

ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION AT ALL STAGES OF THE CRIMINAL JUSTICE PROCESS IN SOUTH AFRICA

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I. INTRODUCTION

Prison overcrowding is one of the largest problems facing the South African criminal justice system today. Many people may think this issue does not affect them, but the problem becomes important when overcrowding forces prisoners to be granted early release. In cases of extreme brutality, the sentence served by criminals can be short.

Prison overcrowding causes a controversy of positive and negative views concerning the construction of more prisons. Supporters claim that building more prisons is the only solution, while opponents argue that community-based alternatives could be used to reduce the prison population, address the problems caused by overcrowding and to enhance effective rehabilitation and successful reintegration of offenders into the community. Treatment services and development programmes are always an important component to bring about more permanent changes in the conduct and behaviour of the offender.

In South Africa, as in the rest of the world, there is great concern regarding the continual escalation of the prison population. In the absence of community-based alternatives to incarceration, prison sentences alone have been relied upon to serve the penal function of deterrence, retribution, protection of the community and rehabilitation.

Regarding penal reform, most leading countries including South Africa have invested in alternative sentencing options which makes it possible to satisfy the community's requirements for retribution and protection whilst keeping offenders with less serious offences out of prison. Therefore, according to Section 2 of the Correctional Services Act 111 of 1998, the purpose of a correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by:

1. Enforcing sentences of the courts in a manner prescribed by this act;
2. Detaining all prisoners in safe custody whilst ensuring their human dignity and;
3. Promoting social responsibility and human development of all prisoners and persons subjected to community corrections.

One of the important goals of the criminal justice system of any country is to help offenders to become law-abiding citizens. Incarceration in prison for long periods at a time does not, in itself, lead to long-term changes that many offenders require in order to return to the community.

Therefore this document aims to share information on the available community based alternatives to incarceration throughout the criminal justice process in South Africa.

II. TRENDS IN THE PRISON POPULATION IN SOUTH AFRICA

A. Prison Population

As of 31 March 2001 the Department of Correctional Services had cell accommodation for 102,048 prisoners against a total prison population of 170,959 prisoners. The situation constituted a national average level of 167.53%. The composition of the prison population is reflected below:

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Table 1. The Composition of the Prison Population as at 31 March 2001

Categories	Adult		Juvenile		Total
	Male	Female	Male	Female	
Sentenced	98,778	2,719	12,814	233	114,535
Unsentenced	41,714	1,067	13,390	251	56,424
Total	140,485	3,786	26,204	484	170,959
Percentage	82.17%	2.21%	15.33%	0.28%	100%

Source: Department of Correctional Services

Table 2. The Cell Accommodation and Utilisation as at 31-01-2000/ 31-01-2001/ 31-01-2002

Gender	1/31/2000			1/31/2001			1/31/2002		
	AC ¹	Prisoners	Occupation	AC	Prisoners	Occupation	AC	Prisoners	Occupation
Female	4,454	4,180	93.85%	4,37	4,157	95.17%	4,066	4,315	106.12%
Male	95,380	162,243	170.10%	97,646	163,612	167.56%	102,024	173,386	169.95%
Total	99,834	166,423	166.70%	102,013	167,769	164.46%	106,090	177,701	167.50%

Source: Department of Correctional Services

The level of the prison population compared to available accommodation clearly demonstrates that South African prisons are seriously overcrowded.

Table 3. The Approved Accommodation Versus Prisoner Population as of 31 January 2002

Provinces	Capacity	Unsentenced	Sentenced	Total	Occupation [%]
Free State	12,847	3,597	13,173	16,769	130.53%
Mpumalanga	7,550	2,086	7,745	9,831	130.21%
KwaZulu-Natal	17,111	11,671	17,646	29,317	171.33%
Eastern Cape	12,033	6,956	14,729	21,685	180.21%
Western Cape	19,383	8,095	20,521	28,616	141.63%
North West	6,599	2,826	8,901	11,727	177.71%
Northern Cape	3,055	1,734	5,056	6,790	222.26%
Northern Province	2,315	1,197	4,608	5,805	250.76
Gauteng Province	2,315	18,904	28,257	47,161	187.17%
RSA total	106,090	57,066	120,635	177,701	167.50%

Source: Department Correctional Services

The above figures suggest that there is serious overcrowding in prisons. The continuous increase in the prison population places an enormous strain on the Department's available resources and this

¹ AC: Accommodation Capacity

remains a real problem that handicaps the proper functioning of Correctional Services in many respects. It is generally accepted that overcrowding has a negative impact on the human detention and service delivery to prisoners.

