recruit new members, organise their activities with alarming precision and generally perpetuate a reign of terror that threatens gang members and non-gang members alike.

Factors influencing growth in South Africa's prison population

In some ways transformation has impacted negatively on the efficacy of the criminal justice system. Since 1994 a number of legislative measures have been introduced which, in various ways, have created new challenges, and in some instances have overburdened a system that was not designed to administer justice fairly and equitably. By implication these legislative measures have also impacted on the correctional services, which could be described as the end-users of the criminal justice system.

Some of these changes have contributed to the extraordinary growth of the prison population, and this remains one of the biggest challenges facing the Department of Correctional Services.

Since 1994 reported crime has increased by 14 percent and serious reported crime by 37 percent. Of the reported crimes, just over 10 percent are prosecuted in courts and 8 percent result in convictions (Stack and Soggot, 2001). The decline in conviction rates over the last couple of years has failed to have any positive impact on prison numbers.

Bail

The administration of bail is a factor that is currently impacting significantly on prisoner numbers. An amendment to the Criminal Procedure Act³ in 1997 shifted the onus to persons accused of serious crimes to show why they should be granted bail, thus making it more difficult to secure bail. Many accused are granted bail amounts that they cannot afford. Furthermore, many people are unable to secure bail as they live in informal settlement areas and cannot provide the court with a fixed or easily verifiable place of residence; or due to unemployment, their employer's details. The bail laws tend to, still today, work to the disadvantage of the poor, mainly black people, in society.

Prisoners awaiting trial

The bail laws, as well as delays in finalizing cases, have impacted most significantly on the numbers of people held in prison awaiting trial. These prisoners are held separate from sentenced prisoners. The number of awaiting trial prisoners has increased from 19 571 in June 1994 to 55 558 in December 2000, an increase of 184 percent; while the population of sentenced prisoners has increased from 79 987 to 107 988, an increase of 35 percent over the same period (Schönsteich, 2001, p.103). At the same time, the average length of time spent awaiting trial has increased due to backlogs in the system from 76 days in June 1996 to 136 days in December 2000 (Ibid).

Minimum sentencing legislation

Another significant factor impacting on the size of the prison population has been the minimum sentencing legislation introduced in 1997.⁴ This legislation was designed to introduce a standard system of sentencing and to reduce the possibility of unfair discrimination. The amendments sought to introduce mandatory minimum sentences for certain categories of serious crimes. A study undertaken on behalf of the South African Law Commission found that the amendments had significantly increased the sentences handed down for some types of offences.⁵

3. Act no 51 of 1977, section 60(11)(a), as amended by Act no 85 of 1997.

4. Criminal Law Amendment Act 105 of 1997, effective from 1 May 1998.

5. A study found that after the implementation of the amendment sentencing severity for rape and robbery with aggravating circumstances increased significantly, as did sentences for people convicted of raping girls under the age of 12. There was also an increase in the percentage of life sentences given for rape and murder after the implementation of the Act (SALC: 2000, at page 14).

Attempts to relieve pressure on the prison system

The President has the Constitutional right to pardon offenders and remit sentences (Section 84(2)(j)). In several instances these measures have been used on a large scale to relieve overcrowding. One such amnesty took place just after the inauguration of the new government, and another on Nelson Mandela's eightieth birthday, but they have failed to have a meaningful impact. These releases have always been accompanied by fierce criticism from the public and none have occurred under the current President, Thabo Mbeki.

Following pressure from the Judicial Inspectorate, emergency measures were implemented in October 2000. As part of these measures the parole dates of 8 678 sentenced prisoners whose parole dates had already been approved, were advanced, and a further 8 451 prisoners, charged with less serious crimes who had been unable to pay bail of less than R1 000, were released pending their trials.⁶ Although this amounted to a substantial drop in the prison population, numbers had risen again by the end of the year (Skosana, Minister of Correctional Services, 2001).

In an attempt to increase capacity the department commissioned the building of three new prisons, two of which are contracted out to private companies - who will be responsible for the construction and management of the facilities. The private prison in Bloemfontein opened in June last year, and Kutama-Sinthumele maximum in Louis Trichardt, is planned to open this year. However, this endeavour only expands the capacity by 8 000 places, and therefore will have limited impact.

In a further attempt to relieve the pressure on the prison system the Judicial Inspectorate made a number of recommendations to reduce the population over the longer term. In response, in 2001 the department recommitted itself to: the enhancement of community corrections for sentenced offenders; increasing diversion options for low risk offenders; and utilizing electronic monitoring for awaiting trial prisoners and those serving parole (ibid).

Towards the end of 2001 two pieces of legislation were amended, both of which should have a positive impact on the awaiting trial population. The Judicial Services Amendment Act⁷ allows a head of prison head to

6. Section 67 of the Correctional Services Act 8 of 1959 empowers the Commissioner, on the authority of the State President, to release any prisoner before the expiration of his/her sentence of imprisonment. This is commonly referred to as a 'bursting release'.

7. Act 42 of 2001.

bring an application to a magistrate to have a prisoner released where that person cannot afford to pay bail, and where the prison head is satisfied that overcrowding is so serious that the human dignity, physical health or safety of prisoners is threatened. This would apply to all prisoners except those charged with serious offences. The second piece of legislation, the Criminal Procedure Second Amendment Act⁸, introduces plea-bargaining into the criminal justice system. This should circumvent a lengthy trial process in many cases.

Changes to legal framework

While conditions in prison have not, in reality, altered much, the last seven years have nevertheless brought about dramatic changes in the legal framework governing prisoners. These changes have sought to protect the rights of those affected and to promote equality among prisoners and staff.

Broadly speaking, the Interim Constitution of 1993, and the final Constitution of 1996, provided a new imperative for change in South Africa. Recognising the injustices of the past, the Constitution aims to 'heal the divisions of the past and establish a society based on democratic values, social justice and human rights', and provide a basis whereby every citizen will be equally protected by the law (Constitution, 1996, preamble).

The founding values of the Republic include respect for human dignity, the achievement of equality and the advancement of human rights and freedoms, as well as the principles of non-racialism and non-sexism. Particularly relevant to this study, the Constitution explicitly recognises the rights of people in trouble with the law, and those people who are arrested, detained and imprisoned by the law.

To this end the law applicable to prisoners was completely redrafted in 1998 to facilitate the implementation of these Constitutional principles. The 1998 Correctional Services Act⁹ explicitly recognises international human rights principles, and sets out the mandatory minimum standards for the treatment of prisoners. It also introduces a system of independent oversight of prisons and the treatment of prisoners through the

8. Act 62 of 2001.

9. Act 111 of 1998.

establishment of the Independent Judicial Inspectorate. The Act also provides for the appointment of independent prison visitors who visit prisons and respond to the complaints of prisoners.

However, despite this new law the implementation of the Act has been delayed. Only certain sections, such as those governing independent oversight over prisons, and privatisation, are currently enforceable. The sections relating to humane conditions and the minimum rights of prisoners are still largely theoretical, although the department recognises its obligations to meet these standards. It is expected that they will be fully promulgated during the first part of 2002.

Race and the administration of justice in South Africa

Introduction

In the eight years of South African democracy the criminal justice system has been required to transform into a system equipped to deal with the challenges of a new democratic society. Part of this process involves overcoming the legacy of a racist past and developing and implementing a system more aligned to the spirit of the Constitution. This has necessitated changes to policy, legislation and management - a tall order.

For the purposes of this report it is useful to briefly review the racial history of the criminal justice system. And while the focus of this report is on the correctional system, it is useful also to briefly look at aspects of the policing and justice system in so far as it impacts on prisons.

Underlying premise of white racial superiority

Racial discrimination in South Africa has been largely synonymous with the development of the administration of justice. From earliest times the country's laws have been racially defined and colonialism played a significant role in the development of racial prejudice, by emphasizing notions of white racial superiority. European culture was introduced to replace 'primitive backwardness in the process of "civilizing" the "native" peoples, who were characterized as childlike or mentally retarded and therefore unable to take care of themselves' (Dlamini, 1988, p. 37). This was accentuated when the National Party came in to power in 1948 and premised all its policies on racial discrimination, the purpose of which was to exclude blacks from the political, social and economic world of whites, while retaining their labour. Criminal sanction was used to support this structure. Laws were introduced such as the Population Registration Act¹⁰; and the Group Areas Act¹¹, that provided for racial segregation and imposed criminal penalties if one group occupied premises in an area set aside for another. The Reservation of Separate Amenities Act¹²

10. Act 30 of 1950.

11. Act 36 of 1966.

12. Act 49 of 1953.

established segregation in the realm of public entertainment, and personal relationships were regulated through the prohibition of mixed marriages between blacks and whites.¹³ Other race-based laws applied to participation in political affairs¹⁴, and the control and supply of liquor to blacks.

It was calculated that from the beginning of 1913 to 1972, between 33 to 44 percent of all prosecutions were related to race statutes (Steytler, 1987, p.70). The majority of blacks prosecuted for crimes under apartheid were those who breached laws relating to influx control, pass laws, black taxation, liquor offences, trespass and master and servant legislation.

Criminal sanction was also widely used to deal with extra-parliamentary opposition to apartheid. A wide range of administrative and criminal sanctions were used to outlaw political organisations, and the introduction of laws, such as the Internal Security Act were used to arrest, detain and prosecute opponents of the apartheid regime (Steytler, 1987).

Access to justice was racially defined

As a result of discriminatory education, blacks were generally less educated than whites and usually had less knowledge about the law and their rights (Murray, 1995). Most were unable to afford the high cost of litigation, or quality legal representation in criminal and civil cases. Furthermore, the negative attitudes of court personnel towards black people contributed towards the perception that the justice system was not concerned with the interests of the black population. The commissioners' courts were primarily used to administer the movement of black people within South Africa and research indicates that they generally failed to meet acceptable standards of justice. Most of the commissioners were poorly qualified and showed little judicial independence, and 'due process was not possible in the minute or less which it took to dispose of a case' (Steytler, 1987, p.76).

Racial discrimination applied not only in the commissioners' courts, but also in the application of laws in the lower and higher courts. Magistrates under apartheid were civil servants, and drawn from the public service rather than the legal fraternity. Most of them had risen from the ranks of

13. *The Prohibition of Mixed Marriages Act 55 of 1949, and the Immorality Act 23 of 1957.*

14. *The Prohibition of Political Interference Act 51 of 1968.*

prosecutors. They were accountable to the state and hence their independence was severely compromised. Another significant factor leading towards the discrimination of black people was that magistrates and judges were not only primarily drawn from the white population, but also from a particular sector of that population. In Professor Dugard's view members of the judiciary were predominantly:

White protestant males of conservative outlook, who support the present political/racial status quo (and often the National Party government) and who have little personal contact with members of other racial groups except at the master-servant level. Bearing this in mind, disparity in sentencing along racial lines is inevitable. Seen against this background, it becomes clear that the average judicial officer is in a better position to evaluate white motivation and behaviour and assess the most suitable form of punishment than is the case in respect of black offenders, as blacks and whites in South Africa live in two completely different worlds.

(Dugard in Dlamini, 1988, p.41)

Several well-known cases give insight into the racial beliefs of some of the judiciary. In the 1953 case of *R v Tusini*¹⁵ the court took judicial notice of the 'fact' that blacks can, and do, recognise people they know in comparative darkness in circumstances where it would be almost impossible for a white person to do so. In two other cases, that of *R v A* in 1952¹⁶, and the 1965 case *S v M*¹⁷, judicial notice was taken at a trial that black women submit to rape without protest. In the later case of *S v Augustine*¹⁸ in 1980, Rumpff, then Chief Justice, made the remark that sometimes coloureds and Africans stab one another for no reason, other than 'oënskynlike steeklus' [apparent lust for stabbing].

These comments may have been made as a result of conscious racial prejudice, but it is also possible that they were the result of unconscious racial bias, and reflect a lack of understanding of people who were 'other' to members of the judiciary. Co-author of this research report, Jody Kollapen, deputy chairperson for the South African Human Rights Commission, writes:

15. 1953 (4) SA 406 (A).

16. 1952 (3) SA 2121 (A).

17. 1965 (4) SA 577 (N).

18. 1980 (1) SA 503 (A).

Thus many judicial officers far from being independent and impartial adjudicators of disputes brought into the judicial arena and gave legal stamp of approval to assumptions of value, excellence, self worth and dignity that was based on a hierarchy of values with whites at the very top and blacks at the bottom. (Kollapen, 2000, p. 3)

Death penalty racially biased

The disparity of attitude, particularly towards blacks and whites, was starkly highlighted when it came to decisions concerning the death penalty. In a highly controversial article in 1969, Professor Barand van Niekerk implied that race had an impact on the imposition of the death penalty. He suggested that there was a greater likelihood that a black person would be hanged for killing a white person or for raping a white woman, than would a white man who killed a black person or who raped a black woman (Dlamini, 1988, p.40). So unpopular was this suggestion that Van Niekerk was charged with contempt of court. However, other studies have shown that the death penalty was indeed racially biased. Of the 1 070 people executed in Pretoria between 1980 and 1998, 97 percent were black¹⁹ (Bekker, 1989). A study by the Black Sash revealed that of the death row prisoners in its sample, all had been tried by one white judge sitting with two assessors. In most cases, the assessors were also white (ibid).

Addressing the concern that most of those sentenced to death were poor and black, and that most of the bench were white males, Constitutional Court President Arthur Chaskalson stated in his judgement in the case of *S v Makwanyane*²⁰ and others, that:

There is an enormous social and cultural divide between those sentenced to death and the judges before whom they appear, who are presently almost all white and middle class. This in itself gives rise to problems which even the most meticulous judge cannot avoid. The formal trial proceedings are recorded in English or Afrikaans, languages which the judges understand and speak, but which many of the accused may not understand, or of which they may have only an imperfect understanding. The evidence of witnesses and the discourse between the judge and the accused

19. 76% were Africans, 29% coloureds and 0.2% were Asians.

20. 1995 (3) SA 391 (CC).

often has to be interpreted, and the way this is done influences the proceedings. The differences in the backgrounds and culture of the judges and the accused also comes into the picture, and is particularly relevant when the personal circumstances of the accused have to be evaluated for the purposes of deciding upon the sentence. All this is the result of our history, and with the demise of apartheid this will change.

(S v Makwanyane at 48)

It is this history that has presented the challenges for the criminal justice institutions to transform so that they accommodate and promote the principles of the new democracy. Despite changes in policy and law, race continues to be a factor in the operation of the criminal justice system.

Challenges for change

The challenges of building unity and coherence within the government as a whole are immense. Logistical hurdles include having to integrate the administrations of the former homelands into one national department. Other less tangible, but equally obstructive problems include having to deal with personnel inherited from the previous regime, many of whom were not in favour of the new dispensation; as well as well-entrenched bureaucratic procedures.

The problems that the government as a whole is having to overcome, applies equally to the criminal justice sector. Each department has sought to develop policy and legislation that translates constitutional principles into practice. In most areas, the criminal justice system has developed a new vision that seeks to improve service delivery, develop modern and appropriate models of dealing with victims and perpetrators of crime, and to develop a transparent and accountable system of justice.

The Promotion of Equality and Prevention of Unfair Discrimination Act²¹ and the Employment Equity Act²² are two examples of legislation designed to advance equity and prevent discrimination. An affirmative action programme has been applied in the Department of Justice to change the racial profile of prosecutors, from predominantly white male, to a diverse group reflecting the racial and gender composition of the country.

21. Act 4 of 2000.

22. Act 55 of 1998.

However, writer Martin Schönreich argues that this process has been poorly managed and has resulted in many experienced prosecutors leaving the system. At the same time many posts have been kept vacant for long periods of time because of the desire to follow affirmative action plans in appointing new candidates (Schönreich, 2001, p.129). Although the prosecution service is now more representative, it still does not reflect the goals of the equity plan.

The introduction of lay assessors (members of the community who assist the magistrate in making decisions around the facts of the case) was an attempt to bring the magistrature closer to the public and to represent the views of the black community. The Constitution requires that the judiciary needs to reflect the racial and gender composition of South Africa, and that this must be considered in the appointment of judicial officers.²³

While affirmative action is an essential path towards restoring equity and addressing the overwhelming and damaging effects of apartheid, it needs to be balanced with the need to maintain an efficient justice system.

An overview of the South African penal system

Introduction

The penal system in South Africa was, broadly speaking, developed along the lines of most other penal systems in the world - from a focus on physical punishment, to one which focuses on notions of the rehabilitation of inmates. What characterizes the South African penal system is the extent to which it was developed to meet the requirements of a country premised on deep racial divisions and notions of racial superiority. Segregationist policy has influenced prison development in South Africa, its impact being seen in the physical structure of prisons and in the old policies and attitudes of many of the staff.

This section illustrates that colonial policy, followed by the policies of the National Party government, manipulated the penal system to satisfy labour requirements and in order to subjugate the black population through punishment and incarceration.

The development of prisons in South Africa

From early on in South Africa's history penal sanctions were used against convicted criminals. In the Cape, prisoners were held in early fortifications such as the Cape Town Castle, and later a rudimentary gaol. These facilities were mainly used for awaiting trial prisoners, while some convicted prisoners were held in the Dutch East India Company's slave lodge, and made to work. Others were deported to work on Robben Island (Van Zyl Smit, 1992, p.8). It wasn't until the end of the 18th century that the idea of imprisonment with the purpose of rehabilitation gained credence.

The abolition of slavery played a significant role in the development of the penal system in South Africa. The abolition process began in the Cape in 1807 with the outlawing of the slave trade and continued when emancipation became effective in 1838 (Shell, 1994, p.418). During this transition from slavery to emancipation, the powers of slave owners to

punish their slaves were gradually limited and that role passed on to the state. Detention in stocks and whipping were common forms of punishment meted out to slaves. However, as the economy of the Cape developed, the demand for labour grew. Since slave labour could no longer be relied upon to fulfil the needs of the growing economy, the penal system soon became instrumental in increasing the labour force. Laws were introduced in 1809 to control the movement of the indigenous Khoi-Khoi through the allocation of passes. Failure to carry the requisite pass, or being found in an area without one, resulted in the Khoi-Khoi being sent to prison to do labour. This policy was also used unsuccessfully on indentured labourers from England. In 1823 a Commission of Inquiry was appointed to investigate the labour and penal systems. The report, published in 1828, noted that the pass system was subject to abuse and proposed the abolition of the penal restrictions applying specifically to labouring Khoi-Khoi (Van Zyl Smit, 1992, p.9).

