

**DRAFT WHITE PAPER  
ON  
CORRECTIONS IN SOUTH AFRICA**

**DECEMBER 2003**

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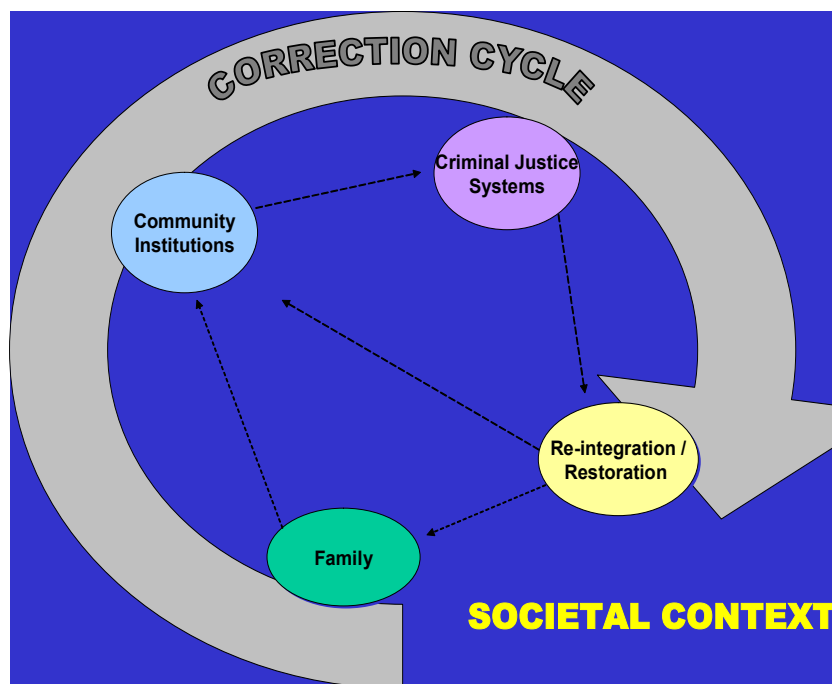
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# PREAMBLE OR FORWARD TO WHITE PAPER ON CORRECTIONS IN SOUTH AFRICA

## Department of Correctional Services

The Cabinet recently approved the draft White Paper on Corrections in South Africa to replace the 1994 White Paper on Correctional Services. This draft White Paper on Corrections arises out of a need for a long-term strategic policy and operational framework that recognizes corrections as a societal responsibility. It also flows from the need for the Department of Correctional Services to gear all its activities to serve a rehabilitation mission that ensures, through delivery of appropriate programmes, security that the people who leave correctional centres have appropriate attitudes and competencies enabling them to successfully integrate back to society as law abiding and productive citizens.

This new direction is setting new major challenges to both the broader society and the Department of Correctional Services. To the broader society the main challenge is restoration of cohesion at both the family and community levels of society. The draft White Paper positions the family as the primary level and community institutions as the secondary level at which correction must necessarily take place. The degree of dysfunctionality at these levels has to be addressed if the rate of new convictions is to decrease. The Department of Correctional Services, positioning itself as a tertiary level of intervention, is looking forward to encouraging these basic societal institutions to recognise their strategic roles in nation building in general and in correction in particular.



The main challenge of the Department of Correctional Services is to translate the vision of the draft White Paper into operational activities. To this end the Department is gearing itself to introduce financial programmes in the 2004/5 financial year that will signal the commitment of the Department to implement the draft White Paper. The new financial programmes of the Department include:

- **Correction:** which aims to address the offending behaviour of sentence persons.
- **Security:** which aims at addressing the safety of inmates, officials and members of the public.
- **Facilities:** to ensure that the Department has a long-term facilities strategy to ensure conditions consistent with human dignity for offenders.
- **Care:** intended to address the well-being needs of inmates including access to social and psychological services.
- **Development:** aims to provide for skills development in line with Departmental and national human resource needs.
- **After Care:** intended to ensure successful re-integration through appropriate interventions directed at both the inmate and relevant societal institutions.

The new financial programmes will require the Department to deliver focused quality services to the offender, effectively manage the correctional official and correctional centres, and drastically improve the management of relations with accredited external stakeholders and oversight authorities.

The Department of Correctional Services recognises the enormous challenge it has to change the profile of the correctional official from that of a prison warder perceived to be prone to corrupt influences to a role model and a rehabilitator. This change is however no longer optional as correctional officials are best placed to influence offenders negatively or positively.

Correction is not a responsibility of the Department of Correctional Services alone – it is a shared responsibility with society. The role of societal institutions must be visible at all levels where correction is taking place, including Departmental correctional centres.

The Department of Correctional Services as an arm of state is looking forward to see to it that this vision of correction contributes to nation building, and will be the main strategic objective of the Department in the next decade.

The Department of Correctional Services believe that every correctional official is a potential rehabilitator and that every person entrusted to our care is corrigible and may become a law-abiding citizen and a nation server through correction.

In order to realise this conviction, this White Paper is underpinned by, but not limited to, the following values and/or rights enshrined in the Constitution of the Republic of South Africa, including the core values of the Department of Correctional Services:

- Human dignity (Section 10)
- Equality (Section 9)
- Rights underlying humane treatment of every detainee (Section 35)
- Right to health care services and other associated rights (Section 27)
- Freedom and security of the person (Section 12)
- Children’s rights (Section 28)
- Right to education (Section 29)
- Freedom of religion (Section 31)
- Intergovernmental relations (section 41)
- Values and principles governing Public Administration (Section 195)

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## **EXECUTIVE SUMMARY**

1. In this White Paper, we outline the new strategic direction of the Department within which rehabilitation forms the centre of all its activities – and one in which the Department strives to make a fundamental contribution to corrections at societal level. It summarizes the philosophical, strategic and operational framework for this new correctional system, and provides a framework comprising key steps needed in establishing it.

2. The White Paper advances a range of motivations for replacing the existing White Paper on Correctional Services, as adopted on 21<sup>st</sup> October 1994. Most of the motivations are directly linked to the inadequacies of the 1994 White Paper, in that it: (i) was based on the 1993 Interim Constitution (RSA 1993), and thus did not benefit from various important subsequent legislation, including the 1996 Constitution, (Act No. 108 of 1996), and the 1998 Correctional Services Act (Act No. 111 of 1998), (ii) is not aligned with key current Government Policies and a broader range of other Public Service Regulations, including that on Health Care and Public Financial Management (iii) is inadequate in providing an appropriate basis to formulate a departmental policy that fully understands the causes and unique nature of crime in South Africa, and which place this understanding within a correction and rehabilitation framework (iv) does not provide adequate guidance and direction to long-term departmental policy practice and development.

3. The existing White Paper also: (i) did not benefit from a very significant and ongoing conceptual debate on corrections and rehabilitation in South Africa, and in particular the role of the Department in it, (ii) falls short in its approach on facilities building and procurement to ensure alignment with Rehabilitation objectives, (iii) does not have a long-term vision on policy with regards to issues like the Public-Private Partnership (PPP) policy and awaiting trial detainees, and (iv) does not address important Human Resource matters that are of critical concern for Department achieving its new Rehabilitation- centred system (v) is silent on the role of the Department in contemporary government initiatives, including Corrections in the African Union, the Moral Regeneration Movement, sustained growth and development, the National Crime Prevention Strategy, and (vi) does not provide consistency in the use and understanding of key terminology and definitions in a way that it is user-friendly and consistent with the philosophy of corrections.

4. A historical perspective on the transformation of the Correctional System in South Africa provides very important understandings on key issues involved in the transformation challenges the Department faces. These include: (i) almost a century in which safety and security was the predominant focus and with Rehabilitation and Human Rights failing to enjoy any central status, (ii) the militarized organizational culture became so imbedded over many years, that the proposed shift away from it caused resistance, (iii) the existing relatively closed prison culture was actively promoted over many years through measures like outlawing reporting and publishing of photographs on prisons, and (iv) overcrowding is a reality that prison administrators had to deal with already since the early 1900's, albeit for many different reasons.

5. The White Paper also provide insight into very crucial historical developments, like: (i) the separation of the Prison Service from the Justice Department and the subsequent change of its name to the Department of Correctional Services in the early 1990's, (ii) the introduction of the system of Community Correctional Supervision, (iii) the introduction of a credit system through which prisoners could earn credits for appropriate behaviour, and (iv) the introduction, and effect, of the 1993 Public Service Labour Relations Act on labour relations in the Department.

6. The White Paper also highlights critical events in the period since the new democratic dispensation in 1993, leading up to the current process. These include: (i) the introduction of, and alignment to, a

human rights culture in our correctional system stressing incarceration within a safe, secure and humane environment (ii) the key focus points of the transformation of the Department in the first five years of the new democracy, including the appointment of the Inspecting Judge, (iii) the approval of the National Crime Prevention Strategy in 1996 by Government and the adoption of the Integrated Justice System (IJS), motivating the Department to transform South African prisons from being so called "universities of crime" or "criminal headquarters" into effective rehabilitation centres, (iv) the demilitarization of the Department on 1 April 1996, which was managed poorly, creating more problems and challenges, (v) the adoption, and impact, of the new Constitution in 1996 (Act No. 108 of 1996), which enshrined the Bill of Rights, and the (vi) Correctional Services Act in 1998 (Act No. 111 of 1998) which heralded the beginning of a modern, internationally acceptable correctional system.

7. This White Paper conveys the processes involved with the actual strategic realignment of the Department, starting in earnest since 1999. These processes enabled the Department to come to critical conclusions in 2003. These include that: (i) correction is much more than just crime prevention, but should be approached in a holistic way through committing the Department to broader societal challenges impacting on Corrections, such as the level of dysfunction amongst South African families, the regeneration of positive social values, poverty alleviation and sustainable growth and development, (ii) corrections and rehabilitation are achievable through delivering key services to offenders aimed at changing their attitudes, behaviour and social circumstances, (iii) the Department is the State's agent in rendering the final level of correction, but has also an important role to play in the prevention of crime at primary and secondary levels, these are, at family and community levels, and (iv) the new Integrated Governance framework, required a high level of synergy of policies of Government Departments, particularly those in the JCPS structure.

8. The White Paper presents a new Vision and an updated Mission for the Department in which the centrality of rehabilitation, a fundamental contribution to societal corrections and the commitment to be one of the best in the world, are paramount features. The White Paper also forwards and discusses ten (10) objectives for the Department in pursuance of the objectives of correction and rehabilitation. These objectives are: (i) breaking the cycle of crime, (ii) security risk management, (iii) implementation of sentence of the courts, (iv) providing an environment for controlled and phased rehabilitation interventions, (v) providing guidance and support to offenders within the community, (vi) provision of corrective and development measures to the offender, (vii) reconciliation of the offender with the community, (viii) enhancement of the productive capacity of offenders, (ix) promotion of healthy familial relations, and (x) assertion of discipline within the correctional centre environment.

9. We acknowledge that, in the process of transforming the Department to a Corrections-Focused system that is one of the best in the world, it would have to address many critical challenges. These challenges include: (i) overcrowding, (ii) the state of the DCS facilities, (iii) institutional "prison culture", (iv) corruption and mal-administration (v) training and retraining of members for the new paradigm, (vi) aligning the organizational structure with the new paradigm (vii) awaiting-trial detainees, (viii) illegal immigrants awaiting deportation, (ix) the needs of special categories of offenders – women, children below 18 years, youth, disabled, aged, mentally ill, long-term, life sentenced, first offenders, and foreign nationals, and (x) dealing with HIV/ Aids, and the effect and management of communicable diseases.

10. The Department regards overcrowding as its most important challenge. It does not only have significant negative implications on the ability of the Department to deliver on its new core business, but constitutional provisions also oblige Government to act urgently on the matter. Although the Department, together with its partners in the JCPS, has introduced measures to address this issue, this White Paper stresses the need for a more effective and systematic long-term management of awaiting-trial detainees. In its long-term view, the Department motivates that Constitutional provisions

and international practice support a position in which the management and care of awaiting-trial detainees should not be the responsibility of the Department.

11. The White Paper acknowledges that its existing organizational culture is not entirely supportive of the new paradigm. As such, the Department commits itself to transform the existing institutional culture into a organizational culture supportive of the core business of the Department. This the Department wants to achieve through, amongst others: (i) the development of a Risk and Fraud Management Strategy, (ii) an internal investigative capacity, (iii) the cost effective utilization of resources, (iv) addressing corruption and mal-administration in a systematic and comprehensive manner, and (v) effective utilization of the Inspectorate Directorate to advise the Commissioner on the level and extent to which officials comply with Government and Departmental policies, (vi) aligning its organizational structure with the core business, (vii) revitalizing, and sustaining, the already approved departmental core values, and (viii) performing a socio-security function with a civilian rank structure and a focus on tight security and personnel discipline.

12. We are mindful of the fact that changing the organizational culture of the Department will require comprehensively addressing the existing Human Resource inadequacies. In order to do this, we will have to introduce far reaching human resource interventions aimed at: (i) elevating the status and role of ordinary correctional officials, (ii) recruitment of persons matching the requirements of the new Rehabilitation-Centred approach consistent with the slogan that “every member is a rehabilitator”, (iii) appropriate training and development, including the retraining of all existing personnel on the new strategic redirection (iv) Career pathing, and (v) a strict code of behaviour supported by a clear and effectively enforced disciplinary code with effective disciplinary procedures.

13. Corrections and rehabilitation are key concepts in the new strategic direction of the Department. As such, the White Paper devotes much time and effort in explaining the meaning of these concepts within the context of a South African Correctional System. This White Paper outlines the primary responsibility of the Department of Correctional Services as to correct offending behaviour, in a secure, safe and humane environment.

14. The Department premises its philosophy of corrections on the ideals espoused within the South African Constitution that provide for a framework advocating that: (i) all South Africans can make a contribution to a just, peaceful and safe South Africa, (ii) correction (both self-correction and correction of others) is inherent in good citizenship, and (iii) corrections is a societal responsibility within which all sectors/ institutions of society – including the Department as only one but very significant player - should contribute.

15. The Department views the correction of offending behaviour as having the following objectives: (i) to promote social responsibility; (ii) to ensure that offenders can recognize what they did as wrong; (iii) that offenders can understand why society regards that which they did to be unacceptable; and (iv) that offenders internalise the impact their actions have had on the victims and on society as a whole.

16. The Department reiterates that it fully understands its place and role in this new Corrections-focused paradigm in which partnership with families, communities, the state and all other stakeholders are of vital importance. We are of the opinion that the Department has got a significant role to play in regenerating societal norms and values, through ensuring that all its correctional centres are turned into moral regeneration institutions in which offenders are taught positive values that are society-friendly.

17. We believe that rehabilitation and the prevention of recidivism are best achieved through correction and development, as opposed to punishment and treatment. The Department's approach to rehabilitation is based on the conviction that every human being is capable of change and transformation if offered the opportunity and resources. Our approach to rehabilitation is also much

more than just trying to prevent crime. It is rather a holistic approach in which we try to encourage and include the following: (i) social responsibility; (ii) social justice; (iii) active participation in democratic activities, (iv) empowerment through life and -other skills; and (v) contribution to make South Africa a better place to live in. The Department also views rehabilitation as a process in which we combine three (3) important things. These three things are: (i) Correction of offending behaviour, and (ii) human development, through which we would like to achieve (iii) the promotion of social responsibility and positive social values.

18. In aiming to achieve our core objective of rehabilitation within a humane and secure environment, we emphasize our focus on needs-based interventions. This is a type of intervention that balances the common features of an offence with the offence-specific factors unique to the case of the individual offender. The aim of needs-based rehabilitation is to influence the offender towards a positive and appropriate norms and value system, alternative social interaction options, development of life, and development of social and employment-related skills, in order to assist the person not to return to crime. We assert that, through this, rehabilitation contributes towards the reduction of recidivism and crime prevention.

19. In order to implement the needs-based approach to rehabilitation, the Department has identified six (6) key service delivery areas relating to the offender, departmental responsibilities of correctional officials, as well as key external relationships necessary for delivery on the mandate of the Department. These are: (i) Corrections, (ii) Development, (iii) Security, (iv) Care, (v) Facilities, and (vi) After Care. The challenge the Department faces, is to find the correct balance and form in applying the elements of these six key service delivery areas to the unique needs of every single offender.

20. We recommend that for every offender, the Department should develop a Correctional Sentence Plan which will be offender-specific, and will take into account the specific correctional setting – correctional centre, probation or correctional supervision. Such a sentence-plan will be based on the total needs of the specific offender. The needs of offenders should be assessed as soon as possible after admission, which are: (i) security needs taken into account the human rights of the individual (Security) (ii) needs in terms of Physical and Emotional Well Being (Care) (iii) education and training needs (Development) (iv) needs in terms of allocated physical accommodation (Facilities) (v) needs in terms of support after release (After Care), and (vi) needs relating to specific intervention programmes that target offending behaviour/s (Corrections). The issue of Gender will be a crucial element in these Correctional Sentence plans, particularly in relation to male offenders whose victims were women and children.

21. The White Paper views social reintegration as the most challenging aspect of rehabilitation, in effectively combating recidivism. For the Department, social reintegration is an ongoing component of the sentence plan that must become an integral part of case management. The period of imprisonment should be used to nurture and rebuild the relationships between the offender, the community, and society at large. The Department intends using the term After-care to describe its services aimed at promoting the effective social integration of offenders back into their communities of origin. This view on social reintegration will also inform our approach to issues like: (i) written and telephonic communication, (ii) visits with family, friends and loved ones, (iii) access to information about the world outside through newspapers, television and radio, and (iv) contact with social institutions from his or her community of origin.

22. In order to promote the effectiveness and sustainability of social integration, the White Paper prioritises the need for creating an Integrated Support System with active involvement of other role players such as community institutions and corporations. The involvement of other role-players will encourage further rehabilitation, employment opportunities, support services and prevention of recidivism. The Department aims to establish satellite or sub-offices for probationers, parolees and



awaiting-trial persons where a need is registered through consultation with other role-players in order to secure such facilities for the development and rehabilitation of offenders.

23. The Integrated Support System will have the following principles: (i) the presentation of programmes will be shared with other role-players; (ii) community-based, non-profit and non-governmental organizations will be involved in the reintegration process of offenders into the community; (iii) it shall jointly cater for the development and rehabilitation of offenders; (iv) the offenders will be referred by the community corrections officials to various support services for their rehabilitation process within their residential areas; (v) the various support services will cater for the individual needs of the offenders in the community; (vi) suitable accommodation for destitute offenders will be arranged in consultation with other role-players; and (vii) families/friends/potential employers/other role-players will be involved in obtaining employment for offenders.

24. We view the purpose of the Integrated Support System for offenders as be able to: (i) attend rehabilitation programmes at their own residential areas; (ii) be counselled by the psychologists, social workers and religious workers at their own residential areas or within their own environment; (iii) render community services within their own environment so as not to pay for transport, unless the court directs otherwise; (iv) do referrals to other agencies for the offenders who need further assistance/support with the community during their reintegration process; (v) motivate offenders to develop further and to attend programmes designed for their rehabilitation process conjointly with other role-players within their own residential places; and (vi) assist offenders to secure employment /accommodation with other role-players before they are released or placed out.

25. The White Paper highlights the importance of the Department's Parole policy in reaching the objectives of South Africa's new Corrections-focused correctional system. The Parole policy makes provision for the release of a detained offender under community correctional supervision under specified conditions, including continuation of correctional and development programmes. The proposed parole policy has the following features: (i) participation of community members in the community supervision and parole boards (ii) direct involvement of relevant state departments in the integrated justice system (iii) direct and valued involvement of family and friends of the offender (iv) the direct involvement of offenders themselves through providing them with a right to make representations to the Board, and (v) the direct input from the victims of the crimes themselves. We maintain that this conditional release, along with other features of the parole system, will contribute to social reintegration, promoting community responsibility for corrections and restoring harmed relationships.

26. This White Paper outlines the fact that correctional management is essentially about the management of human beings, both personnel and offenders. The key to effective correctional management lies in the relationship between staff and offenders. Within South Africa's new Rehabilitation-Centred correctional system, our approach to correctional management (correctional centre management and community correctional supervision) will be based on the three (3) principles of (i) restoration, (ii) unit management, and (iii) secure, safe and humane custody and supervision.

27. In the context of the DCS, restoration emphasises a more important and active role for families and community members in the justice processes. It also holds offenders directly accountable to the communities they violated with the aim of restoring the relationships. The principles of restoration are that: (i) all human beings, including offenders, have dignity and worth, (ii) the focus is on problem solving, and the healing of relationships with the community. Restoration tries to bring together the offender and the community. The aim of this is to reconcile the offender with the community, repairing the harm caused by the criminal act with the objective of promoting the reintegration of the offenders back into the community.

28. This White Paper maintains that unit management is the desired method of correctional centre management. In Unit Management, offenders and correctional centres are divided into smaller more manageable units with direct supervision. One primary objective of Corrections is to develop and operate correctional programmes that balance the concepts of deterrence and rehabilitation for individuals in correctional facilities. We maintain that Unit Management provides this balance. Unit Management is a team approach to inmate-management. The Unit Management approach also requires a system of case management that is aimed at ensuring the responsibility and full involvement of the inmate in his/her progress and choices.

29. In this White Paper, the Department commit itself to full compliance with the provisions of the Constitution of South Africa as well as international instruments in relation to the honouring of the basic human rights of offenders, limited only where justifiable and necessary within a correctional centre environment. The White Paper acknowledges the mandate of the Department to provide security on different levels. These are to (i) the public, (ii) personnel, (iii) inmates from other inmates, and (iv) protect inmates from themselves, where applicable. For this, we provide a clear needs-based framework for the safety and security function of the Department, within a human rights context. This needs-based approach will ensure that there is a perfect balance between secure and safe custody on the one hand, and correction, promotion of social responsibility and human development on the other hand.

30 The needs - based safety and security framework, within a human rights context, makes provision for: (i) tight security controls, (ii) clear procedural regulations in relation to security measures such as regular patrols, searches of cells and inmates (detained offenders), control over objects sent into correctional centres, etc. (iii) a Security Risk Assessment, which informs the security classification of an inmate, that will take into account the impact of incarceration on a human being, the threat that an inmate may pose to him or herself, to staff, to other inmates and to the wider community, (iv) the use of a new Security Classification Instrument making an assessment based on information collected from a detailed evaluation of the criminal act/s, (v) the safety and health of inmates and the provision of health care service consistent with that provided by the state to other citizens, and (vi) fair and just disciplinary procedures and corrective measures based on the principles of natural justice.

31. This White Paper confirms the view that the objective, functions and services of the department speak to both a security as well as a social responsibility. It argues that the definition of the Department's core business as rehabilitation through correction and humane development within a secure, safe and humane framework impacts significantly on the role of the Department in both JCPS and Social Sector Clusters of Integrated Governance. Conversely, this also significantly impact on the role that these Cluster Departments play in relation to support of the Department of Correctional Services mandate. It is therefore our conclusion that the Department must take its place as a key component of the integrated justice system within the JCPS, and the Social Sector Cluster.

32. The White Paper provides an analysis of the high level of crime in South Africa. The inclusion of this analysis in the White Paper advances the understanding that the unique socio-political development of South Africa has resulted in some unique factors impacting on the nature of crimes as well as the profile of offenders – necessitating a fresh analytical approach towards studying crime and violence. The interplay of various unique factors has resulted in South Africa having one of the world's highest ratios in terms of offender-population in relation to the actual general population total. These factors include: (i) the abolition of the death penalty, (ii) the introduction of a system of minimum sentencing by courts, and (iii) an increase in the prosecution of serious aggressive crimes.

33. These factors also resulted in: (i) a changing profile of the country's offenders, with a particular increase in the aggressive and sexual crimes categories (ii) an increase since 1994, in the number of offenders that serve long sentences (iii) a significant increase in the post-1994 period in the number of

children sentenced to correctional centres (with transgressions showing an increasingly violent nature). In this White Paper, we point out that this reality has significant implications and challenges for a future effective Rehabilitation-Centred correctional system in South Africa. These challenges include: (i) an increased need for accommodation of an increasing population of maximum -security and long-term offenders, and (ii) a need for a rapid increase in the accommodation for youth offenders.

34. The White Paper commits the Department to provide sufficient work of a useful nature for inmates in correctional centres. The Department intends to base the productive work of inmates on particular principles. These are that: (i) productive work should form an integral of the correctional sentence plan, (ii) the nature of such productive work should be consistent with the profile of the offence-category and the inmate him/ herself, (iii) it should contribute towards the human development of the inmates, (iv) productive work should be conducted within the framework of the country's labour and safety legislation, and a departmental policy on a skills-based remuneration system for labour by inmates, (v) the nature of productive work should not entrench gender and racial stereotypes, but should be geared to empower all inmates, irrespective of race, class or gender, to play a full and economically active role in society, and (vi) productive work should enhance the employability of inmates once they are released, through providing all inmates who have worked with an accredited and certificated record of their employment in these facilities.