Nonetheless and despite the building of new prisons and renovations of existing prisons, overcrowding continues to place a heavy burden on prison infrastructure and the capacity of prison managers.

B. Number of Prisoners Awaiting Trial in South Africa

The increase in the number awaiting trial was far greater than the increase in the number of those who have been sentenced. In December 2000 the detention cycle for prisoners awaiting trial was 136 days. By June this figure decreased slightly to 134 days. This meant that, on average, alleged offenders are held in prison for over four months awaiting trial. However, in some cases, they are held for years.

The high number of prisoners awaiting trial is an enormous cost to the South African Government. The cost of imprisonment was estimated at R88.00 per day per prisoner. Based on June 2001 figures of prisoners awaiting trial, this suggested the state was spending over 4.5 million a day to hold those awaiting trial.

These efforts yielded good results, but more is needed to maintain the number of prisoners awaiting trial at an acceptable level. In recent months this downward trend continued, although at a slower rate: between December 2000 and June 2001 the number of prisoners awaiting trial dropped by 7%.

Table 4. Number of Prisoners Awaiting Trial: January–June 2001

Months	January	February	March	April	May	June
Prisoners awaiting trial	57,695	57,676	56,422	56,151	53,476	51,559

Source: Department of Correctional Services

One of the main reasons for the large number of people held awaiting trial was their inability to pay bail. In June 2001 a total of 17,588 (34%) prisoners awaiting trial were being held because they could not afford to pay bail. Over 11,000 of them had bail set at less than R1,000.

Table 5. Number of Prisoners Awaiting Trial Who Were Unable to Pay Bail: June 2001

Amounts	Below R300	R600	R1000	Total below R1000	Total above R1000
Prisoners awaiting trial	2,342	4,208	4,709	11,259	6,329

Source: Department of Correctional Services

C. Analysis of Trends in Prison Population in South Africa

The abolition of the death penalty in South Africa in 1995 brought the advent of a new sentencing dimension in the criminal justice system. This resulted in magistrates opting for longer sentences especially for those offenders who committed atrocious crimes such as murder, rape, kidnapping, etc.

An increase in the number awaiting trials is another trend that has adverse implications for the already crowded prisons. This situation is also brought about by congestion and delays in bringing cases to trial.

It is very important to note that the continuous increase in prison population demanded new strategies of managing offenders. The realization of this need, saw the introduction of community corrections in South Africa as an alternative to ease overcrowding in prisons.

III. COMMUNITY CORRECTIONS IN SOUTH AFRICA

There are two basic alternatives to incarceration, namely correctional supervision and parole supervision. These alternatives fall under the umbrella of community corrections.

A. Correctional Supervision

Correctional supervision is a community-based sentence, which is served in the community and not in prison subject to conditions as may be determined by a court of law such as house arrest, monitoring, community service, victim compensation, etc. A person who serves a sentence of correctional supervision is called a probationer.

Table 6. Daily Average Community Corrections: Probationers as at May 2002

	Average for periods						
	1995	1996	1997	1998	1999	2000	2001
PC EASTERN CAPE	698	1,014	1,175	1,485	2,077	2,876	2,939
PC FREE STATE	1,883	2,397	2,382	2,109	2,013	2,454	2,732
PC GAUTENG	1,987	2,608	2,931	2,970	2,546	2,604	2,752
PC KWAZULU-NATAL	1,114	1,478	1,923	1,913	2,255	2,826	3,465
PC MPUMALANGA	388	733	895	873	986	1,161	1,317
PC NORTH WEST	658	989	1,117	1,203	1,153	1,436	1,738
PC NORTHERN CAPE	487	581	603	747	717	781	855
PC NORTHERN PROVINCE	265	368	573	616	1,209	1,856	1,944
PC WESTERN CAPE	2,860	4,106	4,785	4,598	4,262	4,737	5,066

Source: Department of Correctional Services

The dramatic increase in the probationer population would contribute significantly towards reducing overcrowding in prisons and lessen costs for maintaining prisoners per day.

1. Background of Correctional Supervision

A South African delegation attended the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders and also visited several countries to gather information on alternatives to incarceration. It became abundantly clear that the time was ripe for the introduction of a viable and meaningful community-based alternative in South Africa. While visiting several countries it was discovered that the system of supervision used in Georgia, in the United States of America could be adapted to meet local circumstances in South Africa.