The impact of prisoners as labour

In the early 1800s, the penal system did not formally discriminate or classify criminals in terms of race, although in its implementation the majority of its subjects were indigenous inhabitants of South Africa. In the next two decades, the notion of 'rehabilitation' gained acceptance as the goal of punishment. Central to this concept was the idea that rehabilitation could be achieved through the useful labour of prisoners. A new legislative framework allowed for the employment of convict labour in the construction of public roads.²⁴ Prisoners from Robben Island were transferred to the mainland and sent to join work parties, and prisoners were housed in convict stations (Van Zyl Smit, 1992, p.12).

It seems clear that this system of control and isolation from society was informed by a racist agenda. It aimed to change the nature of the prisoner, and introduce 'civilization' to Africans. Newman writing on the benefits of this punishment noted:

You may behold [at the convict station] indolence learning industry, and the idle and thieving Bosjesman, and the cattle-lifting Kaffir; making a high road for the commerce and civilization, in which the spoor of theft shall give place to the rut of the farmer's

24. Ordinance 7 of 1844, "For the Discipline and Safe Custody of the Convicts employed on the Public Roads" (Van Zyl Smit, 1992: 11).

wain. In those stations the savage nature is restrained by wholesome discipline, and yet the same savage by his penal toil turns the wild mountain-pass to a road of usefulness.

(Newman, 1855, in Van Zyl Smit, 1992, p.13)

With the discovery of diamonds in Kimberley, there was an additional need for labour and the focus of prison labour shifted to the mines. In 1882 the Kimberley prison became the first prison formally segregated along racial lines, and in 1885, the De Beers Diamond Mining Company became the first non-State corporate entity to employ convicts on a regular basis (Van Zyl Smit, 1992, p.15). The company took the prisoners off the hands of the state and, in addition, paid the state money for them, resulting in the state making a profit from its prisoners. The De Beers Company even went as far as building a branch of the prison which it staffed, and where prisoners were housed, fed and controlled by the company (ibid). The government undertook to supply De Beers with native labour, and although it was not meant to be exclusively prison labour, large numbers of black convicts were transferred from the 'Native Territories' to De Beers. It was then that, 'the role of the State as provider of unskilled black labour for the mines through the penal system had become manifest' (ibid).

The State's obligations to the private sector, and its profit motive thus provided the impetus to increase the numbers of people in the penal system, and the implementation of pass laws became a significant contributor to the prison population.

Beginnings of racial segregation in prisons

The first systematic attempts to introduce racial segregation into the prisons occurred at the same time as racial segregation was being applied in mining compounds. While white workers had relative freedom and better living and working conditions, the lives of black workers were strictly controlled within and outside of the mining compound (Foster, 1987, p.13). This ideological shift towards segregation was reflected in the concerns expressed by the Committee of Inquiry into the convict system in the Cape Legislative Assembly in 1887. The committee

recommended a complete segregation of Europeans from Natives in gaols and convict stations, rationalising the arrangement as follows:

The association of the Native with the European, [in prison] not only crushes out of the European what little moral feeling there may be left in him, by the sense of degradation, but lowers the whole race in the eyes of the Native, destroying that respect for us without which we can never hope to succeed either as their rulers or as their preceptors, leading them by counsel and example into the higher life of civilization.

(Van Zyl Smit, 1992, p.17)

These sentiments were later reflected in legislation, although racial segregation was left as a matter of administrative policy in the Cape. Similar developments in prison labour and classification also occurred in Natal where in 1887 prisoners were classified into three groups; European, Indian, and natives, and dietary scales accorded to each group (Van Zyl Smit, 1992, p.18).

On the unification of South Africa, the penal law was consolidated and developed. The 1911 Prison and Reformatories Act²⁵ entrenched racial discrimination throughout the Union. Section 91(1) of the Act provided:

In any convict prison or gaol...as far as possible, white and coloured convicts and prisoners shall be confined in separate parts thereof and in such manner as to prevent white convicts or prisoners from being within view of coloured convicts or prisoners. Wherever possible coloured convicts or coloured prisoners of different races shall be separated.

(Van Zyl Smit, 1992, p.25)

This Act established the policy of 'the native for outside work and the European for inside workshop work' (ibid). It also provided that blacks be sent to road camps for violations against the Pass Law, the Tax Law or the Masters and Servants Law. By the early 1900s the prison population was already inflated because of violations of these laws. The prisons continued to be a source of cheap prison labour to the mining industry (DCS, 1999, p.1).

Because of the swelling of the prison population, the decision was made to place non-European prisoners at the disposal of farmers at a very low cost. In 1934 a system was developed to allow prisoners to be sent to do farm labour for a daily fee paid to the prison (Giffard, 1997, p.14). In 1947 a proposal for the construction of a labour outstation by private enterprise was accepted by the Minister of Justice, with African prisoners being the labourers sent to the farms (Venter, (date unknown), p.10).²⁶ The rationale for sending 'Natives' as opposed to Europeans to these farms was that:

In contrast to the European who can be usefully employed in and around the institution itself, the Native is almost without exception an unskilled labourer and used to a life in the open air... The non-European is removed from a detrimental urban environment. The prisoner is enabled to develop self-discipline and a positive approach to work in general. This favours his eventual rehabilitation.

(Venter, pp. 9-10)

Following international trends in penal reform and pressure from both the liberal South African Institute for Race Relations (SAIRR) and the Penal Reform Committee, the Lansdown Commission on Penal and Prison Reform was formed in 1947 (Van Zyl Smit, 1992, p.26). The SAIRR alleged in a memorandum that prison reform had not only been implemented because the prisons were full of black inmates. The memorandum included a number of recommendations including: the improvement of prison housing by replacing dormitory cells with single cells; the decriminalisation of race laws such as the pass laws; abolishing the hiring of prison labour to private individuals; the introduction of rehabilitative work for black and white inmates; and finally that prisoners' aid and after care should be made available to blacks as well as whites (Van Zyl Smit, 1992, p.27). The Lansdown Commission was supportive of these recommendations and was highly critical of the 1911 prison legislation. It made several recommendations, one being that prisons be prohibited from hiring out prison labour to outside entities.

The recommendations of the Commission presented in 1947 were not well received by the South African government, and following the

26. These prison outstations were erected by farmers' associations according to the specifications of the Department of Correctional Services. After construction, control of the structure was then transferred to the Department, which then put its own officers in control.

National Party election in 1948, the proposals were not implemented. Permission was subsequently given to more farmers' associations to utilize prison labour (DCS, 1999, p.2).

The apartheid years

In 1948 the National Party formally introduced the concept of apartheid, which was based on a rigid system of race classification, and attempted to exclude blacks from the political, social and economic world of whites, whilst retaining their labour. Criminal sanction was used to prop up this structure through a system of laws designed to control the labour, movement, status and rights of franchise and ownership of property (Steytler, 1987). The pass laws were extended with the aim to limit black urbanization. In addition, there were other laws which criminalized ordinary life for black South Africans, such as those relating to curfews, and the control of black liquor production and consumption (Buntman, 1997, p.282). The criminal justice system became increasingly used as a form of political and social control by the apartheid government.

The 1952 Natives Act²⁷, commonly referred to as the pass laws, were formalized to further regulate the movement of black people inside South Africa, and this became the source of large scale arrests. It forced black people to carry identification with them at all times and it was a criminal offence to be unable to produce a pass when required to do so by the police. No black person could leave a rural area for an urban one without a permit from the local authorities. On arrival in an urban area, a permit to seek work had to be obtained within 72 hours. According to Gerald Kraak, in the 1950s 200 000 people arrested for pass law offences were handed over to farmers as labour, often without even appearing in court, and subjected to barbaric conditions. Prisoners were housed *en masse* in barracks, barns and sheds. Many were clothed in sacks. They worked extremely long hours without payment or proper meals, and were subjected to assaults and beatings (Kraak, 1993, p.32).

In 1959 new comprehensive penal legislation, the Prisons Act²⁸, was introduced - part of this legislation is still in operation today. The law was framed to include the United Nations Standard Minimum Rules for the Treatment of Prisoners and aimed to establish a minimum standard

27. Act No 67 of 1952.

28. Act No 8 of 1959.

of decency. Although these standards were never fully applied, and remain largely theoretical, they represented an important step in recognising the rights of inmates to humane treatment. On the other hand, the Act concretised racial segregation within prisons and introduced the concept of ethnic separation of black prisoners (DCS, 1999, p.2). This entailed the development of a two-stream correctional policy for Bantu and European offenders, and in effect it created:

...Special arrangements for members of different Bantu nations in one institution. Placing the Bantu offender in a correctional institution for people of his own group and race not only recognizes existing ethnological differences but is in accordance with the national policy on differential development.

(Rhodie, 1967, p.25 quoted in Giffard, 1997, p.16)

Black and white prisoners were housed separately and out of sight from one another and black prisoners were kept in communal cells while whites had individual cells (Africa Watch, 1994, p.18). Prison diets were also determined along racial lines. Regulation 132(4) of the Prisons Act determined that 'a prisoner shall be provided with food according to the prescribed diet scale applicable to his race group' (Van Zyl Smit, 1987, p.158). The difference in diet was justified in terms of the prison catering to different cultures, although bizarrely, a prisoner condemned to death was to be given the same dietary scale as white prisoners.

The 1959 Prisons Act also entrenched the military character of prison management. Although staff members were defined as civil servants, their status was that of para-military personnel (Dissel, 1997, p.5). Apartheid was also apparent in the delineation of the duties of personnel. All white warders automatically outranked all black warders, and black ministers of religion could not have access to white prisoners (Giffard, 1997, p.16).

Furthermore, the new Act closed off the prison to outside scrutiny and introduced draconian measures to prohibit reporting on prisoners or prison conditions or from publishing photographs of them.

In 1983, the Hoexter Commission reported that the incarceration of prisoners as a result of influx control measures was a major cause of

overcrowding (DCS, 1999, p.4; Steytler, 1987). However, when influx control began to decline in the mid-1980's, this failed to reduce the number of prisoners as it was offset by the 25 000 persons detained in terms of emergency regulations and security laws (Steytler, 1987, p.79).

Prison labour continues

As in the past, in an attempt to reduce prison overcrowding, large numbers of prisoners were released on parole under the supervision of a farmer, often shortly after admission to prison. By 1986 there were 22 jails housing some 10 000 prisoners at outstations (Kraak, 1993, p.33). However, international pressure began to impact on this system and in the same year, the government announced that it would phase out the prison labour schemes. The incarceration of political detainees, pass laws and the prison labour system had brought international criticism and condemnation to the South African Prison System (DCS, annual report 1999, p.3). Norway, Sweden and Ireland imposed bans on the import of South African fruit because of the use of prison labour. Prison outstations were finally shut down in mid 1988; there was a decline in the use of prison labour; and the system of paroling prisoners under paid contracts was also phased out.

Political prisoners

According to Don Foster, 'detention emerged in the 1950s and 1960s as part of a steadily growing package of laws and non-legal devices to maintain white, Afrikaner Nationalist rule in the face of the growing organisation and militancy of black (and white) opposition.' (Foster, 1987, p.4). Foster argues that the purposes of detention were to: 1) gather information in political trials and to police the opposition, 2) remove people from political organisations and to isolate groups and, 3) subject people who were opposing the government to political and psychological violence. He argues that detention was used to suppress government opposition.

As a mode of psychological violence, the substantial number of deaths in detention and the widespread rumours of vicious treatment and torture at the hands of the security police both work

to generate a climate of fear that operates in favour of the state.
 (Foster, 1987, p.5)

Under the guise of promoting public safety, the penal law was also used to suppress the steadily growing anti-apartheid movement. In 1953, the Public Safety Act and the Criminal Law Amendment Act were passed. These Acts empowered the government to declare stringent states of emergency and increased penalties for protesting against, or supporting the repeal of a law. The penalties included fines, imprisonment and whippings. Many people were detained under this Act. In the 1960s the anti-apartheid movement gained strength and on 21 March 1960, a large group of black people in Sharpeville protested by refusing to carry their passes. The police opened fire on the crowd killing dozens of people. Within ten days of the shootings, the government declared a state of emergency under the Public Safety Act of 1953. It assumed broad powers to arrest and detain indefinitely anyone suspected of anti-government activity. Over 11 000 blacks, 90 Asians and 18 whites from a wide variety of political organisations were detained under the emergency regulations (Foster, 1987, pp.21-22).

The Public Safety Act of 1953, and later the Internal Security Act of 1982 allowed for widespread detention, and created conditions for torture and brutal treatment of apartheid's opponents. It also made provision for the trial and conviction of political leaders. The State of Emergencies declared in 1960, 1985 and 1986 facilitated large-scale arrests and detention of people.²⁹ Although most of the political detainees were held at police stations, large numbers were also held in detention in prisons.

Many political prisoners, those convicted for opposing apartheid, were also held in prison.³⁰ Although the state initially denied the existence of political prisoners, preferring the notion of 'security' prisoners³¹, a special Security Section was created in the Prison Service to deal with these prisoners (Buntman, 1997, p. 286). Political prisoners were housed separately from 'ordinary convicted criminals', many of them on Robben Island.³²

29. It was estimated that there were 73 000 detainees between 1960 and 1997 (Coleman, 1998: 50).

30. The total number of political prisoners is difficult to ascertain, in part due to the narrow definition of security prisoner used by the state. For example, the official number of 'security prisoners' given by the state in 31 March 1984 was 347. However, the Human Rights Committee estimated that there were between 2 500 and 3 000 political prisoners in South African prisons at that time (Coleman, 1998: 78).

31. In 1966 the Prison Commissioner alleged that there was only one political prisoner (presumably Pan African Congress leader Robert Sobukwe), and that the other prisoners usually referred to as political

The Rivonia treason trial, which ended in 1964, sent senior ANC officers to prison for life, including Nelson Mandela, Govan Mbeki, Walter Sisulu and Denis Goldberg. All except Goldberg, who was white, were sent to Robben Island (Buntman, 1996, p.94).

Prisoners on Robben Island were all black, and the conditions there were exceptionally harsh. Although the policy was not to have black warders, there were still coloured warders up to 1962, but the following year they were removed and the prison staff became exclusively white (Buntman, 1996, p.97). According to Fran Buntman:

Racism overtly and covertly defined much of prison life...prisoners were all black and warders all white, and racial slurs cast by the latter were the hallmark of daily life for prisoners, at least in the early years

(Deacon, 1996, p.101).

From reports it seems that there was an attempt to make life as unpleasant as possible for Robben Island prisoners. The brutality and cruelty meted out to them were deliberate and racist acts of revenge (Buntman, 1997, p.285). When Nelson Mandela arrived on Robben Island he was greeted by a group of white warders who said, 'Dis die Eiland! Hier gaan julle vrek! [This is the Island. Here you will die!]' (Mandela, 1996, p.68). Warders were made to understand that their job was to demoralize blacks and were given a large degree of latitude in order to do so (Buntman, 1996).

One of the most brutal aspects of life on Robben Island was the hard labour the prisoners were forced to carry out and the abuses associated with it. Most prisoners worked in the quarries, quarrying lime and stone, or chopping wood and crushing stone (Buntman, 1996, p.102). According to Nelson Mandela, 'We began to work in the first week, crushing stones with hammers in the courtyard. We sat in four rows, wearing hand-made wire masks to protect our eyes. We were not allowed to talk to each

prisoners were those persons 'tried in an open court, convicted and sentenced for offences against public security'. (Prisons Department report 1963 - 1966 quoted in Buntman, 1997: 285).

32. Robben Island was first used as a prison in 1658 when Van Riebeeck, early Dutch settler, suspected one of his Khoi-Khoi translators, Autshumato, of using his position as intermediary between the indigenous population and the settlers for personal gain. He was placed on Robben Island with two of his Khoi-Khoi companions (Deacon, 1996:17). In the 1600s the population was mixed, but according to Robert C.H. Shell, 'The racial mixing among convicts and political prisoners does not suggest a departure from the usual racial attitudes of the Dutch--far from it. Forcing European prisoners to live with low-status and enslaved groups was part of their punishment' (Shell, 1994:196).

other' (Mandela, 1994, p.81). According to Nattoo Babenia, when he was sent to the quarry to work, if a prisoner called a warder 'sir', the warders would yell, 'Ek's nie jou "Sir" nie, ek is jou Baas!' [I am not your Sir, I am your Master]' (Buntman, 1996, p.103).

The hard labour was coupled with severe punishment and beatings. Indres Naidoo who was imprisoned on Robben Island from 1963 to 1973, was once charged with disobeying a lawful command when he refused to work barefoot in stagnant water. He says:

The final result was I was sentenced to four strokes. They tie you onto a [post]... your hands on both sides and your feet down there. You are stark naked, they put a padding on your back and a padding on your thigh to expose your buttock only.... With the atrocities, it was a daily occurrence on the island. We were beaten with rubber hoses, we were beaten with batons, we were beaten with anything that they had with them. Their attitude was that this is Robben Island and no prisoners leave Robben Island alive, and that was very, very clear to us.

(TRC Prisons hearings, 1997)

Ironically, while the political prisoners may have attracted the worst treatment initially, the continued national and international focus on their treatment and conditions of imprisonment began to have the effect of improving the conditions in prisons generally in the 1970s and 1980s (Buntman, 1996 ; Van Zyl Smit, 1992). Coupled with a number of judicial challenges brought by political prisoners, the state began to relax some of the regulations.

Racism and **Discrimination** in the **South African Penal System**

Prison conditions under apartheid

Separate Development

This is Sun City³³

a prison for all,
 separate amenities
 for separate sexes
 and separate races
 just like Verwoerd
 planned it.