35. The White Paper underscores the need for inmate-involvement in poverty alleviation projects, and that payment for all labour performed should be aligned with Government policy on wage levels. The Department advances the following objectives and principles for its poverty alleviation/social development projects: (i) projects should be designed in such a way so that they build close relationships with the community, and in particular seek to undo the stigmatisation of offenders; (ii) communities identified for such projects should mainly fall into the category of high risk, poor communities of origin of offenders (iii) the projects should not be DCS hand-outs to the community, but should contribute to sustainable development, (iv) projects should not be once off events, but be part of a coordinated multi-year, focused programme of the Department, (v) it should enhance rehabilitation, offender employability, skills development and preventing recidivism as important components of sustainable development, (vi) skills development and employability should take into account the structural changes in the South African economy so that training of offenders is in line with the trends in output of the economy, and (vii) it should develop community awareness amongst offenders, a community service attitude, while also developing self esteem in the individuals.

36. We underscore the immense challenge the nature of the existing 241 correctional centres present to the Department in achieving the objective of a rehabilitation-centred correctional system. As a principal starting point, we maintain that the facilities of the Department should be clearly designed as correctional centres that integrate facilities for rehabilitation, adequate security, development, and conditions consistent with human dignity.

37. We therefore outline various critical issues to ensure that we start to address this challenge in a systematic and comprehensive manner. These include: (i) possible utilization of inappropriate existing facilities by departments in the integrated justice system (ii) to ensure that the limited government resources are utilized appropriately in the facility planning and building programme of the Department (iii) development of an effective cost saving procurement-approach that will adequately address the enormous cost of procurement and need for facilities that are structurally rehabilitation friendly, safe and secure (iv) a needs-driven approach to planning of accommodation of offenders and alignment of the facilities with activities such as Agriculture, Workshops, Academic, and reconciliation with our admission policy, and (vi) correctional centre design, building and procurement should be based on an analysis of trends in arrest, conviction and sentencing patterns, the nature of South Africa crime patterns and trends in offender security classification and offender population. This White Paper also

motivates a need to ensure that operations of Public Private Partnership (PPP) Prisons re entirely within the framework of this White Paper on Corrections in South Africa.

38. We examine the thorny issue of awaiting-trial detainees and illegal immigrants in South African correctional centres. We outline the rights of awaiting-trial detainees in terms of the Constitution, the government's and Integrated Justice's responsibilities toward them and the international position on this. We advocate the view that, on the long term, awaiting- trial detainees are not the responsibility of the Department. We acknowledge, however, the need for the Department to steer a short- to medium term migration management plan to ensure effective transformation. On the issue of illegal immigrants, the Department identifies critical shortcomings in dealing with the issues and stresses the need for an urgent policy-appraisal of the situation.

39. The development of a new Corrections-focused correctional system for South Africa, must take into account the significant contribution and support needed from external partners. This White Paper acknowledges that the Department will fail in its transformation objective if it does not pay special attention in developing, maintaining and promoting partnerships with communities, community institutions, NGO's, private enterprise, other government institutions and Departments and its partners within the Integrated Justice System.

40. We propose an active involvement of the Department in community initiatives and projects, and motivate that the reasons for this will contribute in our aims of crime prevention and effective reintegration of offenders. We acknowledge it will require a very comprehensive and enabling policy framework and we therefore provide very clear objectives for a community participation policy.

41. Some of these objectives for a community participation policy include, to: (i) create an environment that would allow for the effective involvement of the community in the rehabilitation of the offenders (ii) create opportunities for establishment and maintenance of partnerships between DCS and the community (iii) regulate the influx of community-based service providers into the Department wanting to render programmes and services to offenders to assist with rehabilitation efforts (iv) formalize collaborative partnerships and networking relationships with the community (v) integrate and coordinate services rendered by community-based service providers to offenders (vi) ensure effective re-integration of offenders into the community (vii) involve ex-offenders in rehabilitation efforts, and (viii) market the Department, its needs and services to the community.

42. In the same vein, this White Paper stresses the ultimate importance of the role of the Department in making a contribution to the development of Corrections on the African Continent and in the international arena. It acknowledges that, through its systematic and constructive efforts and contributions in the field of Corrections, the Department in conjunction with other African Correctional Departments, can assist in the social and economic development of our continent, as well as to the improvement in the practice of corrections internationally.

43. The development of a new Corrections-focused correctional system will take place within the legal and administrative framework as provided for within the Constitution of South Africa. In this endeavour, the role and functions of all external bodies duly appointed by applicable Acts of Parliament, like the Office of the Inspecting Judge, will be respected and promoted within a framework of joint partnerships. This White Paper also commits this Department, through the office of its National Commissioner as Accounting Officer, to a level of clean and ethical administration, transparency, good governance and accountability associated only with the best in the world.

44. The ideals contained in a White Paper are in nature a long-term vision. The White Paper intends to provide a long- term policy framework that will inform the work of the Department of Correctional Services over the next twenty years. It will outline policy on many areas that are not achievable in the

short term, particularly in the face of the staff development challenges, the levels of corruption and mismanagement and the levels of overcrowding in correctional centres. Implementation of the White Paper will require a prioritisation of areas that require to be addressed in the short term, medium and long-term. Unpacking of this is the responsibility of the strategic planning processes of the Department over the three to twenty years. Budgeting and resource provisioning processes of the Department over this time period must be based on a systematic implementation plan.

45. The White Paper on Corrections will have implications for the integrated justice system and the functioning of other Government departments, requiring a very coordinated approach. This is likely to be the case particularly with the responsibilities in relation to awaiting-trial detainees. Mechanisms will have to be put in place across the IJS through the IJS Development Committee to ensure that transitional arrangements and budgetary planning is taken into account as these adjustments take place.

# CHAPTER ONE

## INTRODUCTION

### 1. Motivation for a new White Paper

1.1 Cabinet has approved a new White Paper on Corrections in South Africa to replace the existing White Paper approved in October 1994. The reasons for this new White Paper are many and varied and they range from advances in legislation, policy, international best practice and everyday practice. Some of the key reasons for the new White Paper are:

1.1.1 The 1994 White Paper was based on the 1993 Interim Constitution (RSA 1993) and the challenges that democratisation and the human rights culture posed for a punitive and paramilitary penal institution. As such, the constitutional and statutory framework has bypassed the 1994 White Paper.

1.1.2 The Bill of Rights in the Constitution of the Republic of South Africa (Act No. 108 of 1996), determines the human rights environment that the Department of Correctional Services operates in, particularly in relation to (s) 35 and the section dealing with children's rights (s)28(g), and the right to education (s)29(1). Section 35 of the Constitution specifically provides for the rights of detained, arrested and accused persons to the extent that they have the right to:

- be informed promptly of the reason for detention
- be detained under conditions that are congruent with human dignity
- consult with a legal practitioner
- communicate with and be visited by a spouse or partner, next of kin, religious counsellor and medical practitioner of the prisoner's own choice, and to
- challenge the lawfulness of his or her detention before a court of law.

1.1.3 The Correctional Services Act (Act No. 111 of 1998) has bypassed the 1994 White Paper. This has resulted in some policy issues being addressed within the legislation before being enshrined in policy. The Correctional Services Act of 1998 defined a coherent purpose of the South African correctional system, which serves as one of the key starting points in relation to policy development in the Department of Correctional Services during the period 1999-2003:

*The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by—*

*(a) enforcing sentences of the courts in the manner prescribed by this Act;*

*(b) detaining all prisoners in safe custody whilst ensuring their human dignity; and*

*(c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections.*

*[Correctional Services Act, No 111 of 1998, s(2)].*

1.1.4 Over and above this, the 1994 White Paper is not aligned with key Government policies at present. For example, it is inadequate in contextualizing correction in the African Renaissance and in the approach to African multilateral relations and the restructuring of the SADC. The 1994 White

Paper is out of harmony with the Public Finance Management Act, particularly in relation to compliance with National Treasury provisions and internal auditing processes. Flowing out of the constitution, there is a body of Public Service policy that the DCS policy must be aligned with, such as the Public Service Regulations that cover the delegation of powers, policy compliance, and internal service evaluation.

1.1.5 The 1994 White Paper does not rise above the departmental mandate to address the South African perspective on the commission of crime, and its impact on correction and rehabilitation.

1.1.6 The 1994 White Paper speaks only to the mandate of the Department of Correctional Services. In sense, it fails to locate rehabilitation and correction as a societal responsibility and a contribution towards the community and societal involvement in social crime prevention and moral regeneration.

1.1.7 The 1994 White Paper fails in its task of providing direction to the development of policy and practice within the Department of Correctional Services' environment, in that it does not provide long-term strategic direction to policy development and correctional management.

1.1.8 The 1994 White Paper does not provide an appropriate framework for key service delivery and policy areas, such as:

- comprehensive health care;
- primary health care;
- the HIV/ AIDS policy;
- the interpretation of Constitutional imperatives;
- the role of Department of Health;
- facilities procurement, building and management
- Government's PPP policy in relation to infrastructure and facilities;
- appropriate human resource provisioning, career development and the personnel retention strategy
- the role of policy personnel, administration personnel, professionals and other correctional officials within the Department; and
- the major policy gap in relation to awaiting-trial detainees, and the government's and departmental responsibilities towards them.

1.1.9 The 1994 White Paper and the 1998 Correctional Services Act provide definitions of prisoner, of correctional officers, of correctional supervision, but fail to provide consistency in terminology in relation to other key areas. This results in use of terminology within the Department that hails from the various eras of the Department's history, and provides for a confusing conceptual environment.

1.1.10 The 1994 White Paper does not address the issues of service evaluation, internal control and an internal investigative capacity in a manner that is consistent with the Public Service and Administration requirements and with international best practice. International experience indicates that corruption and non-compliance tend to become inherent in any correctional system due to the fact that it houses a community of individuals who, for various reasons, have fallen foul of the law, and as yet are not reluctant to contravene the law again.

1.1.11 The 1994 White Paper does not address the location of the Department in the system of governance, and the role of the statutory oversight and advisory bodies defined and established through the Correctional Services Act.

1.1.12 Over and above this, there has been very significant and ongoing conceptual development of the South African approach to corrections and rehabilitation over the past nine years. The 1994 White

Paper defined the core business of the Department as safe custody and the humane treatment of offenders, whereas the core business is now understood as correction within a safe, secure and humane environment, in order to achieve the desired outcome of rehabilitation.

## **1.2 Premises of the White Paper on Corrections in South Africa**

1.2.1 The White Paper takes as its premise the constitutional imperatives as laid down by the 1996 Constitution of the Republic of South Africa (Act No. 108 of 1996). The Constitution provides for a detention system based on the Bill of Rights that defines a human rights environment that the Department must operate within. The Constitution does not directly address the relationship between the justice system and the corrections environment, which is crucial for integrated justice and rehabilitation delivery. The relationship between justice and corrections is, however, addressed in legislation and other policy documents such as the NCPS.

1.2.2 The Constitution defines the Department of Correctional Services as a singular national competency, without any prescribed relationship with provincial and local levels of government and administration. The experience of the Department indicates, particularly in relation to a positive commitment to the core business of the Department, that interaction with the Integrated Justice System Cluster and Social Sector Cluster at both provincial and area levels, as envisaged in integrated governance, is crucial.

1.2.3 The White Paper provides the policy framework for departmental legislation, guidance to subordinate policy development and a framework for long-term departmental policy development. A process of policy alignment, identification of subordinate policy gaps, and a legislative review will be necessary as part of the White Paper implementation plan.

1.2.4 The White Paper provides for consistency in the use of terminology and reviews the current terminology in the Correctional Services Act, and in use in the Department. This is to ensure that the terminology is user-friendly and consistent with the philosophy of corrections.

1.2.5 The White Paper serves to define the relationship between the Department of Correctional Services within the system of governance and oversight.

1.2.6 The White Paper on Corrections in South Africa provides a framework for the understanding of the philosophy and role of corrections in the democratic South African society. It also provides the purpose of, and policy framework for, the Department of Correctional Services and the strategic direction to penal reform within South Africa.

1.2.7 The White Paper contains the high-level general policy principles that guide the making of laws, administration and executive acts of the Department of Correctional Services and informs its relations with other government departments and organs of civil society.

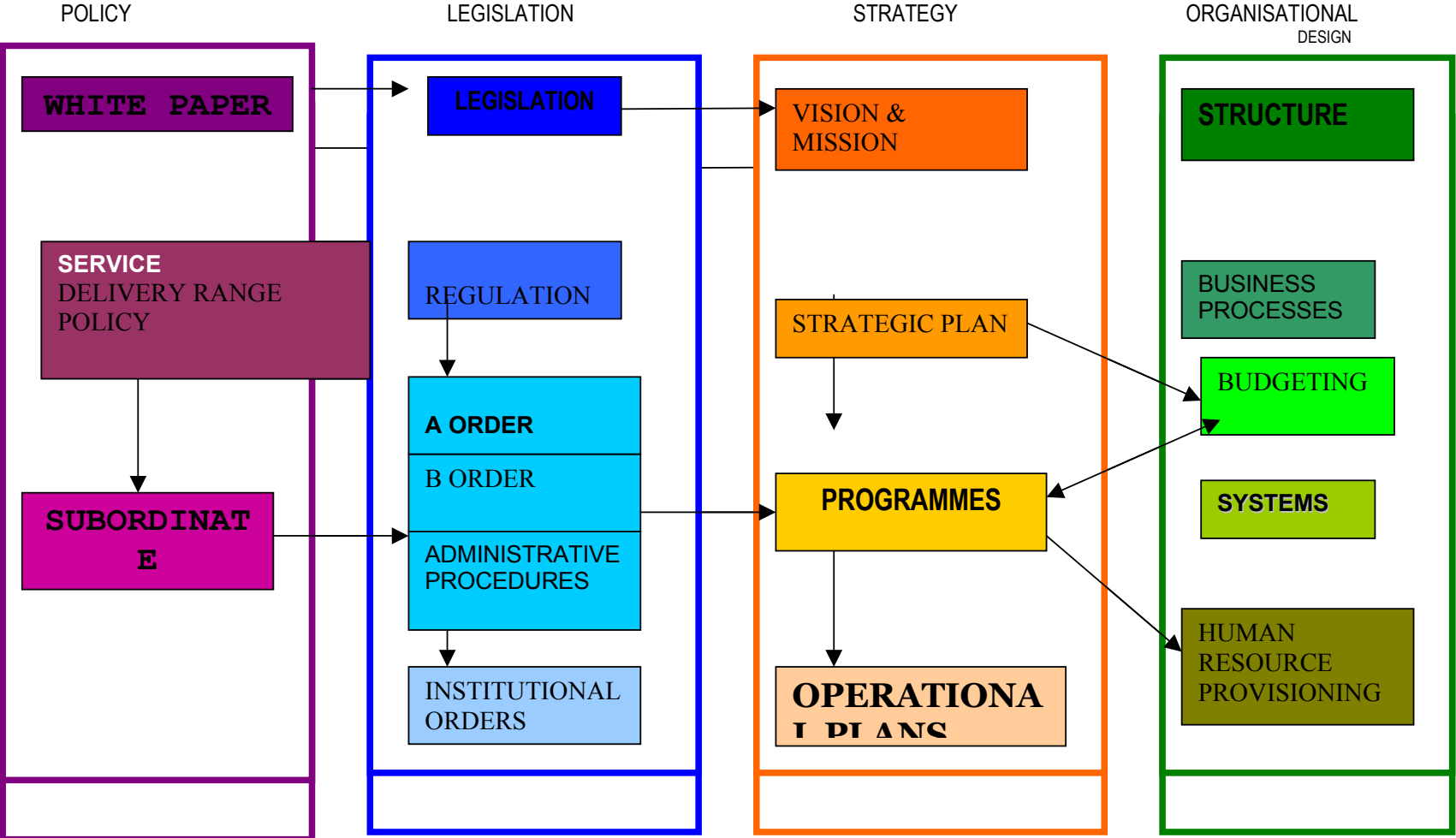
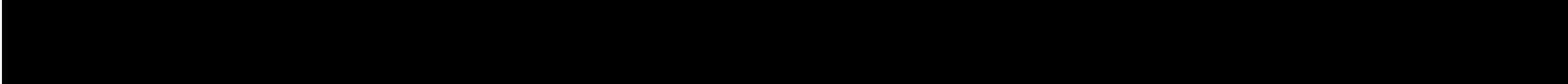
1.2.8 The White Paper draws mandates both from the Constitution and a range of international instruments to which South Africa has acceded. This place obligations of compliance and reporting on the DCS. Some of these instruments are specific to the correctional system, while others are broad-ranging instruments related to human rights. These international instruments are important in relation to benchmarking the South African correctional system and setting goals of compliance over the medium to long-term planning of the Department.

### **1.2.9 The Department's Policy and Legal Framework**

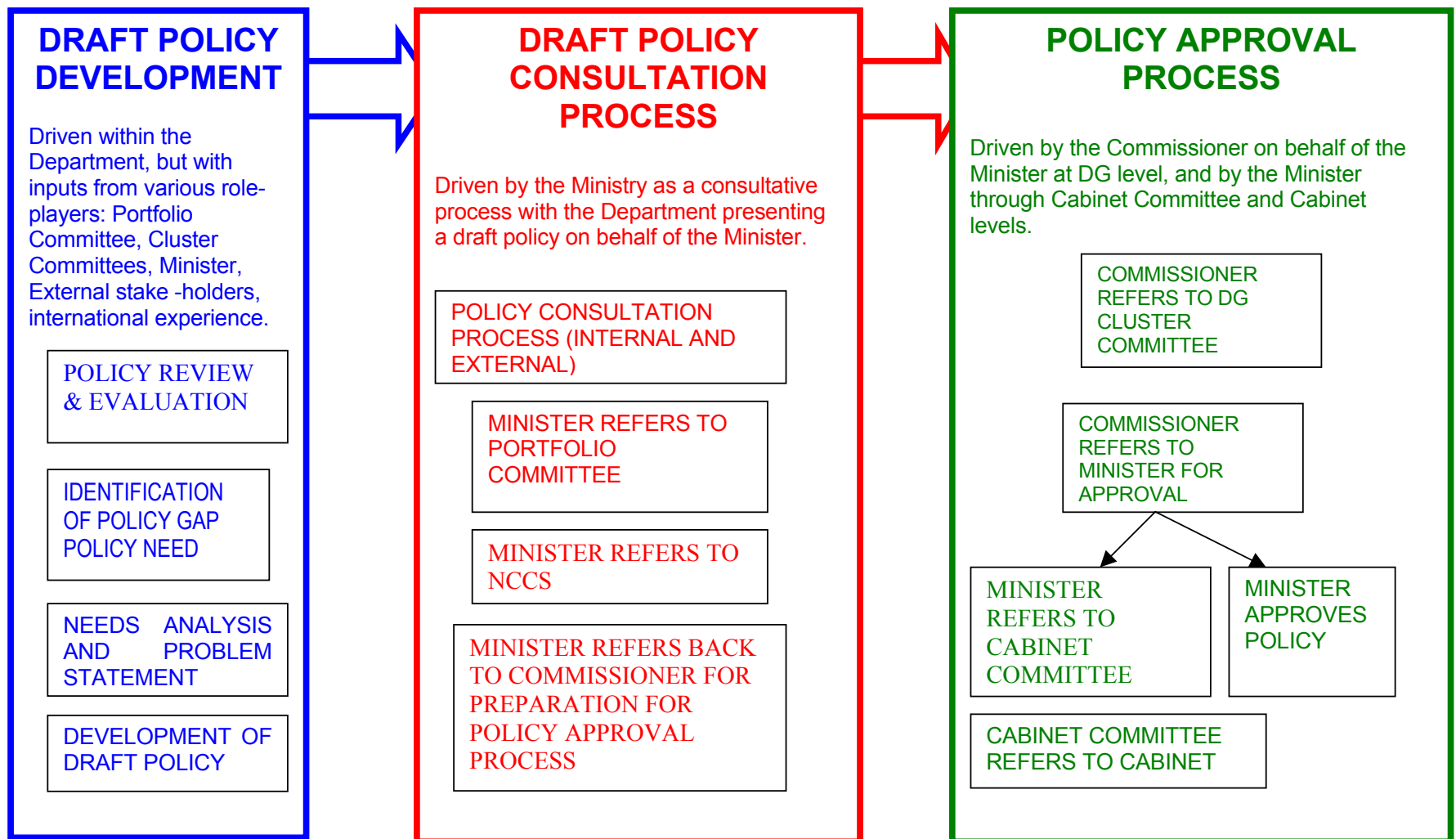
1.2.9.1 The hierarchy of imperatives illustrated in the following diagram, shapes the policy and legal framework from which the Department of Correctional Services derives its mandate and carries out its



core business. The White Paper informs the legislative programme, the subordinate policy development process, and the annual and three-year strategic and operational planning processes of the Department. Strategy as the art of projecting and achieving the larger objectives, as a set of plans to cover all contingencies, is guided by the long-term vision of the policy direction of the Department as set out in the White Paper.



1.2.9.2 In developing a White Paper, it is important that there is clarity both within the Department and amongst stakeholders about the correct process of policy development, of consultation on draft policy and the policy approval process that is followed in Government. The following table reflects these processes.



## CHAPTER TWO

### HISTORY OF TRANSFORMATION OF THE CORRECTIONAL SYSTEM IN SOUTH AFRICA

#### 2.1 Introduction

This chapter aims to provide a brief overview of the history of the Department and the change in the direction of the correctional system during the past century.

#### 2.2 The early 1900's

2.2.1 The early part of the last century saw the prison system regulated mainly by various Provincial Ordinances. The British occupation of the Transvaal and Orange Free State Republics in 1900 led to a major reorganisation of the penal systems in these provinces. This early period will probably be remembered most for an already inflated inmate population, mainly due to transgressions of the pass laws, and the fact that mining companies used prison labour at very low rates.

2.2.2 The Prisons and Reformatories Act, Act 13 of 1911, introduced shortly after Unionisation in 1910, saw the prison system also becoming responsible for the management of reformatories. Courts started playing an increasing role in the development of prison law, inter alia, with findings that it was unlawful to detain awaiting-trial offenders in solitary confinement and the ruling that offenders who felt they had been unfairly treated in prison had the legal right to approach courts of law for recourse.

2.2.3 This period also saw the introduction of a system that allowed for the remission of part of a prison sentence subject to good behaviour on the part of the inmates and the system of probation that allowed for the early release of inmates, either directly into the community or through an interim period in a work colony or similar institution. There was much talk of rehabilitation but very little actually materialised. Punishment for transgressions within correctional centres was harsh and it included whippings, solitary confinement, dietary punishment and additional labour. Racial segregation within correctional centres was prescribed by legislation and it was vigorously enforced throughout the country.

#### 2.3 The 1945 Landsdowne Commission on Penal and Prison Reform

2.3.1 Developments during 1945 held much promise. The Landsdowne Commission on Penal and Prison Reform found that the Prisons and Reformatories Act of 1911 had not introduced a new era in South African prisons but that it had in fact been a vehicle for maintaining the previous harsh and inequitable prison system that preceded it. This Commission:

- held the view that offenders should not be hired to outsiders;
- It also asked for an increase in the emphasis on rehabilitation and the need to extend literacy amongst offenders, and in particular black offenders; and
- was critical of the Government's decision to reorganize the prison service on full military lines, which was seen to be an attempt to increase the control it had over prison officials. It warned

that such a militarised system would not be conducive to “the various rehabilitative influences which modern views deem essential”.

2.3.2 Sadly nothing much came of the Landsdowne Commission Report presented in 1947, as illustrated by subsequent permission for “bona fide farmers associations” to build prison farm outstations to facilitate the extended use of prison labour by farmers.

## **2.4 Prisons in the 1960s and 1970’s**

2.4.1 Brand new prison legislation in the form of the Prison’s Act (Act 8 of 1959), was introduced. This new Act:

- reflected little transformation of the prison system;
- continued and even extended racial segregation within prisons in line with the national policy of “differential development” signalled in by Apartheid;
- abandoned the “nine pennies a day” prison labour scheme and replaced it with a system of parole;
- entrenched the military character of the prisons management, and made provision for commissioners and non-commissioned officers;
- it closed the prison system off from inspection by outsiders by prohibiting reporting and publishing of photographs. This served to entrench a relatively closed institutional culture within the prison service, which resulted in a tendency for the norms of prison law to be relatively remote from daily practice;
- did not give essence to the internationally accepted meaning of the word parole since it still required of paroled prisoners to enter into employment agreements with employers (mainly farmers) at ridiculously low remuneration or else to remain in prison; and
- although the new legislation took cognisance of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners as far as the emphasis on rehabilitation was concerned, it ignored other crucial aspects, such as the prohibition of corporal punishment for prison offences.

2.4.2 Prior to 1960, prisons were not used to detain prisoners on a large scale as a means of controlling political unrest. This subsequently changed and the incarceration of political detainees and sentenced political prisoners became a significant feature of prison reality. This led to an increasing attack on the legitimacy of the prison system. Direct legal and court challenges by prisoners, and in particular political prisoners and detainees, to decisions by prison authorities and increasing international condemnation and pressure became the order of the day. The response by the government at the time was to grant even wider powers to prison authorities. Pass laws and the infamous system of prison labour remained targets for the critics of the government.

## **2.5 The Prisons Department in the 1980’s**

2.5.1 In 1984 the Judicial Inquiry into the Structure and Functioning of the Courts reported that the incarceration of prisoners as a result of influx control measures was a major cause of the overcrowding in prisons and it condemned these measures. Progressive changes started taking place with the closing down of prison outstations and a general decline in the use of prison labour for agricultural purposes. The system of paroling prisoners under paid contracts was also phased out.

