DRAFT WHITE PAPER ON CORRECTIONS IN SOUTH AFRICA

1. Introduction

To a large extent, the very existence of a prison system is a sign of failure: the failure of particular individuals to respect and adhere to the norms and standards required by society; and the failure of society - through its moral, religious, educational, economic and governance institutions - to create a climate in which crime is not regarded as an acceptable or necessary option. In a country such as ours, with a very high incarceration rate by international standards, and with an excessive rate of recidivism, the extent of the failure is abundantly clear.¹

Given that this failure occurs in all societies, the question arises: how do we minimise its harm and ensure that we deal effectively with its consequences? It has often been said, and with good reason, that a nation's standard of civilisation may be gauged by the way in which it treats its prisoners.

In this context it is most encouraging that the Draft White Paper has adopted a holistic, practical and insightful stance in facing up to what it rightly views as 'major challenges'. It would have been all too easy to put forward a reactionary response: build more prisons, toughen up punishments, try to frighten people away from committing crime. That approach has been dominant up to now and it is clearly inadequate. Instead, the Draft White Paper proposes a number of far more pro-active and constructive alternatives. But first, the background.

2. The State of our Prisons

Writing recently in Thisday newspaper², the Deputy Minister of Correctional Services, Cheryl Gillwald, provided the following figures:

¹ In this regard see our Occasional Papers *Stumbling Blocks to Rehabilitation* and *The Restorative Justice Option*, published in May and June 2001 respectively. Copies are available on request from the office.
² Thisday 17th August 2004. A similar article, drawing on the same source - a study by UCT's Prof Dirk van Zyl Smit - appeared in Business Day on 12th August.
our prisons have a capacity of 113 000 inmates, but in fact hold 187 000, an overcrowding factor of 65%

- some prisons house nearly twice the number they were designed for, such as Cape Town's Pollsmoor prison, which has just under 8 000 against an intended occupancy of 4 336
- 54 000 of the total are awaiting trial and thus, technically at least, innocent
- 68% of the total are under the age of 35
- the average length of sentence is nine years
- between 1995 and 2002 the number of prisoners serving 10 years or more grew by 204%
- in the same period the number serving more than 20 years increased by 284%3

Overcrowding in itself is bad enough, making it virtually impossible for prisoners and staff to maintain even basic standards of dignity, but it also goes hand in hand with other negative factors. The Jali Commission of Enquiry has highlighted the levels of corruption in the prison system; HIV/AIDS is spreading at an alarming rate, largely as a result of rampant sexual abuse; and the prison gangs still rule the roost in many jails.

It is all too easy to turn a blind eye to these conditions or, as many people do, to assert that this is what criminals deserve; the harsher the conditions, they say, the more of a deterrent effect there will be. Unfortunately, this argument ignores the evidence - as the figures show, while prison conditions have been steadily worsening over the last few years, the numbers of inmates have grown.4

Such views are also extremely short-sighted. As we have seen, the average prisoner re-enters society after nine years, and the majority are under the age of 35. In rough terms this means that the bulk of our prisoners are released when they are still quite young, with many years ahead of them, quite possibly with dependants, with no social security system to tide them over, and with an even smaller chance of securing regular employment than the average person. In addition, there is little or no support offered to the families of prisoners, during or after their incarceration, which further diminishes the chances of proper domestic and community reintegration. Is the current prison regime doing anything to address this crisis? Not according to Ms Gillwald:

"Current corrections, development and care programmes are not appropriately resourced, primarily as a result of the costs associated with overcrowding. And without rehabilitation there exists a real risk of turning loose on society young people who will have little alternative other than to revert to crime if their capacity to cope with that society has not been significantly improved since they entered prison."

And so the cycle repeats itself: overcrowding prevents meaningful rehabilitation and positive intervention in the prisoners' lives, resulting in un-reformed criminals being returned to society who soon come back to prison and further exacerbate the overcrowding.

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3 This figure is probably influenced by the fact that many of those now receiving life sentences would previously have been executed. Both the 10 year and the 20 year figures also reflect the impact of the minimum sentence legislation passed by Parliament in 1997, which prescribes stiff sentences for a range of serious crimes.

4 In the days of more barbaric punishments there did not seem to be much of a deterrent effect either. It has been remarked that the pickpockets of London welcomed the regular public hangings of their colleagues because the crowds who came to watch provided them with 'easy pickings.'
3. The Draft White Paper

Before commenting specifically on some of the strengths and weaknesses of the paper, it is worth highlighting the underlying philosophy, as set out in paragraph 14 of the executive summary:

i) all South Africans can make a contribution to a just, peaceful and safe South Africa;
ii) correction (of self and others) is inherent in good citizenship;
iii) corrections is a societal responsibility to which all institutions of society should contribute.

These three points are no doubt self-evident, but they bear reiteration. 'Prison ministry' is perhaps a relatively under-developed area of the Church's overall pastoral outreach, and it would be good if the Department's new approach, as discussed below, were to meet with a generous response from clergy and laity alike.