This is Sun City

where the only
 equal Amenity
 is the food...

mealie rice and samp
 with worms
 a la carte

(Jessie Duarte, in Schreiner, 1992, p.262)

The history that South African prisons share with the mine compounds was most apparent in the design of communal cells for black prisoners. The conditions in the communal cells were overcrowded and deplorable. Designed for between 10 and 23 prisoners, up to 60 inmates could be held in these cells. The cells were unfurnished except for sleeping mats and blankets. In older prisons the inmates were forced to use uncovered sanitary pails standing inside the cell (Hellman, 1975, p.105), although later prisons were built with a flush toilet and shower facilities within the communal cell. This unhygienic arrangement the Lansdown Commission described as 'one of the worst features of these institutions', adding that, 'the atmosphere of a communal prison cell upon its being opened up in the morning, is dreadful beyond description'.

In his prison memoir, Hugh Lewin describes the overcrowded conditions that blacks suffered at Local Prison where he was housed for part of his term. He writes that at Local, no matter how grim the conditions, they,

33. *Sun City is the colloquial name for the Johannesburg prison. The prison was built in the late 1970's at the same time as Sun City, the luxury casino/hotel in Bophuthatswana, then an independent homeland. The prison and the hotel shared similar features, including the bright lights that shone all night, and the buses that transported visitors from the gate to the prison, or casino.*

the whites, were daily reminded of the differences in their treatment compared to black people. He relates that the cells in the black and white sections of the prison were identical. In these 'double-cells' that were shared by three whites there was room for three mats, lockers and small tables, but nothing more. During the mornings he could see through the gate to the black section when the cells were being emptied. The warder would stand in front of the cells and yell for the prisoners to come out, 'and the bandiete would run out, five, ten, fifteen of them, never less than fifteen, often as many as twenty from the three-man cells' (Lewin, 1989, p. 130).

In *Snake With Ice Water, Prison Writings by South African Women*, the women capture some of the day-to-day realities of prison life including the diet. Phyllis Naidoo, an Indian anti-apartheid activist had this to say about the prison diet:

I was given bread with a lick and a promise of syrupy fat. Eight 'coloureds' and myself were given chunks about three inches thick. Blacks were given boiled mealies, a large variety over half an inch square. Certainly chickens would choke on it. But the women threw it up into their mouths and chewed and chewed. Why this difference when we were all 'criminals'?

(Schreiner, 1992, p.95).

Common law prisoners shared the experiences so eloquently described by the political prisoners. These adverse conditions had dire consequences for the administration of the goals of rehabilitation, and also impacted negatively on perceptions of the criminal justice system more broadly. The Hoexter Commission criticized the system, arguing that the imprisonment of thousands of blacks for technical offences had a two-fold psychological effect:

In the first place it breeds in many blacks - especially those who have actually suffered the shame and indignity of imprisonment for a minor offence - contempt for the administration of justice in general and the criminal courts in particular. In the second place the result is that, contrary to sound social norms, the serving of a prison sentence is no longer regarded as a stigma by many black inhabitants of the country; and that imprisonment as a

punishment for the commission of crime is consequently losing its power as a deterrent.

(Quoted in Steytler, 1987, p.79)

Transformation of the prisons

From as early as the 1960s rights-based litigation had begun to have an impact on the treatment of prisoners, with their rights being increasingly recognised. While the 1959 Prisons Act sought to incorporate some of the principles of the United Nations Standard Minimum Rules on the Treatment of Prisoners, it was recognised that prisoners' rights were restricted. The courts held that prisoners only had basic rights necessary for their survival.³⁴ In the landmark case of *Minister of Justice v Hofmeyer* in 1993 the courts recognised for the first time that a prisoner retains all his personal rights except those specifically abridged by law. The court held that a prisoner retains all the 'basic rights that all citizens have, but that due to the very nature of being a prisoner, certain rights such as the right to liberty, freedom of movement and association have to be limited'.³⁵

Moves were afoot from 1988 to desegregate prisons. All references to race were removed in 1988, and legislative amendments were introduced in 1990. This was not accomplished without fierce debate from members of the Conservative Party. M J Mentz, honourable member for Ermelo, opposed the new legislation vehemently. He argued:

For the first time the NP [National Party] has now said that if people do not agree with it about integration, it is going to force such people to integrate. All of a sudden the principle of dissociation has been thrown overboard - it no longer applies...Up to now the right of dissociation has been acknowledged outside the prisons. But as soon as one is helpless and totally at the mercy of the State, dissociation no longer applies. This is something we cannot condemn strongly enough. The government is forcing integration on defenceless people.

(Hansard, 1990, col. 12143)

34. In *Goldberg v Minister of Prisons* (1979 1 SA 14 (A)) the court found that the Commissioner of Prisons had the discretion to determine the treatment of prisoners, although their basic rights to food, clothing, accommodation and medical aid were recognised. However, the influential dissenting judgment of Judge Corbett held that prisoners have a substantial residuum of rights that could not be denied. *Mandela v Minister of Prisons* (1983 1 SA 939 (A)), confirmed that the basic rights of a prisoner 'must survive incarceration except as far as it is attenuated by legislation, either expressly or by necessary implication'.

35. 1993 3 SA 131 (A) 141 A - H.

Members of the Conservative Party viewed forcing whites to be housed with non-whites as being an 'additional and undeserved' punishment (Hansard, 1990, col. 12145).

Despite the legislative change, many prisons remained segregated and white prisoners were still to be found in the better sections of the prisons until 1994. According to a study conducted by Africa Watch, the integration of prisons came as a rude awakening to white prisoners. The Africa Watch investigators provided the following account of Pollsmoor Prison:

Pollsmoor Prison was integrated in December 1991, some white prisoners-until then used to what they had grown to consider the norm for prison conditions; that is, single beds with complete bedding, hot and cold water, adequate food, clean and vermin-free cells-suddenly, to their utmost shock, found themselves in what black prisoners had grown to consider normal. They were housed in cells that held twice the number of prisoners they were designed to house, and made to sleep on sleeping mats laid out on the floor, with two lice-infested blankets as bedding. Cells were dirty, damp, poorly lit, badly ventilated and with insufficient ablution facilities.

(Africa Watch, 1994, p.20)

On 2 February 1990, the State President lifted the ban that was placed on certain political organisations and sanctioned the release of political prisoners. Mirroring the rapid change in broader society, the Department of Correctional Services underwent a series of changes as well. The Prisons Act was renamed the Correctional Service Act, and the renamed Correctional Services Department was reorganised in accordance with business principles. The department also began to engage with a need to bring South Africa in line with international penological trends. The department became responsible for the implementation of correctional supervision, an alternative sentence to imprisonment aimed at reducing the number of prisoners.

In recognition of the Standard Minimum Rules, the prison punishments of solitary confinement, and punishment by a spare or reduced diet (often in combination with solitary confinement), were abolished in 1993.

Corporal punishment for prisoners was also abolished, and was found to be unconstitutional as a sentence for juveniles in 1995³⁶, and was subsequently also removed from the Criminal Procedure Act as a form of punishment for adults.

The regulations that called for overt racial discrimination with respect to staff members were also abolished. As late as 1990, the differential treatment along racial lines affected not only prisoners, but prison staff as well. Dirk Van Zyl Smit, professor and prisons expert, visited Helderstroom Prison and observed that white and coloured warders lived separately, had separate messes and clubs and separate buses took their children to the segregated schools in the nearby town (Van Zyl Smit, 1991, p.83). Blacks and whites resided in markedly different standards of housing under apartheid. At Diepkloof and Pollsmoor prisons black and coloured warders and their families lived in old cells in deplorable conditions. They were even prevented from using certain prison facilities, such the golf course and other recreational facilities set aside for the exclusive use of whites (Hansard, 1990, col. 7423).

A broad agenda for social change

The Government of National Unity was elected in April 1994, led by the African National Congress (ANC). The 1993 Interim Constitution and then the final Constitution of 1996 seeks to protect and promote human rights. In the founding provisions, the Constitution affirms that South Africa is a democratic state founded on principles of human dignity, the achievement of equality and the advancement of human rights and freedoms. The principle of non-racialism and non-sexism is firmly established and is reinforced by the extensive equality clause in the Bill of Rights. The Constitution also entrenches the basic right to be treated with dignity, and deals specifically with the rights of prisoners - detained and arrested people being dealt with in some detail.³⁷

One of the founding policy documents of the new government was the Reconstruction and Development Programme (RDP) which set a broad agenda for social change. The agenda for penal reform stressed the need for non-racial and non-sexist principles. It focused on the human rights

36. *The Constitutional Court case of S v Williams & Others 1995(30 SA 332 (CC) found that juvenile whipping was contrary to human dignity, and was cruel, inhuman and degrading.*

37. *S 35 of the Constitution deals with the rights of arrested, detained and imprisoned people.*

of prisoners, humane accommodation and 'rehabilitation and training' (ANC, 1994, p.125).

Under the new government, the challenge was for all government departments, including the Department of Correctional Services (DCS) to map out a new vision in line with Constitutional principles and the spirit of transformation. In October 1994, the DCS released a White Paper wherein the department took the position, for the first time, that it should respect the fundamental rights of all prisoners (DCS, 1994). However, it was slow in extending full recognition of these rights to prisoners and in translating the rights into daily practice.

In response to increasing pressure from civil society for greater transparency and openness to community involvement, a Transformation Forum on Correctional Services was formed in 1995, convened by the Parliamentary Portfolio Committee on Correctional Services. The transformation forum included representatives from the DCS, the Parliamentary Portfolio Committee on Correctional Services, the trade unions and various organisations representing civil society³⁸ (Giffard, 1997, p.29). The forum established a number of subcommittees to focus on selected areas of transformation. These included: demilitarisation; prisoners' health; independent inspection of prisons; human resource management; and the establishment of a change management team to facilitate managerial transformation.

The recommendations by the transformation forum successfully contributed to transformation in a few areas, such as in oversight of the prisons. But on the whole the transformation of these areas, notably in respect of demilitarisation which took place in 1996 (Dissel, 1997), and in respect of advocating the introduction of an independent forum, was crippled by disputes between the Minister of Correctional Services, Dr Sipo Mzimela (an Inkatha Freedom Party (IFP) appointee) and the ANC head of the Parliamentary Portfolio Committee, Carl Niehaus (Giffard 1997, p.30). The transformation forum was disbanded in 1996 due to these conflicts.

38. These included the Minister of Correctional Service's National Advisory Council, NGO's such as Lawyers for Human Rights, NICRO, the Centre for the Study of Violence and Reconciliation, and the Penal Reform Lobby Group.

Demilitarisation

The Prison Service was fully militarised in 1959 under the Prisons Act of 1959.³⁹ It introduced military rank, discipline, culture and the external trappings of militarism. The military structure was viewed as bolstering apartheid separatist development. During Lansdown's time, in 1947, senior positions in the department were reserved for white staff, and even as late as 1990, 90 percent of officers' positions were filled by white members (Dissel, 1997, p.19). The military culture was also problematic in that it retained an association with the South African Defence Force, the body responsible for maintaining apartheid South Africa and for much of the repression of anti-apartheid activism.

The RDP proposed demilitarisation of state and security organisations in 1994. By 1995 the Minister of Correctional Services took up the call reasoning that demilitarisation would have important psychological effects on 'inmates, personnel and the whole country' (Dissel, 1997, p.17), and this eventually took effect in April 1996.

Demilitarisation focused on the removal of all visible signs of militarism, and ranks, titles, military hierarchy and uniforms were changed. However, this strategy was inadequate in its dealings with less overt aspects of militarism, such as the culture of the department and disciplinary systems. To this day prisoners and some staff continue to refer to members of the department by their military rank, although no visible insignia are worn, and today their titles correspond with civilian titles commonly found in the civil service. Furthermore, the prisons continue to hold morning 'parades' although attendance is no longer compulsory.

Another concern is that while in principle the so-called old disciplinary system may have been formally done away with, a new one has not yet been completely re-established, resulting in, amongst other things, divisions between black and white personnel and non-participation in activities.

However, one of the many positive aspects of demilitarisation is that it made it possible to promote black members through affirmative action into senior positions who otherwise would not have qualified for positions as commissioned officers. It also helped to reduce the formality existing

39. The Prison and Reformatories Act of 1911 laid the basis for some degree of military structure in the prison. .

between prisoners and staff. Nevertheless, to date there is no indication that in terms of prisoners, demilitarisation has assisted with the process of rehabilitation.

Transformation of the personnel corps

When the interim Constitution of 1993 became effective, the so-called 'independent homelands' (Transkei, Ciskei, Bophuthatswana, Venda and KwaZulu - the 'TVBC' states), were incorporated into South Africa. These were homelands specially designated for the residence of black people, and accordingly, the prison staff in these areas was mainly black. Before amalgamation, each of the homelands had its own prison service, each operating according to its own particular legal mandate. This resulted in various policy discrepancies. Most of the homelands were still operating under the old Prisons Act that was operative at the time of their independence, and the amendments applicable in the rest of South Africa were not applied or enforceable in these regions. In addition, most of the prisons were in a severe state of disrepair.

The process of transformation involved integrating the six departments under one national department, with nine regional authorities and operating under one uniform set of laws and approaches (DCS, 1994, p.25, 26).

A changing prison warder culture

In the process of transformation the Department of Correctional Services (DCS) had to grapple with its own institutional transformation and change in warder culture. Dr Sipo Mzimela, the first Minister of Correctional Services in the democratic era suggested in 1995 that there was some resistance to change in the system, and that those members who did 'not want to move with the times, and with the new constitution were welcome to resign' (Giffard, 1997, p.45).

Part of the resistance to change came from the difficulty of changing the organisational culture of the DCS. Researcher Chris Giffard proposes that the prison warder culture was similar to that of the police under apartheid. He suggests that they were conservative (resistant to change),

suspicious, isolated, and operated within a culture of machismo. Racial prejudice was part of the make up of the prison warders, upholding the official viewpoint of racial supremacy. A sense of mission was also an important defining component of past prison warder culture, their mission being to 'assist the fallen', with Christianity being an important component (Giffard, 1997, p.45). The militaristic culture played a role in reinforcing these notions with concepts of discipline and hierarchy.

Although there may have been many changes in culture and the system since the worst days of apartheid, Giffard argues that it is important to understand the underpinnings of this culture. One of the key features in working with political prisoners on Robben Island was the racial exclusivity of white warders, coupled with notions of baaskap (subservience to an authority figure). Neville Alexander writing on the history of Robben Island suggests that notions of racial superiority derive from the ideology of the ruling National Party:

The elasticity of the warders is truly phenomenal. Few people can realize to what extent the National Party's indoctrination of South African whites, especially of those in the civil service, has succeeded. One sees this very clearly in the sedulous somersaults performed by warders and officers regarding their attitudes to and treatment of black prisoners. These men are mere automata, willess instruments of government policy: when some higher-up throws the switch, the rest follow almost mechanically, i.e. few, if any, warders refuse to carry out any instruction no matter what its nature.

(Alexander, 1994 quoted in Giffard, 1997, p.48)

Black warders were junior members of the department, automatically outranked by white members, and in many ways were forced to accept the prevailing ideology to succeed in the institution. They were trained in the vision of the department. Many of the older members in the department today are those that were trained and who worked under the apartheid system. The process of bringing about change in values and outlook is a long one and is unlikely to be successful with all parties.

Protest acts - staff and prisoners

However, fairly early on in the transformation process racial discrimination amongst prison staff attracted attention. The Police and Prison Officers Civil Rights Union (POPCRU) was founded in 1989, but was immediately crushed in 1990, when the Prisons Act made it an offence for a prison warder to be a member of a trade union without the permission of the Commissioner, or to go on strike.⁴⁰ Warders who joined POPCRU were refused promotions, one of the gains that they were fighting for, and disciplined for infringing the Act (Van Zyl Smit, 1998). However the union continued to exist and this ban was eventually lifted.

On 5 June 1996, the members of POPCRU conducted a nationwide protest march on offices of police commissioners. One of the grievances of the union was the alleged failure of the South African Police Services and the DCS to implement affirmative action, and the exclusion of members of disadvantaged groups from senior positions (Pete, 1998, p.72).

Prisoners were also becoming more organised. In 1994, frustrated prisoners embarked on nationwide protest action to demand their voting rights in the first democratic election in South Africa, and to claim a general amnesty for prisoners. In the three-month period of unrest that followed, 37 prisoners were killed and 750 injured. The violence ended when the government granted a six-month remission of sentence to all common law prisoners. A commission of inquiry, headed by Judge Kriegler, was appointed to investigate the events. Its primary mandate was to look at the causes of the unrest and the events of that period. It also concerned itself with complaints of general prison conditions. The main cause of complaint was the expectation that prisoners would be granted amnesty, but they also complained of assaults by warders, racist treatment by staff, poor food, and chronic overcrowding (Kriegler Commission, 1995). In respect of racism, the commission reported that:

Many of the respondents referred to the provocative relationship between prisoners and staff: abusive language, a lack of communication, racist remarks, etc. Many prisoners alleged that, especially after the elections, staff with right-wing sympathies were openly hostile to black inmates. The problem was aggravated by the fact that the only avenue of complaint was via the very

40. An amendment in 1993, to the Correctional Services Act has the effect that members of the Correctional Services may not strike if they are engaged in a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population.

persons who had transgressed in the first place.
 (Kriegler Commission report, 1995, p.91)

The Commission also found there was racial tension between black and white staff, often expressed through POPCRU and sometimes backed by the South African Organisation for Human Rights (SAPOHR), a prisoner representative organisation.

Affirmative action

The incorporation of the former homelands into the DCS increased the size and changed the racial composition of staff. In 1995 the department appointed an advisory forum under the chairmanship of Prof. Linda Human to advise management on the principles and mechanisms for achieving a more representative personnel corps. The outcome was a five-year Recommended Blueprint (DCS, 1995 (a)) whose goal was to move from the 60:40 ratio to reach the target demographic representation of 70:30 in favour of affirmative action by 2000. The Blueprint recommends recruitment, accelerated promotions for under-represented groups, and the promotion of early voluntary retirement of personnel. The Constitution allows affirmative action to protect or advance the rights of formerly disadvantaged groups.⁴¹

The department launched a Programme of Affirmative Action that has the following objectives:

- To develop an organisational culture supportive of affirmative action;
- To strive to fill all posts with experienced personnel in order to obtain the global 70:30 ratio;
- To promote training and bridging programmes to ensure that staff are equipped to perform their tasks sufficiently; and
- To establish committees to monitor the implementation (DCS, 1995(b)).