2.5.2 Prisons, however, mainly remained overcrowded places of security and not much more. Although some rehabilitative processes were taking place, they were insignificant. These marginal improvements in the prison system were, however, soon overshadowed by the declaration of the State

of Emergency on 21 July 1985, which lasted until 1990. The mass detention of political prisoners in prisons during this period further inflated the already problematic prison population.

2.5.3 During 1988 important amendments were made to prison legislation. By excluding all references to race, a reversal of the almost total racial segregation of the prison population was brought about, although it took some years before this was implemented. The infamous prison regulation that ruled that “white” staff members automatically outranked all “non-white” staff members was also repealed.

## **2.6 Prison reforms in the early 1990's**

2.6.1 Late in 1990 the government announced that it planned to introduce extensive reforms in the prison system. The Prison Service was separated from the Department of Justice and renamed the Department of Correctional Services. This triggered important changes to prison legislation. An important milestone in this period was the introduction of the concept of dealing with certain categories of offenders within the community rather than inside prison – a system known as non-custodial “correctional supervision”. This was introduced as a more cost-effective way of doing corrections and a response to overcrowding.

2.6.2 The release policy and the automatic system of remission were revisited and a system of credits, which prisoners could earn for appropriate behaviour, was introduced. At the same time, in the face of rising challenges to the racial barriers on promotion of black members into the officer ranks in the Department, the Prisons Act was amended to make it illegal for warders to become union members without the permission of the Commissioner, and made it an offence to strike.

2.6.3 The introduction by the government in 1993 of the Public Service Labour Relations Act brought another transformation in this regard. This Act was introduced as a result of continuous pressure on the Government to grant public service employees protection from unfair labour practices. The scope of this Act was made applicable to the Department of Correctional Services just prior to the first democratic elections in 1994. This was an important development as it allowed employees of the Department to belong to trade unions, to engage in collective bargaining with the Department as employer and to declare and refer disputes to Conciliation Boards and to the Industrial Court for adjudication and settlement.

## **2.7 Transformation of Correctional Services in democratic South Africa**

2.7.1 The Interim Constitution of the country, introduced in 1993, embodied the fundamental rights of the country's citizens, including that of offenders. This resulted in the introduction of a human rights culture into the correctional system in South Africa, and the strategic direction of the Department was to ensure that incarceration entailed safe and secure custody in humane conditions. On 21 October 1994, a White Paper on the Policy of the Department of Correctional Services recognised the fact that the legislative framework of the Department should provide the foundation for a correctional system appropriate to a constitutional state, based on the principles of freedom and equality.

2.7.2 The transformation of the Department in the first five years of the new democracy entailed:

- significant changes in the representativity of the DCS personnel and management;
- the demilitarisation of the correctional system in order to enhance the Department's rehabilitation responsibilities on 1 April 1996;
- progressive efforts to align itself with correctional practices and processes that have proved to be effective in the international correctional arena; and
- the introduction of independent mechanisms to scrutinize and investigate its DCS activities, such as the appointment of an Inspecting Judge.

2.7.3 Despite the human rights culture brought about by the new democratic dispensation and enshrined in the Constitution, the immediate post-1994 transformation of the Department focused its attention mainly on safe custody. However, the National Crime Prevention Strategy (NCPS) approved by Cabinet in 1996, adopted an Integrated Justice System (IJS) approach that aimed through Pillar 1 of the NCPS at making “the criminal justice system more efficient and effective. It must provide a sure and clear deterrent for criminals and reduce the risks of re-offending.” The key aims of programmes in this pillar are to:

- increase the efficiency and effectiveness of the criminal justice system as a deterrent to crime and as a source of relief and support to victims;
- improve the access of vulnerable groups to the criminal justice process, including women, children and victims in general;
- focus the resources of the criminal justice system on priority crimes;
- forge inter-departmental integration of policy and management, in the interests of co-ordinated planning, coherent action and the effective use of resources; and
- improve the service delivered by the criminal justice process to victims, through increasing accessibility to victims and sensitivity to their needs.

2.7.4 The national programmes of the Pillar 1 of the NCPS were:

- Re-engineering of the Criminal Justice Process
- Criminal Justice Information Management
- Crime Information and Intelligence
- Prosecutorial Policy
- Appropriate Community Sentencing
- Diversion Programme for Minor Offenders
- Secure Care for Juveniles
- Rationalisation of Legislation
- Victim Empowerment Programme.

2.7.5 The National Programme on Appropriate Community Sentencing indicated that available correctional resources must be used in a targeted way to deal more effectively with serious offenders. The imposition of prison sentences on minor offenders reduces the likelihood of their reintegration into society and further burdens the criminal justice system. Increasing the availability of community sentencing options on conviction increases the humane treatment of minor offenders and will improve the effectiveness of corrections by reducing the burden on the correctional services department. This will also reduce recidivism within this sector. The Lead Agency was defined as Correctional Services, assisted by Welfare, the Department of Safety and Security, Justice, the Law Commission and NGOs involved with offender rehabilitation. The key actions were the development of criteria in line with the priority crimes described above and guidelines for sentencing which are canvassed with the judiciary, and the review and upgrading of existing community sentencing options and examination of the potential roles of community service providers in this regard.

2.7.6 The National Programme on Diversion Programme for Minor Offenders noted that the criminal justice system is enormously costly and often inappropriate for dealing with petty offenders, particularly juveniles, where stigmatisation can pose an intolerable burden on the normal developmental path to responsible adult citizenship. This programme aims to divert petty offenders and juveniles out of the criminal justice system. The Lead Agency was Welfare, assisted by the Departments of Correctional Services, Justice, Defence, Safety and Security and non-governmental organisations concerned with child welfare and the rehabilitation of offenders. The key actions were to extend the existing capacity for diversion on the basis of agreed national guidelines and criteria and to develop a standardised referral system, in consultation with Attorneys-General and South African Police Service.

2.7.7 The National Programme in relation to Secure Care for Juveniles argued that youthful offenders suspected of serious offences should not be held in standard prison or police cells. They do, however, need to be held securely, in an environment that limits unnecessary trauma and strengthens the likelihood of eventual reintegration into society. This requires the creation of special secure care facilities for young suspects and offenders. The Lead Agency was Welfare, through the inter-ministerial committee on Young People at Risk, which includes the Departments of Justice, Safety and Security and Correctional Services. This team was to be assisted by other key departments such as Public Works, NGOs and the private sector. The key actions were to speed up the completion or conversion of necessary buildings for secure care facilities for juveniles and to implement legislative steps and social programmes to discourage the exploitation of juveniles by criminal syndicates.

2.7.8 The National Crime Prevention Strategy persuaded the Department to re-examine its core objectives and reprioritise its resources. The focus shifted to transforming South African prisons from being so-called "universities of crime" or "criminal headquarters" into effective rehabilitation centres that produce skilled and reformed individuals who are capable of successful reintegration into their communities as law-abiding citizens.

2.7.9 This period also saw the demilitarisation process from a paramilitary structure with military ranks, drill and parades, and a military command structure to a civilian government department. The 1994 White Paper reluctantly acknowledged that the militarised character of the Department may need reconsideration, but within the Department resistance to this direction amongst senior management resulted in a flawed process of demilitarisation. As a result, there was inadequate preparation for, little common understanding of the need for and consequences of demilitarisation, and a poorly managed process of demilitarisation. This precipitous demilitarisation coincided with the implementation of affirmative action in the Department which was carried out without due consideration of training and development of affirmed appointees. Demilitarisation required that a new form of basic, promotional and management training be put in place, but the manner of demilitarisation resulted in a hiatus in human resource development, which compounded the weaknesses in the management of the Department. The confused notion that demilitarisation meant a retreat from discipline and security further negatively impacted on the functioning of the Department.

2.7.10 Parallel to this was the passing of the Constitution in 1996, which provided the overall framework for governance in democratic South Africa, enshrined the Bill of Rights, and obliged all Government departments to align their core business with the Constitution and their modus operandi with the framework of governance. The Department undertook massive legislative reform in the period leading up to the passing of the Correctional Services Act (Act No. 111 of 1998) by Parliament. This legislation represented a total departure from the 1959 Act and embarked on a modern, internationally acceptable correctional system, designed within the framework of the 1996 Constitution.

2.7.11 The most important features of the Correctional Services Act (Act 111 of 1998), are:

- the entrenchment of the fundamental rights of offenders;
- special emphasis on the rights of women and children;
- a new disciplinary system for offenders;
- various safeguards regarding the use of segregation and of force;
- a framework for treatment, development and support services;
- a refined community-involved release policy;
- extensive external monitoring mechanisms, and
- provision for public and private sector partnerships in terms of the building and operating of correctional centres.



## **2.8 Strategic realignment of the Department of Correctional Service since 2000**

2.8.1 The period 2000-2003 has been marked by consistent engagement with the strategic direction of the Department, as role-players have striven to interpret the purpose of the correctional system and unpack the policy direction necessary for successful delivery on rehabilitation and the prevention of recidivism.

2.8.2 The Department hosted a National Symposium on Correctional Services on 1 and 2 August 2000, attended by approximately 160 participants representing approximately 70 stakeholder organisations, which recognised the need to promote a collective social responsibility for the rehabilitation and reintegration of offenders into the community and recommended the establishment of a “Partnership Forum for Correctional Services”.

2.8.3 The objectives that the National Symposium focused on, were to:

- develop a clearly articulated national strategy to attain the desired fundamental transformation of correctional services;
- create a common understanding of the purpose of the correctional system;
- create a firm foundation for coherent and cohesive role-playing by all sectors of society; and
- achieve national consensus on the human development and rehabilitation of all offenders and their integration into the community as productive and law-abiding citizens.

2.8.4 As a result of a re-examination of the Department's strategic role in the fight against crime within the broader context of the criminal justice system and in terms of the priority programmes presented by the Justice, Crime Prevention and Security Cluster to the Cabinet Lekgotla held on the 22nd and 23rd January 2001, the Department committed itself to step up its campaign to put rehabilitation at the centre of all its activities, by identifying the enhancement of rehabilitation services as a key departmental objective for the Medium Term Expenditure Framework (MTEF) period. Government acknowledged the critical role played by the Department of Correctional Services in the long-term strategy of crime prevention through the reduction of recidivism through the provisioning of effective rehabilitation services to offenders.

2.8.5 To this end the Department identified the enhancement of rehabilitation services as a key starting point in contributing towards a crime-free society. The strategies developed towards the enhancement of rehabilitation, were the:

- development of individualized need-based rehabilitation programmes;
- marketing of rehabilitation services to increase offender participation;
- establishment of formal partnerships with the community to strengthen the rehabilitation programmes and to create a common understanding;
- promotion of a restorative approach to justice to create a platform for dialogue for the victim, the offender and the community, facilitating the healing process;
- combating of illiteracy in correctional centres by providing ABET to offenders;
- increase of production to enhance self-sufficiency and to contribute to the Integrated Sustainable Rural Development Strategy; and
- increase of training facilities for the development of skills.

2.8.6 In the process of drafting subordinate legislation and implementing certain aspects of the Correctional Services Act, 1998 (the principal Act), certain amendments were made in order to fully implement the principal Act (Correctional Services Amendment Act, 2001), as well as to be more compliant with the provisions of the Constitution. Central to the Amendment Act were the:

- treatment of offenders;
- accommodation of disabled offenders and gender considerations;
- disciplinary procedures for offenders;
- new parole system;
- treatment of child offenders; and
- use of firearms and other non-lethal incapacitating devices.

2.8.7 The internal 2001 strategic planning session in October 2002 resulted in the adoption of the Mvelaphanda Strategic Plan for 2002-2005, the thrust of which is that the Department needed to put rehabilitation at the centre of all DCS activities. The session identified unit management as the missing ingredient in the transformation of the South African correctional system and set a target to implement Unit Management in 80% of the prisons by the end of the forthcoming MTEF period (31 March 2005). Unit management is an approach that makes provision for:

- the division of correctional centres into smaller manageable units;
- improved interaction between staff and inmates;
- improved and effective supervision;
- increased participation in all programmes by offenders;
- enhanced teamwork and a holistic approach; and
- creation of mechanisms to address gangsterism.

2.8.8 In 2002, the Department recognised that the incompleteness in the transformation of the Department had resulted in a lack of coherence of paradigm, and the lack of a common understanding of the meaning of rehabilitation across the entire Department. A concept document called 'Conceptualising Rehabilitation' was developed for internal discussion in all components of the Department. Alongside this process, an approach to the development of a corporate culture that would support the philosophy of "rehabilitation and correction" was articulated.

2.8.9 At the beginning of 2003, all of these processes had consolidated into an understanding of corrections as not merely the prevention of crime, but as a holistic phenomenon incorporating and encouraging social responsibility, social justice, active participation in democratic activities and a contribution towards making South Africa a better place to live in. As such, the DCS operates in the environment of integrated governance, requiring that policy processes in the Department should be aligned with the overall Government strategy, and specifically with the policy of the departments in the Justice, Peace and Security Cluster, the Social Sector and the Governance and Administration Clusters. Moreover, the Department has developed an understanding that correction within the DCS environment is achieved through the delivery of key services to offenders, and through interventions to change attitudes, behaviour and social circumstances in order to achieve the desired outcome of rehabilitation and social responsibility.

## **2.9 Challenges encountered during the strategic realignment of the Department**

2.9.1 Throughout all of these periods, the Department has faced a range of challenges, some of which are inherent in correctional systems the world over, and some have particular South African or time-specific dimensions. The current challenges faced are due to both inherent risks in correctional systems and dimensions due to the societal transformation that South Africa has gone through over the past decades:

- overcrowding and the state of the DCS facilities;
- institutional "Prison Culture" and corruption;
- training for the new paradigm; and
- structuring for the new paradigm.

2.9.2 The Department regards overcrowding as its most important challenge as it has significant negative implications on the ability of the Department to deliver on its new Core Business. There are various causes of overcrowding, including the:

- inefficient functioning of the criminal justice system, in the particularly high incarceration rate in South Africa when compared to international trends;
- introduction of minimum sentences for particular categories of serious crime in 1997 resulting in an increase in the proportion of long-term offenders in the DCS facilities;
- crime trends in South Africa, particularly as it relates to serious violent crime and serious economic offences;
- levels of awaiting-trial detainees held in correctional centres; and
- inadequate needs-driven facility planning in the Integrated Justice System.

2.9.3 The Department, in co-operation with partners in the JCPS, are attempting to address this issue through exploring various options. These include:

- the awaiting-trial offender project aimed at reducing the detention cycle time of awaiting-trial detainees;
- involvement in the Saturday courts project, which was introduced in ninety-nine courts countrywide;
- the establishment of a Departmental Task Team to liaise with a task team working on overcrowding within the Security cluster at implementation level;
- the utilization of sections 62[f] and 63[a] of the Criminal Procedure Act by the Heads of Prison in court applications which resulted in the release of prisoners; and
- the use of the amendment of Section 81 of the Correctional Services Act to allow the release, under specific conditions, of awaiting-trial prisoners who have been allowed bail but could not afford to pay due to the prisoner's personal social conditions.

2.9.4 The Department adopted a new approach to a cost-effective expansion strategy by building low-cost "Prototype" correctional facilities for medium and low-risk inmates, who are the majority of the country's offender population. This project was also aimed at consistent delivery of facilities that are consistent with rehabilitation and humane treatment.

2.9.5 In response to the challenge to transform the institutional culture within the Department, the DCS committed itself to the creation of a culture of good governance including the development of a Risk and Fraud Management Strategy and an internal investigative capacity, to ensure the cost-effective utilisation of resources and to address the ongoing incidents of corruption and mismanagement in the Department. Alongside this, the Department has established an 'Inspectorate Directorate' in terms of section 95 of the Correctional Services Act to advise the Commissioner on compliance or non-compliance by officials to Government and departmental policies.

2.9.6 The period 2001-2003 saw the development of a strategy of both external and internal processes to cleanse the Department in preparation for the provision of effective service delivery in response to allegations of corruption and financial mismanagement, findings of the Auditor-General in this regard, and reports to and appearances before the Standing Committee on Public Accounts (SCOPA). This strategy saw a series of external investigations conducted at the behest of the Minister of Correctional Services and Senior Management, which included:

- The Department of Public Service and Administration management audit which culminated in a report presented to the President by the Minister of Correctional Services and the Minister of Public Service and administration, dated 18 February 2000;

- A second phase of the investigation, conducted jointly by the Department of Public Service and Administration (DPSA) and the Public Service Commission (PSC) to concentrate on allegations to do with human resource malpractices resulting in reports submitted to the President, Cabinet and Parliamentary Committees in March 2001;
- The establishment of a Judicial Commission of Inquiry (the Jali Commission) with powers to summon and cross-examine witnesses, obtaining evidence in relation to alleged incidents of corruption, crime, mal-administration, violence or intimidation in the Department of Correctional Services in terms of Presidential Minute No. 423 of 8 August 2001;
- The Proclamation of authorisation of the Special Investigation Unit (SIU) to provide forensic investigations into corruption and mal-administration in the Department in support of the Jali Commission's work, and to ensure investigation for effective prosecution and conviction; and
- Alongside this, the Department intensified the prevention of corruption and mismanagement through tightening of management systems and increasing compliance with policy and controls, and through internal sanction and referral to external law enforcement agencies where appropriate.

2.9.7 The 2001 Strategic Planning processes had generated recognition that the DCS was inappropriately structured and engineered for delivery on rehabilitation. External consultants were brought in to facilitate the alignment of the DCS systems, processes and structures, with the expectation that the outcome of this process should assist in positioning the Department to properly deliver on rehabilitation as departmental core business. Expected outcomes of the "Gearing DCS for Rehabilitation" project include:

- designing a clearly defined organizational structure with identified key functions;
- alignment of the organizational structure to the core business;
- analysis of business processes;
- alignment of budget with core business;
- determination of the skills and competencies required to perform; and
- designing information systems appropriate to the new structure.

2.9.8 At the same time, the Department of Public Service and Administration began the implementation of a Public Service Central Bargaining Chamber Resolution, No 7 of 2002, which facilitated the overall transformation and restructuring of all government departments within specific time frames. The Department integrated the two processes in order to ensure coherence of the Resolution 7/2002 process with the strategic direction that was emerging for the Department.

2.9.9 The strategic direction that has developed in the Department in the democratic dispensation has faced the Department with major human resource development challenges – to ensure the paradigm shift of existing personnel, as well as the development of an appropriate recruitment, promotion and retention strategy for the various categories of personnel required to deliver on the rehabilitation mandate.

## CHAPTER THREE

### CORRECTION IS A SOCIETAL RESPONSIBILITY

#### 3.1 Introduction

3.1.1 The family unit is recognised as the basic building block of any healthy and prosperous community and nation. South African history and circumstances have resulted in many families in South Africa living on the edge of survival. Families living on the edge of survival have a great possibility of becoming dysfunctional. Many children must grow up in families without a mother, or even both parents. Factors such as poverty, the migrant labour system, outdated traditions and the changing roles of men and women, cause hunger, hardship and challenges to traditional socialization processes. Trusting and respectful relationships are an exception rather than the rule.

3.1.2 The White Paper is mindful of the fact that it is not only those from dysfunctional families that engage in acts of criminality. To this end, the categories of offenders coming from affluent families, and those committing criminal acts whilst in highly paid employment positions, attest to this. However, a sober analysis of the composition of South Africa's offender population, drives home the reality that the vast majority of our offenders come from communities and families plagued by poverty, hunger, unemployment, absent figures of authority and care, a distorted value system, and general hardship – some of the very factors directly associated with (dysfunctional) families and communities.

3.1.3 This chapter deals with:

- correction as a responsibility of society that seeks to transcend the normal narrow Departmental scope of intervention;
- the different levels of correction and the role of various role-players and stakeholders in making a contribution to corrections at these different levels; and
- the fundamental contribution of the Department of Correctional Services to creating a correcting societal environment.

#### 3.2 Correction and dysfunctional families

3.2.1 When families are dysfunctional, they provide fertile ground for acts of criminality for the young people growing up in them. Lack of delivery on basic socio-economic needs, such as employment, public infrastructure, social recreational infrastructure and poverty, combined with dysfunctional families provide the basis that put youth at risk. Dysfunctional families also provide the circumstances for ex-offenders to relapse to a life of crime.

3.2.2 Looking at all these negative consequences connected with dysfunctional families, the role of other social institutions and individuals in society becomes very important. These other social institutions and individuals, like teachers, religious leaders, sports role models, cultural leaders and women leaders are required to supplement the role of parents in shaping the values and life style choices of all children and youth. It is in the context of dysfunctional families that the role of the state through its various government departments and communities with all its social institutions, takes on a significant importance in the development of a correcting environment for children and youth.

3.2.3 It is also within this context of the need to provide a correcting environment for South Africa's children and youth, that the Department of Correctional Services has formulated a new strategic direction that facilitates making a fundamental contribution to corrections.

### **3.3 The Role of the Department in Societal Corrections**

3.3.1 The Department's perspective on corrections provides the fundamentals for its new strategic redirection. It is based on the ideals contained in the South African Constitution that asserts that all South Africans should contribute to maintaining and protecting a just, peaceful and safe society in our country. This we should do by upholding the law and justice system and promoting the social responsibility and human development of all citizens. It is therefore the approach of the South African government that correction (both self-correction and the correction of others) is inherent in good citizenship.

3.3.2 Our new strategic direction, towards making a fundamental contribution to corrections in South Africa, incorporates a profound understanding of where the Department of Correctional Services fits into the corrections framework. Our new strategic framework also incorporates the important notion that the Department of Correctional Services is but one crucial role-player in creating, and maintaining, a correcting environment for South Africa's children and youth.

3.3.3 In this regard, the Department of Correctional Services recognises the family as the basic unit of society. The family is also the primary level at which correction should take place. The community, including schools, churches and organisations is the secondary level at which corrections should take place. The state is regarded as being the overall facilitator and driver of corrections, with the Department of Correctional Services rendering the final level of corrections. Our successes in crime-prevention and rehabilitation are intimately connected to how effectively we are able to address the anomalies in South African families that put people at risk with the law at the primary level – that is at family level.

3.3.4 Correction is therefore not just the duty of a particular department. It is the responsibility of all social institutions and individuals (starting within the family and educational, religious, sport and cultural institutions), and a range of government departments. It is only at that final point at which the society has failed an individual, where the criminal justice system and the Department of Correctional Services step in.

3.3.5 It is also for this reason that the DCS needs the cooperation of other government departments, community-based organisations and non-governmental organisations. Collectively there is a need to ensure that we contribute to the betterment of the circumstances of families and communities. The challenge that this poses is to develop mechanisms to strengthen families and to empower communities to ensure that South Africa can realise the all-important objective of crime prevention through rehabilitation.

3.3.6 The Department's view on corrections also flows from the need to regenerate the moral fibre of South African society. In this regard, the work of the Social Cluster of Government in strengthening social cohesion and promoting social justice, marks proactive steps to effectively deal with the moral degeneration of South African society. The DCS believes that the moral regeneration drive will be a major contribution to the efforts that the Department is confronted with and engaged in – that of cultivating moral values to those already convicted.

3.3.7 The creation of an environment in which offenders are encouraged to discard negative and destructive values and replace them with **positive and constructive** values can be said to be the core business of the Department of Correctional Services. This approach has started to assume a key role in the provision of correctional service in South Africa. All departmental programmes are designed specifically to support a regeneration of morality for those who have strayed from the accepted norms and values of society. This marks a major paradigm shift – turning prisons from centres of punishment to centres in which an environment is created for moral/spiritual regeneration to **occur**.

3.3.8 Moral regeneration and promotion of the ethics enshrined in the Constitution, requires special attention to be paid to the creation of an environment that allows for self-discipline, social independence, ongoing family support and community support as well as reintegration of offenders into a substantially transformed community. It is the vision of our correctional system to have equipped offenders by the time they are released into society with an attitude of desiring to serve their families and society with competence, excellence and responsibility in relationships, but without the general moral regeneration and social crime prevention within the broader society, the trigger factors for recidivism are likely to come into play.

3.3.9 The promotion of the spirit and practice of goodwill and sincere interaction between offenders and their community and family, and within the correctional centre community is a vehicle through which rehabilitation can be promoted. The involvement of inmates in caring for their community within the correctional centre environment, in taking responsibility for their fellow inmates and their families, are stepping-stones to reintegration of these individuals into a society equipped for strengthening the moral fibre of society.

3.3.10 It is the Department's hope that members of the public will support internal rehabilitation programmes run within correctional centres. This support can be through provision of resources such as expertise, funding, participation or involvement in rehabilitation programmes, provision of facilities and equipment within the parameters of the Department's strategic framework.

3.3.11 The Department welcomes the recognition through this White Paper of the role of family and community institutions in the correction of individuals prior to commission of criminal acts that lead to convictions.

3.3.12 The Department is therefore committed to working with other government departments and societal institutions in advocating for restoration of families and communities as viable entities in which there is good governance and socio economic viability, security and stability. This restoration of viability and good governance is essential if communities are to optimally benefit from government's service delivery in various areas of its work.