Through the co-operation of the Department of Corrections in Georgia, an in-depth study of correctional supervision was undertaken. This culminated in the establishment of multi-disciplinary task team whose terms of reference was to formulate a South African model based on the Georgia model of supervision and to draft legislation that would meet South African needs and realities.

On the 6th May 1991, a white paper was tabled in Parliament, charging the Department of Correctional Services with the management of offenders to be placed under community corrections. Parliament approved the Correctional Services and Supervision Matters Act, 1991 on the 14th June 1991. The Criminal Procedure Act, 1977 as amended in 1991, included the following options:

- Section 276(1)(h) of the Criminal Procedure Act, 1977 empowers the magistrate to sentence an accused person to a maximum of three years and minimum of one year correctional supervision after receiving a report from a correctional official or probation officer.

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- Section 276(1)(i) of the Criminal Procedure Act, 1977 authorizes the court to impose a sentence of imprisonment not exceeding 5 years upon an accused person which sentence may be converted into correctional supervision by the Correctional Supervision and Parole Board, after serving at least 1/6 of the sentence.
- Section 287(4) of the Criminal Procedure Act, 1977 the court may sentence an accused person to imprisonment with the option of a fine. If an accused person cannot afford to pay a fine, he/she will automatically face imprisonment, which may be converted by the Correctional Supervision and Parole Board after serving at least 1/6 of the sentence.

On the 15th August 1991 correctional supervision was introduced in the magisterial districts of Pretoria and Wondedrboom in Gauteng Province. The courts were provided with a sentencing option to deal effectively with those offenders who posed no threat to the community. This community-based alternative to incarceration was rolled over to eight more provinces.

2. Requirements for Correctional Supervision

According to the Criminal Procedure Act, 1977, accused persons must comply with the following minimum requirements to be considered for a sentence of correctional supervision. They must:

- Not pose a threat to the community.
- Have a fixed, verifiable address, and
- Have a means of support or be financially independent.

B. Parole Supervision

Parole supervision refers to the supervision of offenders who have been released from prison upon the decision of the Correctional Supervision and Parole Board. Parolee means any person placed on parole.

Table 7. Daily Average Community Corrections: Parolees as at May 2002

	Average for periods						
	1995	1996	1997	1998	1999	2000	2001
PC EASTERN CAPE	2,451	3,576	4,163	4,235	4,111	4,953	5,470
PC FREE STATE	1,368	1,787	1,765	1,771	2,020	2,188	2,681
PC GAUTENG	5,851	8,565	9,334	9,929	10,468	10,599	10,773
PC KWAZULU-NATAL	3,670	6,127	7,391	7,187	7,008	7,578	9,688
PC MPUMALANGA	1,676	2,118	2,301	2,329	2,519	2,546	2,717
PC NORTH WEST	1,236	2,043	2,625	3,311	3,378	3,385	3,513
PC NORTHERN CAPE	1,064	1,335	1,391	1,356	1,392	1,497	1,484
PC NORTHERN PROVINCE	1,145	1,773	2,401	2,280	2,559	2,833	3,472
PC WESTERN CAPE	5,762	7,307	7,765	7,573	6,691	6,436	7,086
All RSA	24,222	34,629	39,135	39,970	40,145	42,015	46,885

Source: Department of Correctional Services

The sharp increase in the parolee population would reduce the prison population and alleviate the problems caused by overcrowding.

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1. Background of Parole Supervision

A South African delegation conducted an in-depth investigation into the systems of parole supervision in other countries. During the years 1992/1993 the Parole Supervision and Amendment Bill was approved by Parliament, charging the Department of Correctional Services with the supervision of parolees, to be placed under community corrections.

2. Parole Procedure

The Correctional Supervision and Parole Board (CSPB) is an autonomous body that is chaired by a member of the community. When the Correctional Supervision and Parole Board finds that a prisoner meets the requirement that parole will better serve the goal of correctional efforts, it determines a definite date of release, the place where he or she should return and the conditions that the parolee should abide by during the period of parole supervision. These requirements include, amongst other things, the following; a person who has been sentenced to:

- (i) Imprisonment for corrective training may be detained in prison for a period of two years and may not be placed on parole until he or she has served at least 12 months.
- (ii) Imprisonment for the prevention of crime may be detained in a prison for a period of five years and may not be placed on parole until he or she has served at least two years and six months.
- (iii) Life imprisonment may not be placed on parole until he or she has served at least 25 years of the sentence but a prisoner on reaching the age of 65 years may be placed on parole if he or she has served at least 15 years of such a sentence.