As a consequence of these recommendations, there was a once-off relaxation of promotional requirements for non-commissioned officers; and the training of junior managers to fulfil the target ratios. The

Programme has been so successful that by 1998 the staff ratio had changed to 68:32 in favour of blacks, coloureds and Asians (DCS, 1998(a)).

In 1998 a new Equity Policy was introduced in keeping with the government's vision for the Public Service and policy to deal with past and continuing discriminatory policies and practices. The objective of the Equity Policy is to 'achieve substantive equality within the department by eliminating all forms of unfair discrimination policies and practices and the transformation of its culture and systems as well as the introduction and enforcement of specific equity strategies' (DCS, 1998(b)). One of the objectives is to bring the equity plans of the department in line with other policies which exist in South Africa, such as the White Paper on Affirmative Action in the Public Service, and the Employment Equity Act.⁴² In terms of the White Paper the personnel demographics of Public Service departments must be in line with the demographics of the broader society⁴³, and departments are urged to introduce affirmative action strategies in order to achieve this goal. Accordingly, the department developed a five-year equity plan covering a range of employment policies and practices. An agreement reached at the Departmental Bargaining Chamber in July 1999⁴⁴ sets out the targets for the year 2004 as follows:

Table 1: Representation targets in the Department of Correctional Services for the year 2004

	%		%	Total %
African Males	54.88	African Females	14.7	69.58
Coloured Males	7.84	Coloured Females	1.96	9.8
Indian Males	2.94	Indian Females	0.98	3.92
White Males	11.76	White Females	2.94	14.7
Total	77.42		20.58	98
Disabled	2			

41. Section 9(2) of the Bill of Rights says, 'To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.'

42. Act 55 of 1998.

43. According to the White Paper, these stand at 75% African, 13% white, 9% coloured, and 3% Indian.

44. Resolution 4/99.

As at the end of 2000, the department employed 22 percent white males, compared with 59 percent black males (including Asian and coloured men). Females constitute 19 percent of the staff employed in the department. The figures, according to Table 1 above, indicate that the department is on target with respect to the employment of women, but there is still an over-representation of white males (DCS Annual Report, 2000/2001, pp.22, 23).

In order to achieve these goals some drastic measures have been implemented, including the voluntary retrenchment of (mainly) white staff, and the rapid promotion of black staff. This has impacted on the structure, functioning and morale of the personnel.

The department has also examined other policies affecting race and discrimination, including looking at policies on disability and gender, and the allocation of housing to staff members.⁴⁵

45. Interview with managers from DCS, 25/7/01.

Racism and **Discrimination** in the South African Penal System

Statistical findings shed light on prison life

Internationally, studies done on racial bias in the criminal justice system, using statistical analysis, tend to focus on the disparity in sentencing and on those sent to prison. In the United States of America, blacks and other ethnic minorities form the majority of prisoners although they are the minority of the population⁴⁶. Ethnic minorities are disproportionately over-represented in prisons in England and Wales⁴⁷. In South Africa, on the other hand, Africans form the majority of the population, as well as forming the majority of the prison population.

This statistical analysis aims to examine official data to determine whether there has been, during the period of study, any intentional or unintentional racial bias against one racial group, or against foreigners. It also aims to determine whether any particular group has been disproportionately affected by imprisonment, length of sentence, illness or death in prison, and release from prison.

Method

Statistics were obtained from the Department of Correctional Services (DCS) for the period 1989 to May 2001. However, since the department only computerized its record keeping in 1994, the statistics for the earlier period are less reliable. For the most part, this analysis is therefore based on figures from 1994.

The department maintains statistics based on the following calculations: by a count of admissions to prison over any period; by averaging the daily number of prisoners over the year; or by counting the number of prisoners in prison on any particular date (daily count of prisoners). For this study the DCS supplied figures for the number of sentenced prisoners admitted to prison over specific years, from May 1989 to May 2001.

46. Based on the rates of first incarceration, minorities are more likely to be incarcerated than whites. An estimated 28 percent of black males will enter a State or Federal prison during their lifetime compared with 16 percent of Hispanic males and 4.4 percent of white males. Sixty five percent of State inmates, and 63 percent of jail inmates in 1996 belonged to racial or ethnic minorities (Bureau of Justice Statistics, 2001).

47. In England and Wales, ethnic minorities (excluding foreign nationals) account for 7.7 percent of males and 7.6 percent of females, yet they make up 19 percent of the male prison population and 25 percent of the female prison population (Home Office, 2000, p. 3).

Figures were also obtained for the total number of prisoners held in prison on 31 May for each of the relevant years. Additional figures, pertaining to averages were obtained from the DCS's annual reports.

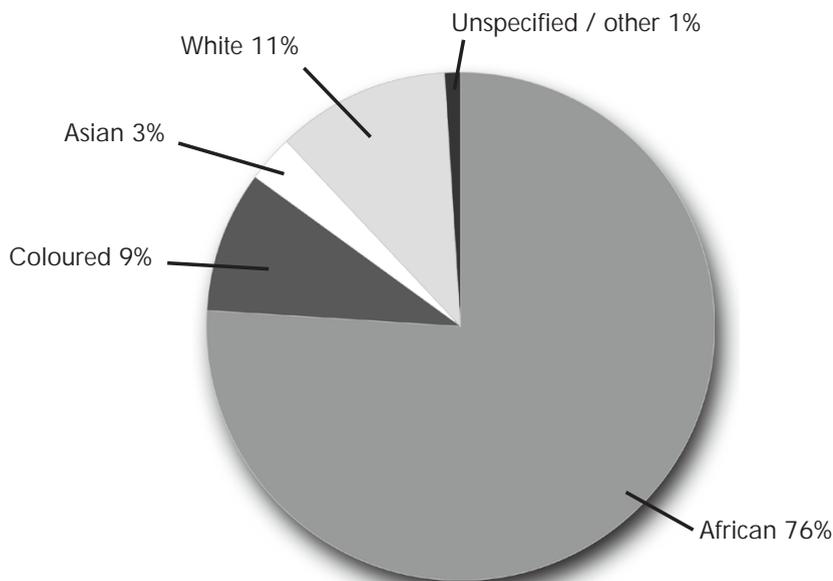
Naturally the reliability of this data analysis depends partly on the reliability of the statistics from DCS and any inconsistencies have been pointed out where they are apparent. The data provides only the numbers of prisoners, which allows for comparison of one set of numbers against another - but precludes comparison of like cases, sentences or other factors.

We were unable to do a comparison of the crime rate versus the imprisonment rate of any racial group as neither the South African Police Services, nor the Department of Justice maintain data on arrest and convictions according to race group.

Findings

Racial composition of people in South Africa

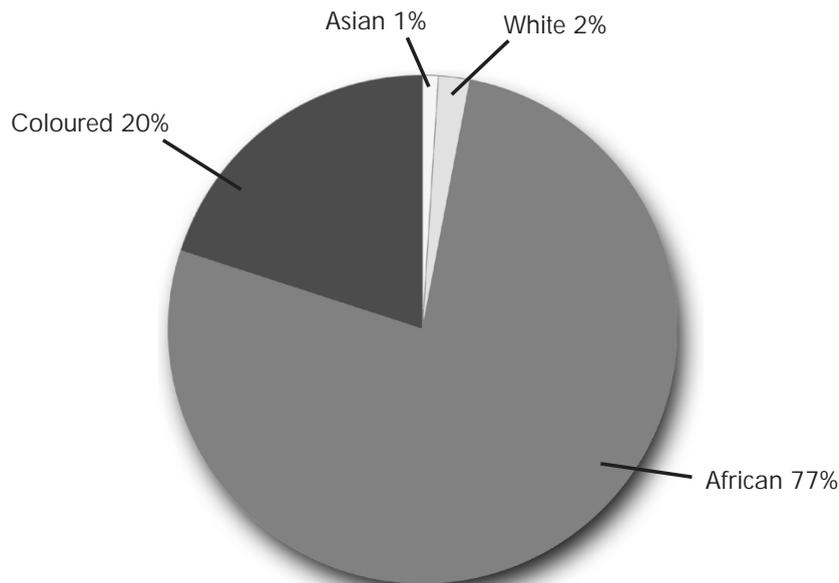
Figure 1: Percentage of the population in South Africa by population group - October 1996



In 1996 the population of South Africa was calculated as 40,6 million (Statistics South Africa, 1996). More than three-quarters (76%) of the

population are African. Africans are the majority group in every province of the country except Northern and Western Cape where coloured people are in the majority.

Figure 2: Prison population by population group - May 2001

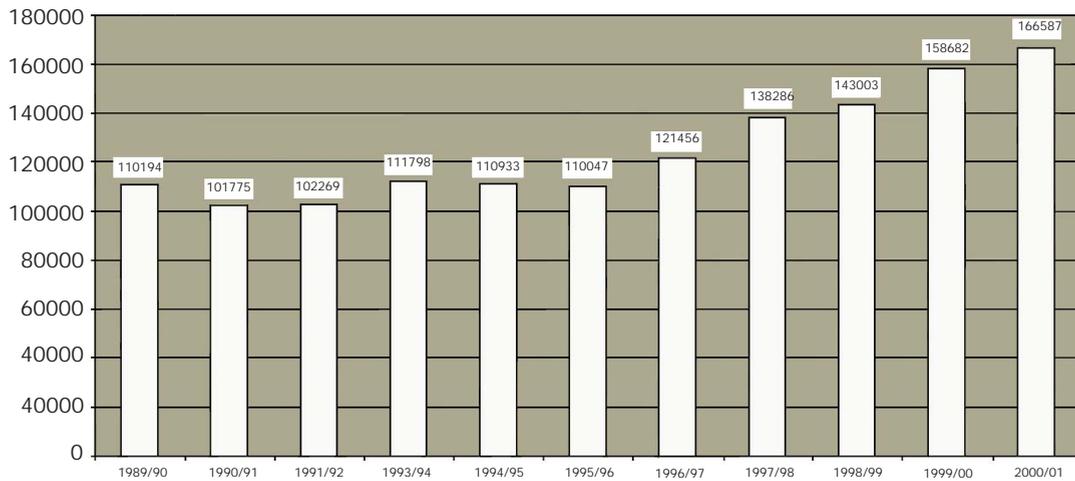


In May 2001 the greatest proportion of prisoners were African (77%), followed by coloureds (20%), whites (2%) and Asians (1%). According to the 1996 census data this indicates that the African prison population is comparable with the national population. In contrast, coloureds whom constitute 9 percent of the national population are over-represented in prisons, while whites who constitute 11 percent, and Asians who form 3 percent of the national population, are under represented in prison.

Prison population

The growth in the prison population over the last decade has been phenomenal. The daily average prison population for the 1989/90 year was 110 194 compared with the daily average of 162 425 in the 2000/2001 year. As can be seen in Figure 3 below, the daily averages declined slightly in the period from 1989 to 1991. This could be due to the repeal of the pass laws and other apartheid offences. However, from this period the prison population again increased steadily.

Figure 3: Average daily prison population for the 1989/1990 financial year to the 2000/01 financial year



The daily count of prisoners held on 31 May had increased by 122 percent from 80 301 in 1994 to 170 044 in 2001. The number of Asian prisoners had increased by 86 percent, African prisoners by 138 percent, coloured prisoners by 54 percent, and whites by 49 percent. Africans constituted the greatest proportion of prisoners and had increased from 65 percent of the total population in 1994, to 77 percent in 2001. The percentage of coloured prisoners had decreased from more than one in four (27%) in 1994, to one in five (20%) in 2001. The white and Asian population figures had not changed in terms of their proportional representation.

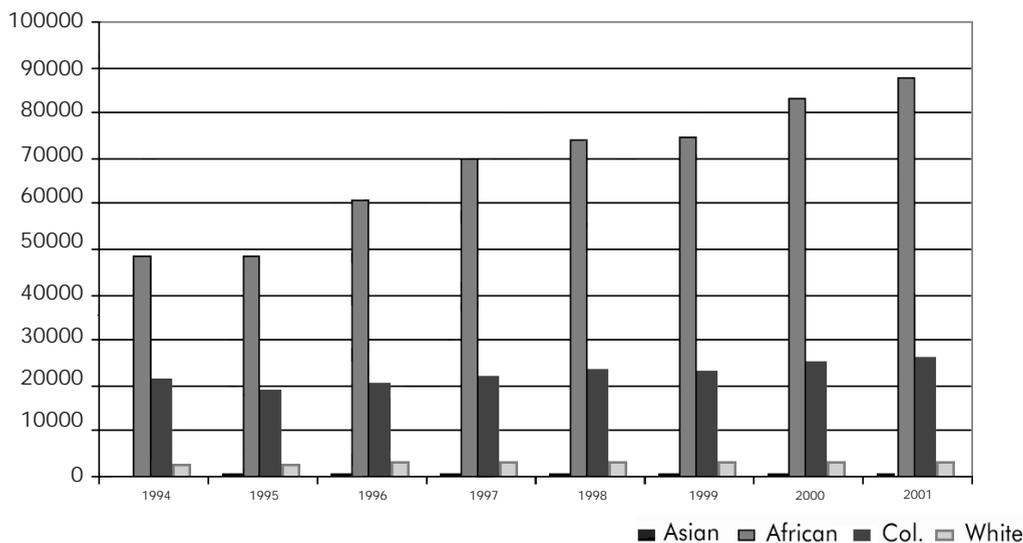
Sentenced prisoners

Sentenced prisoners constituted 67 percent of the prison population⁴⁸. For the period 1994-2001, a total of 755 192 sentenced prisoners were admitted to prison. There was an incremental increase in the number of admissions each year, with 72 656 being admitted in 1994 and 118 103 being admitted in 2001 up to the end of May⁴⁹. Africans constituted 73 percent of these admissions, coloureds, 24 percent; whites, 3 percent and Asians, 1 percent. While the figures for all race groups fluctuated over the years, there was an overall increase in the numbers of people admitted over time.

48. This figure is based on the prison population as at 31 March 2001 (DCS Annual Report 2000/2001).

49. A greater number of prisoners are admitted to prison than are held in prison on any particular date, as the majority of prisoners are admitted with sentences of less than a year. Fifty four percent of admitted prisoners are sentenced to six months or less, and 19 percent are admitted with sentences of between 6 months and 2 years (DCS Annual Report, 1998).

Figure 4: Sentenced prisoners admitted to prison according to population group: January 1994 to May 2001



As Figure 4 illustrates there had been an incremental increase in admissions of all race groups. In 1994, 336 Asians were admitted, compared to 616 in 2001 - an increase of 83 percent. This was matched by an increase of 82 percent in the number of Africans from 48 397 in 1994 to 87 991 in 2001. Far less dramatically, there was only a 23 percent increase in the number of coloureds, from 21 272 in 1994 to 26 186 in 2001, and a 27 percent increase in the number of whites admitted from 2 610 in 1994 to 3 310 in 2001. Overall, there had been a 63 percent increase in the admissions of sentenced prisoners over this period.

Provincial breakdown for admitted prisoners

Table 2: Provincial breakdown of sentenced prisoners admitted from January 1994 to May 2001

	Asian		African		Coloured		White		Total
Eastern Cape	64	2%	57187	10%	18196	10%	2204	9%	10%
Free State	72	2%	70475	13%	8099	5%	2372	10%	11%
Gauteng	673	18%	149348	27%	9398	5%	11129	46%	23%
Kwazulu-Natal	2711	73%	101152	19%	2091	1%	1579	7%	14%
Mpumalanga	87	2%	55120	10%	1154	1%	1321	6%	8%
North West	38	1%	56136	10%	2168	1%	1596	7%	8%
Northern Cape	23	1%	11566	2%	19924	11%	505	2%	4%

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Northern Province	17	1%	18911	4%	15738	9%	267	1%	5%
Western Cape	17	1%	27586	5%	103247	57%	3021	13%	18%
Total	3702	100%	547481	100%	180015	100%	23994	100%	100%

There was a disparity in the number and racial breakdown of prisoners admitted in each of the provinces during the period of study. However, this does not necessarily mean that more crimes were committed, or more convictions obtained in one province, as prisoners may have been relocated to a different province from the one where the crime was committed or from where they live, based on a range of factors including: available accommodation; their developmental needs; or security classification.

The greatest proportion of prisoners admitted was to prisons in Gauteng (23%), and Western Cape (18%) and the smallest proportion to prisons in the Northern Cape (4%), and Northern Province (5%). The greatest proportion of Asian prisoners was found in KwaZulu-Natal (73%). The greatest proportion of African prisoners (27%), and the greatest proportion of white prisoners (46%) were found in Gauteng. The greatest proportion of coloured prisoners was found in the Western Cape (57%).

African prisoners formed the majority in all provinces except in the Northern and Western Cape where coloureds formed the majority of the general population. Whereas coloured people represented 54 percent of the Western Cape population, they constituted 77 percent of the Western Cape prison population.

Crime categories

Sentenced prisoners constituted 67 percent of the prison population⁴⁸. For the period 1994 to 2001 there were 755 192 known cases of sentenced prisoners admitted to prison. However, in the case of 287 464 (38%) of these, no data was available as to the crimes that these individuals had been convicted of, nor the sentences that they had received. Consequently, these 38 percent were eliminated from the sample group when analysing crime data, leaving 467 728 prisoners in the sample.

Table 3 below presents the figures of the crimes for which prisoners had been convicted and admitted to prison. The DCS classifies crimes into

five major categories: economic⁵⁰, aggressive⁵¹, sexual⁵², narcotics⁵³ and other⁵⁴. Each category contains a number of sub crimes and specific crimes. The sub crimes are reflected below and have in some cases been simplified and condensed. They are ranked from those that occurred less frequently, to those for which prisoners were most frequently convicted.