## CHAPTER FOUR

### OBJECTIVES OF THE SOUTH AFRICAN CORRECTIONAL SYSTEM

#### 4.1 Introduction

4.1.1 This chapter deals with the level of corrections that falls on the shoulders of the correctional system or the Department of Correctional Services. It should be emphasised here that the name change from the Department of Prisons to the Department of Correctional Services was not merely cosmetic. It reflected the beginning of a paradigm shift.

4.1.2 The responsibility of the Department of Correctional Services is not merely to keep individuals out of circulation in society, nor to merely enforce a punishment meted out by the court. The responsibility of the Department of Correctional Services is first and foremost to correct offending behaviour, in a secure, safe and humane environment, in order to facilitate the achievement of rehabilitation, and avoidance of recidivism.

#### 4.2 Defining rehabilitation and correction

4.2.1 Rehabilitation is the result of a process that combines the correction of offending behaviour, human development and the promotion of social responsibility and values. It is a desired outcome of processes that involve both departmental responsibilities of Government and social responsibilities of the nation.

4.2.2 Rehabilitation should be viewed not merely as a strategy to preventing crime, but rather as a holistic phenomenon incorporating and encouraging:

- social responsibility;
- social justice;
- active participation in democratic activities;
- empowerment with life-skills and other skills; and
- a contribution to making South Africa a better place to live in.

4.2.3 Rehabilitation is achieved through the delivery of key services to offenders, including both correction of the offending behaviour and the development of the human being involved. The correction of offending behaviour and development are two separate, but linked responsibilities. Rehabilitation is achieved through interventions to change attitudes, behaviour and social circumstances. The desired outcome is rehabilitation and the promotion of social values and responsibility.

4.2.4 Within the Departmental environment, rehabilitation is best facilitated through a holistic sentence planning process that engages the offenders at all levels – social, moral, spiritual, physical, work, educational/intellectual and mental. It is premised on the approach that every human being is capable of change and transformation if offered the opportunity and resources.



4.2.5 Systematic efforts must be made to ensure the rehabilitation of offenders. The correctional service is a necessary proactive, real time and reactive intervention in the encouragement and enforcement of constitutionally-accepted values. As such the introduction of a code of ethics for offenders takes on real significance and will have two functions. A first function of the code of ethics for offenders can be to inform them what the Department expects of them in a correctional environment. A second, and equally important function, could be to make offenders aware of what society anticipates them to learn through the rehabilitation process and to put back into society once they have completed their sentence.

### **4.3 Vision and mission of the Department**

4.3.1 The Vision of the Department of Correctional Services is *“to be one of the best in the world in delivering correctional services with integrity and commitment to excellence”*.

4.3.2 The Mission Statement of the Department, developed in 2002, is:

*“Placing rehabilitation at the centre of all Departmental activities in partnerships with external stakeholders, through:*

- *The integrated application and direction of all Departmental resources to focus on the correction of offending behaviour, the promotion of social responsibility and the overall development of the person under correction.*
- *The cost-effective provision of correctional facilities that will promote security, correction, care and development services within an enabling human rights environment.*
- *Progressive and ethical management and staff practices within which every correctional official performs an effective correcting and encouraging role.”*

### **4.4 Key objectives of the correctional system**

**4.4.1 Implementation of sentence of the courts:** Rehabilitation needs to be understood in the courts, by those sentenced and by correctional officials as the key reason for sentencing. As such it must be approached as a *sine qua non* of any sentence. It is not an option that offenders can choose to participate in or not. The Department of Correctional Services is obliged to provide correctional and developmental opportunities to all offenders, both in and out of correctional centres. At the same time it is being faced with the challenge to ensure that the offenders have a positive commitment to active participation and internalisation of the lessons of such opportunities. The department should go through a process to ensure that people under correction buy-in and accept the need to be corrected and rehabilitated.

**4.4.2 Breaking the cycle of crime:** The purpose of the correctional system in South Africa is not punishment, but protection of the public, promotion of social responsibility and enhancing of human development in order to prevent recidivism, or the return to crime. Sentences do provide a deterrent to repeated offending if justice is seen to be swift, effective, and consistent, but the essence of deterrence is rehabilitation, the positive orientation that crime does not pay and that good citizenship is the duty of all. It is rehabilitation and not punishment that breaks the cycle of crime leading to a reduction of crime.

**4.4.3 Security risk management:** The correctional system is tasked to provide appropriate measures to ensure public safety from offenders. While this forms part of the rationale of the particular sentence handed down in court, the Department must balance this responsibility with the need to provide circumstances appropriate to rehabilitation. Security risk management and needs-based correction

inform incarceration classifications of the offenders and the community correctional supervision classifications of offenders.

**4.4.4 Providing an environment for controlled and phased rehabilitation interventions:** The function of incarceration or correctional supervision is, while ensuring public safety, to create a controlled environment for intense and needs-based rehabilitation, correction and development.

**4.4.5 Providing guidance and support to probationers and parolees within the community:** Community correctional supervision covers all non-custodial measures and forms of supervision. The function of community correctional supervision is to ensure that there are alternative routes to rehabilitation than through correctional centres. Additionally it needs to ensure that the reintegration of offenders back into the community is a supervised process, with adequate provision of services to the individual.

**4.4.6 Provision of corrective and development measures to the offender:** The purpose of the Department is for the state to have a vehicle to address the offending behaviour and indirect causes of, and contributing factors to, such offending behaviour. This the Department does through submission of offenders to programmes, addressing, amongst others, the offending behaviour itself, social responsibility and ethical and moral values, alternative lifestyle choices, development needs, and the future employability of the offender.

**4.4.7 Reconciliation of the offender with the community:** The Department must address the reconciliation of the offender with the community, and heal the relationship with the victims. This includes restoration of trust and/ or loss where applicable, as an integral part of rehabilitation and reintegration. Non-reconciliation with the community poses a great risk for recidivism of the offenders, who remains alienated from the community.

**4.4.8 Enhancement of the productive capacity of offenders:** Employment and contribution through production to the wealth of the community is a key component to rehabilitation and the prevention of recidivism. The Department has the responsibility, therefore to ensure that offenders are appropriately skilled in market-related skills. This will enable offenders to take their place in the economically active and gainfully employed sector of society on their release. The objective of Department-run industries should be to enhance the self-sufficiency of the Department. In addition to this, it should also contribute to the self-esteem and sense of worth of offenders through the payment of a gratuity for their labour. As such the Department should aim to develop commercially viable industries and farms without undue advantage over the equivalent industries in the private sector.

**4.4.9 Promotion of healthy familial relations:** The Constitution obliges correctional officials to ensure contact between inmates and their families. Moreover, the achievement of rehabilitation is premised on the building of healthy familial relations. The importance of these external relations to both inmates and family is of such importance that disciplinary measures should not infringe on these constitutional rights. Control of visitation rights, for example, should not be used as either a punishment or a privilege and visits should only be limited by the availability of resources.

**4.4.10 Assertion of discipline within the correctional environment:** This should aim to reinforce and not undermine the objective of correction and rehabilitation. It should most importantly aim to instil self-discipline through a restorative justice approach to all offenders. Forms of disciplinary measures or sanction within a correctional centre environment should take the form of community service directed towards other inmates.

## CHAPTER FIVE

### SOUTH AFRICA'S APPROACH TO CORRECTIONAL MANAGEMENT

#### 5.1 Introduction

5.1.1 South Africa's approach to correctional management and community correctional supervision is based on the principles of restoration or corrections, unit management, and secure, safe and humane custody and supervision. This approach should be, as far as practicable, in line with international human rights standards. The management of correctional centres within an ethical context that respects the humanity of everyone involved in a correctional centre, including inmates, staff and visitors, is essential for rehabilitation-focused correctional centres.

5.1.2 This ethical context needs to be universal in its application and the international human rights instruments provide this universality. This approach does not represent a liberal or soft approach to correctional management or to community correctional supervision. This style of management is the most effective and safest way of managing correctional centres and community corrections. The concept of human rights is not merely another subject to be added to the training curriculum. It rather suffuses all aspects of good correctional management and is an integral part of it.

5.1.3 Correctional management is essentially about the management of human beings, both staff and offenders. The key to effective correctional management lies in the relationship between these two groups. Those who have management responsibility for correctional centres and systems need to look beyond technical and managerial considerations. They should also be leaders who are capable of inspiring their staff with a sense of value in the way that they carry out their daily tasks.

#### 5.2 Principles of restoration as a correctional management objective

5.2.1 The principles that underlie the approach to restoration and that shape the Department's approach to corrections are:

- Addressing offences committed and assisting the offender take accountability for such offence, which may include restoration of relations with victims where appropriate;
- Addressing offences suffered and assisting the offenders as a victim to reach a stage of forgiveness;
- Addressing anti-social addictions and anti-social habits that increase opportunity for rational thinking, decision-making and behaviour;
- Promotion of restoration of offender as a member of the family;
- Promotion of restoration of communities and community institutions and good governance and enhanced social cohesion.

5.2.2 In relation to the addressing offences committed and assisting the offender take accountability for such offence, which may include restoration of relations with victims where appropriate, the approach of the Department towards rehabilitation is informed by a commitment to restoration of normative behaviour by the offender as a first step. The focus is on problem solving, healing of brokenness and condemnation and the restoration of harmony with self. The restorative approach will enable the offender:

- To recognize the wrongness and to accept responsibility for their offensive behaviour;
- To deal with instances where they themselves have been victims to encourage forgiveness and restoration of relations with concerned party;
- To come to terms with their court imposed sentences.
- Personal restoration of the offender as an individual will be fostered through correction interventions and development programmes to enable the offender to competently serve society in social responsible manner.

5.2.3 The Department is also committed, where appropriate, to encouraging restoration of relations between offender and his victims. The following principles of restorative justice will serve as a guide in this instance:

- recognition of human rights of all people;
- recognition that crime is often a violation of one person by another with only the state assuming an intermediary role;
- recognition of re-integration of rehabilitated offenders into society entails restoration of rights of citizenship.

The Department recognizes the restoration of relations between offenders and victims of crimes as vital for the prevention of repeat offending.

5.2.4 In relation to addressing offences suffered by offenders and assisting the offender as a victim to reach a stage of forgiveness, it must be recognized that many offenders have themselves been victims of injustices, dehumanising and anti-social behaviour. The Department recognizes that the process of offenders understanding themselves as products of their social background and personal experiences may involve a process of recognizing themselves as a victim of offences perpetrated against them. This process is deemed to be inherent in the rehabilitation of an offender who has suffered such offences.

5.2.5 The South African reality also obliges the Department to attend to any anti-social addictions or habits that offenders may manifest. While these may not be the offence for which the offender has been sentenced, these behaviour patterns may play a critical role in the lifestyle choices of the offender, in the inability to make alternative choices to criminality, and may indeed be triggers of criminal behaviour and repeat offence patterns.

5.2.6 The fact that most South African families are dysfunctional from an ongoing legacy of apartheid and migrant labour, and that the majority of offenders come from these families is a matter record. The family is under siege and the consequences of this reverberate throughout society and some find expression in criminality. This state of affairs has, in modern society, greatly diminished the role of family as the primary agent of socialization and correction.

The restoration of functional and correctional family relations becomes of great import to the work of the Department, both in crime prevention and in reduction of repeat offending.

5.2.7 The Department attaches great importance to restoration of normal functioning of families. In this regard the Department views the restoration and maintenance of close familial relations between offenders and their families as central to cultivating loving relations. The participation of families of offenders in their rehabilitation programmes, which may include family group conferencing, and providing the necessary support will encourage better relations between the family and the offender once released.

5.2.8 Rehabilitation cannot be complete or sustainable without restoration of offender with community. The Department views restoration as applicable throughout the criminal justice system, from the point of arrest, trial and ultimately incarceration. During the trial stage the court could impose a sentence of community service. Community service is productive work related to the aim of correcting the offending behaviour of offenders to the benefit of affected communities. Restorative community service provides an opportunity for the offender to make amends to the community in a way that is valued by the community. The community service experience allows the offenders to create new, positive relations with members of the community, and the fabric of the community is strengthened. The process also enhances the offender's investment in the community. Community members recognize the offender's capacity to contribute to the general well-being of the community.

5.2.9 The role of community members during incarceration is also of vital importance to also ensure that offenders feel a sense of community despite their exclusion. Offenders having served a predetermined time in a correctional centre become eligible for parole under community corrections supervision. This is done on the basis that the offender will comply with set conditions, including continued participation in correctional and development programmes.

5.2.10 The parole system reflects the principles of social reintegration. While the offender on parole is under the supervision of a correctional officer based in the community, the view of the Department is that the community should in fact assume a bigger role in ensuring that corrections does take place.

5.2.11 A key objective of the Department is to make a meaningful contribution in promoting community responsibility for correction. This would be enhanced by making provision for the participation from members of the community, from relevant state departments in the integrated justice system, in the process of community supervision and parole boards.

### **5.3 Applying unit management in the management of correctional centres.**

5.3.1 The approach of dividing offenders into smaller, more manageable units with direct supervision, called unit management, is the desired method of correctional centre management and an effective method to facilitate restorative rehabilitation. The principle of multi-disciplinary case management is equally applicable to the field of community corrections. It must be the basis of all structuring and resourcing at the correctional centre level of the correctional system, as the concept of unit management is regarded as one of the key service delivery vehicles to transform the delivery of correctional services in South Africa.

5.3.2 One of the primary missions of corrections is to develop and operate correctional programmes that balance the concepts of deterrence, incapacitation and rehabilitation for individuals in correctional facilities. Unit management helps to provide this balance. This management approach relies on continuous communication amongst staff and between staff and inmates.

5.3.3 Unit management is a team approach to inmate management. It incorporates the notion that co-operation is most likely in small groups that have lengthy interactions. Other key ingredients in the unit management mixture are decentralisation and delegated authority. A unit management approach requires a system of case management aimed at ensuring the responsibility and involvement of the inmate in his/her progress, choices etc., with clearly defined responsibility and accountability for particular functions and tasks. It also requires a less stressful environment for both personnel and inmates.

5.3.4 The six essential elements of Unit Management are:

- lateral communication, with team work and common understanding;
- direct, interactive supervision of inmates;
- assessment and needs-driven programmes in structured day and correctional plan;
- multi-skilled staff in enabling and resourced environment;
- restorative, developmental and human rights approach to inmates; and
- delegated authority with clear lines of accountability.

5.3.5 The sub-values underlying unit management are:

- co-responsibility;
- ownership;
- integrity; and
- ubuntu.

5.3.6 The objectives of unit management are to:

- divide large groups of inmates into smaller, well-defined clusters of sections constituting units;
- increase the frequency of contact and the quality of relationships between staff and inmates by, amongst others, creating co-responsibility in decisions pertaining to development programmes;
- provide more effective observation of inmate activities and to foster early detection of problems for timeous intervention;
- improve inmate accountability;
- enhance an integrated and team approach;
- incorporate all aspects of the inmate's life for effective rehabilitation;
- provide different programmes, strategies and interventions for each inmate depending on his/her ability, needs and ambitions; and
- place special emphasis on institutional adjustment, acquisition of vocational skills and societal coping mechanisms.

5.3.7 The advantages of unit management could best be summarised as:

- Staff and inmates gain many benefits from adopting the procedures integral to unit management.
- Unit management fosters the development of correctional and managerial skills.
- The use of a multi-disciplinary team improves communication and co-operation between staff from various disciplines.
- It increases the frequency of contact and improves the quality of relationships between inmates and staff, which results in better communication and programme planning.
- Decentralised management results in decisions about inmates being made more quickly by people who really know them.
- It results in increased programme flexibility, since each unit can develop the type of programme appropriate for its own population.

## **5.4 Person-centred correctional management through safe and secure custody in a humane environment**

5.4.1 The Constitution of South Africa as well as various international instruments stipulate compliance with basic human rights, limited only where justifiable and necessary, in a correctional centre environment. As such, inmates must be treated at all times as human beings entitled to all the rights of any citizen of South Africa. This logically excludes those necessarily curtailed through the act of incarceration, or that are removed as a consequence of the individuals' behaviour. In all such

processes, adherence to administrative justice processes in relation to the management of offenders is of fundamental importance.

5.4.2 The very act of incarceration limits the basic rights of freedom of movement and constrains the rights to communication. International instruments define the purpose of imprisonment as being to protect society against crime not simply by removing offenders from society, but by trying to ensure as far as it is possible, their rehabilitation. This requires correctional centre administrations to achieve an appropriate balance between security and those programmes that are designed to enable inmates to reintegrate into society.

5.4.3 The purpose of the correctional system also defines a key dimension to incarceration and to monitoring of people on parole or probation – to contribute to public safety. As such, the Department is obligated to provide secure correctional facilities and ensure effective monitoring of those on community corrections. The human rights culture also dictates that correctional centres should be safe environments, where the safety of inmates, staff and visitors is prioritised. Safe and secure incarceration creates an environment in which the State and its partners are able to make structured interventions into the lives of members of society who have fallen foul of the law.

5.4.4 All correctional managers must understand the importance of achieving and maintaining the balance between security, control and justice. It is incorrect to suggest that treating inmates with humanity and fairness will lead to a reduction in security and control. The objective of preventing escapes and ensuring control can best be achieved within a well-ordered environment:

- That is safe for inmates and staff.
- In which all perceive themselves to be treated with fairness and justice.
- In which inmates have the opportunity to participate in constructive activities and to prepare themselves for release.

5.4.5 Correctional centres are closed systems in which abuse of authority can occur. It is therefore vital that the use of force needs to be guided by set procedures that are clear and transparent. The use of force itself should at all times be a last resort and should be utilised only when order has completely broken down.

## **5.5 Parole contributing to humane custody and as a vehicle for social reintegration**

5.5.1 The Parole policy, which is often erroneously called release policy, is the policy which informs the release of an incarcerated offender into community correctional supervision. This is done on the basis of an undertaking between the parolee and the Department on condition that he/she will not abscond and will comply with the conditions, including continuation of correctional and development programmes.

5.5.2 Parole is a reflection of the principle of social reintegration of the offender as part of the purpose of the Correctional System. It is also recognition that the beginning of the process of social reintegration is a period of vulnerability for the parolee. It must be emphasised that parole is under the guidance of correctional officials based in the community, and under conditions determined by the Parole Board on the basis of the assessment of the parolee.

5.5.3 Part of the purpose of the correctional system is to enforce the sentences of the courts. As such, the parole policy must at all times be aligned with the sentencing policy and body of law on the reason for sentencing by the courts. The parole policy should also make provision for the change by the parolee that can reduce or remove the risk that the individual poses to society.

5.5.4 A key objective of the Department is to make a meaningful contribution in promoting community responsibility for correction. This would be enhanced by making provision for the participation from members of the community, from relevant state departments in the integrated justice system, and family and friends of the inmate self, in the processes of community supervision and parole boards. Inmates should have a right to make representations to the Board, as does the victim of the crime committed.



## CHAPTER SIX

### INTEGRATED JUSTICE AND SOCIAL SECTOR RESPONSIBILITIES FOR REHABILITATION

#### 6.1 Introduction

6.1.1 The state is the driver and overall facilitator of rehabilitation and correction. The Department of Correctional Services is the state's agency for rendering the tertiary and final level of correction. However, the Department is but one contributor to the rehabilitation process. As such, the DCS operates in the environment of integrated governance, requiring that policy processes in the Department be aligned with overall Government Strategy, and specifically with the policies of the departments in the Justice, Peace and Security Cluster, the Social Sector and the Governance and Administration Clusters, as well as in partnership with the community.

6.1.2 Restorative justice, as opposed to retributive justice, requires synergy across the integrated justice system as to the purpose of sentencing an individual, the purpose of incarceration, and the role of correction. The South African correctional system is an integral part of the country's criminal justice system and requires an effective integrated justice system for service delivery on the DCS core mandate. The enforcement of court sentences alone is not enough to ensure an attitudinal, cognitive and behavioural change on the part of offenders.

6.1.3 Incarceration has a deterring effect when society perceives the criminal justice system to be efficient, speedy, consistent and effective in arrest, hearing and sentencing, and that it has an element of punishment. Incarceration should, however, not be treated as the primary sentencing option. Sentencing should also focus on what the most effective rehabilitation route would be for the individual concerned, taking into account the gravity of the offence, assessment of the individual and the individual's history, social and employment circumstances.

6.1.4 To achieve rehabilitation, serious study is needed into the deterring and rehabilitative effects of various alternative sentences in order to develop, as an integrated justice system, guidelines to assist the judiciary in sentencing convicted individuals. This entails an integrated justice system approach to both sentencing options and rehabilitation routes for particular categories of offence. Rehabilitation is sustainable if based on correction and development, as opposed to through punishment and treatment.

#### 6.2 The Integrated Justice System and Rehabilitation

6.2.1 The Department of Correctional Services is not included as a security service in Chapter 11 of the Constitution (Act No. 108 of 1996). It was, however, seen by the Constitutional Assembly as an integral part of the justice system. The nature of the Department underlines the debates about the demilitarisation of the Department, and where it should be located within the system of Integrated Governance adopted in 1999/2000 in South Africa.

6.2.2 The Department's core business is rehabilitation through correction and human development in secure, safe and humane detention or in community-based correctional supervision. This has an impact on the role that DCS plays in the Justice, Crime Prevention and Security (JCPS) Cluster and the Social Sector Cluster of Integrated Governance. It also impacts on the role that these cluster departments play in relation to support of the Department of Correctional Services' mandate. Within the JCPS, the Department must take its place as a key component of the integrated justice system, and correct the practice, which has been to treat Correctional Services as the other side of the fence in the criminal justice system.

6.2.3 The government departments that form the Integrated Justice System, are the:

- Department of Social Development;
- South African Police Services;
- National Prosecuting Agency;
- Department of Justice; and
- Department of Correctional Services.

6.2.4 The key departments in the Social Sector Cluster directly relevant to corrections, are the:

- Department of Education;
- Department of Social Development;
- Department of Arts and Culture; and
- Department of Sports and Tourism.

6.2.5 All these departments in both clusters have a major role and contribution to make in nurturing the culture of corrections in the South African society. Each of these departments will have the challenge to make an effective contribution, in a systematic and coordinated fashion, with regard to their mandates on corrections and rehabilitation. Effective delivery on the core mandate by the DCS as defined by section 2 of the Correctional Services Act, is dependent on proper alignment of the integrated justice system and a common understanding of rehabilitation as the desired outcome of the criminal justice process. From a DCS perspective, an effective justice system has to address South Africa's approach to sentencing options and alternatives to incarceration, desired and appropriate rehabilitation routes, and appropriate "release policy" options for particular categories of offence.

6.2.6 As indicated earlier, rehabilitation is completed only with the successful reintegration of offenders into the community in a manner that prevents recidivism. While circumstances that lead to the individual turning to crime in the first place are unchanged, and social development and moral regeneration of the community have not taken place, the tendency towards recidivism will remain high, despite correction and human development efforts by the Department of Correctional Services. From a DCS perspective, effective social crime prevention must entail a close partnership between Government departments and between Government and civil society in delivery on social justice and social cohesion.

## CHAPTER SEVEN

### WHO ARE SOUTH AFRICA'S OFFENDERS?

#### 7.1 Introduction

7.1.1 At the end of the first decade of democracy, South Africa has one of the world's highest ratios in terms of offender population in relation to the actual population total. Four out of every 1000 South Africans are in correctional centres. In the United Kingdom, the same total is 1.25 out of every 1000 UK citizens. In two thirds of the world's countries, there are less than 1.5 out of every 1000 citizens in correctional centres.

7.1.2 In 1996, the National Crime Prevention Strategy team conducted an in-depth comparative study into the reason for this and to find the causes of crime in South Africa. In this study, they compared the causes of crime in South Africa, with that in other countries. The study found that there are many factors that South Africa have in common with other countries, but that there are also some factors that were unique to South Africa.

#### 7.2 Unique factors contributing to crime in South Africa

7.2.1 All forms of crime normally increase during periods of political transition. South Africa's had a rapid transition from apartheid to democracy. Because of this, the existing (and illegitimate) mechanisms of social control were broken down without immediately replacing them with legitimate and credible alternatives. This weakness has been worsened by the historical breakdown of other vehicles of social authority, such as schools, the family and traditional communities.

7.2.2 The 1993 Government of National Unity inherited, intact, the entire public service. Including with it, was a racially-based, disproportionate distribution of Criminal Justice resources. Personnel were insufficient and ill-equipped, systems outdated and departments were fragmented. This resulted in a system that was not able to cope with the demands created by the need to provide services to all the people of South Africa.

7.2.3 The political transition generated substantial material expectations, many of which were largely beyond what the new Government could immediately deliver. These very high, and often unrealised, expectations associated with transition have contributed to the justification of crime.

7.2.4 South Africa's violent history has left us with a "culture of violence", which contributes to the high levels of violence associated with criminal activity in South Africa. Violence in South Africa has come to be regarded as an acceptable means of resolving social, political and even domestic conflicts.

7.2.5 Historically, factors like poverty and underdevelopment were key factors in understanding increasing crime levels. Poverty alone does not directly lead to higher crime levels. However, together with a range of other social, political and cultural factors, it contributes to conditions conducive for an increase in crime and the growth of criminal syndicates and gangs.