In South Africa, the decision to release on and revoke parole is the function of the Correctional Supervision and Parole Board.

C. Placement of Prisoners Awaiting Trial

The Criminal Procedure Act, 1977, as amended in 1991, makes provisions for the magistrates to place the following categories of offenders under the supervision of correctional officials or the supervision of Community Corrections.

- Section 62(f) of the Criminal Procedure Act, 1977 empowers the court to place an adult accused person who is awaiting trial, under the supervision of a probation officer or correctional official.
- Section 71 of the Criminal Procedure Act, 1977 makes provision for the placement of persons awaiting trial who are under the age of 18 years, in custody, may, instead of being released on bail, be placed under the supervision of a correctional official.

The effective utilization of community-based alternatives to incarceration and the placement option would contribute significantly towards increasing the number of probationers under the system of community corrections and reduce the number of accused being held in prison awaiting trial.

D. Conditions to which Parolees and Probationers may be Subjected

Parolees and Probationers may be subjected to the following conditions in terms of the Correctional Services Act, 1998:

1. General Conditions

Parolees and probationers are required to comply meticulously with the following conditions:

- Refraining from committing criminal offences.
- Complying with any reasonable instructions issued by the court.
- Refraining from making contact with a particular person or persons.
- Refraining from threatening a person or persons by word or action.

2. Monitoring

Both parolees and probationers will be monitored by correctional officials or appointed volunteers. They are subject to one of the following categories of supervision:

- Maximum supervision cases: visited four times per month.
- Medium supervision cases: visited twice per month.
- Minimum supervision cases: visited once per month.

3. House Arrest

Both Parolees and Probationers are expected to be at their homes at all times, except when they must report for work, go to school, attend religious services or participate in organised sports such as soccer, cricket etc. The monitoring officials also visit them physically at their homes to ensure compliance with house arrest conditions.

4. Victim Compensation

The court may order the probationer to pay victim compensation. In the event of such an order, the correctional supervision official must ensure that this becomes one of the probationer's conditions of correctional supervision. Parolees are not required to pay any victim compensation.

5. Community Service

The Court/Correctional Supervision and Parole Board must stipulate the number of hours which probationers are required to serve, which shall not be less than 16 hours per month. Parolees are not required to perform community service but this matter is still under discussion.

6. Correctional Programmes

Parolees and probationers are required to attend specialized programmes aimed at the prevention of further criminality, drug and alcohol abuse, promotion of family relationships and the acquisition of social skills.

7. Restriction to Magisterial District

Parolees and probationers are restricted to their magisterial districts for the duration of their term of community corrections. The supervision committee may grant them permission to leave their magisterial districts upon request.

8. Fixed Addresses

Parolees and probationers are not allowed to leave their fixed addresses for the duration of the community corrections term. Any change of address must be communicated to the Head of Community Corrections immediately.

9. Use or Abuse of Alcohol/Drugs

Parolees and probationers are restricted from using or abusing alcohol/drugs during their term of community corrections. A correctional official may require parolees and probationers to allow a designated medical officer to take blood or urine samples in order to establish the presence and concentration of drugs/alcohol in the blood.

10. Searching

Correctional officials are empowered to search parolees and probationers subjected to community corrections and may even confiscate any weapon in order to ensure the safety of the correctional officials or any other persons.

11. Seeking Employment

Both parolees and probationers are required to take up and remain in employment. They may not change their employment without notifying their correctional supervision official.

IV. NON-COMPLIANCE WITH CONDITIONS OF COMMUNITY CORRECTIONS

Section 70 of the Correctional Services Act, 1998 (Act 111 of 1998) makes provision for the handling of non-compliance with conditions of Community Corrections. The court and Correctional Supervision and Parole Board may apply the following measures, depending on the nature and seriousness of the non-compliance:

- The court may revoke the correctional supervision sentence imposed upon a probationer, if it is satisfied that the probationer has repeatedly violated his/her conditions, it may even impose an alternative sentence which may include imprisonment
- The Correctional Supervision and Parole Board may revoke parole granted to a parolee if it is satisfied that the parolee has repeatedly violated his/her conditions, it may even instruct the parolee to serve the remaining portion of his/her sentence in prison.