At the time that this data was collated aggressive crimes accounted for 44 percent of the total for which prisoners were convicted; economic for 36 percent; sexual offences for 12 percent, other crimes for 7 percent, and narcotic offences for 1 percent.

Table 3: Crime categories of sentenced prisoners admitted to prison from January 1994 to May 2001

Crime category	Asian		African		Coloured		White		Total	
Accessory after fact to murder	-	-	17	0%	-	-	-	-	17	0%
Agriculture/Stockbreed/Fishery	-	-	10	0%	36	0%	2	0%	48	0%
Animals - Cruelty to	-	-	70	0%	24	0%	1	0%	95	0%
Crime iro health ser.	-	-	7	0%	1	0%	-	-	8	0%
Crimes iro conservation	-	-	137	0%	11	0%	-	-	148	0%
Crimes iro education	-	-	3	0%	12	0%	-	-	15	0%
Crimes iro health ser.	-	-	2	0%	-	-	-	-	2	0%
Crimes iro public transport	-	-	14	0%	1	0%	-	-	15	0%
Crimes iro welfare	-	-	6	0%	3	0%	-	-	9	0%
Good name and honour	-	-	58	0%	12	0%	3	0%	73	0%
Government finance	1	0%	18	0%	4	0%	1	0%	24	0%

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50. Economic crimes include burglary/housebreaking, car theft, stock-theft, theft-other, fraud and forgery, illegal trade, and economic crimes other.

51. 'Aggressive crimes' refers to murder, attempted murder, culpable homicide, murder of a child, attempted suicide, robbery with aggravating circumstances, robbery common, serious assault, assault common, aggressive crimes other, cruelty to animals, damage to property, necklace and related murder.

52. Sexual crimes include rape, attempted rape, indecent assault, intercourse with a minor, and sexual crimes other.

53. Narcotic crimes include, trade or cultivation of marijuana, possession or use of marijuana, trade/cultivation of prohibited substance, possession or use and trading of prohibited dependence forming substance, possession or trade of intoxicating liquor.

54. 'Other crimes' include, kidnapping/man stealing, crimes against the family, government finance, lottery and related crimes, crimes against agriculture/stock-breed and fisheries, and mining/factories/trade and building crimes, crimes in respect of health services, and crimes against the safety of the republic.

Lottery and related crimes	-	-	5	0%	1	0%	-	-	6	0%
Mining/Factories/Trade	-	-	99	0%	58	0%	4	0%	161	0%
Necklace ⁵⁵ & rel. murder	-	-	1	0%	-	-	-	-	1	0%
Posses/Use of dangerous	1	0%	58	0%	24	0%	10	0%	93	0%
Posses/Use of prohibit dep.	25	1%	85	0%	75	0%	32	0%	217	0%
Possession/Use of dang. drugs	3	0%	28	0%	6	0%	12	0%	49	0%
Reckless/Negligent driving	-	-	38	0%	-	-	-	-	38	0%
Suicide attempted	-	-	1	0%	-	-	-	-	1	0%
Aggressive crimes - other	-	-	544	0%	93	0%	18	0%	655	0%
Crimes iro road traffic	1	0%	201	0%	41	0%	14	0%	257	0%
Driving under the influence	1	0%	204	0%	102	0%	202	2%	509	0%
Foreigners in the RSA	1	0%	637	0%	1	0%	4	0%	643	0%
Illegal trade/Possession	4	0%	320	0%	6	0%	7	0%	337	0%
Intercourse with minor	1	0%	214	0%	50	0%	26	0%	291	0%
Kidnapping/Man-Stealing	7	0%	292	0%	39	0%	25	0%	363	0%
Other not mentioned	-	-	312	0%	66	0%	5	0%	383	0%
Posses/Trade in intoxic liquor	-	-	210	0%	145	0%	19	0%	374	0%
Trade/Cultivate of prohibition	15	1%	173	0%	85	0%	48	0%	321	0%
Trade in dependent forming substances	6	0%	184	0%	60	0%	46	0%	296	0%
Crimes against the family	5	0%	267	0%	515	1%	38	0%	825	0%
Sexual crimes other	10	1%	1355	0%	550	1%	52	0%	1967	0%
Indecent assault	24	1%	1232	0%	764	1%	460	4%	2480	1%
Crimes against functioning of criminal justice system	7	0%	2024	1%	708	1%	52	0%	2791	1%
Fraud and forgery	53	3%	1652	1%	382	0%	1000	8%	3087	1%
Rape attempted	7	0%	2983	1%	1023	1%	86	1%	4099	1%

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55. Necklacing is a particular form of murder that evolved during the 1980's and continued to be used by political activists in the 1990's to deal with people suspected of being informers. It involves putting a petrol soaked tyre around the suspect's neck and setting it alight.

Damage to property	7	0%	3002	1%	2051	2%	141	1%	5201	1%
Assault common	18	1%	4309	1%	1671	2%	177	1%	6175	1%
Possess/Use of marijuana	31	2%	5762	2%	743	1%	95	1%	6631	1%
Crimes against the safety of republic	8	0%	6196	2%	731	1%	135	1%	7070	2%
Car theft	30	1%	7165	2%	1470	1%	921	7%	9586	2%
Burglary/Housebreaking	25	1%	8024	2%	3707	3%	255	2%	12011	3%
Culpable homicide	25	1%	8746	3%	3633	3%	182	1%	12586	3%
Stock-theft	-	-	9897	3%	3779	4%	100	1%	13776	3%
Murder attempted	69	3%	12022	4%	2524	2%	355	3%	14970	3%
Prison offences	66	3%	11723	3%	6366	6%	597	5%	18752	4%
Robbery aggravating	95	5%	17443	5%	1128	1%	349	3%	19015	4%
Assault serious	32	2%	17584	5%	10635	10%	205	2%	28456	6%
Rape	175	8%	36722	11%	8749	8%	606	5%	46252	10%
Robbery common	168	8%	40553	12%	9432	9%	758	6%	50911	11%
Economic crimes other	133	6%	46308	14%	13790	13%	1092	8%	61323	13%
Theft other	254	12%	45324	13%	16770	16%	2827	21%	65175	14%
Murder	799	38%	50045	15%	15954	15%	2342	18%	69140	15%
Total	2107	100%	344286	100%	108031	100%	13304	100%	467728	100%

Over the 1994 - 2001 period the crimes prisoners were most commonly convicted of were rape (10%), robbery-common (11%), economic crimes-other (13%), theft-other (14%) and murder (15%). Collectively these categories accounted for 73 percent of the crimes for which the sentenced prisoners were convicted.

Murder accounted for 38 percent of crimes committed by Asians, 15 percent of crimes committed by Africans, 15 percent of crimes committed by coloureds, and 18 percent of crimes committed by whites. Murder was the most frequently occurring crime amongst Africans and Asians, while theft-other, was the most frequently occurring crime amongst coloureds and whites.

Crime categories and sentences

The statistics for sentenced prisoners admitted to prison from 1994 to 2001 were analysed in terms of crime categories and sentences. The greatest proportion of sentences (38%) handed down overall, was in the 7-10 year category. Although these prisoners were in all the 'sentenced'

sections of prisons, 1 percent of them were classified as un-sentenced. Of these 74 percent were African, 24 percent coloured, and 2 percent white.

The following tables reflect the sentences handed out to people convicted of the five crimes for which, according to the data, people had most frequently been sent to prison - these being: rape, robbery-common, economic crimes-other, theft-other, and murder. The sentence categories are ranked from those sentences occurring least, to those occurring the most.

The sentences meted out to each prisoner were based on the circumstances of the case, the seriousness of the crime and the individual circumstances of the offender. Under these conditions, one should be cautious about comparing sentences without full knowledge of the individual circumstances of each case.

Table 4: Prisoners sentenced for rape and admitted to prison in the period from 1994 to 2001

RAPE					
	Asian	African	Coloured	White	Total
Death sentence ⁵⁶	-	0%	-	-	0%
Detainee	-	0%	0%	-	0%
Ordered by Court as dangerous	-	0%	0%	2%	0%
Other	-	0%	0%	-	0%
0 - 6 months	-	0%	0%	-	0%
Day parole	-	0%	0%	0%	0%
1-2 years	-	0%	1%	-	0%
6 months - 1 year	-	0%	0%	0%	0%
Habitual criminal	-	0%	1%	1%	1%
Life sentence	-	1%	1%	2%	1%
Unsentenced	-	1%	1%	1%	1%
20 years	-	2%	2%	1%	2%
15 - 20 years	6%	3%	5%	6%	3%
2 - 3 years	1%	4%	5%	3%	4%

Continued next page

56. Although a moratorium was declared on executions in 1989, the death penalty was still a valid sentence until 1995 when it was abolished by the Constitutional Court that found the death penalty to be unconstitutional, *S v Makwanyane* 1995 (3) SA 391 (CC). The death penalty was deleted from the Criminal Procedure Act in 1997 (by virtue of s 34 of Act 105 of 1997).

10 - 15 years	16%	11%	13%	18%	11%
3 - 5 years	3%	15%	15%	12%	15%
5 - 7 years	23%	23%	22%	19%	23%
7 - 10 years	50%	39%	33%	36%	38%
Total	100%	100%	100%	100%	100%

As Table 4 above indicates, people convicted of rape were more likely to receive a sentence of 7-10 years than any other sentence. This was meted out to 38 percent of convicted rapists. Six percent of Africans, 6 percent of Asians, 8 percent of coloureds, and 9 percent of whites received sentences of 15 years or longer. One percent of all people convicted of rape were un-sentenced.

Table 5: Prisoners sentenced for robbery-common and admitted to prison in the period from 1994 to 2001

ROBBERY - COMMON					
	Asian	African	Coloured	White	Total
Declaration as dangerous criminal ⁵⁷	-	0%	-	-	0%
Other	-	0%	0%	-	0%
Day parole	-	0%	0%	0%	0%
Life sentence	-	0%	0%	1%	0%
Detainee	-	0%	0%	1%	0%
Unsentenced	-	1%	1%	1%	1%
0 - 6 months	1%	1%	1%	-	1%
Habitual criminal	-	2%	5%	5%	2%
1-2 years	4%	2%	4%	1%	2%
6 months - 1 year	2%	2%	3%	-	3%
20 years	6%	4%	4%	12%	4%
15 - 20 years	7%	6%	6%	6%	6%
2 - 3 years	9%	9%	11%	4%	9%
3 - 5 years	13%	12%	15%	10%	12%
5 - 7 years	15%	15%	16%	15%	15%
10 - 15 years	10%	18%	16%	25%	18%
7 - 10 years	34%	29%	20%	22%	27%
Total	100%	100%	100%	100%	100%

57. Reflects the categories of 15-20 years, 20 years and life sentence.

As those convicted of rape, people convicted of robbery-common were more likely to receive a sentence of 7-10 years than any other sentence. This applied to 34 percent of Asians, 29 percent of Africans, 20 percent of coloureds, and 22 percent of whites. Whites (44%) were more likely to receive sentences exceeding 10 years⁵⁹ than Asians (23%), Africans (28%), and coloureds, (26%).

Table 6: Prisoners sentenced for economic crimes-other and admitted to prison in the period from 1994 to 2001

ECONOMIC CRIMES - OTHER ⁶⁰					
	Asian	African	Coloured	White	Total
Life sentence	-	-	0%	-	0%
Ordered by Court as dangerous	-	0%	0%	-	0%
Other	-	0%	0%		0%
20 years	-	0%	0%	0%	0%
Day parole	-	0%	1%	-	0%
Detainee	-	1%	0%	2%	0%
15 - 20 years	-	1%	0%	1%	1%
Unsentenced	-	1%	1%	1%	1%
0 - 6 months	2%	3%	2%	1%	3%
10 - 15 years	-	4%	2%	7%	4%
1 - 2 years	5%	5%	7%	3%	5%
6 months - 1 year	6%	6%	8%	3%	7%
Habitual criminal	5%	6%	11%	13%	7%
7 - 10 years	16%	10%	8%	13%	9%
5 - 7 years	20%	15%	16%	19%	15%
2 - 3 years	20%	21%	21%	13%	20%
3 - 5 years	26%	28%	23%	25%	27%
Total	100%	100%	100%	100%	100%

People convicted of crimes in the category economic-other were most likely to receive sentences of 3-5 years. There was little variance across race groups for those who received this sentence. Whites (40%) were marginally more likely to receive sentences exceeding five years for this crime type than Asians (36%), coloureds (26%), and Africans (30%), during the 1994 to 2001 period.

⁵⁸ Section 286A of the Criminal Procedure Act provides for the declaration of a person as a dangerous criminal. Sentences may be determinate or indeterminate prison terms, but the court must state when the offender must appear in court again for re-evaluation of sentence.

⁵⁹ Reflects the categories of 10-15 years; 15-20 years, 20 years and life sentence.

⁶⁰ The category 'Economic - other' refers to the conviction of housebreaking and theft.

Table 7: Prisoners sentenced for theft-other and admitted to prison in the period from 1994 to 2001

THEFT -OTHER ⁶¹					
	Asian	African	Coloured	White	Total
Life sentence	-	-	0%	-	0%
Ordered by court as dangerous	-	-	0%	-	0%
Other	-	0%	0%	1%	0%
20 years	6%	0%	0%	1%	0%
Day parole	1%	0%	0%	0%	0%
Detainee	-	0%	0%	1%	0%
Unsentenced	0%	0%	0%	1%	1%
15 - 20 years	2%	1%	1%	2%	1%
10 - 15 years	23%	3%	3%	9%	3%
Habitual criminal	1%	6%	9%	9%	7%
1 - 2 years	4%	7%	10%	4%	8%
7 - 10 years	11%	8%	9%	16%	9%
6 months - 1 year	5%	10%	8%	4%	9%
0 - 6 months	4%	12%	5%	2%	10%
5 - 7 years	12%	12%	14%	17%	13%
2 - 3 years	13%	19%	18%	12%	18%
3 - 5 years	19%	21%	22%	22%	21%
Total	100%	100%	100%	100%	100%

Sentences of 3-5 years was the most common sentence handed out to people convicted of theft-other. Whites (44%) and Asians (48%) were more likely to receive sentences exceeding five years for this crime type than coloureds (27%), and Africans (24%). In particular, the 25% of Asians receiving 10 to 15 year sentences appeared to be disproportionate to other race groups sentenced for similar crimes.

61. The category 'theft-other' includes the following offences: shoplifting, shoplifting by employees, theft of firearms or explosives, theft of bicycle, theft, being found in possession of stolen goods, attempted theft, theft of a motorcycle, fiddling with a motor vehicle, theft from a car, and theft under false pretences (Crime Codes supplied by the Department of Correctional Services, June 2001).

Table 8: Prisoners sentenced for murder and admitted to prison in the period from 1994 to 2001

MURDER					
	Asian	African	Coloured	White	Total
Day parole	-	0%	0%	0%	0%
Detainee	-	0%	0%	-	0%
Ordered by Court as dangerous	-	0%	0%	0%	0%
Other	-	0%	0%	0%	0%
6 months - 1 year	-	0%	0%	-	0%
0 - 6 months	-	0%	0%	0%	0%
1 - 2 years	-	0%	1%	0%	0%
Habitual criminal	-	0%	0%	-	0%
Unsentenced	-	1%	1%	0%	1%
2 - 3 years	0%	1%	2%	1%	1%
Death sentence	2%	2%	1%	3%	2%
3 - 5 years	3%	5%	7%	1%	5%
Life sentence	8%	9%	5%	16%	8%
5 - 7 years	3%	8%	12%	3%	9%
15 - 20 years	26%	14%	12%	19%	14%
10 - 15 years	21%	18%	20%	18%	19%
- 10 Years	9%	20%	23%	13%	20%
20 Years	28%	22%	15%	27%	20%
Total	100%	100%	100%	100%	100%

In this category sentences of 7-10 years and 20 years were the most common. Whites (27%) and Asians (28%) were more likely to receive a 20-year sentence for murder than coloureds (15%), and Africans (22%). Whites (16%) were more likely to receive a life sentence for the crime of murder than Asians (8%), Africans (9%), and coloureds (5%). Overall, 2 percent of people who were convicted of murder received the death sentence.

In terms of this data it appeared that whites, followed by Asians, were more likely to receive longer sentences than any other race group. Whether this indicates any racial bias against these groups is uncertain, as the available data does not provide an analysis of the seriousness of offences compared with the length of sentence.

Deaths in prison

The statistics presented in this section were obtained for deaths in prison according to racial group. The three most frequently occurring causes of deaths in each group appear in Table 9 below.

Table 9: Deaths of all prisoners according to racial group from 1994 to 2001

	3 most prevalent causes of deaths	Number of deaths (1990-2001 categories listed)	% of total deaths	Total number of deaths, all categories
Asian	Cardiac failure	2	13%	16
	Natural causes other	2	13%	
	Heart defects	3	19%	
	Other	9	55%	
African	Tuberculosis	326	9%	3497
	Natural causes other	849	24%	
	AIDS	850	24%	
	Other	1472	43%	
Coloured	AIDS	43	10%	434
	Tuberculosis	47	11%	
	Natural causes other	76	18%	
	Other	268	61%	
White	Suicide	17	15%	114
	Heart defects	14	12%	
	Natural causes other	26	22%	
	Other	57	50%	
Total				4061

Between the period 1990 to 2001, 4 061 people were reported to have died in prison. Of these 16 (0%) were Asian, 3 497 (86%) were African, 434 (11%) were coloured, and 114 (3%) were white. African prisoners died in greater proportion than they were represented in prison. Aids was listed as the cause of death for one in four Africans and one in ten coloureds⁶². Suicide and heart defects was listed as the cause of death for one in ten whites. Suicide was the cause of death for 90 Africans, 27 coloureds, 17 whites, and 1 Asian prisoner.

There were 112 deaths caused by assault. Of these 56 (50%) were reportedly due to assaults by other prisoners; 51 (46%) due to assault by gang members; and 5 (4%) due to assault by members of the correctional

62. AIDS caused the death of one Asian and 7 whites over the period. Tuberculosis was recorded as the cause of death for 1 Asian and 2 white prisoners over the period.

services. There were 90 (80%) Africans killed by assault; 21 (19%) coloureds and 1 Asian (1%). No white prisoners died following an assault in prison.