7.2.6 Historically, also, the youth of this country has been marginalized. This, combined with the slow growth in the job market, has contributed to the creation of a large pool of young people who are considered to be "at risk".

7.2.7 The absence of appropriate role models for the youth, combined with substance abuse, gender violence and immorality amongst the youth have a significant impact on crime amongst our younger generation.

7.2.8 The problem of rising crime levels has become something of a "political football". The tendency of political parties to use the issue as a vote-catcher, has resulted in the situation where people are under the wrong impression that the solution to crime and violence is very simple and lies in tough justice and more policing.

7.2.9 The absence of services to victims of crime means that the negative impact of crime on individual, family and community is largely ignored.

7.2.10 The number, and easy accessibility, of firearms is a major contributor to violent crime. The fact that a large proportion of the citizenry is armed, serves to escalate the levels of violence associated with robbery, rape and car theft.

7.2.11 Gender inequality (inequality in terms of the power relations between men and women), in terms of popular attitudes and beliefs in favour of male domination, and the inadequate service offered by the criminal justice system to women, contributes to the high levels of violence perpetrated against women.

## **7.2 Changes in the composition of the South African offender population**

7.2.1 The profile of the offender in South Africa is also changing, in particular since 1994. Some of the changes in the composition of our offender population, are:

- a particular increase in the aggressive and sexual crimes categories;
- an increase since 1994, in the number of offenders that serve long sentences; and
- a significant increase in the post-1994 period in the number of children sentenced to correctional centres (with transgressions showing an increasingly violent nature).

7.2.2 Factors that were found contributing to the changing profile of the offender population, were:

- the abolition of the death penalty;
- the introduction of a system of minimum sentencing by courts; and
- an increase in the prosecution of serious aggressive crimes.

7.2.3 The changing profile of the offender population is presenting crucial challenges for the Department. These challenges include:

- an increased need for accommodation of an increasing population of maximum security and long-term offenders;
- a slower turnover rate of individuals in the correctional centres, and
- a need for a rapid increase in the accommodation for youth offenders in separate youth correctional centres.

## **7.4 People under correction are human beings**

7.4.1 Profiling and offender management must begin with recognition of the offender as a human being, as a product of society, and as a potential valued member of the community. Reference to

people sentenced to the care of the DCS, whether to incarceration in a correctional centre or under community correctional supervision or probation must be consistent with this approach. A variety of terms are used to refer to people in the care of the Department. These terms include inmates, prisoners, detainees, convicts, criminals, offenders, etc. This plethora of terms masks the fact that such people are indeed the primary responsibility of the Department's correctional services.

7.4.2 In order to avoid the social branding of such people, generic reference to them as offenders should replace the plethora of terms. Where reference to the nature of a person's sentence or status is relevant in terms of correctional management, this should be indicated by reference to:

- inmates for those in residential correctional centres;
- parolees for those released under the parole policy; and
- probationers for those directly sentenced by the courts to community correctional supervision.

7.4.3 At the essence of rehabilitation and correction is the ability of the Department to separate the person of the offender from the offending behaviour and to enable both the offender and her family to perceive this separation.

## **CHAPTER EIGHT**

### **AN IDEAL CORRECTIONAL OFFICIAL WITHIN AN APPROPRIATE ORGANIZATIONAL CULTURE**

#### **8.1 Introduction**

8.1.1 It is essential for the Department to optimally develop and align its organizational structures, organizational culture, human resource requirements, and partnerships with other relevant Government departments, with its rehabilitation objectives. In successfully laying these foundations, it will enable the Department to fundamentally contribute to, and assist in helping to build a system of corrections in South Africa that will constitute a key component in the pursuit of a crime-free and morally regenerated country.

8.1.2 As part of the transformation of the Department from a closed paramilitary prisons department to a correctional service focused on rehabilitation in a secure, safe and humane environment, an effective human resource strategy is crucial. This human resource strategy must include human resource planning, provisioning, maintenance, and development and the entrenchment of an organizational culture that is appropriate to delivery on the core business of the Department. The transformation of corrections into a recognised and respected profession within South Africa will require a commitment to education and training of personnel combined with career-pathing.

8.1.3 The history of the Department shows that correctional officials were not trained in the skills and knowledge critical for a new Rehabilitation-Centred Correctional System. As a result, the Department faces a major challenge to retrain the members in the new paradigm of rehabilitation through correction and development in a secure, safe and humane environment. In general, also, ongoing training and the professional supervision of staff is crucial in an environment where the work is demanding, stressful, varied and at times threatening. The strategic direction that has developed in the Department in the democratic dispensation has faced the Department with major human resource development challenges – to ensure the paradigm shift of existing personnel, as well as the development of an appropriate recruitment, promotion and retention strategy for the various categories of personnel required to deliver on the rehabilitation mandate.

8.1.4 The organisational culture that the DCS has had is not relevant to the new challenges of ensuring safe custody in conditions of human dignity, while facilitating effective rehabilitation as required by the legal mandate. The past, and in many cases the existing attitudes to the way that work is done as well as the way people are expected to behave, do not augur well for an effective rehabilitation-centred strategy. The implementation of the legal mandate of the Department must be the primary reason for the employment contract for every person who is an official of the DCS.

#### **SECTION 8A: THE IDEAL CORRECTIONAL OFFICIAL**

##### **8A.1 Characteristics of an ideal correctional official**

8A.1.1 The relationship between staff and offenders is key to correction and rehabilitation, as well as to correctional management. As such, the competencies required of the ideal correctional official must be a unique combination of:

- personal qualities:
- experience;
- expertise;
- professional ethics;
- personal development; and
- multi-skilling.

8A.1.2 The ideal correctional official should be a person who finds a high degree of compatibility and synergy with the Code of Ethics and Conduct adopted by the Department.

8A.1.3 The ideal correctional official should embody the values that the DCS hopes to instil in the offender, as it is this official who is to assist and facilitate the rehabilitation processes of the offender. An attitude of serving with excellence, a principled way of relating to others and above all a just and caring attitude are essential ingredients of the behaviour of a correctional official. The competencies of the ideal correctional official should be informed by:

- the desire to achieve a level of excellence in any field through self-development and team-development;
- a focus on productivity and efficiency through the implementation of best work methods, procedures and systems in order to lead to efficiency in service delivery;
- recognition of the need to take responsibility for assigned tasks and to be accountable for one's own omissions or actions;
- appreciation of security through vigilance, to ensure the safety of employees, offenders and the community.

8A.1.4 In addition, the second pillar – a caring attitude – requires the correctional official to have the following attributes:

- a principled display of qualities such as integrity, honesty, sound work practices;
- adherence to the departmental code of conduct; and
- general disassociation with all forms of corruption and unethical conduct.

8A.1.5 This provides a correctional official with an opportunity to contribute to the rehabilitation goals through leading the offender by example. A correctional official must be willing to account for his or her own behaviour and in the process be correctable. This value also sets a good example to offenders, who desperately need to be inspired in that direction. Principles of justice and fairness in the management of relations with others, both within and without the work environment, constitute a key ingredient in the expected latent values of a correctional official.

8A.1.6 A correctional official has a duty to understand, adopt and support attitudes and practices that entrench equity. These include respect and accommodation of people with disabilities, different races, gender equality, employment equity and non-discrimination. As a member of a young and developing profession, a correctional official should also take the responsibility for self-development seriously and have a culture of learning inherent in their *modus operandi*.

8A.1.7 The Department has asserted that “every member is a rehabilitator”. The manner in which each and every staff member performs his or her task can either contribute to the creation of a rehabilitation-encouraging environment or militate against rehabilitation and the correction of offending behaviour. Staff interacting with offenders must ensure that:

- they are treated with decency, humanity and fairness;

- all offenders are safe;
- offenders, particularly those regarded as dangerous, do not escape;
- good order and control in correctional centres; and
- they provide offenders with opportunities to use the time that they are incarcerated positively, assisting them to reintegrate into their communities when they are released.

8A.1.8 Fundamental to rehabilitation is motivating offenders to develop a positive commitment to, and voluntary participation in, a correctional sentence plan. This plan will guide them, from admission into the correctional centre as sentenced offenders right through the period of their community corrections, to full reintegration into society until their release date. In relation to those offenders sentenced directly to community correctional supervision, the correctional sentence plan will also see them through the full time period of their sentence. The Department of Correctional Services has a duty to embrace offenders who are entrusted to it by society, as an integral part of the DCS. In that way correctional officials can serve them with excellence and relate to them in a principled, just and caring way.

8A.1.9 The primary reward for the officials of DCS must be to see the people leaving correctional centres and community correctional supervision, looking forward to and actually serving their own country with excellence and relating to its people in a principled, just and caring way. The organisational culture, in laying the basis for a total commitment to effective rehabilitation, strategically repositions the DCS as not only the last resort in the fight against crime, but also as the last hope for those trapped in the vicious circle of crime. The DCS is society's legally mandated correctional capability for its wayward or lost children.

8A.1.10 Generally, the status of correctional officials is regarded as lower than other criminal justice personnel, when in fact their work should be recognised as requiring a high degree of personal integrity, commitment and professionalism. The attitude of society to the correctional official has to change in order to facilitate the recruitment into the Department individuals with the necessary skills and personal disposition.

8A.1.11 Recognition that every member does indeed impact on rehabilitation, and that corrections is a profession that has many facets within it, requires that the relationship between correctional officials trained in the social professions such as social work, psychology, nursing pharmacology, health, and theology and the broader category of non-specialised correctional officials must be one of co-operation, empowerment and team work. In practice, the recruitment and retention of professional staff, and the relationship between professional correctional officials and custodial correctional officials in the Department has been a fraught one, complicated by the shortages in certain professional human resources in South Africa.

## **SECTION 8B: AN APPROPRIATE ORGANIZATIONAL CULTURE**

### **8B.1 Defining an organizational culture**

8B.1.1 The White Paper on Human Resource Management in the Public Service states that “all organizations have a corporate culture, reflecting the *attitudes to the way work is done* and to the *way the people within the organization are expected to behave*”.

8B.1.2 The same White Paper stresses further that “a corporate culture is important to ensure that *all employees work together to achieve organizational goals*”.



## **8B.2 Indicators of an ineffective departmental organizational culture**

8B.2.1 The effectiveness of a state department's organisational culture can ultimately be seen in the overall effectiveness of a department in carrying out its legal mandate. In the case of the Department of Correctional Services the following indicators of the shortcomings of the past and existing organisational culture deserve attention:

- high rate of recidivism or repeat offending;
- low recognition of the strategic role played by frontline employees or those employees at the point of delivery;
- corruption and perceptions of the broader society of DCS as being infested with corruption;
- perceptions of different interests of DCS management and union activists as well as perceptions of covert interference by union activists in the management of the department; and
- apparent acceptance of overcrowding as a "long-term" problem.

## **8B.3 Indicators of an effective departmental organizational culture**

8B.3.1 An effective organisational culture for the DCS must complement the organisational strategies of the day in positively addressing the abovementioned failure areas. It should reflect in the organizational culture of the Department in the following ways:

- there has to be a significant reduction in the rate of recidivism; and
- there must be a re-understanding of the criticality of the frontline functions and functionaries.

8B.3.2 The Department of Correctional Services must earn the respect of communities and broader society through the improved:

- conduct of employees;
- conduct of serving offenders;
- conduct of people released from SA correctional centres; and
- content and methods of marketing the DCS to the macro-environment (parliament, media and broader society).

## **8B.4 Outcome of an effective people-centred organizational culture on the Department**

8B.4.1 The essence of an effective organisational culture is the creation of an environment in which effective and sustainable rehabilitation takes place. Such an environment is one in which:

- offenders discard negative or harmful attitudes and behaviours;
- offenders replace such attitudes and behaviours with, or adoption of, useful attitudes, values and behaviours through active encouragement;
- the focus of employees are entirely geared towards the core business of an organisation;
- there are programmes and processes to help employees to take more initiatives, set more challenging goals, be more innovative, and become better leaders and managers;
- employees are assisted to take more responsibility for the success of their sections, correctional centres, Management Areas, as well as for the Department as a whole.

8B.4.2 The effective rehabilitation of offenders is therefore dependent on the existence of an enabling environment that we seek to entrench within the DCS. An effective departmental organizational culture will manifest itself in practice, through:

- a common focus / purpose of all DCS officials from the Commissioner to the lowest placed official, regarding the implementation of the legal mandate of the Department;

- sound labour relations for the benefit of employees and ultimately the offenders, who are the only reason for the existence of this Department;
- unions active within the Department of Correctional Services playing a critical role in ensuring that labour relations do not degenerate at the expense of quality service to offenders.

8B.4.3 The organisational culture of the Department has to be centred around people. This means that there is particular focus on:

- their behaviour;
- the way they approach their work;
- the way they individually and collectively as basic work units solve emerging organisational problems; and
- the way they are rewarded.

8B.4.4 An organisational culture that creates a work environment in which employees are engaged, challenged and motivated is critical for the DCS. Management must take responsibility for hiring and developing managers who correct and motivate their subordinates. They should structure jobs and teams in ways that keep employees stimulated and help them improve their skills and abilities in rehabilitating offenders. Work should be a source of growth and joy for employees. The organisational culture must be the summation of the personality of the Department of Correctional Services. Every official employed (temporarily or permanently) by the DCS must also be the embodiment of this culture.

8.6.5 Critical to the foundation of this organisational culture and its pillars are love and respect for our country and its people. Our organisational culture must draw strength from the Batho Pele (people first) service-delivery principles. The Department's reward and corrective practices can either support or work against the spirit of these pillars. A deliberate effort to effect alignment is therefore necessary.

## **SECTION 8C: DEVELOPING THE IDEAL CORRECTIONAL OFFICIAL IN AN APPROPRIATE ORGANIZATIONAL CULTURE**

### **8C.1 The human resource provisioning strategy**

8C.1.1 The Department must have a human resource provisioning strategy that has recruitment criteria consistent with the intention that "every correctional official is a rehabilitator" and that correction is a profession, involving ongoing development and professional ethics. Thorough analysis of the categories of personnel that are required to perform that range of functions in the Department's administrative offices, correctional centres and community corrections offices, are needed. The distinction between competencies required for staff with line functional responsibility for interaction with offenders, those involved in policy development and administration, and those involved in management must inform the provisioning strategy. Moreover, appropriate remuneration codes must be developed to attract and keep the required staff in the Department.

8C.1.2 The Human Resource provisioning strategy of the Department must be informed in part by recognition of the principle of a sound staff-offender ratio. While international best practice should be borne in mind, the appropriate and realistic staff-offender ratios need to be determined from time to time by the Department, and a long-term staffing strategy planned in order to provide the required balance.

## **8C.2 The human resource development strategy**

8C.2.1 A focused human resource development strategy should ensure delivery on the new policy direction of the Department, through the:

- retraining of members to the new paradigm;
- ongoing professionalization of the membership of the DCS ;and
- induction and orientation of new members.

8C.2.2 The Human Resource Development Strategy must cover a range of training components, which must be mandatory for staff of the Department, including:

- orientation and training of all members when they join the Department in relation to the mandate, core business, location of the Department in integrated governance, and introduction to the field of corrections;
- basic correctional management training for those new recruits who will work in the correctional centres;
- basic office training for those new recruits who will work in the DCS offices;
- senior, middle and junior management training;
- specialist bridging training of professional staff whose professional training has not addressed practice within a correctional centre environment;
- training for correctional officials who work with special need groups of offenders; and
- functional training.

## **8C.3 Career pathing and development**

8C.3.1 The Department is one of the largest in the Public Service, and as such aligns itself with the Public Service Regulations and Public Service Agreements as they emerge from time to time. Incorporation of effective career management and improved service delivery through a system of performance management, based on work units with appropriate levels and forms of supervision is crucial. Job enrichment, career development, combined with organisational learning and development must be integral to the correctional profession.

8C.3.2 In line with the principle of effective management, organisation and sound administration, management training must be inherent to appointment and promotion policies. Equity should be approached not merely as numbers but with the provision of training and deployment in a manner that will transform social relations between races/cultural groups, gender, disabled status, young and old within the Department. The history of South Africa, combined with the tensions in the Department in the early years of the democracy require careful consideration of the manner in which equity and unity issues are combined within the Department's human resource strategy.

## **8C.4 An effective disciplinary code and disciplinary procedures**

8C.4.1 The very nature of the correctional system requires that a strict code of behaviour be supported by a clear and effectively enforced disciplinary code with effective disciplinary procedures. The disciplinary code and procedures must be consistent with the principles of administrative justice, while at the same time ensuring effective and timeous action in instances where the safe, secure and orderly management of the correctional institutions is at stake. Discipline must be a core supervisory and management responsibility, while particular procedures may be put in place for more serious offences that result in special investigations.

## **8C.5 Dealing effectively with corruption and mal-administration**

8C.5.1 The Department intends to intensify its campaign and processes to systematically and comprehensively prevent corruption and mismanagement. This it hopes to achieve through:

- tightening of management systems;
- increasing compliance with policy and controls; and
- internal sanction and referral to external law enforcement agencies where appropriate.

## 8C.6 Revitalizing and sustenance of the departmental core values

8C.6.1 An attitude of serving with excellence – the first pillar - requires a firm willingness and commitment from everyone to recognise and learn from their own failures. An attitude of serving with excellence is not the absence of failure, but the pro-active prevention as well as combating of failure, once it is detected. The adoption of an attitude of serving with excellence requires bringing into life the already approved departmental core values, namely:

- **Development:** Development entails the provision of appropriate resource support to individuals and units, while demonstrating faith in the potential of people to grow or to be corrected. This value is also dependent on officials demonstrating a willingness to discard issues that cause them to be incompetent. It is almost impossible for anyone to attain a level of excellence in any field while simultaneously hanging on to issues that are preventing him / her from excelling. This means all employees, both supervisors and the supervised, must learn the rare quality of being able to identify areas in themselves that are bogged down by incompetence, identify reasons for such incompetence and finally identify and implement the most effective ways of removing such weaknesses. This requires that we must all learn how to deal with weaknesses within ourselves and in those with whom we have to relate.

The road to excellence, employees need to acknowledge, may require that one exposes one's weaknesses and misses out on a merit bonus, but then gets the opportunity or management support to rectify the weaknesses and becomes a better employee. We have to bring to today a scenario in which it is not the presence of weaknesses that disadvantages one from promotion or rewards but the unwillingness to correct such weaknesses as proven in various official work assessments and disciplinary records.

- **Efficiency:** Efficiency relates to encouraging a focus on productivity through implementation of best work methods, procedures and systems. Deliberate attention to specifications or quality of the work one performs is a major attribute leading to efficiency in service delivery.
- **Responsibility:** Responsibility embraces the recognition of the need to take responsibility for assigned tasks and for own omissions or actions. It includes respect for set work timeframes and provision of timely feedback when given a task to perform or contribute to achievement of the unit and departmental goals. Supervisors or managers also have a responsibility to provide feedback to their subordinate colleagues.
- **Security:** Security relates to the appreciation, through vigilance, of the need for ensuring the safety of employees, offenders and the community. Employees of the Department of Correctional Services are expected to always remember that their work has a major security component, and therefore reckless activities or disclosure of information that can expose a fellow employee, an offender or a member of the public to harm, must be avoided.

8C.6.2 The second pillar – a caring attitude – also requires the bringing into life of some of the already approved departmental core values such as the following:

- **Integrity:** Integrity refers to a principled display of qualities such as honesty, sound work practices, adherence to the departmental code of conduct and general disassociation with all forms of corruption and unethical conduct and provides a correctional service official with an opportunity to contribute to the rehabilitation goals through leading the offenders by example.
- **Accountability:** A correctional service official must be willing to account for his or her own behaviour and in the process be correctable. This value also sets a good example to offenders, who desperately need to be inspired in that direction.
- **Justice:** Principles of justice and fairness in the management of relations with others, both within and without the work environment constitute a key ingredient in the expected latent values of a correctional official.
- **Equity:** A correctional service official has a duty to understand, adopt and support attitudes and practices that entrench equity. These include respect and accommodation of people with disabilities, different races, gender equality, affirmative action and non-discrimination.

## **8C.7 Balancing security and correction in the organizational culture: a socio-security orientation**

8C.7.1 The Department has committed itself to a culture devoid of militaristic practice. This will ensure that we are aligned with the international standard of providing an environment conducive to changing the offending behaviour of offenders. We regard a military or paramilitary institution as inappropriate for a rehabilitation-centred Correctional System. In this regard, the UN Standard Minimum Rules (Rule 46 [3]) state that:

*“(To secure the foregoing ends,) personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness.” (Rule 46[3])*

8C.7.2 The DCS must be conceptualised as performing a socio-security function. As such the Department should be a civilian structure with a strong social sector dimension, with a focus on tight security, on personnel discipline, and on a civilian rank recognition as crucial factors in prison management. A misinterpretation of de-militarization resulted in officials at both the provincial and national offices no longer wearing uniform and insignia, while officials at correctional centre level continued to wear uniform but without insignia, resulting in a lack of unity and coherence amongst staff in the Department.

8C.7.3 It is important that the Department has a clear approach to uniform, insignia, command and control, and the role of all members as “rehabilitators”. The Department’s approach in this regard must map out a comprehensive identification package that will affect both officials and offenders in a manner that is supportive to the legal mandate of the Department. Central to this approach is a deliberate focus on the overall cultural identity of personnel as strategic agents of behavioural change of offenders, as well as the cultural identity of offenders as people who are expected to change from being offenders to responsible nation servers. In particular, the Department seeks to provide for corporate identity, security, authority or protocol, function identification, rehabilitation status and basic wear.

8C.7.4 In the short term, the Department recommends utilising the existing uniform for officials together with the proposed new insignia. In the long-term, the Department hopes to roll-out a complete package to be organised along the following purposes:

- Corporate Identity: through the use of uniforms by officials.
- Authority Identification / Protocol: through the use of insignia by officials.
- Security: through the use of identity cards with photographs and electronic access and exit coding for officials.
- Function: through the use of colour coding within identity cards for officials.
- Rehabilitation status: through the use of differentiated uniforms for offenders who are at different stages within a correction cycle.
- Correctional Centre wear: use of uniform as a means of basic wear by offenders.

## CHAPTER NINE

### GOVERNMENT'S RESPONSIBILITIES TOWARDS AWAITING-TRIAL DETAINEES AND ILLEGAL IMMIGRANTS AWAITING DEPORTATION

#### 9.1 Introduction

9.1.1 The Department of Correctional Services has been saddled with the responsibility of keeping a range of detainees within its facilities, as a legacy from the time when the Department of Prisons was administered under the Ministry of Justice and was perceived to have a single "custodial mandate". Following the legislative and policy developments over the last ten years it has since become apparent that this perception cannot be sustained.

9.1.2 International practice agrees with the notion that a person arrested and facing charges is innocent until proven guilty and shall be treated as such. The only reason for their detention is to ensure due process in the court of law where they are to be tried. Our Constitution fully endorses this principle and practice. The detention of awaiting-trial detainees is not for punishment or correction. It is also internationally recognized that there must be a clear separation of the functions between the agencies which are responsible for investigating crimes, (namely the police and the national prosecuting authority), and the administration which is responsible for detaining accused persons.

#### SECTION 9A: AWAITING-TRIAL DETAINEES

##### 9.A.1 Categories of awaiting-trial detainees in South African correctional facilities

9A.1.1 South African correctional facilities have the following categories of awaiting-trial detainees in custody:

- awaiting-trial detainees who have been granted bail that they cannot afford to pay
- awaiting-trial detainees who have been denied bail
- awaiting-trial children
- detainees on warrant from bailiff/sheriff in relation to debt
- illegal immigrants detained while awaiting repatriation and facing no charges.

##### 9A.2 Constitutional imperatives on awaiting-trial detainees

9A.2.1 Awaiting-trial detainees have a unique status, and are protected by a set of rights and requirements that are different from those of sentenced offenders. The Constitution lays down a range of rights that impact on the rights of awaiting-trial detainees in relation to their incarceration and their passage through the criminal justice system.

9A.2.2 Section 2(1) of the Constitution asserts that:

*Everyone has the right to freedom and security of the person, which includes the right:*

- (a) *not to be deprived of freedom arbitrarily or without just cause;*
- (b) *not to be detained without trial;*
- (c) *to be free from all forms of violence from either public or private sources;*

- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

**9A.2.3** Section 35(1) of the Constitution maintains that, in relation to arrested, detained and accused persons:

*Everyone who is arrested for allegedly committing an offence has the right-*

- (d) to be brought before a court as soon as reasonably possible, but not later than-
  - (i) 48 hours after the arrest; or
  - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
- (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

**9A.2.4** Section 35(2) of the Constitution asserts that:

*Everyone who is detained, including every sentenced prisoner, has the right-*

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's-
  - (i) spouse or partner;
  - (ii) next of kin;
  - (iii) chosen religious counsellor; and
  - (iv) chosen medical practitioner.

**9A.2.5** Section 35(3) of the Constitution states that:

*Every accused person has a right to a fair trial, which includes the right-*

- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- (o) of appeal to, or review by, a higher court.