V. HIGH CASELOAD

Most countries experience a shortage of staff within community corrections services and South Africa is no exception in this regard. Community corrections personnel cannot cope with the amount of work available. High caseloads are brought about by the fact that there are few monitoring officials and the demand and volume of work is high. The ratio between personnel and probationer/parolee is reflected as follows:

Table 8. Ratio Between Personnel and Probationer/Parolee

	1999/2000	2000/2001
Ratio	1:33	1:34

VI. COST IMPLICATIONS

Community corrections as a community-based alternative is more cost-effective than incarceration in South Africa. During the 2000/2001 financial years, the budget per capita cost for offenders under the system of community corrections was R12.00 compared to today's cost of R97.75 per day to maintain a prisoner awaiting trial or a convicted prisoner.

VII. OTHER AVAILABLE COMMUNITY-BASED ALTERNATIVES IN SOUTH AFRICA

A. Pre-Trial Stage

1. Pre-Trial Services

The aim of Pre-Trial Services is to enable courts to make more informed bail decisions. Pre-Trial Services (PTS) is a system whereby relevant information is collected and verified by probation officer prior to an accuser's first appearance in court.

PTS does not take away the discretion of the magistrate to make a bail decision, however, it provides the court with more information. Its most obvious impact has been on the profile of awaiting trial prisoners in that it has reduced the number of accused persons who cannot afford to pay bail. This programme has also helped to ensure that:

- Dangerous suspects are less likely to be released on bail;
- Petty offenders are released with a warning or on affordable bail;
- All accused persons are closely supervised, reducing the likelihood of witness intimidation and court delays due to failure to appear; and
- There is a decrease in the number of prisoners awaiting trial.

If no pre-trial services were considered in South Africa, the number of offenders in our system would have doubled.

2. Diversion Programmes

Diversion is a procedure by which people are referred away from the criminal justice system, in order to deal with him/her in a developmental and strength-based manner, which allows the person to take responsibility for his/her actions and make restitution to the victim and the community.

Diversion programmes essentially try to prevent people who have offended from being imprisoned by providing alternatives to prosecution and convictions. Diversion from the criminal justice system has a dual function:

- It prevents further exposure to negative influences of the criminal justice process and
- Attempts to prevent further offending by providing a variety of options

The existence of diversion programmes in South Africa dates as far back as 1990 when the main concern was about the number of children being convicted for petty offences. A prosecutor refers young people who commit petty offences to diversion programmes presented by NICRO. The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) a non-governmental, community-based organisation in partnership with the correctional services and the welfare department are spearheading the diversion programmes for offenders.

(i) *Diversion Process*

Firstly, the Bill has certain rules about referral of children to diversion, to ensure that children's rights are protected, and that they are not coerced into opting for diversion. The draft Bill says the following in section 51:

1. A child suspected of having committed an offence may only be considered for diversion if:
 - a) Such child voluntarily acknowledges responsibility for the offence;
 - b) The child understands his or her right to remain silent and has not been unduly influenced in acknowledging responsibility;
 - c) There is sufficient evidence to prosecute; and
 - d) Such child and his or her parent or an appropriate adult, if such person is available, consent to diversion and the diversion option.

Secondly, the draft Bill sets out minimum standards applicable to diversion and diversion options in section 49:

1. No child may be excluded from a diversion programme owing to an inability to pay any fee required for such programme;
2. A child of ten years or over may be required to perform community service as an element of diversion, with due consideration for the child's age and development;
3. Diversion options must:
 - a) Promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society;
 - b) Not be exploitative, harmful or hazardous to a child's physical or mental health;
 - c) Be appropriate to the age and maturity of the child; and
 - d) Not interfere with the child's schooling.
4. Diversion options must, where reasonably possible:
 - a) Impart useful skills;
 - b) Include a restorative justice element which aims to heal relationships, including the relationship with the victim;
 - c) Include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including victims of the offence, and may include compensation or restitution; and

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- d) Be presented in a location reasonably accessible to children. Children who cannot afford transport in order to attend a selected diversion programme should, as far as is reasonably possible, be provided with the means to do so.

Today, diversion programmes are primarily used for juvenile offenders although adults occasionally benefit from this service. Most participants are between 14 and 18, although some are older or younger. Upon the completion of a number of hours, this organisation must submit a report to the court regarding the number of hours performed, which would imply that the order would have been executed. Amongst others NICRO has developed the following five-structured diversion programme.