Foreigners in South African prisons

A total number of 19 542 foreign prisoners were reported to have been admitted to South African prisons between 1989 and May 2001. This represents an increase of over 6 200 percent, from 48 foreign prisoners in 1989, to 3 032 for the first half for 2001. It can be summarised that this increase was a reflection of the opening of South Africa's borders, particularly since 1994. However, this may also be evidence of the increased sophistication of the DCS record keeping over this period.

Table 10: Countries that have had the greatest number of nationals in South African prisons from 1989 to 2001

Portugal	82	0%
Great Britain	92	0%
Burundi	93	0%
Zambia	102	1%
Botswana	105	1%
Zaire	119	1%
Namibia	141	1%
Angola	144	1%
Tanzania	238	1%
Malawi	357	2%
Nigeria	521	3%
Swaziland	1104	6%
Zimbabwe	2816	14%
Lesotho	3827	20%
Mozambique	9050	46%
Total	19542	97%

With the exception of Portugal and Britain, all countries reflected above are African, and the four most represented countries, Southern African Development Community (SADC) countries. Collectively, these countries constitute 97 percent of the total, and Mozambique nearly half.

Although foreign prisoner numbers were relatively small at the time of this study, as can be seen in the following section, ethnic discrimination and xenophobia did affect these prisoners, particularly those from the SADC region.

Release from prison

Table 11: Indicates the number of people released on parole or released under supervision from January 1989 to 3 July 2001

Year	Asian		African		Coloured		European	
	Parole	Supervision	Parole	Supervision	Parole	Supervision	Parole	Supervision
1989	0	0	20	0	0	0	2	0
1990	0	0	201	0	81	0	12	0
1991	0	0	135	0	63	0	8	0
1992	1	0	204	1	145	0	5	0
1993	41	1	8691	9	3939	5	218	0
1994	155	2	23048	76	11588	98	797	21
1995	151	14	26141	3040	11532	1691	909	258
1996	96	42	26626	9548	9369	4787	830	611
1997	140	61	25128	13201	8933	5081	672	694
1998	177	78	25321	19483	9073	7089	814	846
1999	94	83	18566	23260	7742	7213	528	810
2000	72	133	19949	28424	9549	8777	577	1081
2001	34	32	7910	12697	3517	3966	164	401
Total	961	446	181940	109739	75531	38707	5536	4722

During the period 1989 to 2001 a total of 417 582 people were released on parole or under correctional supervision⁶³. Of these, less than 1 percent were Asian, 70 percent were African, 27 percent were coloured, and 2 percent were white. These percentages were largely congruent with the racial composition of South African prisons. However, these figures do not include prisoners who were released from prison on completion of their sentence.

Table 12 below sets out the ratio of prisoners released from prison on parole or correctional supervision, to those entering prison, according to population group.

63. Correctional supervision was introduced as a sentence option in 1993.

Table 12: Racial composition of prisoners released on parole/correctional supervision

Asians	1:2.7	One person released, for every 2.7 entering the prison system
Africans	1:1.9	One person released, for every 1.9 entering the prison system
Coloureds	1:1.6	One person released, for every 1.9 entering the prison system
Whites	1:2.6	One person released, for every 2.6 entering the prison system

One Asian prisoner was released from prison for every 2.7 Asians who were sentenced to prison; one white prisoner for every 2.6, and one African and coloured prisoner were released compared to every two prisoners who are admitted. In other words, African and coloured prisoners were being released on parole or correctional supervision at a slightly faster rate than the other two race groups.

This data, however, does not indicate the length of time spent in prison prior to release on parole or correctional supervision, nor does it compare this to the type of crime committed and the sentence handed down. This data also does not reflect those released on prison after completion of their entire sentence.

Imprisonment for failure to pay a fine

Table 13: The number of people admitted to prison as a result of not paying a fine/fines for the period 1989 - 2001 as at 31 May

Year	Asian	African	Coloured	European	Totals
1989	0	77	53	2	135
1990	1	125	69	12	213
1991	2	237	220	8	485
1992	4	466	412	5	946
1993	5	1012	688	218	1762
1994	47	11002	3939	797	15352
1995	38	19892	8757	909	29180
1996	63	23929	8550	830	33016

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1997	100	28919	10579	672	40217
1998	112	28681	11414	814	40753
1999	100	30977	10193	528	41781
2000	110	34043	11179	577	45940
2001	39	16932	5273	164	22501
Total	621	196292	71326	5536	272281

It is presumed that the high number of prisoners who served sentences for failure to pay their fines was a direct reflection of the levels of poverty among many of them⁶⁴. Due to the historical economic disadvantages of black people, it would be expected that they would be disproportionately serving sentences for failure to pay fines.

Asians constituted less than 1 percent of prisoners serving prison sentences as a result of not paying a fine, Africans 72 percent, coloureds 26 percent, and whites 1 percent. This was again roughly congruent with the racial profile of the prison population, although coloureds are slightly over represented.

In summary

During the period that the study honed in on, Africans constituted the greatest proportion of the prison population (77%). According to 1996 Census data, Africans (male and female) made up 76,7 percent of the population.

Overall, there was an increase of 63 percent in the admissions of people to prison since 1994. The greatest proportion of admitted prisoners came from Gauteng (23%), and Western Cape (18%). Over the time period 1994 to 2001, the number of people in prison increased from 80 301 to 170 044 on 31 May - an increase of 112 percent.

Rape, robbery-common, economic crimes-other, theft-other and murder were the five most common crime types. They collectively accounted for 73 percent of crimes committed. The greatest proportion of sentences (38%) overall, fell within the 7-10 year category.

Between 1990 and 2001, 4 061 people were reported to have died in prison, of which the vast majority (86%) were African.

64. In 2000 one fifth, or 11 924 prisoners were in prison awaiting trial as they were unable to pay their bail that amounted to less than R1000.00. This situation applies also to convicted prisoners unable to pay bail (Judicial Inspectorate, 2000).

The foreign composition of prisoners was more likely to be comprised from people from SADC countries than anywhere else.

For the period 1989 to 2001, 417 582 people were released on parole or under supervision. Seventy percent of these were African.

For the most part, prisoners were imprisoned, sentenced, and paroled in a ratio generally congruent with the national population. Two exceptions appear to be relevant however. Africans in prison died in greater proportion to the proportion that they comprised in the general population, and whites and Asians tended to be sentenced to longer sentences than other population groups in the same offence category.

Racism and discrimination in three South African prisons

The objective of this component of the study was to question and explore the experiences of prisoners and staff in terms of racial tension and incidents of racism and discrimination within these particular prisons - Pollsmoor in the Western Cape, and Boksburg and Krugersdorp prisons in Gauteng.

These prisons were selected as they are large prisons accommodating medium and long-term prisoners. Pollsmoor prison in the Western Cape was useful to ascertain the racial dynamics in a prison where African prisoners were not the majority. It must be noted that these three prisons are not representative of the entire prison population.

Pollsmoor prison

Pollsmoor prison is a large complex situated on a big area of land in the wealthy southern suburbs of the Western Cape. It comprises five prisons, a residential facility for staff, and a variety of social facilities for staff and members of the public. The prison consists of the Admission centre, holding, at the time of this study, 3 015⁶⁵ mainly unsentenced male prisoners; Medium A accommodating 1 299 unsentenced and 642 sentenced male juveniles; Medium B accommodating 849 sentenced male prisoners; Medium C, accommodating 743 sentenced male prisoners; and the women's section, holding 339 female sentenced and unsentenced prisoners. There are two special sections, Section B4 and B5, that at the time of our visit held 369 sentenced and unsentenced prisoners. In all, Pollsmoor prison was holding 7 276 prisoners in space designed for 5 798 prisoners - at 168 percent occupancy.

Boksburg prison

Boksburg prison is situated in the eastern part of Gauteng. Built in the late 1980s, it was designed to accommodate white and black prisoners in separate sections. It was also designed to accommodate female

65. These figures are applicable to the date of the research visit on 16 July 2001.

prisoners. However, segregation was never applied in the prison, and given the shortage of accommodation for male prisoners nationally, the women's section was used to house male juvenile offenders instead. At the time of this study there were 2 421⁶⁶ sentenced and 1 833 unsentenced prisoners held in the adult section. However, the prison capacity is only for 2 200 prisoners, thus it was operating at 193 percent capacity. The majority of prisoners (87%) were African, while coloureds formed 7 percent and whites 5 percent of the population.

Krugersdorp prison

Krugersdorp is an older prison in the western part of Gauteng. It has a main prison for adult offenders and a separate juvenile facility. On the date of our visit, 6 July, 2001, this prison accommodated 3 370⁶⁷ prisoners in facilities designed for 1 757 - thus operating at 191 percent capacity.

Method

This component of the study focused primarily on sentenced prisoners because they fell exclusively in the domain of the Department of Correctional Services (DCS). They also constitute a stable group of people and it was therefore easier to have access to this group.

Each prison was visited for one or two days. Separate interviews were held with the heads or acting heads of the prison, and at Pollsmoor and Krugersdorp meetings were held with the area managers. The interviews were open-ended but focused on issues of racism and discrimination.

The head of each prison was requested to provide us with a racially representative group of prisoners, including those who were serving long and medium term sentences. The research team held a focus group interview with these groups. Prisoners were given the option of speaking to us individually if they did not feel comfortable raising their issues in the group, but no prisoners accepted this offer.

Similar focus groups were also held with members of staff. In addition to selecting a racially representative group, efforts were made to meet with staff who fulfilled different functions. However, fewer staff than prisoners were interested in participating in the study, and groups were

66. These figures are calculated according to the population on 12 July 2001.

67. Krugersdorp prison was visited on 6 July 2001.

often smaller and not fully representative. Although the intention was to interview staff and prisoners separately, at least two of the groups expressed a preference for having the focus group jointly. It is possible that the nature of social pressures in prison inhibited participation in groups, as well as inhibiting individuals from coming forward for individual interviews.

The only female section that was visited and staff and prisoners interviewed, was at Pollsmoor prison. The only juvenile prison included in the study was Boksburg.

A walk through some of the prison sections, and random interviews followed these meetings with prisoners and staff. Several interviews were held at Pollsmoor prison after visiting different sections. Although it was an objective of the project to look at racism and discrimination towards foreign prisoners, very few foreigners took part in the study.

Finally, a focus group was held with 32 members of the DCS senior management. This was a representative group in terms of race, gender and function within the department.

Findings

The findings in this component are presented in two sections. The issues concerning the treatment, management and perceptions of staff are dealt with in the first section; and the concerns of prisoners are dealt with in the second section.

The treatment, management and perceptions of staff

Organisational transformation

Although superficially the DCS appears to have been reasonably successful in integrating a more representative cross-section of language and cultural groups into its staff complement - black staff members are now in the majority - several problems still exist. Staff raised several of these issues.

According to respondents, after the transition period, many white members of the DCS did not accept the changes required by the new

dispensation and left the service, many of them on voluntary retrenchments, and others on 'stress leave'. Some of their concerns related to having a black person in authority over them. It was reported that some white members were uncomfortable with the thought of having to report to a black head, or with black prison officials having to discipline white prisoners.

As a result of this exodus the prison was required to recruit new experts and promote juniors, often after insufficient training. In some cases, this led to feelings of inadequacy and uncertainty in making decisions among the newly qualified black members. In others it was felt that this resulted in corruption where new members were 'not aware of the laws and regulations to do things'.

Some were promoted because of the gravy train. About 20 percent of them were not playing the game. This meant that others could grumble, "Look, they can't perform." However, transformation is not new to us, and under the old regime you also had rapid promotion of whites without proper qualifications. (Prison head)

Some respondents perceived that the real power still lies in the hands of the remaining white members. It was felt that because blacks were previously disadvantaged they hadn't received the training that whites had. They felt that whites were still favoured and were viewed as if they had greater potential than blacks and were accordingly given more responsibilities and assistance to develop that potential.

Most respondents felt that the department had progressed far in terms of demographic representation, but that this did not always translate into a sense of real power being held by the formerly disadvantaged groups.

Black people are used as tokens. In Boksburg whites [staff] do everything. Black people are afraid to make decisions. Affirmative action is not working. (Prisoner)

One of the results of years of institutionalised racism is the internalisation of racist attitudes and feelings of inferiority. Several respondents indicated that black staff, even senior managers, sometimes subordinated themselves to white members. For example, if a black head of prison made a decision about whether a prisoner was to be allowed access to after-shave lotion,

he allowed himself to be overruled by a subordinate white warder.

Another consequence was overcompensation by way of increased discipline towards prisoners and members of one's own race group. One coloured manager said:

I am more strict with coloured prisoners who disobey, and I punish them worse. I don't want to be accused of favouritism. They must see that I treat everyone the same. Mr [African head of prison] is harsher on black guys. He also wants to set an example that he does not favour that group. This might have the result of favouring the white group. (Head of prison)

On the other hand it was felt that many of the remaining whites were not fully committed to transformation, that they were 'passive aggressive', 'bitter', and that they only wanted to 'look out for light work'. This impacted negatively on workplace integration. A common complaint was that white warders did not participate in many of the work activities:

White members are not committed to change. They don't attend personnel meetings, parades, memorial services, sports events and social events. They only participate when they personally benefit. (Warder)

Since demilitarisation, morning parades are no longer compulsory, but appear to still continue and to be viewed as an essential forum for organisational communication. Despite requests by the head of prison, one prison reported that most whites continued to abstain from the parades. When whites did attend, it was reported that they often stood separately, or to one side of the rest of staff.

It was reported that personnel re-structuring had also resulted in a breakdown of relationships:

There is a lack of absolute trust between the race groups. People have difficulty in adapting to deal with all groups, especially the senior people from the old regime. My senior white colleagues distance themselves from daily activities. They only want to do the job according to the book. There is no emotional commitment. It also happens to a less extent to coloureds from the old department. (Warder)

Some respondents felt that although white members from the 'old' regime appeared to be cooperating with the new management, they were actually finding ways to undermine management by ensuring that new policies, and practices were not carried out properly. One example given was where white managers did not give support to junior staff in order for them to develop the skills necessary to do their job. They then expected them to carry out the tasks without the skill or training, and in essence, 'set them up for failure'.

Work allocation

There was also the feeling that white warders were given preferential, and safer jobs in the prison. For instance, in Boksburg it was reported that white women were not required to participate in prison searches. It was also said that white warders organised their shifts so that they worked only with other white warders, and that they avoided hard jobs such as night shifts. Conversely, the warders at Pollsmoor felt that white warders preferred to work night shifts in order to avoid contact with prisoners; and also that white warders preferred to work in office-based jobs rather than in the prison itself. One warder expressed her frustration:

There is a white member in my section. It is said that she is incapable of working alone. But if the person is of another race, then they will allow the person to stay in the prison alone. Whites are not allowed to escort a prisoner alone. But once I had to escort some dangerous juvenile prisoners alone to court. Anything could have happened to me. Our life is not as important as theirs. (Warder)

Discriminatory treatment in respect of working conditions was also raised. Boksburg social workers complained that the black social workers had to work in damp and unsatisfactory rooms within the prison, while the white head social worker had an office in the more comfortable administration block.

Despite these reservations some respondents felt that there were some white staff that were committed to transformation, although 'some white members also felt threatened by the black staff. They felt that they were being victimized and intimidated, and that they were just expected to work'. The unions were also putting them under pressure, as 'they want

the black guys to be promoted to the fore'. Although many whites were still in supervisory or managerial positions there was a push for them to be replaced by black staff.

Proportional representation

Racism concerns were not only a feature between blacks and whites, but also between coloureds and other racial groups. Many of the coloured respondents felt that they continued to be marginalized. Under the apartheid years, they were categorized as blacks, but now they were not considered 'black enough', and had to seek a new identity for themselves. This feeling was more pronounced at Pollsmoor Prison in the Western Cape.

The Western Cape has the largest coloured population in the country. In May 2000 they constituted over fifty percent of the workforce in the prisons. At a parliamentary portfolio committee meeting ANC member Mr. Lamina queried that senior positions in the Western Cape were only held by coloured people and suggested that black people be given the opportunity for upward mobility. In response, the commissioner for the Western Cape indicated that 70 percent of new recruits in the Western Cape were African. He also cautioned that the national targets in the province should be seen in the light of national demographics indicating that 60 percent of South Africa's coloured population lived there (Parliamentary Monitoring Group: 2001).⁶⁸

However, in terms of the national targets set out in the DCS Equity Policy, the province is required to bring the population of coloured members down to 11 percent in favour of members of the African population group. This has caused a certain amount of tension amongst the coloured staff who argue that the demographic population in the prisons should reflect the demographics of each province, rather than reflect the national situation. About 2 000 coloureds would have to be transferred out of the Western Cape to comply with the DCS targets. There appears to be a concern that the national and provincial management is not taking this concern seriously enough.

In Boksburg one coloured member suggested that coloureds were being made to pay for the perception that they were previously privileged under

68. This discussion is taken from the minutes of the Correctional Services Portfolio Committee meeting on 18 September 2001.

the old regime, and accordingly made to do the less preferential jobs in the prison. Black members would often use derogatory terms to describe coloured people, such as 'bushie', a shortened term for 'bushman' - and usually derogatory.

Coloureds and whites in the Western Cape share the Afrikaans language and this, according to respondents, sometimes led to perceptions of white/coloured hegemony. Members of this group held key administrative positions, which to some degree rendered these positions exclusive to them due to their insistence on using Afrikaans as the primary medium of communication. One warder said that:

I have had a lot of complaints from people who say that if you don't speak Afrikaans then you won't get the job [in administration]. They still print many of their documents in Afrikaans. (Warder)

Another African member who works in the administration section said:

'If you answer the phone in English, the person on the phone will ask you to call someone else so that they can speak to someone they know will speak Afrikaans to them.' (Warder)

In response to this problem one warder stated that he had started writing his documents in English as the Afrikaans documents were 'irrelevant'.