**9A.2.6** Section 35(4) of the Constitution asserts that:

*Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.”*



### **9A.3 International Provisions on Awaiting-Trial Detainees**

9A.3.1 International instruments strongly assert that a person arrested and facing charges is innocent until proven guilty and shall be treated as such. The impact of this is that the reason for their detention is to ensure due process in the court of law where they are to be tried, and not in any sense for punishment or correction.

9A.3.2 Furthermore, it is internationally recognised that there must be a clear separation of the functions between the agencies which are responsible for investigating crimes, (namely the police and the national prosecuting authority), and the administration which is responsible for detaining accused persons on the order of a judicial authority. The fact that an accused person is detained may assist the investigating authorities in their work, but the conditions of imprisonment should never be an element of the investigation.

### **9A.4 Government's obligations towards awaiting-trial detainees**

9A.4.1 The presumed innocence of awaiting-trial detainees requires that very limited restriction on their human rights is justifiable. While the right to movement is curtailed by the warrant that empowers their detention, continuity of their basic human rights is obligatory on Government. The only basis on which rights of awaiting-trial detainees can be curtailed is:

- the presumed threat to society; and/or
- the likelihood of escape that the legal process has identified; or
- on the basis of what is practicably feasible.

9A.4.2 Awaiting-trial detainees should be subjected only to those restrictions necessary for the maintenance of security and good order in correctional centers. Where practicable, they must be allowed all the amenities to which they could have access outside correctional centres. Thus there is a range of services that must be made available to awaiting-trial detainees, including:

- continuity in education and training in line with Government policy;
- safety of person;
- access to social welfare services in line with Government policy;
- accessibility to state-provided health care in line with Government policy;
- accessibility to visits, communication and correspondence with family and friends;
- accessibility to recreational and reading resources; and
- accessibility to legal representation.

9A.4.3 Without presuming guilt, given the socio-economic, familial and educational backgrounds of many of the South African awaiting-trial detainees, there is an important niche for the promotion of human development during the period in which they are awaiting trial. These include life skills and social development, including understanding of the legal and justice system in South Africa in which they find themselves.

9A.4.4 The South African legal system is premised on the principle that accused individuals are innocent until proven guilty. Such individuals, until such time as being proven guilty, cannot be subjected to compulsory attendance of correctional programmes. No awaiting-trial detainee may be compelled to wear the clothes provided to sentenced inmates. If the detainee's own clothing is improper or unsanitary or needs to be preserved in the interests of the administration of justice and he/she is unable to obtain other suitable clothing from another source, state clothing should be provided. However, this should not be the same as the clothing provided to sentenced inmates. It is also

important that awaiting-trial detainees not only wear different clothes from those of sentenced inmates, but they are also held separately as far as practicable.

9A.4.5 While the Constitution stipulates that periods of awaiting-trial detention should be as short as possible, in practice many are incarcerated for extended periods of time, and involvement in productive activity that promotes recreation and human development is a crucial service that Government must provide. However, the fact that the length of stay of awaiting-trial detainees varies considerably might also negatively affect the administering of these programmes.

9A.4.6 Government is thus obliged to provide facilities for awaiting-trial detainees that allow for the minimal limitation of an individual's rights, while ensuring secure and safe custody, the staffing of the facilities with personnel who are trained in human development, in the rights of persons in the legal/judicial process, who are trained in secure and safe custody, and who are responsible for ensuring delivery by government agencies on the rights of awaiting-trial detainees.

## **9A.5 Short-term management of awaiting-trial detainees**

9A.5.1 Until such time that a long-term policy on awaiting-trials has been fully developed, Government will have to put in place a transition policy. This will ensure that the transition from the current status quo to the desired handling of awaiting-trial detainees by the appropriate agency in the Criminal Justice System, will be a controlled and systematic process. This transitional policy by Government has to outline both short and medium-term measures to be implemented with regard to awaiting trial detainees.

9A.5.2 A first short-term measure that warrants priority attention, is the need for Government to address the fact that the rights of awaiting-trial detainees are compromised by the backlogs in court cases, the length of their remand period, and the conditions that they have to endure in prisons. Apart from being a violation of rights, this situation tends to increase the criminality of awaiting-trial detainees and a hardening of anti-social attitudes and behaviour. In the correctional centres that are over 200% full, the current percentage of awaiting-trial detainees is about 45%, whereas in the correctional centres that are 100% full, the current level of awaiting-trial detainees is about 20% of the total population in that centre.

## **9A.6 Responsibilities of the Integrated Justice System towards awaiting-trial detainees**

9A.6.1 In this regard, the Integrated Justice System should, on an ongoing basis, and in a systematic manner:

- monitor the length of stay of awaiting trial detainees in order to keep this period as short as possible;
- monitor the levels of awaiting-trial detainees in each correctional centre in order to manage levels of overcrowding more effectively;
- use the Integrated Justice System processes to speed up the processing of court cases; and
- utilize the range of options for alternatives to imprisonment for awaiting-trail detainees and prevent backlogs.

9A.6.2 Other short and medium-term measures include the:

- immediate separation of awaiting-trial detainees from sentenced offenders;
- accommodation of awaiting-trial detainees on the basis of categories determined on the basis of their previous convictions, status and nature of their alleged offence;

- provision of services such as health, continuing education and training, and social work intervention by all relevant government departments compelled to do so through their legal mandates;
- staff of Correctional Services only be utilized to manage the administration of the awaiting-trial centre/section, and facilitating the access of personnel from other government departments to render the relevant services;
- payment for the accommodation and feeding of awaiting-trial detainees should be made by the Department of Justice to the Department of Correctional Services; and
- delivery of, and payment for, other services by Government Departments should be made according to service level agreements between the Department of Justice and the relevant departments.

## **9A.7 The Department's view on a long-term policy on awaiting-trial detainees**

9A.7.1 This White Paper acknowledges the work that Government has already done on awaiting-trial detainees. In this regard, Cabinet has identified that there is a policy gap in relation to the responsibility for the incarceration of awaiting-trial persons. Cabinet has noted that the South African legal system presumes innocence until proof of guilt, and yet awaiting-trial detainees are accommodated in the facilities of a correctional system, which facilities are designed primarily for sentenced offenders. The purpose of correctional services, to enforce sentences of courts, ensure humane detention, and promote social responsibility and human development, and the principles on which the South African legal system is based, are compromised by the current accommodation of awaiting-trial detainees in correctional centres. Apart from being in contradiction with the principles of the legal system, the practice uses DCS resources inappropriately, particularly staff who are trained in rehabilitation and correction.

9A.7.2 The long-term policy on the issue of awaiting-trial detainees should clearly state:

- that awaiting-trial detainees are not to be accommodated in correctional facilities;
- that correctional officials should not be used to secure and care for, awaiting-trial detainees;
- what services and facilities should be provided for the incarceration of awaiting-trial detainees;
- that Government policy should define the appropriate design and resourcing of facilities in which awaiting-trial detainees should be accommodated;
- that the custodial responsibility for awaiting-trial detainees, with the corresponding facilities administration, should be reconsidered and should not resort under the Department of Correctional Services;
- the allocation of responsibilities to IJS Government departments as well as the support roles of the various departments should be defined; and
- the necessary budgetary provisions for this awaiting-trial custodial responsibility should be made to the relevant department.

## **SECTION 9B: ILLEGAL IMMIGRANTS AWAITING DEPORTATION**

### **9B.1 Problem statement on the detention of illegal immigrants awaiting deportation**

9B.1.1 The Department of Home Affairs is responsible for illegal immigrants. Legislation empowers the Director-General to cause illegal immigrants awaiting deportation to be detained, but without specifying where or how. The Department of Home Affairs currently lacks the expertise, structures and funds to run its own detention facilities. It has one privately run facility that it utilises and in which it oversees the management.

9B.1.2 Illegal foreigners awaiting repatriation from the country are held in the following types of facilities in the different regions of the country:

- community service centres;
- police cells;
- correctional centres; and
- a privately run detention centre in Gauteng.

## **9B.2 The need for a policy on illegal immigrants awaiting deportation**

9B.2.1 The increase in illegal immigrants in South Africa over the past decade, and the levels of overcrowding of correctional centres and SAPS police cells, have forced a policy dilemma to the surface. Clear guidelines on the custodial responsibility for illegal immigrants facing deportation are required. While there is a tendency for such people to want to escape deportation, there cannot be a presumption that they pose a threat to the safety of society or that there is a justifiable basis for their rights to be severely limited.

9B.2.2 Given this, a policy on illegal immigrants awaiting deportation should provide for:

- the reality that detention facilities required for this category of person is substantially different from those facing criminal charges and court proceedings;
- the fact that, in many instances, detention facilities also have to provide for family accommodation;
- the staff of such facilities to require an understanding of the diverse cultures of the illegal immigrants;
- awareness of staff of domestic and international law relating to the treatment of illegal immigrants and refugees;
- equipping staff with a range of appropriate languages; and
- the training of staff in providing guidance to such people with regard to their deportation.

## CHAPTER TEN

### THE NEEDS-BASED INTERVENTION PLAN

#### 10.1 Introduction

10.1.1 In order to deliver effectively on its core business, the Department has adopted a needs-based approach to rehabilitation. Needs-based interventions are types of interventions that specifically balance the generic causal factors with the unique offence profile of the individual offender. The aim of profile-based rehabilitation is to influence the offender towards a positive and appropriate norms and value system, alternative social interaction options, development of life, and development of social and employment-related skills, in order to assist the person not to return to crime. We assert that, through this, rehabilitation contributes towards the reduction of recidivism and crime prevention.

10.1.2 It should be acknowledged that many of the causes of crime cannot be addressed by the Department. However, it is the Department's belief that it can make a significant contribution towards the rehabilitation of offenders through the provision of:

- basic academic education;
- vocational training;
- social education/orientation;
- psychological treatment;
- diagnosis and treatment of problems such as substance abuse; and
- the building of family links.

#### SECTION 10A: NEEDS-BASED REHABILITATION PROCESSES

##### 10A.1 The Standard Minimum Rules on the rehabilitation of people under correction

10A.1.1 On the rehabilitation of offenders in correctional centres, Rule 66 (1) of the Standard Minimum Rules indicates:

“To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his (or her) social and criminal history, his (or her) physical and mental capacities and aptitudes, his personal temperament, the length of his (or her) sentence and his (or her) prospects after release.”

##### 10A.2 The aim of needs-based rehabilitation

10A.2.1 Rehabilitation is a process that has to address the specific history of the individual concerned in order to be successful. Moreover, it requires the positive commitment and voluntary participation of the individual, as it is a process that others can facilitate, but that cannot succeed without the decision of the individual. In order to contribute to the reduction of recidivism and crime prevention, the aim of needs-based rehabilitation is to influence the offender towards:

- positive and appropriate norms and value systems;
- alternative social interaction options;
- development of life, and
- social and employment-related skills, in order to assist the person not to return to crime.

### **10A.3 Compiling offender and offence profiles for rehabilitation: responsibilities of the Integrated Justice System**

10A.3.1 Needs-based interventions demand scientific research and analysis of offender and offence profiles. Based on such scientific research and analysis, proposed correctional sentence plans in relation to categories of offences for offenders that are based on professional expertise and best practice, could be developed. Models for Assessment and Intervention conducted through multi-disciplinary case management, should inform the Department's approach to the assessment and profiling of offenders for needs-based rehabilitation processes, from the stage of admission to the DCS systems until the completion of the sentence.

10A.3.2 The professional services must be rendered to offenders on the basis either of a court instruction or the need to be determined by the Department. Care intervention in the form of therapy, crisis intervention, and counselling must be responsive to the changing needs of an offender throughout the sentence period. These changing needs should be assessed through profiling and guided by the model for intervention.

10A.3.3 The input into these models from the IJS departments needs to be aligned with the desired outcome of rehabilitation. There should be mechanisms between the IJS departments to ensure that the offender-information generated for rehabilitation, provides detail on, amongst others:

- causes;
- nature and circumstances of offence;
- conviction record of the offender; and the
- social circumstances of the offender.

10A.3.4 This should constitute the starting point for offender profiling and assessment - from admission to release - inform the process of and review of security classification, and decisions during parole board hearings. Moreover, the work of the DCS should be driven by an ongoing analysis and understanding throughout the Integrated Justice System of:

- crime trends in South Africa;
- analysis of the crime-promoting factors in South African communities; and
- monitoring of the communities of origin of offenders.

### **10A.4 The positive commitment and voluntary participation of a person under correction in rehabilitation processes**

10A.4.1 Sentenced offenders have the right to take part in the processes and use the services offered by the Department and NGOs, in partnership with the Department. If in the opinion of the Commissioner their participation is necessary, sentenced offenders may be compelled to participate in rehabilitation processes and to use services offered.

10A.4.2 This opinion would be based on the nature of their previous criminal conduct and the risk they pose to the community. The professional services must be rendered to offenders in correctional centres and under community correctional supervision on the basis either of a court instruction or the need to be determined by the Department.

## 10A.5 The key service delivery areas for rehabilitation

10A.5.1 The Department of Correctional Services has moved from the conceptualising of rehabilitation to identifying key service delivery areas with regard to the offender, departmental responsibilities of correctional officials, as well as key external relationships necessary for delivery on the mandate of the Department.

10A.5.2 The key service delivery areas with regard to the offender, are:

- **Corrections:** Refers to all those services aimed at the assessment of security risk and criminal profile of individuals under correctional supervision based on their social background and developing correctional sentence plan, targeting all elements associated with the offending behaviour/s. The initial focus will be to target the actual offence for which a person will have been convicted and sentenced to community correctional supervision and/or remanded in a correctional centre and/or placed on parole.
- **Development:** Refers to all those services aimed at the development of competency through the provision of social development and consciousness, vocational and technical training, recreation, sports and opportunities for education that will enable offenders to easily reintegrate into communities and serve as productive citizens.
- **Security:** Refers to all those services rendered by the Department aimed at ensuring the provision of safe and healthy conditions for all persons under its care in conditions consistent with human dignity, while providing protection for its personnel, security for the public against persons under its care, as well as the safety of persons under its care.
- **Care:** Refers to needs-based services aimed at maintenance of the well-being of persons under departmental care; providing for physical well-being, nutrition, social links with families and society, spiritual and moral well-being, psychological well-being and health care.
- **Facilities:** Refers to all physical infrastructures provided by the Department for those legally entrusted to its care as well as to personnel, aimed at ensuring the availability of the minimum facilities requirement pursuant to rehabilitation responsibilities and objectives.
- **After-Care:** Refers to all services focused on persons under the care of the DCS in preparation for the completion of sentences, to facilitate social acceptance and effective reintegration into their communities.

10A.5.3 The provision of the key delivery services in a manner suitable to the individual requires that as soon as possible after admission as a sentenced offender, he/she must be assessed to determine his or her:

- security classification for purposes of safe custody;
- health needs;
- educational needs;
- social and psychological needs;
- religious needs;
- specific development needs;
- work allocation;
- allocation to a specific correctional centre; and
- needs regarding reintegration into the community.

10A.5.4 The Department must provide or give access to as full a range of processes and activities as is practicable to meet the educational and training needs of sentenced offenders. Sentenced offenders who are illiterate or children still in the schooling process, might be compelled to take part in the educational programmes offered. The Department must provide social and psychological services in order to develop and support sentenced offenders by promoting their social functioning and mental health. The Department must provide, as far as practicable, other development and support processes that meet the specific needs of sentenced offenders. Rehabilitation processes must also be responsive to the special needs of women. In addition, specific processes designed for youth must be provided for young offenders.

10A.5.5 A key challenge of the South African correctional system will be to develop the capacity to provide effective corrections and development processes in all aspects of offenders' lives for the range of offender categories. Care intervention in the form of therapy, crisis intervention, and counselling must be responsive to the changing needs throughout the sentence period of an offender assessed through profiling and guided by the model for intervention.

## 10A.6 The Correctional Sentence Plan

10A.6.1 The challenge for the Department is to find the correct balance and form in adequately and comprehensively applying the elements of the six key service delivery areas when addressing the unique needs of every single offender. The White Paper recommends that for every offender, the Department should develop a Correctional Sentence Plan which will be offender-specific, and will take into account the specific correctional setting – correctional centre or probation or community correctional supervision. Such a sentence-plan will be based on the total needs of the specific offender.

10A.6.2 These needs are:

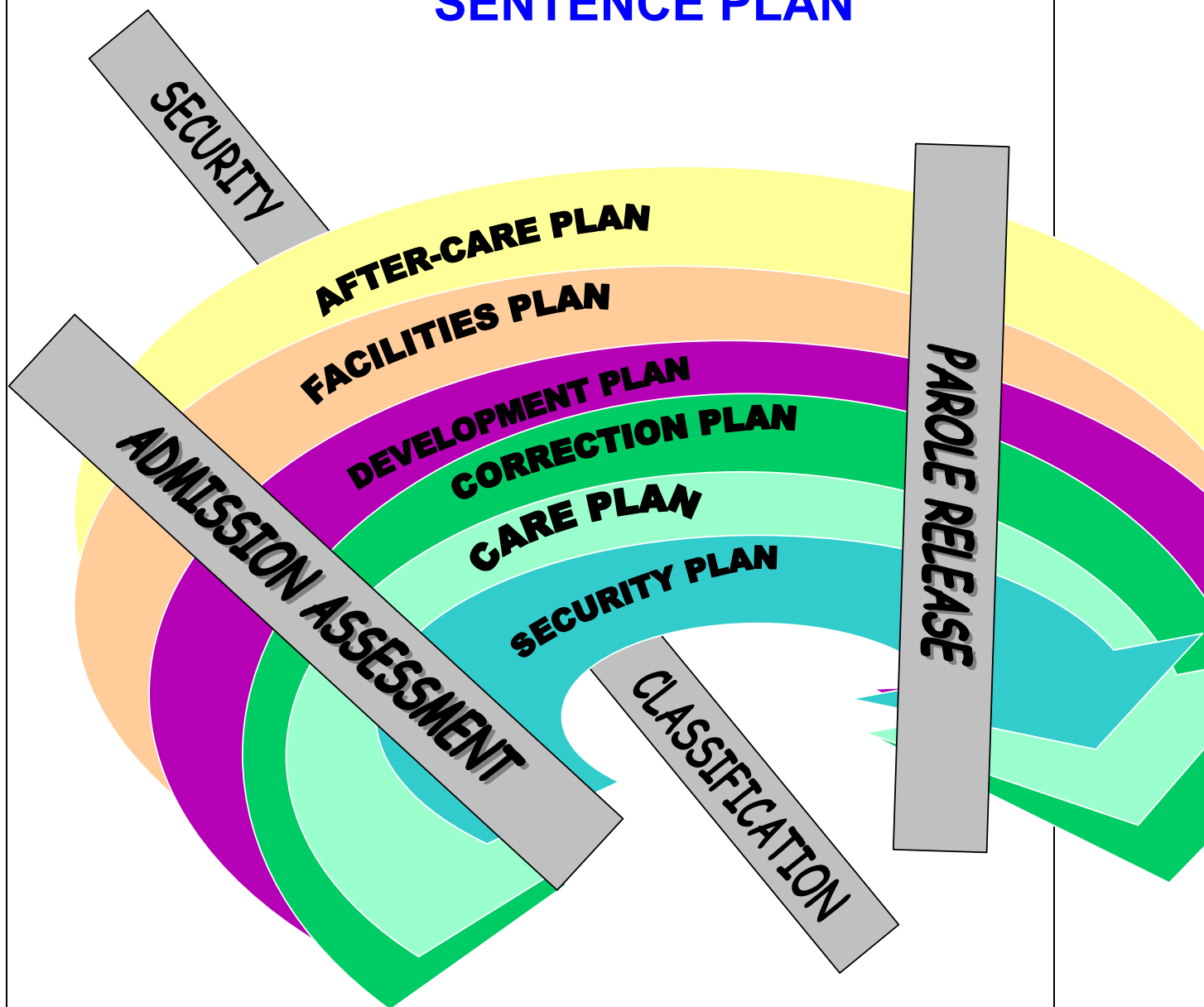
- needs in terms of correcting offending behaviour (**Corrections plan**);
- security needs taking into account the human rights of the individual (**Security plan**);
- needs in terms of the physical and emotional well-being of the offender (**Care plan**);
- education and training needs (**Development plan**);
- needs in terms of allocated physical accommodation (**Facilities plan**); and
- needs in terms of support with the social reintegration of the offender (**After-Care plan**).

10A.6.3 Scientific and thorough research into the components of sentence planning for the various categories of offenders will have to shape the delivery of appropriate and effective corrections and development programmes in all aspects of the offender's life. While rehabilitation is the desired outcome of the work of correctional services, of which correcting the offending behaviour is the key component, there is much debate about the components that are required to make up the route to rehabilitation.

10A.6.4 Internationally, a variety of terminology is used to portray the planning that the Case Management Committee and the individual offender needs to undertake – it is variously called a rehabilitation plan, a sentence plan, or a correctional plan. In this White Paper, the term Correctional Sentence Plan is used. The graphic below tries to conceptually portray the manner in which the planned delivery on each of the six (6) service delivery areas identified above fit together throughout the period that the offender serves his or her sentence, be it in a correctional centre or under community correctional supervision.



# THE CORRECTIONAL SENTENCE PLAN



## **SECTION 10B: CORRECTION AND DEVELOPMENT PROGRAMMES**

### **10B.1 The distinction between correction of offending behaviour and development**

10B.1.1 In the South African context the distinction between the correction of offending behaviour and human development can become blurred. It is not always easy to identify clearly what the causes of crime are. The desperate socio-economic circumstance of the majority in South Africa in contrast to the wealth and opulence of the minority generates intense feelings of unfairness and resentment that can feed into crime. At the same time, socio-economic hardship can itself drive citizens to crime in order to care for the family. In the South African reality, the inadequacy of development amongst the majority of the society has resulted in the human development component of rehabilitation being of the utmost importance.

10B.1.2 Correcting offender behaviour deals in essence with the promotion of social responsibility, ensuring that the individual can recognise what they did as wrong, understand why society believes it to be unacceptable and to internalise the impact that their actions have had on the victims and on society as a whole.

10B.1.3 Development, on the other hand, deals with the life skills of the person aimed at making him/her a well-rounded person. These skills include:

- education and training;
- communication;
- employability;
- health awareness;
- recreation;
- sport.

### **10B.2 Providing education to people under correction**

10B.2.1 The levels of illiteracy amongst offenders in South Africa, and in particular the proportion of youth amongst South African offenders, require that the Department places significant emphasis on the provision of literacy classes and basic schooling for offenders. The constitutional imperative for schooling is not a right that is curtailed by incarceration, and between the Department of Education and the Department of Correctional Services, literacy, schooling and basic adult education are priorities.

10B.2.2 International instruments instruct that education in a correctional environment must be in line with that educational system of the society as a whole, and provision must be made for the continuity of educational activity of people incarcerated in prison, and for those who are released on parole.

### **10B.3 Providing training and productive work aimed at the employability and development of people under correction**

10B.3.1 The UN Standard Minimum Rules (SMR 71) specify that sufficient work of a useful nature should be provided in correctional centres and that productive work by offenders should be "such as will maintain or increase the offender's ability to earn an honest living after release". Our approach to rehabilitation should ensure that productive work by offenders is integral to the sentence plan. The nature of such productive work should be consistent with the profile of the offence categories and the

offenders themselves, and should contribute towards the human development and employability of the offenders once they are released on parole or from correctional supervision. Such involvement in productive work should be conducted within the framework of the country's labour and safety legislation, and a departmental policy on a skills-based remuneration system for labour by offenders.

10B.3.2 The training and activities that are offered to offenders should not entrench gender and racial stereotypes, and should be geared to empowering all offenders, irrespective of race, class or gender, to play a full and economically active role in society. Over and above this, the correctional system in South Africa as a coherent and comprehensive community in itself, should strive for self-sufficiency through the development of a production section of the Department. The production section of the correctional centres should aim to provide all offenders who have worked on the farms or workshops or production centres with an accredited and certificated record of their employment in these facilities. This certification will enhance their ability to find employment once back in the community, and perhaps decrease some of the stigmatisation attached to having been an offender.

#### **10B.4 Involving people under correction in community service and poverty alleviation projects**

10B.4.1 The premise of the Department of Correctional Services' approach to offender involvement in poverty alleviation projects is that their implementation should seek to enhance the constitutional role and responsibility of the Department. It should also aim to enhance rehabilitation efforts towards the offenders involved. The offenders are at the heart of these. In addition, projects should be informed by Government's commitment to sustainable development, seen as being a core component of the prevention of crime and recidivism.

10B.4.2 The departmental objectives in poverty alleviation/social development projects are:

- the projects should be designed so that they build close relationships with the community and in particular seek to undo the stigmatisation of offenders;
- the communities that are identified for such poverty alleviation/social development projects should include and prioritise high risk and poor communities of origin of the offenders. High-risk communities of origin should be included in the communities identified by government for poverty alleviation projects;
- the projects should not be DCS hand outs to the community, but should contribute to sustainable development and hence social crime prevention;
- poverty alleviation/social development projects should not be once off events, but be part of a coordinated multi-year, focused programme of the Department;
- poverty alleviation/social development projects should enhance rehabilitation, offender employability, skills development and preventing recidivism as important components of sustainable development;
- skills development and employability should take into account the structural changes in the South African economy so that the training of offenders is in line with the trends in output of the economy. In particular, the training should address the shift from goods to services within the South African economy;
- promotion of these partnerships with the community should be part of the media strategy around the launching of the projects; and
- involvement of offenders in such projects should aim to develop community awareness amongst offenders, a community service attitude, while also developing self-esteem in the individuals. To this end, the payment for labour performed in all DCS projects should be aligned with the Government policy on wage levels.