- (i) Youth Empowerment Scheme (YES): a six-part life skills programme that runs over a period of six weeks. It involves 15 to 25 participants and parents/guardians participate in the first and last sessions.
- (ii) Pre-Trial Community Service: In lieu of prosecution, the offender has to perform a number of hours agreed to by all the parties and are monitored by NICRO who has to give reports to the public prosecutor. As of May 2001 to May 2002-4,273 offenders were ordered under this option.
- (iii) Victim Offender Mediation (VOM): Victims and offenders are brought together in an attempt to address the needs of both parties.
- (iv) Family group conferencing: These conferences are similar to mediation in certain instances except that they involve the families of both the victim and the offender in the mediation process. The aim is to come to an agreement with the assistance of a mediator/facilitator. Preventing recidivism and stigmatization is the ultimate goal of this programme.
- (v) The Journey: An intensive and long-term programme that involves an outdoor experience for young people.

Upon completion of the diversion programme, the case is withdrawn. If the offender fails to complete the diversion programme, the case will be referred to the court for prosecution.

As of May 2001 to May 2002, 16,377 cases involving children and young people were diverted out of the criminal justice system by way of a range of diversion programmes, offered by non-governmental organisations which operate in the nine provinces and in partnership with government departments at a Provincial and National level.

(ii) *One Stop Youth Justice Centre: Stepping-Stones*

Stepping Stones is a one stop youth justice centre, consisting of a police charge officer; youth court and welfare component staffed by a probation officer and children and youth care workers. This pilot project is mainly located in the local community. The aims of the centre are:

- To divert young people in trouble with the law away from the criminal justice system or to prevent them from going deeper into the system;
- To provide a holistic and comprehensive service to young people in trouble with the law and their families, from the point of their arrest. Services are based on a developmental, strength-based approach and is rendered by multidisciplinary teams. This programme embodies the philosophy of restorative justice with an emphasis on:
- Re-uniting the young people with their families and preventing them from being separated from their families
- Focusing on the least restrictive and most empowering sentence option
- Giving the young people the opportunity to correct the wrongs done through their actions

Amongst other services provided in this centre are pre-trial assessments and supportive services to the families, pre-sentence investigations with regard to sentence options, diversion programmes, probation supervision and preventive counselling services. During the period of January 1999 to December 1999 about 3,395 young people attended the centre.

B. Sentencing Stage

1. Fines

The Criminal Procedure Act, 1977 stipulates that the court may order the payment of a particular sum in lieu of a sentence of imprisonment. The court will stipulate the amount of the fine, and the date by when the fine should be paid. The court may also suspend the payment of a fine for a stipulated period on the condition that the accused is not convicted of the same offence during the same period.

The court should inform the offender that the payment of the fine could be postponed, or could be paid in installments on request from the offender. Usually, the court insists that the fine be paid immediately to release the person from custody.

The court may also instruct the sheriff of the court to issue a warrant to attach certain of the offender's property in the event that the person is unable to pay the fine, or the court may order that the money be deducted from the offender's salary.

When sentencing the offender to pay a fine, the court must investigate the ability of the person to pay the fine. The courts have held that the amount of the fine should be proportionate to the income of the offender, so that the offender should be able to pay the fine.

There is usually no fixed amount to be paid in respect of an offence, although some Acts may determine a minimum or a maximum amount, which the court can impose.

In addition, the Criminal Procedure Act allows the court, in cases of imprisonment for a period of three months or less, to impose a fine to reduce the term of imprisonment. This option has been widely used in South Africa. However, in reality those who are not able to pay the fines are sent to prison, which has an adverse effect on prison overcrowding.

2. Community Service Order

Overcrowding and detention costs led to the introduction of community service orders in South Africa. The court may make a community service order against an offender convicted of an offence punishable with imprisonment. Before making the order, the court has to obtain the consent of the offender and has to be satisfied with the probation officer's report on the suitability of making such an order. Under this order, the offender has to perform unpaid work of benefit to the community for a number of hours, not exceeding 240, within the period of twelve months. The order can be made to or in lieu of any other sentence.

In South Africa, the National Institute of Crime Prevention and Reintegration of Offenders (NICRO), which is a community-based organisation and other relevant organisations, administers community service orders. These organisations are also responsible for monitoring the execution of the order. Upon the completion of a number of hours, organisations must submit a report to the court regarding the number of hours performed, which would imply that the order would have been executed.