New black recruits felt discriminated against at Pollsmoor. White and coloured members filled most of the existing positions and it was difficult for black members to fit in. Many of the new black recruits were educated and often university graduates who became frustrated with their lack of acceptance. They had new ideas and wanted to transform the system. However, they felt that members of the old guard frustrated their attempts.

Discipline and promotions

Some of the respondents felt that criticism from their white colleagues or superiors were an indication of their racist attitudes. A white supervisor said, 'I have seen that when a black member does something wrong and you confront him, he won't accept that it is wrong. He will challenge you and say it is racism'.

Although many of the managers indicated that there was a tendency for staff to bring race into disciplinary matters, they did agree that the staff was more confident of the process when they were disciplined by members of their own racial group.

It was felt by some warders that when white members were charged with serious offences they were treated more gently and advised to resign rather than be dismissed. They felt that black members were disciplined more frequently, and that, 'If you give an instruction to a white man he does not have to comply, but if it happens the other way around, then the person is discharged'. A white warder disagreed and gave examples of whites who had been stripped of their ranks or removed from service following disciplinary proceedings.

There also seemed to be a lack of faith in warders' managers' ability to recognise and reward people appropriately. One coloured member said,

One white member came to our section from another prison. He was transferred to another position after two months by a black manager. I was told that he had proved himself, but I saw that as racism [that he was promoted before me]. (Warder)

Among the managers in the department's national office there was a feeling that white members were disproportionately favoured when it comes to recommendations for merit awards. It was suggested that black managers needed to be trained on how to develop black staff and recognise them for promotions, as well as to be able to substantiate the motivations properly.

Culture

The department could be described today as multi-cultural and many of the problems of integration appear to lie in the misunderstanding of the norms and mores of others' cultures. Many respondents raised the issue of leave to mourn members who pass away. In the African culture, when a person dies, a broad range of people are expected to mourn the deceased and to attend the funeral. On the other hand, white and coloured funerals are much smaller, often attended only by the immediate family and friends.

When, for instance a black warder dies, it was reported that it was predominantly black colleagues who attended the funeral. The absence of white members was viewed as racist behaviour and evidence of their lack of support for their black colleagues. A black warder said, 'It seems that they do not care about the member who has passed away'. One coloured warder indicated that attempts have been made to accommodate every race. Because they thought that white members did not attend memorials where African songs were sung, they attempted to introduce songs in other languages, 'but still the whites stayed away'.

Departmental policy allows members to take off one or two hours to attend a burial. Many viewed this as a discriminatory policy that does not recognise different cultural practices. They said that in African culture, a burial is an extended process that can take up to two weeks.

Impact of racial dynamics on working in prison

There was strong racial identification between warders and prisoners. Prisoners were more likely to request assistance from a warder of their own racial or ethnic group than they were from a warder of a different group. Warders and prisoners attributed this to communication preferences. They felt that it is easier to communicate with someone who speaks their own language. It was reported that this is why white prisoners will sometimes go to a coloured member, instead of an African member for assistance - however their first choice would be a white member. In one case, a prisoner indicated that he could only get assistance from a 'man' - meaning a warder who had been circumcised following his own cultural practice.

This tendency was also evident among the members. At Boksburg, white members tended to take their problems to the assistant head of prison who was a white man, rather than to the African acting head, who said, 'There is a perception that I would favour one group'.

This identification appeared to have further implications in the workplace. In Boksburg it was reported that if white prisoners had a confrontation with a white warder, only white warders tended to rush to the assistance of their colleague, black members would withdraw. This situation was reported to work in the reverse as well.

Also comments were made by warders that some warders tried to manipulate their working schedules so that they were on duty only with members of their own race group.

In some prisons it was said that a warder from one ethnic group, for example a Pedi, would not speak to a warder from another ethnic group, for example a Zulu person.

Another, and rather ominous concern, was that group members felt that some white warders were more likely to trust and assign tasks to white prisoners rather than to another black colleague.

Racial stereotyping

Many whites, I wouldn't say all, have a particular stereotype of black people. They would deny it, but it's true. It's a very negative stereotype of people who are lazy, basically dishonest, thieves, corrupt, can't really govern any country. Many carry this perception and it informs their reading of what is happening. (Comment by President Thabo Mbeki⁶⁹ and pinned up on the notice board in the office of the Boksburg assistant head)

Until all of us acknowledge that racism is a problem and still exists, it is not possible for management to come up with solutions. (Warder)

One member said that, 'Many white members grew up believing that nothing good could be done by a black man, so if a black man has a good idea and wants to give some advice, the white warder will undermine it.'

Lack of communication and steps to deal with this

Warders in all prisons complained of a lack of communication, at both interpersonal and operational levels. In Boksburg the component heads identified lack of communication and racial tension amongst managers. It was decided that a meeting should be arranged for all managers to look at ways of dealing with the problem.

The number of different languages spoken by the different race groups, was cited as hampering communication. White and coloured members seemed to feel excluded when an African person spoke their own

69. 'The legacy of apartheid is still with us', Interview with President Thabo Mbeki by Hugo Young, *Mail and Guardian*, 1 June 2001.

language. However, since the official languages in the prisons were normally English and Afrikaans, there was an expectation that people were conversant in one or more of these. One woman alluded to the issue of language superiority:

Why is it that white people talk their language, and it is fine. But when black members talk their own language, they are gossiping?
(Warder)

Some members pointed out that this was due to their own lack of interest in learning the languages of other groups. One person said that he is making a special effort to learn another language.

I don't feel excluded when people talk Xhosa. I ask someone to tell me what they have said. Every person has to look after the other. We deal with inmates of different tongues, and you have to learn some key words and phrases from their languages. (Warder)

Social interaction

There seemed to be a general lack of social interaction between different race groups. Most members lived on the prison premises in departmental housing, yet there were often requests for members (mainly from white members) to be allocated housing next to their own race group. The children however, played together and did not see racial boundaries, reported respondents, but it was felt that they grew apart as they got older and became influenced by their parents.

Respondents also reported that members tended to only attend those social functions organised by members of their own racial group. One warder said, 'This is racism, not comfort zones. The attitude is that I won't attend (the function) because he is coloured or black.'

On a more positive note some of the members had made an effort to reach out to other members. A reported example of this was in Pollsmoor, 'when the coloureds arranged a social function they made a pot of porridge to make the black members feel more comfortable'.

The prison complex usually has club facilities as well as sporting and recreational facilities. Whereas almost exclusively utilized by whites in the past, it was pointed out that now whites seldom use them. White

members also played for non-prison sport teams. If they did frequent the department bars and clubs, they tended to segregate themselves. They also seldom attended annual and half yearly functions organised by the prison.

Unions

The unionisation of members was split according to race. White members belonged to the Public Servants Association (PSA) while black members tended to belong to the Police and Prison Civil Rights Union (POPCRU). There appeared to be a lot of finger pointing between the two unions, and members responded along racial lines. Although management ought not to be involved in the unions it was believed that they lent invisible support to members of their own union or its particular leaning.

The perspective of managers

The research team met with the managers of the various units in the department's head office in Pretoria. The group comprised of African and white managers, with an absence of Asians and coloureds. At the start of the meeting a member pointed out that racial issues were not overt, but that they were played out in subtle ways in every interaction. He illustrated this by indicating that participants had grouped themselves according to their racial group in the meeting room.

Many of the group members at the meeting viewed this as an indication that most people operate from the safety of their comfort zones, and that some effort was required to move beyond this into proper integration. Some people indicated that it was important for people to learn to respect one another's culture and the different ways that they do things.

Racism was said to often divide the department, particularly on some issues. People would lobby for individual posts or policy issues along racial lines. Another problem raised, similar to that raised by the heads of prison, was that some black managers were insecure in their positions and didn't feel comfortable in positions of authority over their white colleagues. People felt that staff did not tackle racial issues head on and tended to gossip and complain rather than confront the problem.

The use of language was an issue raised frequently by personnel. They

contended that some Afrikaans words were problematic and viewed as insulting when used in front of black members.

More seriously, some members felt that whites received preferential treatment, and were considered more frequently for promotion and merit assessments than blacks. Possibly this had to do with black managers being unsure of how to motivate for their staff. Conversely, a white manager felt that people tended to hide behind complaints of racism, neglecting to examine actual work performance.

The managers also indicated that affirmative action impacted negatively on white staff who had negative perceptions of the blacks who were affirmed. This problem was reinforced when managers lacked the confidence to discipline or deal with those members who did not, or who were unable, to perform according to performance criteria.

The issue of ethnic discrimination was also raised. Issues of tribalism were more pronounced in certain provinces, particularly those in more remote areas. If one of the head office managers visited one of these prisons, but could not speak the dominant language, then he or she was shown less respect. In some prisons it was reported that staff had refused to allow their visitors to address them in English - the common language. It was difficult for someone from one ethnic group to manage a prison composed mainly of staff from another ethnic group. Conversely, a prison such as Middleburg, which is a microcosm of different ethnic groups, lacked cohesion and was also difficult to manage. Similarly, it was said that many members were prejudiced against members who came from the former TVBC states (Transkei, Venda, Bophuthatswana, Ciskei).

A manager from the prison training programme pointed out that the department had created various training programmes to focus on dealing with diversity and team building. However, it seemed that there was little attempt to deal with racism head on, and for most in the group, this session provided the first opportunity to air their views about racism. It was said that this meeting would not have been possible 15 years ago.

Managers bemoaned the fact that there wasn't a structure within the department to deal with issues of diversity.

Prisoner concerns

In contrast to the Department of Correctional Services (DCS) members, prisoners tended to have fewer complaints of racial bias or ill treatment from their fellow prisoners. Most of their concerns related to relationships between warders and prisoners. They did express difficulties in integrating and understanding one another. However, this was probably a reflection of the wider process of integration occurring generally in South African society.

Cell integration

At the start of the transformation process, even though the prisons had been desegregated, the races were still largely accommodated separately. One of the challenges for managers was to facilitate the integration and to ensure that prisoners were proportionately distributed throughout the prison. At the time of our visits prisoner accommodation was largely integrated. The large cells were fully integrated, with only a small number of white prisoners (two or three) being allocated to each communal cell. The policy was to separate the whites and distribute them throughout the prison.

Several of the white prisoners interviewed indicated that they felt isolated and insecure in the large cells. They said that their greatest difficulties lay in understanding the cultures of other inmates and understanding the different languages.

The cell rules were usually determined by a cell monitor, and on issues such as the selection of TV programmes, the choice of the majority was the one that rules. Whites were often marginalized in these decisions, although some prisoners indicated that they did try to make allowances for minority groups and rotate programmes. However, it did not seem that this system was always applied equitably.

Prisoners tended to segregate themselves according to race and ethnic groups in the cells. Some of the cell monitors would try and keep prisoners of a different race or ethnic groups out of the cell. Sometimes it was felt that it was difficult to deal with the prejudices of other groups. Some of the prisoners did not want whites in the cell at all.

Some prisoners felt that they should be allowed to select which cells they

wanted to stay in so that white prisoners could be held together. Other prisoners indicated that this system would lead to greater friction.

In every prison there was only a small number of single cells. In most cases although three prisoners occupied the cells, the conditions were markedly better than those in the communal cells. Consequently the right to stay in single cells was highly contested. Both prisoners and warders indicated that whites 'always' want to stay in single cells, and in some prisons it was indicated that more whites stay in single cells than other groups of prisoners. Some white prisoners complained that they had to 'pay warders' for their single cells, whereas other prisoners could be given the cells on application.

At Boksburg researchers were told that there were no 'white only' single cells, although on a walk through the cells researchers saw at least three cells occupied by only white prisoners.

At Pollsmoor prison it was indicated that there were still a greater proportion of whites being accommodated in Medium B, the old white section. Because the conditions in that section were more favourable, white prisoners did not want to be transferred out. It was said that these prisoners joined special programmes, and their requests not to be transferred were usually supported by the white social workers.

Relationships between prisoners of difference race and ethnic groups

We are all racist in prison. This is a contagious disease that we have all adapted to historically. Blacks are told that what the whites did in the past was bad. We were told what the Zulus did was bad. Every group has a past of doing something wrong.
(Prisoner)

Prisoners reported that there were some incidents of racist language used to refer to other groups. Conservative Afrikaners were said to use racist terms towards blacks, while coloured prisoners complained that they were subject to racist language by Africans and other groups.

Ethnic discrimination arose as an issue. A Zulu prisoner from KwaZulu-Natal felt discriminated against at Krugersdorp prison, which was

predominately a Tswana prison. He said that he was discriminated against by warders and prisoners, and was even excluded from finding a job at the prison, although he had worked as a boilermaker in other prisons. He said, 'I am being treated like a foreigner instead of a South African. They say that if I want a job I must go back to KwaZulu-Natal.'

Prisoners spoke of the struggle many of them had in resolving their own prejudices towards other racial groups. 'This thing is in yourself. We have learned to think and feel this way.'

A black prisoner said, 'We must learn not to discriminate, but I don't want a white man on top of me in the top bunk.' Another man said, 'I was a black consciousness member. I am trying to deal with my prejudice against whites. I used to hate whites. It's hard to get out of this. It is internalised.'

A white prisoner said that he found it difficult living in close proximity to a person who was brought up in a different culture to himself. Different habits cause arguments and friction. But most prisoners seemed to recognise the need to change and adapt and to be tolerant of other cultural groups.

One prisoner indicated that he had put the Afrikaans language aside and was learning to speak Zulu as a way of trying to better integrate.

Interviewees could not cite examples of racial violence between prisoners. The managers did comment that sometimes there appeared to be violence between prisoners of different races, but on investigation the violence was gang rather than race-related. The gangs were racially and ethnically integrated, although racial disputes often occurred between gang members of different race groups, particularly between black and coloured gang members. This seems to indicate that racial tensions did exist even in the gangs.

Broadly speaking it could be said that the integration of prisons was a lesson in social interaction for all racial and ethnic groups. Prisoners were challenged to find ways to communicate with one another, and to learn to tolerate one another's culture and habits. Several prisoners had established inter-racial relationships, whilst others preferred to keep relationships at a more superficial level.

One white prisoner indicated that it was difficult to express emotions, particularly anger, towards a prisoner of a different culture. He commented that he felt safer discussing his emotions with a white prisoner, than confronting a black prisoner with whom he were angry and run the risk of exposing himself to racial slurs.

Racial and ethnic discrimination between warders and prisoners

Racial and ethnic dynamics tended to play themselves out in the relationships between warders and prisoners. Some prisoners indicated that there was definite racial discrimination, and that white prisoners were usually treated preferentially. In passing through the gates to the visiting sections some prisoners said that only black prisoners were searched. They also said that white prisoners were given the best jobs, or were in the most skilled positions. This was sometimes related to the fact the white prisoners were often more skilled or educated than black prisoners. For example, there were two white prisoners assisting in the medical section of one prison. Both were trained and experienced nurse aides.

Several prisoners complained of racist language and treatment by white warders, particularly those in charge of the kitchens. One said that he was sworn at by the head of the kitchen who said that he 'does not want a kaffir in the kitchen.' This inmate said that when he complained to the head of the prison he was assaulted. Prisoners were afraid to complain about this treatment for fear that they may lose their jobs in the kitchen.

There was also the perception that the white doctors gave preferential treatment to white prisoners.

Conversely, some of the white prisoners felt that black warders try to 'punish' them for the past. One coloured prisoner said, 'Black warders are anti all of us'. The attitude is that "I am the ruler at the end of the day". At the hospital section it was said that black warders called members of their own group to the hospital section first. It was only at the end of the day that they allowed white and coloured prisoners to go through, by which time the hospital had often closed for consultation. At Boksburg a black prisoner complained that a white warder refused him a contact visit, whereas a black warder allowed it.

All prisoners acknowledged that they would be more likely to go to a warder of their same ethnic or racial group for assistance, or when emotions run high. They attributed this mainly to wanting to speak to someone who understood their culture or language. But it was also attributed to warders being more likely to favour members of their own group. For instance, at one prison it was said that white warders only selected white prisoners to work with them. One member said,

There is a tendency for one (racial) group to be more lenient than another group. I get complaints that a black warder is sympathetic to black prisoners. There are rumours that some warders have family members in the prison who are more senior in the family hierarchy than the warder. They will try and tell the warder what to do. (Warder)

However, it was acknowledged by prisoner respondents that they were also sometimes prejudiced towards warders, and would speak to a coloured or a black warder in a different way. They also acknowledged that prisoners sometimes manipulated warders along racial and ethnic lines. For instance, a coloured inmate would complain to a coloured warder about black inmates and warders, or they would try to set one group up against the other.

At Krugersdorp a common complaint was that it was difficult to pass through the gates of the different sections. Unless the gatekeeper was of the same ethnic group as the prisoner, or one of his 'homeboys' (a person from the same residential area), the prisoner would be unlikely to be allowed to pass through without an unreasonable delay. The prisoners also attributed this to corruption, and said that the warders would let anyone through if they were paid or given a cold-drink.

In addition to racial prejudice, prisoners also indicated the presence of different modes of discrimination. Some prisoners were treated differently from others, but that this was not necessarily along racial lines, but rather it appeared to be based on class distinction. If someone were a well-known personality or a politician, that person would be more likely to get better treatment. Such people were often accommodated in the hospital sections of the prison. In the Pollsmoor female section the prisoners complained that one of the women was not locked up at night at the same

time as the rest of the prisoners, was allowed unlimited phone calls, and was allowed to spend her evening in the company of the warders rather than in the cells.

Foreigners

At the time of this study there were roughly 3 000 foreign prisoners held annually in South Africa. Xenophobic attitudes prevalent in general society were also expressed within the prison. Foreign prisoners tended to be discriminated against, with xenophobic attitudes being more pronounced in large prisons, such as Johannesburg, where large numbers of foreign prisoners were held. Most of these prisoners were held in the awaiting trial section from where they were often deported or sent to other facilities to await their deportation. Relatively few had been sentenced for crimes. These prisoners often could not speak South African languages and felt alienated from the general prison population. Where there were more prisoners, they tended to stick together in their respective groups.