10.B.4.3 The Department of Correctional Services should adopt an integrated approach towards poverty alleviation and social responsibility if the goals of community empowerment and offender rehabilitation are to be achieved. Poverty alleviation projects in DCS should aim for a combination of desired outcomes, that include:

- donations to communities to alleviate poverty;
- skills transfer to communities to facilitate sustainable solutions to poverty; and
- enhanced societal responsibility for corrections and rehabilitation through partnerships.

## **10B.5 Providing gender training for people under correction**

10B.5.1 In this White Paper, the Department forwards its understanding of Gender. It is understood as being the social relations between men and women. Our Gender Policy should be in line with the Constitution, promoting respect for gender equality and the protection, development and attainment of gender equality. Our approach to Gender will inform the management of women offenders. It will also inform the management of male offenders and is of particular importance in rehabilitation of men whose victims have been women and children.

10B.5.2 The Department regards Gender training as a crucial aspect of the rehabilitation of particularly young offenders, whose social development has been interrupted by incarceration and amongst whom issues of gender equality, particularly in personal relationships, may not be well- internalised.

## **SECTION 10C: SERVICES TO PAROLED OFFENDERS**

### **10C.1 The social reintegration of people under correction**

10C.1.1 The term After-Care has been utilised to focus the Department on service delivery towards the goal of a society that can care for, and correct, the individuals and prevent recidivism. The After-Care plan is aimed at preparing offenders for their social acceptance and effective reintegration into their community on parole or community correctional supervision.

10C.1.2 The Department regards the effective social reintegration of offenders as the most challenging and most crucial aspect in their rehabilitation. The Department also realises that this is also the point at which offenders are at their most vulnerable stage in their progression to sustainable correction and rehabilitation.

10C.1.3 Social reintegration does not start the moment at which offenders leave the correctional centre, or the point they leave the care of the Department of Correctional Services. The preparation for the social integration of offenders will commence on their admission into the care of the Department of Correctional Services and will continue right through their period of sentence in the care of the Department. The social integration of offenders will also be an ongoing and important part of their Correctional Sentence Plan. The main objective with the After-Care plan is to rebuild and nurture the relationships between offenders and their victims, the communities of the victims, communities of origin of the offenders, and the society at large.

10C.1.4 It is this type of approach to the social reintegration of offenders that will inform the Department's policy on their written communication;

- telephonic communication;
- visits with family, friends and loved ones;
- contact with social institutions from his community of origin; and

- access to information about the world outside through newspapers, television and radio.

10C.1.5 To this end, the Standard Minimum Rules (Rule 39) say that: "Prisoners shall be kept informed regularly of the more important news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorised or controlled by the administration."

10C.1.6 Based on the promotion of social responsibility as prescribed in Section (2) of the Correctional Services Act of 1998 (Act No. 111 of 1998), offenders must be provided with opportunities/ resources to interact with events in the outside world. The potentially isolated environment of the correctional centre can undermine the development of a social consciousness and commitment to civic duty. That is thus not in support of what the Department wants to achieve with the rehabilitation of offenders. The ability to see themselves as an integral part in the life of their nation and country is a crucial aspect in the rehabilitation of offenders.

10C.1.7 The human rights principle endorsed by the Department prescribes that decisions in relation to the privacy, family, home or correspondence of offenders, must be fair, consistent and humane. It is only where circumstances indicate the possibility that such communication and contact is being used for criminal purposes, that these rights of offenders can be limited. Moreover, Article 23 of the International Covenant on Civil and Political Rights indicates that: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

10C.1.8 The Department should ensure that, as far it is practically possible, offenders have the best possible access to their families. This access is an important element in the rehabilitation of offenders. If offenders are, for rehabilitation services delivery or security reasons, held far from their families and immediate friends, the Department should consider the possibilities of telephonic, electronic and even video conferencing communication. After-care is not the end product of the sentence plan, but an integral part of it. International experience identifies social reintegration as the most crucial aspect of rehabilitation and one that cannot be undertaken by the Department alone. After-care and social reintegration both require partnerships between the correctional system, the offender and the community.

## **10C.2 Role of community supervision and parole boards**

10C.2.1 Decisions by the community supervision and parole boards must be made on the basis of multi-disciplinary reports from the Case Management Committee. Such decisions should also comply with the principles of administrative justice. There must be a mechanism for the review of the decisions of these boards, initiated by either the inmate or the Department itself. This will enable the building up a body of law in South Africa that provides for uniformity across all Community Supervision and Parole Boards.

10C.2.2 Parole boards should be recognised as an area that is vulnerable to corruption and misconduct. The Department must thus ensure that systems are put in place to protect these proceedings from undue influence, corruption and misconduct.

## **10C.3 The integrated support system**

10C.3.1 The Department regards rehabilitation as one of its top priorities with regard to the offenders. As part of moving beyond community correctional supervision as a means of monitoring offenders to control their behaviour, a system is needed to strengthen the support system for the reintegration of

offenders into the community by involving other role-players. This will entail creating an Integrated Support System that will encourage further rehabilitation, employment opportunities and support services by involving other role-players. This will assist in preventing offenders from relapsing into crime and to reduce recidivism in South African correctional centres. The Integrated Support System may be defined as a means whereby various services could be attained for the rehabilitation of the individuals through the involvement of other role-players.

10C.3.2 The provision of Integrated Support Systems must apply equally to offenders who are sentenced to community correctional supervision. Community correctional supervision has been introduced into a system that still regards imprisonment as the primary sentencing option, and does not look holistically at the need to treat rehabilitation as a basic aim of sentencing. Community correctional supervision needs to be supported by an ethos of non-custodial sentencing and not by a culture of imprisonment.

#### **10C.4 Principles of the integrated support system policy**

10C.4.1 The Integrated Support System policy of the Department of Correctional Services is based on the following principles:

- the presentation of programmes will be shared with other role-players;
- community-based, non-profit and non-governmental organizations will be involved in the reintegration process of offenders into the community;
- the Integrated Support System shall jointly cater for the development and rehabilitation of offenders;
- offenders will be referred by the community corrections officials to various support services for their rehabilitation process within their residential areas;
- the various support services will cater for the individual needs of the offenders in the community;
- suitable accommodation for destitute offenders will be explored in consultation with other role-players; and
- families / friends / potential employers / other role-players will be involved in obtaining employment for offenders.

#### **10C.5 Purpose of the Integrated Support System**

10C.5.1 The purpose of the Integrated Support System is, among others, to:

- attend rehabilitation programmes at their own residential areas;
- be counselled by the psychologists, social workers and religious workers at their own residential areas or within their own environment;
- render community services within their own environment so as not to pay for transport, unless the court directs otherwise;
- do referrals to other agencies for the offenders who need further assistance/support with the community during their reintegration process;
- establish satellite or sub-offices for the probationers, parolees and awaiting-trial persons where a need is registered through consultation with other role-players in order to secure such facilities for the development and rehabilitation of offenders;
- motivate offenders to develop further and to attend programmes designed for their rehabilitation process conjointly with other role-players within their own residential places; and
- assist offenders to secure employment/accommodation with other role-players before they are released or placed out.

## **10C.6 Measurement of the success of the rehabilitation processes**

10C.6.1 The Department of Correctional Services has committed itself to excellence. Such an orientation requires regular appraisal of the effectiveness of all its operations, including the delivery of needs-based rehabilitation processes. Without such a framework of continuous evaluation, there is no proper baseline to measure the impact and success of, inter alia, different rehabilitation routes, the content of correction interventions, models of assessment, the impact of different methods of correction, etc. Without such a baseline, the Department will find it difficult to quantitatively and qualitatively improve on services related to its core business.

10C.6.2 International experience has shown that the monitoring of recidivism rates over periods of time represents a critical indicator of the success and effectiveness of needs-based rehabilitation and improved service delivery. The rate of recidivism (namely the rate at which offenders re-offend after completion of sentence) in South Africa is widely acknowledged to be unacceptably high. This deduction is, however, not very reliable, as there is currently no reliable system for monitoring recidivism, or analysing the trends in this regard.

10C.6.3 The extent to which societal institutions such as the family unit and other community institutions embrace correction as one of their basic functions, will have an impact on the rate of new offending. The proactive role of societal institutions in correction is also expected to minimize obstacles to successful re-integration of DCS rehabilitated citizens.

10C.6.4 The Department is committed to appraisal of the effectiveness of rehabilitation processes. Success in the following areas will be a good indicator of the effectiveness of both internal Departmental programmes and societal initiatives:

- Reduction of recidivism
- Effective re-integration of released offenders to society
- Reduction of new offending as societal institutions begin to play their part
- Reduction or elimination of criminal offending within correctional centres.

## CHAPTER ELEVEN

### SAFETY, SECURITY AND HUMAN DIGNITY AS PART OF REHABILITATION

#### 11.1 Introduction

11.1.1 The focus on rehabilitation as the desired outcome of service delivery in Correctional Services does not negate the mandate of the Department to:

- provide security to the public from those offenders who constitute a threat to their safety;
- provide safety to inmates who are inside correctional centres; and
- ensure compliance with security provisions of parole and probation orders.

11.1.2 This responsibility is in part compliance with enforcement of the sentences handed down by the courts, but is also a necessary component of the Department being able to deliver on correction and development of offenders. The rehabilitation of offenders and secure, safe and orderly custody are two sides of the same coin. The Human Rights culture further requires that both rehabilitation and security are conducted in an environment in which the human dignity and rights of offenders are respected.

### SECTION 11A: SAFETY, SECURITY AND ORDER AS PART OF REHABILITATION

#### 11A.1 Operating secure, safe and orderly correctional centres

11A.1.1 The Department is obliged to:

- ensure the safety of the public from inmates who pose a threat to the public;
- provide a safe environment for inmates; and
- enforce sentences and ensure that justice is seen to be done.

11A.1.2 The balance between security, control and justice is the responsibility of all correctional managers. Excessive security and control at the expense of justice, such as oppressive security measures which exclude rehabilitative programmes, brutal methods of control, lack of justice in disciplinary hearings and unlawful punishments, can lead to situations in which orderly and fair management gives way to abuse of power, violence by both offenders and staff, the possibility of escapes and the absence of constructive activities for inmates.

11A.1.3 Principle 4 of the Basic Principles for the Treatment of Prisoners says that: "The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society."

11A.1.4 The use of force as a means of restoring order can only be justified in extreme circumstances, when order has broken down and all other interventions have failed. Instruments of restraint, such as handcuffs, chains, leg irons and strait-jackets, should not be used as punishment, and their use should be carefully regulated. The security measures to which offenders and detainees are subject should be the minimum that is needed to ensure their secure custody, and the safety of other offenders.



11A.1.5 Given the restrictive nature of the correctional centre environment, the security controls in a correctional centre have to be tight. Procedural security measures such as regular patrols, frequent searches of cells and offenders, control over objects sent into correctional centres, and even under certain circumstances searches of visitors, must be very clearly regulated and the procedures must spell out the circumstances in which such methods are to be used and the manner in which they are to be conducted. The training of staff in methods of search of physical spaces where the individuals live, work or congregate and of the individuals themselves, must aim to ensure the ability to detect and prevent an escape attempt or hiding of contraband, while at the same time respecting the dignity of the inmate.

## **11A.2 Security classification of offenders contributing to safety and security**

11A.2.1 The assessment of risk, which informs the Security Classification of Inmates, must take into account the impact of incarceration on a human being, the threat that an inmate may pose to him or herself, to staff, to other inmates and to the wider community. It must also be borne in mind that this risk is not static and can change for better or for worse, as the sentence is served, and circumstances change.

11A.2.2 The Security Classification of Inmates for the purpose of rehabilitation is based on a principle, adopted by the DCS, with regards to the proximity of the inmate to his/her family, friends, and community. This has bearing on the location of the facility in which an inmate client is accommodated, and similarly has bearing on whether facilities should be given a security classification. While the principle that security categories of inmates should not be accommodated together is adhered to, it is argued that the actual facility should not be classified, except where it is very specifically designed for a security purpose. On the whole, the inmates are the ones who should be security classified. The section in which they are accommodated should then be run according to the appropriate levels of security routine.

11A.2.3 The Security Classification for inmates is aimed at facilitating a needs-driven approach to secure accommodation of inmates, as well as a needs-driven rehabilitation strategy. It is designed to ensure that the correctional system can balance the provision of secure and safe custody with correction, promotion of social responsibility and human development. The approach of the new proposed security classification instrument is to develop a matrix of the:

- personal particulars;
- crime category;
- nature of crime;
- nature of relationship of offender to victim(s);
- circumstances under which the crime was committed;
- effective length of sentence;
- number and nature of previous conviction; and
- time lapsed since last previous conviction.

11A.2.4 The information would be balanced with the threat to the community, the escape risk, the threat to fellow inmates and staff, the vulnerability of the individual to others and the need for protection from other inmates and/or himself or herself. The approach is also based on the understanding that this classification will be impacted on by the very rehabilitation process that inmates are subjected to. As such, it becomes a feature of ongoing case management that allows for reconsideration of the conditions of the inmates' management and security classification.

### **11A.3 Disciplinary procedures and punishment contributing to safety, security and order in correctional centres**

11A.3.1 The relatively closed environment within the correctional institutions, and the nature of the community that is accommodated within these institutions means that special attention should be paid to the nature of the disciplinary procedures and punishments meted out. The scope for abuse of authority in the correctional institution must be countered, while at the same time the rule of law must prevail in correctional centres. Both correctional official and inmate must know very clearly what is expected of them and what will not be tolerated from them.

11A.3.2 A clear distinction should be drawn in the disciplinary procedures between those breaches of correctional centre discipline which are primarily administrative in nature, and those which are of a criminal nature. The latter can be referred to either special internal investigative capacity, or to external investigative, prosecutorial or judicial agencies. In relation to breaches of a criminal nature, the same criteria should be used in dealing with an accused person who is an inmate as with any other citizen who has not been sentenced in any way. The type of conduct that constitute a disciplinary offence, the method of seeking information and making complaints, the disciplinary procedures to be followed, the sanctions that may be entertained on conviction, and the manner in which such sanctions may be applied must all be clearly codified and made available and understandable to all inmates and correctional officials on admission and entry to the Department.

11A.3.3 As in all matters of administrative justice, the principles of natural justice must be respected. These principles include that:

- all inmates should know in advance what the rules and regulations of the correctional centre are;
- the rules and regulations of the correctional centre should have a legal status;
- the individual has the right to know in advance the charge that he or she is facing and who has made the charge;
- both the accused person and the person laying the charge must have time for preparation for the hearing, without unnecessary delay that may result in informal punishment;
- the case must be heard by a competent authority, who has received the necessary level of training, and who has not had prior knowledge of the case that he/ she is about to hear;
- the accused person must be present at the hearing, hear the evidence presented, and be capable of mounting a defence; and
- in the case of the accused being found guilty, there must be access to an appeal mechanism.

11A.3.4 The area of disciplinary procedures for both correctional officials and offenders provides an opportunity for the Department to practice restorative as opposed to retributive justice. It is acknowledged that restorative justice may not be appropriate in all cases, and would have to be weighed against the potential of behaviour to undermine the secure, orderly and humane running of a correctional centre. The approach to disciplining of offenders should as far as possible use alternative sentencing such as community service within the correctional centre.

## **SECTION 11B: SAFETY AND HEALTH OF OFFENDERS AS PART OF REHABILITATION**

### **11B.1 The safety and health of inmates**

11B.1.1 The safety and health of inmates require from the Department to provide a safe and secure environment to its inmates in the broadest sense. Inmates are dependent on the Department to provide for their safety as they are deprived of freedom of choice in a number of respects, freedom of association and of freedom of movement.

11B.1.2 The Constitution guarantees the freedom and security of the person, which includes:

- the right to be free from all forms of violence from either public or private sources;
- not to be tortured in any way; and
- not to be treated or punished in a cruel, inhuman or degrading way.

11B.1.3 By its very nature, incarceration can have a damaging effect on both the physical and mental well-being of inmates, and the Department is thus obliged to meet these special health needs of inmates in its institutions. This also entails that those providing this health care, are trained in the specificity of health needs and health problems in a correctional centre environment. They must also have the ability to seek health care solutions that are appropriate and attainable in a correctional centre environment. The responsibility of the Department is not just to provide health care, but also to provide conditions that promote the well-being of inmates and correctional officials.

## **11B.2 Prison gangs and the safety of inmates**

11B.2.1 The safety of inmates compels the Department to effectively deal with the issue of gangs in correctional centres. Gangs have been a feature of the South African correctional system over the past century. Along with the presence of gangs is a level of correctional centre violence that violates the safety of other inmates. It manifests in many ways, such as:

- gang supported fights;
- assault and murder;
- forced sexual activity or rape;
- intimidation and coerced favours; and
- complicity of or the turning of a blind eye by correctional officials in relation to these activities.

11B.2.2 The pervasive manner in which prison gangs assert control over the management of correctional centres requires an anti-prison gang strategy to be adopted by correctional management.

## **11B.3 The constitution and international prescripts on the health of inmates**

11B.3.1 The health of inmates is addressed in Section 35 (2) of the Constitution that obliges the Department to ensure that: "Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment."

11B.3.2 This clause points to the obligation on the Department to provide health care to inmates. By implication, this health care should be consistent with that provided by the state to other citizens, while also recognizing the right of individuals in South Africa to access private health care facilities at their own expense, which in the case of inmates can also be limited by security constraints. It should be clear however, that on release on parole or if serving a correctional supervision sentence in the community, health care is accessed through the state health care system and not through the Department of Correctional Services.

11B.3.3 Moreover, the Constitution protects people's rights to:

- bodily and psychological integrity, which includes the right to make decisions concerning reproduction;
- security in and control over their body; and
- not to be subjected to medical or scientific experiments without their informed consent.

11B.3.4 The Constitution also states that no one may be subjected to slavery, servitude or forced labour. The Department is obliged to ensure that the offender is safe from violation of these rights. In the context of serious overcrowding, these freedoms are very difficult to secure for offenders.

11B.3.5 A commitment to the Health of Offenders requires a type of health care that incorporates both physical and mental health. Indeed, Article 12 of the International Covenant on Economic, Social and Cultural Rights (Article 12) establishes the:

*“ . . . right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”*

#### **11B.4 The health of inmates and the South African reality**

11B.4.1 Making the health of offenders a priority, requires a clear understanding that South Africa is a country in which socio-economic conditions give rise to a high prevalence of communicable diseases. This relates to the aspect of a majority of the population that has a lower than desirable nutrition level and hence is vulnerable to infection. It also relates to the aspect of cramped and inadequate living conditions that tend to worsen communicable diseases.

11B.4.2 The crime patterns in South Africa indicate that a large proportion of the offender population come from these very communities. Thus it can be expected that the rate of infection with communicable diseases of offenders entering the Department is higher than the national average. The level of overcrowding of correctional centres exacerbates this situation.

11B.4.3 In this regard, the statement from the Heads of Government at the 4<sup>th</sup> Baltic Sea States Summit on the Threat of Communicable Diseases, Issued at St Petersburg, 10 June 2002, commented as follows:

*“Overcrowded prisons with infected inmates and with poor hygiene and sanitation are a dominant threat in the field of communicable diseases in the region. Prison health must be a priority.”*

11B.4.3 HIV/AIDS and other communicable diseases such as TB and sexually transmitted infections (STDs) are a serious threat to people under correction who it should be understood are a across section of the community that is already vulnerable. Imprisonment further increases their vulnerability to these and many other diseases as a result of poor living conditions and the stress they experience. The department has an opportunity and moral duty to address the health needs of a population that might otherwise not access health care services until their problems are advanced. The department should focus on programmes to reduce the impact of HIV/AIDS and other diseases to allow people under correction to leave the system as healthy as possible.

## CHAPTER TWELVE

### SPECIAL CATEGORIES OF OFFENDERS

#### 12.1 Introduction

12.1.1 A lesson from international experience is the tendency to regard all offenders in correctional centres as being a uniform entity. This has resulted in correctional centres being organised in the interests of the majority, usually adult male offenders from the main ethnic, cultural and religious grouping in the country. Special consideration needs to be given to the various groups of offenders who are not part of this perceived uniform majority.

12.1.2 A needs-based rehabilitation approach implies that we will have to ensure the provision of appropriate facilities, services and processes for each of these categories. Given the gravity of the overcrowding problem, effectively delivery of these will, in a significant manner, be dependent on the effective management of overcrowding in South African correctional centres.

#### 12.2 Children in detention

12.2.1 The internationally recognised definition of children refers to under the age of 18. In relation to the detention of children, the South African Constitution of 1996 (Act No. 108 of 1996) in section 28 (1) says that such children have the right:

- not to be detained except as a measure of last resort;
- If detained, to be detained only for the shortest appropriate period of time;
- to be kept separately from detained persons over the age of 18 years;
- to be treated in a manner, and kept in conditions, that take account of their age;
- to have a legal practitioner assigned to the them by the state, and at state expense, in civil proceedings affecting them, if substantial injustice would otherwise result.

12.2.2 The Department's position on children in detention are that different age groups of children require different service delivery and should as far as possible, be accommodated separately. The Department must align its policy with those of the other integrated justice system departments to ensure that appropriate policies are in place for different age categories of children. Children should not be in correctional centres, and should as far as is possible be diverted from the criminal justice system. Where this is not an option, they should be accommodated in secure care facilities that are designed for children.

12.2.3 Children under the age of 14 have no place in correctional centres. Diversion, alternative sentences, and alternative detention centres run by the Department of Social Development and the Department of Education should be utilised for the correction of such children. Where children are incarcerated, trained staff and facilities designed for children and youth must be provided. Children must at all times be separated from adult inmates. The vulnerability of children and youth to pressure, force and abuse by adult inmates must be prioritised in the training of all correctional officials. Any breach of this should be considered a serious offence in the Departments disciplinary code.

#### 12.3 The Department's vision for youth offenders

12.3.1 The Department must have in place a Youth Policy aimed at service delivery and correction of the offenders aged between 18 and 25. This is the category of the South African incarcerated population that has been growing rapidly in the first decade of democratic South Africa. Youth offenders is a category of people who, even after serving a lengthy sentence, still has the chance to make something of their lives. Provision of rehabilitation/correction service delivery focusing on human development and education and training for youth is key to the prevention of recidivism.

12.3.2 The United Nations' Rules for the Protection of Juveniles Deprived of their Liberty should be adopted as a minimum standard to which youth correctional centres should comply with. Youth correctional centres should be designed to accommodate the building and strengthening of familial ties. In this regard, smaller and more community-based systems where youth are not moved far from their families, are regarded as appropriate. At the same time, the services and programmes provided to the youths should assist them in their transition to full adulthood. The Department must also address night supervision in youth correctional centres.

## **12.4 Women offenders**

12.4.1 As in other countries, women offenders also constitute only a small proportion of the incarcerated offender population in South Africa. This small number has both disadvantages and advantages for women inmates. One advantage is that they do not face the same degree of overcrowding as male offenders. One major disadvantage is that, because there are fewer women correctional centres, they are often forced to be further away from their families than men. The Department has an obligation to incarcerate women offenders as close to home as possible, in order to minimise the negative impact on family life, especially where they are mothers. As far as it is practicable, the Department should provide a women's unit in each and every correctional institution.

12.4.2 Training facilities offered to women offenders have historically tended to be less well resourced due to the lower number of women offenders. This goes against the principle of equality before the law and non-discrimination on the basis of gender or sex. It is important that development opportunities offered to women enable them to take their place in the formal economy of South Africa and to be financial independent. The majority of women sentenced to incarceration in South Africa are serving short-term sentences. There is thus greater potential for successful rehabilitation through alternative sentences.

12.4.3 On the issue of women offenders with children, the Department wants to provide "Mother and child units" within the correctional centre with separate sleeping accommodation for mothers and their children, as well as a crèche facility. The focus should be on the normalisation of the environment in order to promote the child's physical and emotional development and care. The interests of the child should be put at the forefront in any policy development about babies of offenders being accommodated inside. The policy must also be flexible enough for adjustment on the basis of proper assessment of the particular familial circumstances of the child outside of the correctional centre, and alternative arrangements that could be made.

12.4.4 Over and above the mother and child units, incarcerated mothers of small children who are not in a correctional centre with their mothers, require particular access to their mothers as a necessary step to reduce the negative effect of the separation from the mother that may occur and to prepare for the eventual release of the mother. The provision of an appropriate environment for such visits to occur that will aid in fostering the mother-child relationship, is important. The role of professional child-care workers and social workers must be to provide services to mothers and children.

## **12.5 Offenders with disabilities**

12.5.1 The Department will operate within a human rights model for disability. Correctional institutions should be designed to accommodate the needs of disabled offenders and should be consistent with the national policy framework on persons with disabilities. The policy should reflect both the equality of rights of disabled offenders with others, and the particular needs that disabled offenders have. The provision of appropriate facilities must not be limited to the physical accommodation needs, but include the provision of appropriate facilities for the enhancement of rehabilitation amongst these offenders.