The rationale underlying the community service order is to punish the offender in the community where the offence was committed, away from the prison. This gives offenders the opportunity to make some general reparation to the community and furthers the notion of community responsibility to offenders by involving it with correctional programmes.

The target groups for this sentencing option are first time offenders and/or those who commit minor offences. In the case of employed offenders, this order may be performed on weekends, and for those unemployed, during the week.

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When the offender fails to comply with the requirements of the community service order, the court may issue a summons requiring the offender to be brought before the court. The court may impose a fine upon the offender or sentence him or her to imprisonment. As of May 2001 to May 2002, 51 cases involving juveniles and adult offenders were ordered to serve community service as a form of punishment.

Since the direct supervision of offenders on community service orders is carried out under the control of a non-governmental organisation such as NICRO, and not by the Department of Correctional Services, this arrangement has reportedly proven to be ineffective to ensure that the set conditions are met.

(i) *Selection Criteria*

The Criminal Procedure Act specifies that Community Service Orders can only be imposed on persons of 15 years of age or older who are first time offenders. The minimum period of service must not be less than 50 hours. Community service may be imposed for any offence other than those for which a maximum sentence is prescribed by law. In order to be considered for such a sentence, the offender must be willing and must have time to render unpaid service.

(ii) *Assessment and Referral Procedures*

Usually their attorneys, advocates and the courts refer offenders. The assessment of offenders is done by a group of professional people who come from different disciplines, e.g. social workers, probation officers and others. The decision of the panel is based only on the individual offender. After the assessment, a report is prepared for presentation to the court.

People serving community service may be referred to places such as, hospitals, homes for the aged, police stations, schools or health clinics. The referral of offenders to such places is still a problem because not all of them are prepared or are able to accept and supervise such offenders.

(iii) *Caution and a Discharge*

This is the lightest possible sentence, which a court can impose on someone. It is usually imposed where the offence is so trivial that it does not warrant even a suspended sentence being imposed. The effect of this sentence is the same as if the court acquitted the person, except that the conviction will be recorded as a previous conviction.

(iv) *Compensation Order*

A sentence of imprisonment or the payment of a fine may be suspended subject to the condition that the offender pays compensation to the victim of the crime. The criminal court can order the offender to pay money to the victim of the crime.

The difficulty with this sentence is that a criminal court can make a monetary award, which is usually made only by a civil court. A civil court in an action for damages can make an order that a person pays another person "damages" in a certain amount. This the court does only after evidence has been put before it as to how the damages are calculated. The Criminal Procedure Act allows the criminal courts to do the same thing.

This sentence is imposed on relatively few occasions, mainly because it is difficult for the criminal courts to determine the amount of the award.

3. Suspended Sentence

The Criminal Procedure Act, 1977 provides that:

A magistrate may impose an imprisonment sentence upon an accused found guilty of a crime and may also suspend the execution of the sentence. The court may, when taking into consideration the age, the past record, behaviour, intelligence, education and training, health, condition of the mind, habit, occupation and the environment of the offender or the nature of the offence or other extenuating circumstances, pass judgment, if it thinks fit, that the accused is guilty, but the determination of the punishment is to be suspended and then release him / her.

The suspension ranges from one year to a five-year maximum period. This alternative is widely used in South Africa.

The court can suspend a sentence of imprisonment or a fine on condition that the offender:

- Pays compensation;
- Renders a specific service to the victim;
- Does community service;
- Be under correctional supervision; or
- Attends a specific treatment programme.

If the offender does not commit any crime during the suspension period then the sentence is automatically dismissed. There is no supervision during the period of suspension.

If the offender commits a crime during the period of suspension, then the suspended sentence would be put into operation. If the offender is found guilty of an offence, the court may impose a new sentence in addition to the suspended sentence. The suspended sentence reduces prison overcrowding and lessens detention costs.

C. Post-Sentencing Stage

In terms of the Correctional Services Act, 111 of 1998, Section 81 (1) if the Minister is satisfied that the prison population is reaching such proportions that the safety, human dignity and physical care of the prisoners are being affected materially, the matter must be referred to the National Council. Section 81 (2) further stipulates that the National Council may recommend the advancement of approved dates for placement of any prisoner or group of prisoners under Community Correction and the Minister may act accordingly

VIII. RESTORATIVE JUSTICE APPROACH

A. Background

Within the criminal justice system, criminal activities are mainly dealt with by means of a system of retributive justice. Once convicted by a court of law, offenders are punished either by means of imposing a period of correctional supervision, a term of imprisonment, the payment of a fine or a combination of these punishment options.