The foreign prisoners indicated that the warders often treated them like 'dogs', rather than like people. Prisoners said that warders used xenophobic language towards them, and did not do enough to accommodate these prisoners. It was reported that foreign prisoners from developed countries were treated with more respect, and often allowed a greater number of privileges than other prisoners, whereas foreigners from Africa were treated with disrespect. To guard against this some foreigners pretended to be South African - but if they were found out they were treated badly.

Prisoners also discriminated against foreigners. One Portuguese speaking man said that prisoners called him 'Portuguese', and treated him with disrespect. He wanted to phone his sick child in Mozambique, and when he was refused permission he filed a complaint. The response was to send him to an isolation cell.

Services to prisoners

South African prisons were under-resourced when it comes to social and psychological services to prisoners,⁷⁰ so it was expected that there would be a lot of dissatisfaction with the services available to them.

70. There are shortages of personnel in all support services. In March 2001 the ratio of psychologists (of whom there are 44 nationally) to inmates was 1:3885; social workers (477) was 1: 358; religious workers (34) 1:5028; and qualified and functional staff who are educators (561) 1:305. (Department of Correctional Services: 2001, p. 89).

Different programmes seemed to be attended more predominantly by one or other racial group. Most of the black participants had dropped out of the South African National Council for Drug and Alcohol Abuse (SANCA) drug and alcohol rehabilitation course in Krugersdorp, because 'they were advised to give up dagga' and were reluctant to do so. At Boksburg the prisoners had the perception that few black prisoners were chosen for courses, and that the places were reserved for white and coloured inmates where inmates are isolated and received preferential food and treatment. On the other hand, it was said that the 'self-development' courses were predominately attended by black inmates.

The school and education section was mostly attended by black inmates, yet at Boksburg the head of the section was a white man. Prisoners related the lack of text books to the lack of white prisoners studying there. It was also said that although a charity had wanted to donate computers to the prison, the head of the section had refused, and this decision was perceived to be underpinned by racist motives. The prisoners said that this education head was also the head of the Task Unit and the Reaction Unit. It was reported that he kept guns, snakes and teargas in his office, and they commented that this was intimidating and unacceptable for the head of an educational institution.

At most prisons there seemed to be a racial disparity among the social workers and psychological staff. In Krugersdorp, of the seven social workers, three were white, and the only psychologist was white. This may have been a reflection of the smaller proportion of black social workers nationally. Prisoners and staff indicated that prisoners usually requested to see a social worker of their own racial group, for cultural and language reasons. At Krugersdorp, the white social workers saw inmates from all race groups, but predominantly coloured and white inmates. Social workers were allocated to each section, however, it seemed that some white prisoners went out of their way to see white social workers. One social worker said that there was a perception among all inmates that white social workers were more competent.

One black warder said that prisoners perceived that white prisoners were regarded by the staff as superior and treated preferentially. She indicated that whites demanded a lot of attention, whereas black people did not

complain as much. Black inmates saw whites getting medication and treatment from the doctors and viewed this as discrimination. One prisoner said that:

Whites have more privileges. The warders will stand and listen to what they have to say. If a black man complains they don't take any notice. It is difficult for a black man to be given a special diet.
(Prisoner)

Another inmate complained that the chief nursing officer at the prison was Afrikaans speaking and was always shouting. She didn't attend to his request for a special diet, whereas white prisoners were given their special meals.

Prisoners also complained about the treatment by medical staff. Some prisoners said that the doctors did not have respect for people of other races. When prisoners were given prescriptions for medication, the medicine did not arrive at the section. It was reported by respondents that prisoners were given generic drugs or nothing at all. One prisoner complained that they were given expired tablets. He also said that 'whites get proper medicine and not blacks. They think we don't know.'

Another prisoner said that if a black person got sick at night, he would be told to wait for the morning to see a doctor, but if it happened to a white man, 'they will send the chief [head of the prison] and about six other people to come and see if they can help him.'

A potentially discriminatory provision around medical treatment was the lack of access to traditional medical practice in the prison. Many African prisoners respected and believed in traditional medicine. Since there was no departmental policy dealing with traditional healing treatment, heads of prison had to use their discretion. Traditional healers were sometimes allowed to consult with prisoners in the visiting section, but they were not generally given permission to visit and treat prisoners inside the prison. A prisoner had to apply to the head of prison for any medication to be brought in. It seemed it was problematic for the head of prison to approve traditional medicine as it was often difficult to be sure that no harmful or illicit substances were being brought in; or to scientifically test the medicine. Despite this there were examples of prisoners who had applied and who had been supplied with their treatment.

On a similar note, the presence of different cultural beliefs also caused confusion among staff, who didn't understand them. One coloured warder was given a bottle of liquid with a rolled up banknote in it and asked to pass it onto one of the prisoners. The other prisoners reacted with horror and refused to allow the warder to give the bottle to the prisoner believing that the contents would be used for evil purposes. Another example offered was that until African prisoners explained to the warder, that they wanted to bring water to their minister to be 'blessed', she refused to allow them to carry the water through the prison, until its purpose was explained to her.

General prison conditions

There is no hot water in the prison. This is racism too. Because we are black prisoners they treat us like this. (Prisoner)

We would not eat this badly in prison if it were full of whites. The head of prison is full of apartheid. He does not test the food. The food is deserving of black people. (Prisoner)

It would seem from this study that prison conditions had not improved much since the so-called transformation, and sometimes, due to the increasing prison population, the conditions had in fact worsened. Prisoners complained about the conditions, and many of them believed white prisoners were more respected and that prison conditions would be better if there were more white prisoners. Prisoners mentioned a host of complaints ranging from lack of hot water, broken windows, and lack of the means to keep the cells and themselves clean. In one prison they complained that some of the stoves were broken and that accordingly all the food, including the fish was boiled. They also complained of worms in the samp and mielie-rice.

Discipline against prisoners

Most prisoners perceived that harsher disciplinary action was generally taken against members of their own racial group than other groups, although examples were always cited of prisoners from other groups who had also been disciplined 'unfairly'.

Racism and **Discrimination** in the South African Penal System

Concluding remarks

On the strength of this research project it would appear that during the time of the research, staff and prisoners were undoubtedly living and working in conditions influenced by the country's racist past. This being said, law, legislation and policy have been designed to eradicate the influence of apartheid and to rectify its impact on the treatment of prisoners and staff. Steps have also been taken to remedy racial inequality and discrimination, and restore racial representation at all levels, through affirmative action. Although there was evidence to suggest that staff and prisoners experienced some difficulties in learning to live and work together, it could be argued that this was probably no more or less than would be experienced by people in the rest of society. On the positive side, through forcing people to live together in controlled confined spaces, the prisons may represent a more successful lesson of integration than can be seen outside.

At the time the research was conducted, the prison population was roughly proportionate with the general demographic breakdown of people in South Africa, with slight over-representation of people from the coloured population group. In addition, although there were slight variances in the sentences for certain crimes being handed down to different population groups, these were largely proportional to both the prison population and that of the country's population.

Policy dictates that all prisons and cells are fully integrated, and this has largely been achieved and adhered to. On the interpersonal level prisoners tended to group with their own ethnic and racial groups where possible. Some racial tension did exist, but appeared not to have resulted in any serious racist incidents. Racial dynamics were more overt in relationships between staff and prisoners, and this had the potential to disrupt prison management, and lead to the unequal treatment of prisoners by staff of different races. If prisoners saw that staff treated different racial or ethnic groups differently, they would, at times, exploit this to their own advantage.

Issues of integration seemed to have resulted in greater stress and to have been more difficult among staff. Affirmative action has ensured that staff reflects the demographic make-up of the country, assisting the department to reach its quantitative goal for transformation. However, this often appears to have been done without fully recognising the impact of transformation on staff morale, relationships between staff, and the impact on the working environment. There remained a great deal of resentment amongst staff towards members of different racial groups. White members were resentful that black members had displaced them, while black members felt anger towards white members and still perceived whites to be receiving preferential treatment. It would seem from interviews that resentment, and an unwillingness to accept the challenges of change, caused conflict as well as a lack of commitment in the work place. It also resulted in some difficulties in different racial groups working together, as well as created opportunities for prisoners to exploit these differences to their own advantage.

One of the biggest challenges facing prisons is to find a way to manage diversity amongst personnel at all levels. This requires not only the development of policy, but also a change in institutional culture. It requires an awareness of racial perceptions and attitudes and how this affects working relationships. It also requires that senior managers, and those working in prison, recognise the effect of these attitudes and develop proactive ways of dealing with problems. The official and NGO Declaration and Programme of Action adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and related Intolerance, serves as useful guides for the changes that needing to be introduced into the Department of Correctional Services.

The crime rate in South Africa is escalating, and it seems unlikely that prison numbers will reduce in the near future. Simultaneously, there is a public backlash against crime, calling for harsher treatment of offenders. South Africa has one of the highest per capita prison ratios in the world. If crime continues to increase, and if our society continues to incarcerate offenders and suspected offenders at the same rate, then we are likely to see even greater numbers of people sent to prison.

The link between poverty and crime has been well documented, and in the South African context, given the disparities in wealth, opportunities and skills that have existed for so long, the effect is that black people are more prejudiced by poverty. The result of this, given our high rate of incarceration, is that people (particularly black people) will continue to be imprisoned simply because they are poor. While there is little the Department of Correctional Services (DSC) can do about the matter, it is nevertheless a factor which must inform both economic policy as well as policies within the criminal justice system - particularly sentencing policy.

Racism and **Discrimination** in the South African Penal System

Recommendations

The research has indicated a number of issues that deserve attention. Should these be ignored, it is possible that unresolved tensions might lead to serious racial tension or conflict. A failure to address these issues may also lead to difficulties in managing the prison administration and staff. The following recommendations are suggested in order to address some of these concerns.

General

1. The Department of Correctional Services (DCS) must, in conjunction with other role-players in the criminal justice system, continue to seek ways to reduce the prison population, while simultaneously trying to improve prison conditions. It is very difficult to make any changes to the work conditions of prison workers or the life of prisoners when the conditions in prisons are so taxing. Overcrowding creates additional burdens on staff, and increases tensions amongst prisoners and staff.
2. A study should be conducted to determine the extent of racial discrimination in the criminal justice system more broadly. It is important for South Africa to monitor, with a view to eradicating, the potentially negative impact of racism and discrimination on the administration of justice, and particularly on the people who are severely punished by being sentenced to imprisonment.
3. Laws and policy in the criminal justice system should be reviewed to ensure that they are not discriminatory, either in purpose or effect.
4. Sentencing and parole policy and practice should seek to work towards a situation that avoids people being incarcerated simply on account of their poverty. In other words the use of alternate sentencing options should be encouraged where financial circumstances render a person unable to pay a fine or fulfil a sentence that has some direct monetary obligation.

Prisoners

1. Diversity and anti-racism workshops should be held for prisoners. Many prisoners appear to be harbouring feelings of anger and resentment towards other prisoners, and should be afforded the opportunity to speak about their concerns and come to some understanding about how the past influences how they understand and interact with each other. These workshops should also focus on managing conflict between different racial and ethnic groups of prisoners.
 - It is recommended that people who are not employed by the prison facilitate these workshops. Alternatively, these can be facilitated by social workers who are appropriately trained.
2. Prisons should be independently monitored to protect against racist, discriminatory or xenophobic practices. Members of the correctional services, as well as members of external monitoring bodies (such as the Judicial Inspectorate and Independent Prison Visitors) should be trained to be sensitive to racial tensions in prisons. This is important so that they can report on racial tensions discrimination, or racist behaviour, and deal with problems in a sensitive and appropriate way.
 - Prisoners should be able to report incidents of racism to the relevant authorities.
3. Efforts should be made to further integrate the accommodation of prisoners. Prisoners should not be racially segregated, even in specialist units or single cell accommodation.
 - However, this integration should not have the effect of isolating prisoners from prisoners of the same cultural or ethnic background as themselves. They should still be able to associate freely with whomever they choose outside of their cells.
4. Prisoners of all races and ethnic groups should have the same access to education and development programmes, health services and other programmes available to prisoners. Where it appears that prisoners primarily of one racial or ethnic group

are making use of a service, this should be investigated to ascertain why the programme does not meet the requirements of other groups.

5. Prisoners should be able to see members of the DCS offering professional services, who are able to understand their own culture and language. However, this often leads to imbalances in the workloads of these professionals, as for instance, white prisoners may only want to see white professionals. Efforts should be made to ensure that all prisoners have equal access to professional services, and that in turn, professionals of different racial/ethnic groups, are not overburdened by the caseloads of one particular group.

Staff

The research suggests that much of the racial tensions and perceptions of discrimination in prisons, occur among members of the department. The following recommendations are suggested in order to deal with these concerns.

1. Management should take complaints of racism seriously and take disciplinary measures against any staff member who has acted in a discriminatory manner. Other forms of performance management counselling should also be used when a staff member indicates by conduct or words that he/she has inappropriate attitudes towards another racial group.
2. Diversity workshops should be held with staff at all levels, including those at senior managerial level, and those operating in provincial and national offices. There has been no systematic attempt by the DCS to deal with issues of diversity or racism among staff, and many have not had the opportunity to work through some of the attitudes and feelings that they may have.
3. The WCAR Programme of Action recommends that States develop and strengthen anti-racist and gender-sensitive human rights training for public officials, including correctional officials (Paragraph 133). Accordingly anti-racist training should become part of the DCS training for recruits, as well as for in-service training.

4. Members should ensure that special attention is given to the rights of refugees or foreigners in prisons.
5. Members should be trained on how to tackle issues of racism and discrimination within the workplace, particularly in relation to interpersonal and work relationships with other members. They should also be trained on how to take effective and incremental disciplinary steps against members who are conducting themselves in a racist or discriminatory manner.
6. Mentoring systems should be in place for new appointees in senior positions. While many of these new managers may well be competent, many of them seem to lack confidence, and would value a forum whereby they were able to seek support for their decisions. Due to the difficulties in trying to manage white managers who may be more experienced or have been in more senior positions, it is recommended that these mentors be of the same race group as the people they are mentoring.
7. A specific unit should be established within the department to develop programmes to deal with equity and diversity, as well as to monitor the equity programme and complaints of discrimination or racist treatment
8. Efforts should be made to actively draw members of all racial and ethnic groups into the daily professional and social life of the prison. Members of any one particular racial/ethnic group should not be allowed to refuse to participate in any work activity. Work should also be allocated equally to members of all racial groups. Attendance at parades and other work-related events should be compulsory for all staff, and members failing to comply should be disciplined.
9. The Equity Programme of the department should continue in order to ensure that the department personnel are representative of the general population in terms of race and gender. However, this should be flexible enough to accommodate the historical demographic differences that occur in different provinces (for example the Western Cape and KwaZulu-Natal).

Penal Reform International Against Racism and Racial Discrimination

Penal Reform International (PRI)¹ is an international non-governmental organisation. It seeks to achieve penal reform, recognising diverse cultural contexts, by promoting the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards; the elimination of unfair and unethical discrimination in all penal measures; the abolition of the death penalty; the reduction of the use of imprisonment throughout the world; and the use of constructive non-custodial sanctions which encourage social re-integration while taking into account the interest of victims. .

PRI is committed to fighting against all forms of racial discrimination within criminal justice and penal systems. Persons who are vulnerable to racism or racial discrimination within these systems include persons who belong to any minority, racial, ethnic, national, linguistic, religious group or caste, indigenous peoples, migrants, and asylum-seekers and refugees who are placed in detention centres pending the outcome of a request for asylum. Compounding factors which increase the likelihood of discrimination within these existing categories of vulnerable persons include gender, age (in particular children and young persons), sexual orientation, disability, economic status, and social origin, and persons living in situations or countries in conflict. Racism or racial discrimination occurs in multiple forms and at all stages within the criminal justice and prison systems and law enforcement agencies. Within law enforcement agencies, it occurs during the period of investigation, during stops, searches, seizures and arrest, as part of the decision to charge a person, and during periods in police custody. Legal provisions may be racially discriminatory. Discrimination also occurs as a result of the systemic lack of protection of vulnerable persons, including lack of access to justice. Court decisions or administrative procedures often result in racially discriminatory outcomes. Vulnerable groups also suffer racial a

1. Founded in London, UK, in 1989, Penal Reform International has members in five continents and in over 80 countries. PRI develops programmes on a regional basis, assisting both non-governmental organisations and individuals to establish projects in their own countries. It promotes the exchange of information and good practice between countries with related conditions. PRI's regional programmes include sub-Saharan Africa, the Middle East, Central and Eastern Europe and Central Asia, South Asia, Latin America and the Caribbean.

discrimination whilst serving sentences of the court, whether imprisonment or other sanctions, and may suffer disproportionate hardship and stigmatisation after release.

In fulfilling its anti-discrimination mandate, PRI participated at all stages in the World Conference Against Racism (WCAR) and NGO Forum, held in Durban, South Africa in 2001. PRI wished to bring to the urgent attention of the WCAR the serious prevalence and extent of racist and racially discriminatory laws, policies and practices in criminal justice and prison administration systems. It also wished to ensure the amendment of the WCAR and Forum Declarations and Programmes of Action to reflect this unacceptable global reality, and to identify the causes, victims, methods of prevention, and remedies for such laws, policies and practices, and provide strategies for their eradication. PRI was instrumental in founding and co-ordinating the WCAR International Criminal Justice Caucus, comprised of a large number of organisations and individuals, which succeeded in having key provisions and chapters relating to criminal justice issues included in the final Durban documents. This was recognised by the UN High Commissioner for Human Rights, Mary Robinson, when she declared that the NGO Forum Declaration contained excellent provisions relating to criminal justice. The International Criminal Justice Caucus, renamed Coalition, is a network which continues a broad range of activities in the follow-up to the WCAR. In addition, PRI has commissioned a number of publications dealing with specific issues of racism, racial discrimination, xenophobia and related intolerance within criminal justice and penal systems.

PRI is honoured to have worked in partnership with the Centre for the Study of Violence and Reconciliation, represented by Amanda Dissel in close collaboration with Jody Kollapen of the South Africa National Commission for Human Rights, in the publication of this study, which represents a piercing insight into the on-going repercussions of a former regime on its own people. It is hoped that this will provide a valuable template for reflection and action in the global fight against racism.

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