12.5.2 Greater commitment needs to be made by the courts to consideration of the individual circumstances of each offender, and in this instance, consideration should be given by the courts to non-custodial sentences for disabled offenders. The Department should also use the system of ongoing assessment to consider referrals, depending on the nature of the crime, to court for conversion of sentences of disabled offenders to correctional supervision and community service. To ensure that offenders with disabilities are treated in an appropriate manner, it will be important that members of staff are well educated and trained on the management of disabled offenders.

## **12.6 Aged offenders**

12.6.1 The percentage of aged offenders is likely to increase. This is directly related to the increase in the proportion of those incarcerated for long-term sentences. This higher percentage will be added to those who are sentenced when already senior citizens. The Department must ensure that correctional centres are equipped to adjust structured day activities to the needs of the elderly. While a percentage of the elderly are sentenced for serious crimes, consideration should also be given to sentence conversion referrals of people once they reach a predetermined advanced age.

12.6.2 Important elements in the case management of Elderly offenders that should be taken into consideration are:

- the provision of recreational activities that are suitable for the elderly;
- facilities that can ease the physical demands on elderly people; and
- the provision of appropriate medical care for elderly people must all be integrated into the case management system.

## **12.7 Offenders with mental illnesses**

12.7.1 It is the ideal that correctional centres should not accommodate mentally-ill offenders and that they should rather be diverted to institutions with the necessary knowledge to deal with them. Sentenced offenders who are thought to be mentally ill must be treated in accordance with the Mental Health Act. It is necessary that the decision to subject an offender to the examination provided for in the Mental Health Act is not made by a Head of Correctional Centre or member of Management alone, but should be done on the basis of a psychiatric recommendation.

12.7.2 Correctional officials in the correctional centre environment must be trained in the recognition of signs of mental illness, and should be under strict orders to report immediately to the Head of the Correctional Centre should an offender appear to be mentally ill. The process of referral of an offender to a psychiatric institution must involve legal representation on behalf of the offender. Any period that an offender spends in a psychiatric institution should automatically be considered as part of the person's sentence.

## **12.8 First offenders**

12.8.1 “First” offenders sentenced for the first time, particularly for less serious crimes, should as far as possible be accommodated separately from repeat offenders as in general they have the best possible opportunities for rehabilitation. This separation should already begin during the period of awaiting-trial and become an integral part of the manner in which the criminal justice system in South Africa treats “first offenders”.

12.8.2 Given the extent of overcrowding and the limitations on resources at the Department’s disposal, the bias in resource and accommodation allocation should be towards first offence correctional clients. Where this first offender is also a young offenders, prioritisation of service delivery, rehabilitation/correction intervention and resource allocation should take place.

## **12.9 Offenders with long sentences or life sentences**

12.9.1 There has been a significant increase in the proportion of South Africans incarcerated who are to serve life and long-term sentences. This poses particular challenges to the Department, as the provision of a structured day of activity and rehabilitation/correction to people over such extended periods of time will drain a lot of resources. Given that this category of offender also tends to be inclined towards aggression, the consequences of inactivity for management of the correctional centre and for the management of the person pose a risk to secure, safe and orderly correctional centre management.

## **12.10 Detained offenders who are foreign nationals**

12.10.1 The objective of the Department is to rehabilitate offenders and to ensure their successful reintegration into their communities. This is not achievable in relation to foreign nationals who are sentenced by South African courts to incarceration in South African correctional centres. Continuity in relation to education and training cannot be achieved when the foreign nationals are to be deported to their homeland once they are released on parole or complete their sentence. The Department will also not be able to adequately understand the causes of crime, the nature of the community of origin, the familial and social environment from which the offender came and to which they will return to be able to achieve a degree of correction and rehabilitation.

12.10.2 It will thus be very difficult, if not impossible for the Department to achieve its core business – rehabilitation and correction in a secure and safe environment – with regard to foreign nationals in South African facilities. It is therefore argued that the Department of Correctional Centres should enter into prisoner exchange treaties with the countries from which most foreign nationals who contravene South African law originate. This would then facilitate the immediate return of such offenders in order to serve their sentences in their homeland and in an environment in which rehabilitation will be possible. Rehabilitation of offenders demands a huge amount of resources. It is therefore not justifiable to use the limited resources to offenders who might not benefit from them. Priority should rather be given to South African nationals who are more than likely to stay in the country.



## CHAPTER THIRTEEN

### APPROPRIATE AND COST-EFFECTIVE FACILITIES

#### 13.1 Introduction

13.1.1 The history of the South African correctional system is embedded in the 241 prisons that house inmates. The Department's correctional facilities consist of a range of facilities built over an extended period of time, with a variety of different purposes in mind, and many are not appropriately designed for the rehabilitation and safe and secure custody focus of the current correctional system. The utilisation of inappropriate existing facilities by departments in the integrated justice system should be explored through the JCPS.

13.1.2 The capital works programme of the correctional system is vast and the task to ensure that government resources are utilised appropriately in the facility planning and building programme of the Department remains a major challenge. The Department's approach to the procurement of correctional facilities must address the enormous cost of procurement and the need for facilities that are structurally rehabilitation-friendly, and provide safe and secure incarceration.

13.1.3 This Chapter focuses on the current policy and legislative framework on the procurement and building of facilities, as well as the Department's long-term view on this.

#### 13.2 A focus on needs-driven facilities

13.2.1 The approach to the core business of the Department outlined in this document indicates the need for a move towards facilities aimed at a needs-driven planning of the accommodation of inmates. This would allow for the allocation of appropriate levels of human, physical and financial resources in accordance with the function of that particular correctional centre, and allow for the possible consideration of preventing key correctional centres or sections of correctional centres from being overcrowded, with a view to the development of centres of excellence. The lessons learnt in these centres of excellence would then inform that roll-out of the core business in other correctional centres. This approach would also provide for alignment of the facilities with activities such as agriculture, technical workshops, academic facilities, and alignment with the Department's admission policy.

13.2.2 It has already been suggested that South Africa requires Holding or Remand Prisons/Detention Facilities that are secure to accommodate awaiting-trial detainees and with humane treatment and provide for the service delivery required for awaiting-trial detainees who are innocent until proven guilty. The issue of which department is responsible for these holding or remand correctional facilities is subject to policy decision.

13.2.3 The correctional facilities of the Department should be clearly designed as Correctional Development Centres that in their design combine facilities for rehabilitation, adequate security, and conditions consistent with human dignity. The prototype design should be sufficiently flexible to allow for sections of the correctional centre to accommodate a particular category of offender, with the necessary specific features that they require included in the building of the facility.

13.2.4 The Department's facilities planning and building programme must be needs-driven and informed by an integrated justice system analysis of:

- trends in arrest;
- conviction and sentencing patterns;
- the nature of South African crime patterns;
- trends in inmate security classification;
- trends in the offender population; and
- changes in South African demography.

13.2.5 Proactive projections on this basis should drive facilities planning in the Department of Correctional Services and in the other IJS departments. An ongoing mechanism is necessary to avoid a reactive approach to facility planning, resulting in periodic overcrowding.

13.2.6 In the short term, the Department must ensure the alignment of the facility capacities with the actual and projected offender population per region. This approach will enable the Department to contribute to reducing overcrowding, particularly as it relates to sentenced offenders.

### **13.3 Cost-effective and needs-driven design, procurement and building of correctional facilities**

13.3.1 The Department's view is that all future design, procurement and building of correctional facilities in South Africa, should exclusively be based on the South African realities. This demands an approach to decision-making premised on continuous and extensive appraisal of societal factors such as levels of overcrowding, offender profiles, crime trends, etc.

13.3.2 Policy on the financing models for Correctional Services infrastructure development must be developed to align feasibility studies and public sector comparators in line with National Treasury guidelines. It is argued that the correctional system in democratic South Africa is not sufficiently consolidated and codified to ensure that there is no possibility for divergent approaches to be learnt and for a genuine partnership to be developed.

13.3.3 The development of a cost-effective prototype based on economical and practical design solutions, should take into account our unique situation as a developing country. This will ensure a balance between value for money and rehabilitation-friendly facilities and will expedite capitalization and delivery. "The new facilities" facilities for medium and low-risk offender categories, which constitute the majority of the country's offender population, should be strategically situated around the country in the areas most affected by overcrowding and closest to the communities of origin of the majority of offenders.

### **13.4 Policy framework on Public-Private Partnership (PPP) correctional facilities**

13.4.1 The approach of building public-private partnership (PPP) correctional centres has been introduced to the South African correctional system, and subsequent policy development by the National Treasury on PPP's has relevance to future correctional facility procurement.

13.4.2 While it is early days to assess the rehabilitative impact of the PPP correctional centres, it is imperative that the practice in the PPP correctional facilities be constantly aligned with the spirit of this White Paper on Corrections, and the strategic direction of the DCS. The PPP correctional facilities are contractually managed by private companies on behalf of the Department of Correctional Services,

and revert back to the Department. The desired outcome is that they are partners in a common desire to achieve the common objective of rehabilitation.

13.4.3 Existing policy provides that the Minister may, subject to any law governing the award of contracts by the State, with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any correctional centre or part of a correctional centre established or to be established in terms of section 5. The contract period in respect of the operation of the current prisons may not be for more than 25 years.

13.4.4 In such an instance, the Contractor must be bound to contribute to the purpose of the correctional system, namely maintaining and protecting a just, peaceful and safe society by:

- enforcing the sentences of the courts in the manner prescribed by the Correctional Services Act;
- detaining all offenders in safe custody whilst ensuring their human dignity; and
- promoting the social responsibility and the human development of all offenders.

13.4.5 The Contractor must be bound to apply to the Essential Services Committee established under section 70 of the Labour Relations Act, to have the whole of the service to be provided under the contract declared as an essential service. The Contractor may make correctional centre rules only with the prior permission of the Commissioner. Those rules should be aligned with, and not be in contradiction to, the objectives of the White paper and Departmental policy and regulations.

13.4.6 The Contractor may not:

- take disciplinary action against offenders or impose penalties on them;
- be involved in the determination or the computation of sentences;
- determine at which correctional facility an offender should be detained;
- decide upon the placement or release of an offender;
- be involved in the implementation of community corrections;
- grant temporary leave; and
- subcontract, cede, assign or delegate any of the functions under the contract unless authorised to do so under the contract.

## CHAPTER FOURTEEN

### EXTERNAL PARTNERSHIPS

#### 14.1 Introduction

14.1.1 No correctional system can achieve its objective if it does not have a range of healthy external partnerships. The Department of Correctional Services has identified the following as key external relationships:

- the family;
- the community;
- other government departments;
- the private sector;
- the JCPS Cluster and the Social Sector Cluster;
- the non-governmental, faith-based and community-based organisations;
- the Legislature at all three levels; and
- the international community.

14.1.2 South Africa's exposure to international good practices since 1994 led to a fundamental paradigm shift in its outlook on corrections. The White Paper will aim to strike the balance between aligning the Department with international trends in correctional services and ensuring that the reality of the South Africa correctional system and South African society is taken into account. The analysis of international trends, particularly in relation to the African continent, should inform the policy framework of the Department's international relations work.

14.1.3 The objective of the White Paper is to balance the Department's commitment to international corrections trends with the realities of the South African correctional system and South African society at large. The analysis of international trends, particularly in relation to the African Continent, should inform the policy framework of the Department's international relations work.

#### SECTION 14A: PARTNERSHIP WITH CIVIL SOCIETY

##### 14A.1 Towards a partnership with the community

14A.1.1 The relationships between DCS and the community, community-based organisations, NGOs and faith-based organisations are inherent to the successful achievement of the rehabilitation and reintegration of offenders. The partnership approach that is required in this regard must be managed through formal arrangements and the ongoing monitoring and evaluation of such projects and work by such organisations in order to ensure quality service delivery to offenders. At the same time, the Department should be involved in partnerships in the community, such as in social crime prevention, moral regeneration and poverty alleviation programmes.

14A.1.2 The role that offenders can play in building these relationships in the community should be enhanced in the manner in which the Department works. The involvement of the community in the correctional system, through representation on Community Supervision and Parole Boards, and in volunteer work in correctional centres and joint projects must be reinforced and yet be guided by the approach to rehabilitation that the Department will have enshrined in the White Paper.

## **14A.2 Establishing a policy framework for community participation**

14A.2.1 The rehabilitation of offenders can only be truly successful and their reintegration into the society meaningful, if all stakeholders are allowed to participate in the process. To this effect the participation of the community in strengthening and enhancing rehabilitation is crucial. The needs of the Department shall have to be marketed to the community so as to enable it to know what expertise and services it can provide. An environment that encourages and promotes the participation of community-based service providers must be created. Entry into the Department for purposes of rendering services must be regulated yet made easy. Structures that facilitate ease of access into the Department need to be put in place.

14A.2.2 The Department needs to be involved in community initiatives and projects. This can be done through the utilisation of offenders and visible involvement of Departmental personnel in community projects. The forging of closer links and cooperation between the Department, community and other state departments is crucial for the fight against crime, reparation of relationships and the rehabilitation of offenders. In this regard, it will be very important for the Department to develop the necessary policy and practice framework in relation to community participation.

## **14A.3 Objectives of the Community Participation Policy**

14A.3.1 The Department requires the Community Participation policy to achieve particular objectives. These objectives are to:

- create an environment that would allow for the effective involvement of the community in the rehabilitation of the offenders;
- create opportunities for establishment and maintenance of partnerships between the Department and the community;
- regulate the influx of community-based service providers into the Department wanting to render programmes and services to offenders to assist with rehabilitation efforts;
- formalise collaborative partnerships and networking relationships with the community;
- integrate and coordinate services rendered by community-based service providers to offenders;
- ensure effective reintegration of offenders into the community;
- involve ex-offenders in rehabilitation efforts; and
- market the Department, its needs and services to the community.

## **14A.4 The Principles of the Community Participation Policy**

14A.4.1 The Community Participation Policy is guided by the following principles:

- Offenders shall have the freedom to participate voluntarily in processes and services offered by the community-based service providers.
- An offender may not be forced to participate in processes or be deprived his/ her rights and privileges because of non-participation;
- This principle shall be subject to stipulations of the court, which may require such participation to be compulsory.

## **14A.5 The Department's approach to community-based service providers**

14A.5.1 The Department of Correctional Services shall provide access of community-based service providers into its institutions for the rendering of programmes and services to offenders aimed to foster rehabilitation. Such programmes and services shall be:

- non-discriminatory and sensitive to culture, religion, gender and linguistic diversity;
- responsive to the need of offenders and other intended recipients;
- be aimed at strengthening and enhancing the rehabilitation efforts of the Department.

## **14A.6 Principles with regard to community participation and community programmes**

14A.6.1 Principles relating to community participation and community programmes, are that:

- community participation and programmes shall promote the restoration of relationships, and bring about healing and forgiveness;
- the Department shall actively participate in community initiatives and projects;
- all the community projects that are funded by the Department shall be managed according to departmental financial procedures and regulations;
- joint management and sharing of resources shall be encouraged;
- agreements between the Department and the community shall be formalized;
- all applications for community participation shall be subjected to a screening process;
- applications where programmes and services rendered do not promote the core business of the Department, shall not be approved;
- programmes rendered to offenders or staff by, and agreements entered into with community-based service providers, shall be evaluated and reviewed from time to time to ensure continuous adherence to, and promotion of, the Department's core business;
- all community participation programmes and services shall be coordinated and managed at area management level;
- any deviation from agreements, as well as policies and procedures of the Department, shall result in the termination of services of a community-based service provider;
- community participation shall aim to enhance effective reintegration of offenders into society as law-abiding and productive citizens;
- the needs of the Department on programmes and services to enhance rehabilitation of offenders shall be marketed to the community; and
- the Department shall enter into collaborative partnership with the community, and expertise and resources of both parties shall be shared.

## **14A.7 Measuring the Effectiveness of the Community Participation Policy**

14A.7.1 A monitoring and evaluation tool will be required to measure the following with regard to the Community Participation Policy:

- efficiency: effort to achieve the objectives of this policy in terms of resources, time, and cost.
- effectiveness: the extent to which the objectives of this policy are met.
- adequacy: the extent to which the achievement of the objectives addresses the problem statement / need identified.
- responsiveness: the extent to which the policy addresses the needs of the offenders, community and Department.
- Appropriateness: the relevancy of the policy in achieving the needs identified.

## **14A.8 Promoting societal responsibility for corrections: The community consultative forum**

14A.8.1 Over and above the formalisation of partnerships with the community, the Department should strive to sustain a regular consultative forum of organisations committed to penal advocacy. This forum should also strive to ensure that the societal responsibility for corrections becomes inherent to the fabric of South African society.

## **SECTION 14B: PARTNERSHIPS ON THE AFRICAN CONTINENT**

### **14B.1 Aligning international corrections objectives with South African foreign policy**

14B.1.1 South African foreign policy is broadly guided by particular principles. These principles are:

- social development;
- economic development;
- good governance and stability;
- inter-state security, and
- bilateral and multi-lateral co-operation.

### **14B.2 Working together for more effective corrections on the African continent**

14B.2.1 The period since 1994 saw a significant growth in African multi-lateral forums. Regional economic forums have developed substructures to accommodate most fields of government, culminated with the recent Summit of the African Union. In this regard, the DCS is firmly committed to ensure that its policy on African multi-lateral cooperation will transpire within this framework.

14B.2.2 The DCS will also ensure that issues relating to the criminal justice system and corrections, as well as cooperation in this regard, are mainstreamed within the SADC and AU processes. The objective with this is to facilitate the following:

- dealing with Africa as a unique entity;
- the need for a holistic approach on African correctional matters;
- encouraging uniformity in terms of legislation, organization, development and training;
- promoting professionalism and best practices through scientific research;
- optimizing resources through the sharing of expertise and facilities;
- promoting African Corrections in the international arena; and
- carrying out recommendations of international and African conferences and declarations with the African reality in mind.

14B.2.3 To ensure effective and successful multi-lateral and bilateral inter-governmental relations, there should be appropriate forums at official, Ministerial and Head of State levels, and a clear line of accountability from official level to Ministerial level and from Ministerial level to Head of State level. In this regard, a forum like CESCA is a crucial government-to-government platform on which we could base the development of our strategies. The challenge is to reform this platform to be aligned with the structures of the AU and SADC in order to bring corrections into the mainstream of multi-lateral African politics. In addition, South African Government has located itself as a committed partner within SADC, through which we seek to strengthen our alliances with our Southern African neighbours. South Africa also plays a role in strengthening the African Union, and is the newly elected Chair since July 2002.

14B.2.4 There are a number of declarations relating to correctional and prison services that have been developed over the past decade in African gatherings. However, none of these has any formal status

in terms of African multi-lateral forums. While the Department of Correctional Services has studied these, and has aligned the international relations policy in terms of these declarations, there is no commitment in terms of the region and continent to formalize these declarations to give it a binding status within Africa. Declarations adopted by the Central, Eastern and Southern African correctional and prisons services, were the:

- Kampala Declaration;
- Arusha Declaration;
- African Human Rights Charter; and
- Cadoma declaration.

14B.2.5 The South African Government is committed to close partnerships with organs of civil society – be it community-based organizations, national or international NGOs, tertiary educational institutions or private enterprise. South Africa therefore, believes that there is a role for Government institutions in forums that bring civil society and government together. This should be of such a nature that African correctional service interests are best represented within the international NGO fold.

14B.2.6 As South Africa is a member of the Commonwealth, the Department aligns itself with treaties and conventions with reference to corrections e.g. the Prisoner Transfer Agreement Order.

## **SECTION 14C: INTERNATIONAL PARTNERSHIPS**

### **14C.1 South African Corrections and International Cooperation**

14C.1.1 The Department is committed to the maintaining of universally accepted standard and norms with regard to the treatment of offenders and to achieving constructive relations and cooperation with the international penology community. This, the Department wants to achieve through an active partnership with the United Nations in particular. The United Nations makes an appeal to member countries to become more involved by consolidating cooperation and coordination within the framework of crime prevention and criminal justice. Through this, integrated regional policy aspects, programmes and mechanisms can be meaningfully coordinated and maintained.

14C.1.2 In the light of this, it is of immense importance that the Department should include the following UN standards and norms, instruments and resolutions as part of its foreign policy for implementation within the Department:

- United Nations Standard Minimum Rules For The Treatment Of Offenders;
- United Nations Standard Minimum Rules For Non-Custodial Measures (The Tokyo Rules);
- Basic Principles For The Treatment Of Offenders;
- United Nations Guidelines For The Prevention Of Juvenile Delinquency (The Riyadh Guidelines);
- United Nations Rules For The Protection Of Juveniles Deprived Of Their Liberty;
- Model Treaty On Extradition;
- Model Treaty On Mutual Assistance;
- Model Treaty On The Transfer Of Supervision Of Offenders Conditionally Sentenced Or Conditionally Released;
- International and Interregional Co-Operation In Correctional Centre Management And Community-Based Sanctions;
- Work, Education, Leisure And Family Visits;
- Drugs;
- Health Care;
- Juveniles;



- International Co-Operation; and
- The Vienna Convention On Consular Relations (Section 36B) Comment/ Proposal.

## CHAPTER FIFTEEN

### GOVERNANCE AND ADMINISTRATION

#### 15.1 Powers and functions of the Executive Authority

15.1.1 The Executive Authority responsible for correctional services in South Africa is appointed by the President in terms of the Constitution of the Republic of South Africa s(91)2. The Executive Authority is responsible in terms of the Constitution for exercising executive authority in relation to correctional services by:

- Implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
- Developing and implementing national policy;
- Co-ordinating the functions of state departments and administrations;
- Preparing and initiating legislation; and
- Performing any other executive function provided for in the Constitution or in national legislation.

15.1.2 The Cabinet Member responsible for correctional services has the following accountability and responsibilities in terms of the Constitution. He/she is responsible for the powers and functions of the executive assigned to him/her by the President. He/she is accountable collectively and individually to Parliament for the exercise of his/her powers and the performance of his/her functions. As a member of the Cabinet, he/she must act in accordance with the Constitution; and provide Parliament with full and regular reports concerning matters under their control.

15.1.3 The Executive Authority is responsible for the direct supervision of the functioning of the Department of Correctional Services.

#### 15.2 Powers and functions of Accounting Officer and Head of Department

15.2.1 the Commissioner of Correctional Services serves as the Head of Department in terms of the Public Service Regulations, as such is the Accounting Officer, and serves under the supervision of the Minister responsible for Correctional Services. The Commissioner as Head of Department is responsible in the main for the management practice within the department. Some of the functions include good governance, general and financial management systems and legal sanctions. While many of these are generic responsibilities within the Public Services, they take on a specific form and relevance in the correctional system.

15.2.2 As Head of Department, the Commissioner of Correctional Services is responsible for:

- Ensuring Good Governance within the Department;
- Ensuring Service Evaluation against clearly defined Service Delivery Indicators;
- Ensuring an Anti-Corruption Strategy based on prevention through tight management and a code of conduct, investigation of serious mal-administration, irregularities and corruption, and system of sanction involving both internal steps as well as referral to outside agencies where appropriate;
- Anti-Fraud Strategy;

- Ensuring compliance with the Public Finance Management Act throughout the Department;
- Ensuring that the Department functions on the basis of a clear Code of Conduct, professional ethics, a clear disciplinary code and procedures.

### **15.3 Accountability to Parliament**

15.3.1 The Department of Correctional Services is accountable to Parliament through the member of Cabinet appointed to be the Minister responsible for Correctional Services. In line with s55(2) of the Constitution of the Republic of South Africa, Act 108 of 1996, the Department as an executive organ of state in the national sphere of government is accountable to the National Assembly, and recognises the National Assembly's constitutional obligation to ensure oversight over the exercise of national executive authority including implementation of legislation and the department as a whole.

### **15.4 Roles and responsibilities of the Judicial Inspectorate**

15.4.1 The correctional system in South Africa should be subject to independent inspection. The Judicial Inspectorate facilitates the inspection of prisons to ensure that offenders' rights are respected and reports on any corrupt or dishonest practices in correctional centres.

15.4.2 Section 85 of the Correctional Services Act, 1998 states that the:

- Judicial Inspectorate of prisons is an independent office under the control of the Inspecting Judge.
- object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of offenders in prisons and on conditions and any corrupt or dishonest practices in prisons.

15.4.3 The Inspecting Judge must have at his/her disposal a number of full-time Inspectors. The main responsibility of these inspectors is to conduct independent inspections at various prisons with emphasis on the treatment of the offenders and the conditions in prisons. Their findings are reported to the Inspecting Judge who is obliged to report to the relevant Minister responsible for Correctional Services.

### **15.5 Policy input from outside the Department**

15.5.1 In line with the approach to rehabilitation as a societal responsibility, and in line also with the approach that the correctional system is an integral part of the integrated justice system, the Minister responsible for Correctional Services should ensure that there is a forum in which expertise from these sectors is brought to bear in the policy and legislation development, and approval processes. The National Council for Correctional Services, which should consist of judges, lawyers, professionals, and a number of eminent citizens, should also serve the function of advising the Minister of Correctional Services from outside of the Departmental environment.