The Department of Correctional Services has, however, decided to introduce the concept of Restorative Justice as a key priority. This approach is based on the understanding of crime as an act against the victim and the community. It encourages participation of the prisoner, the victim, families and the community in addressing the concerns of the victim in an attempt to allay the need for revenge and to combat re-offending whilst facilitating the healing process of all concerned. Restorative justice seeks to address and balance the rights and responsibilities of victims, prisoners and communities and it advocates reparation and forgiveness.

This can be achieved through the mediation and healing process. It also aims to remedy the fundamental shortcomings in the criminal justice process. It is not aimed at replacing retributive justice in the short term but rather at enriching the justice process.

B. Definition of Restorative Justice

There is no single definition that can embrace all of the available perspectives on the concept of *Restorative Justice*, but the following definition on the subject can be very enlightening:

Within the context of Correctional Services, *Restorative Justice* could be described as a restorative response to crime. It emphasizes the importance of the role of the victims, families and community members by more actively involving them in the justice process. It also aims at holding offenders directly accountable to the people they have violated and at restoring the losses and harm suffered by the victims. It provides an opportunity for mediation, dialogue, negotiation and problem solving which could lead to healing, a greater sense of safety and enhanced offender reintegration into the community.

C. Practising Restorative Justice

Restorative Justice can be practiced at all stages of the criminal Justice process, including the:

- Pre-Trial Stage
- Sentencing Stage and
- Post-Sentencing Stage

D. Processes of Restorative Justice

Restorative Justice processes can be practiced at places where it is conducive for both the victim, the offender and the community to freely and voluntarily meet and talk about the impact and effects of the crime. These processes can be done at:

- Police stations/probation offices/welfare offices
- Places of detention/prisons etc.
- Community safety centres/rehabilitation agencies

IX. ADVANTAGES OF COMMUNITY-BASED ALTERNATIVES

The advantages of community-based alternatives are many and varied. These advantages include:

- To achieve the reformatory, retributive, deterrent, and preventive aim of sentencing as a form of punishment;
- To avoid offender stigmatization;
- To reduce prison overcrowding and prevent escalation of detention costs;
- To allow the offender to continue contributing towards his or her family in particular and society instead of being confined in prison;
- To avoid the risk of the break-up of the family institution as a result of a member of the family being incarcerated;
- To retain their employment and contribute to the economic mainstream of the country;
- To avoid an escalation in deviant behaviour when new offenders are mixed with hardened criminals; and
- To enhance rehabilitation and reintegration of offenders into the community

Community-based alternatives offer a viable solution to both overcrowding and financial constraints, as they are cheaper sentencing options and result in more space being made available in prison for hardened criminals who pose a real threat to the community.

X. CONCLUSION

In conclusion it can be stated that imprisonment remains the most appropriate option for offenders who pose a real threat to the community. It can also be concluded that community-based alternatives to imprisonment should be enhanced to reduce the prison population, address problems caused by overcrowding, and promote effective rehabilitation and successful reintegration of offenders into the community. The Inspecting Judge of South African Prisons, Mr. Justice JJ Fagan, in the South African Press, 21 May, 2002 said, "It is totally unacceptable that prisons are so overcrowded. There are far too many prisoners. Building new prisons is not the answer, Community Corrections is the way to go." It should always be remembered that the community is the point of entry and the point of exit for the offender.

Furthermore, Judge Fagan said at the Launch of the Restorative Justice Approach in November 2001, "We all know that effective rehabilitation of offenders can best be done outside prison and within the community." This statement clearly shows the vital role that the community can play in the rehabilitation of offenders, which cannot be overlooked if the criminal justice system wants to achieve its objective of developing community-based alternatives to incarceration.

The scenario sketched above, asserts that a need exists for criminal justice practitioners to search for a new or a better way of addressing the problems of crime, overcrowding in prisons, and the high

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rate of recidivism, etc. A more reintegrative approach as opposed to the current retributive nature of our criminal justice systems needs to be explored. It can also be said that adoption of a holistic and an integrated approach in the search for community-based options towards the rehabilitation of the offender should be considered. Since successful community-based alternatives demand a consultative and a genuine partnership with the community.