3.1 There is a very welcome emphasis in the draft white paper on restorative justice, the restoration of the relationship between the offender and the victim (section 5A). The Catholic Church has long held that one of the main purposes of punishment must be 'redressing the disorder introduced by the offence'. If nothing is done to heal the damaged relationship then it is questionable what will be achieved by imprisonment, other than simple vengeance.5

3.2 Linked closely to this, the Department plans to extend community service (5A.2.7). Such projects can offer an opportunity to offenders to make a real contribution, either to the community at large or to the victims themselves. And of course, societal institutions are in a position to assist the Department in such initiatives. It is often thought that this is a 'soft option', promoted by people who are too sentimental to be 'tough on crime'. However, greater use of community service sentences has been called for by Judge Johann Kriegler and by the Inspecting Judge of Prisons, Judge Hannes Fagan, among others, neither of whom could remotely be described as naive or inexperienced in the imposition of punishment.

3.3 The provision of opportunities for productive work is of the utmost importance (4.4.8 and 10B.3). There can be no doubt that the boredom and monotony which so many offenders experience contributes to violence, gangsterism and other dehumanising tendencies. At the same time, valuable opportunities for the acquisition of skills and the development of self-esteem are lost. There is potentially a positive role here for the private sector: rather than seeing prison workshops, farms and other productive facilities as unfair competition, private companies could enter into mutually beneficial partnerships, possibly extending to the employment of offenders upon their release. In any event, it should be clear that anything that can reduce the rate of recidivism and improve the nation's skills base will be good for the economy as a whole, and will be of direct benefit to the private sector.

3.4 Very considerable thought has obviously been given to the best way of dealing with special categories of offenders (Chapter 12). There is a commitment to the principle that children, youth and first offenders should be incarcerated separately from older and repeat offenders. Apart from the fact that it is to society's benefit to prevent young people from being influenced by hardened

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5 Among the foremost proponents of restorative justice are Catholic theologians and activists, including Fr Jim Consedine of New Zealand, who has visited South Africa on various occasions and held discussions with the Portfolio Committee on Correctional Services. This is an important example of the type of contribution the Church can make in terms of 3(iii) above.
criminals, it is also a matter of their own dignity and safety. Likewise, it is intended to institute appropriate steps to deal with women offenders and those with physical and mental disabilities, although it is not yet clear what these will be. And, inevitably, optimal treatment for these categories is to a large extent contingent upon there being sufficient funds available, a problem which shows little sign of easing.

3.5 Chapter 14 focuses on external partnerships. Included among the sectors with which the Department intends working are NGOs, faith-based groups and community-based organisations. The general idea, which will no doubt be concretised in the final version of the white paper, is to involve such groups, and the community in general, both during the time of a prisoner's incarceration and afterwards, as he or she is re-integrated into society. There would obviously be plentiful opportunity for church groups to become involved in such efforts.

4. Areas of Concern

4.1 As already mentioned, many of the innovations proposed in the draft white paper have budgetary implications. Whether it is a case of providing more facilities, or recruiting more and better qualified staff, or enhancing the education and skills-training capacity of the Department, the costs are likely to be significant. Unfortunately, the paper offers little indication of how these costs will be met; neither does it indicate to what extent a commitment, even in principle, has been made by government to provide the necessary funding.

4.2 With certain exceptions, the Department has to implement the sentences imposed by the courts. Thus, if the courts are reluctant to order community service in appropriate cases, or if they continue to set bail amounts that are unaffordable for significant numbers of accused persons, many of the problems - notably overcrowding - identified in the paper will persist. To this one may add the view recently expressed by the Inspecting Judge of Prisons that the courts are too inclined to impose very long sentences. All of this raises the question of how the Department intends to ensure that the courts share its vision, without, of course, attempting to interfere in the latter's independence.

4.3 A similar concern arises as far as awaiting-trial offenders are concerned. Unless ways can be found to speed up dramatically the processing of alleged offenders - from time of arrest to imposition of sentence - serious overcrowding will continue to plague the system (not to mention the serious violation of the alleged offender's rights that this represents). In this respect the cooperation of the Departments of Justice and of Safety and Security will be vital and, although this is alluded to in section 6.2, there is no indication that these departments have committed themselves to Correctional Services' vision.

4.4 As the Draft White Paper points out, 'gangs have been a feature of the South African correctional system over the past century.' While, on the one hand, it is encouraging that this pernicious reality is being more readily acknowledged by the Department, it is far from clear what it intends to do about the problem, other than a statement in section 11B.2.2 that an 'anti-prison gang strategy' is to be adopted by management of the Department. The sad truth is that, unless the power and influence of the prison gangs is effectively combated, as a matter of priority, many of the reforms and initiatives mooted in the paper will not get off the ground.
5. Conclusion

As we have already noted, the draft white paper provides an excellent example of pro-active and constructive policy development. We welcome the way in which challenges are identified and analysed, and in which well thought-out solutions are proposed to meet these challenges. Of course, as the paper itself points out, what it proposes will take many years to carry out; nevertheless, the Department can be congratulated on having made a positive start. As the process unfolds the precise ways in which the Church and other civil-society organisations can make their contributions will become clearer; the urgency and necessity of doing so is already clear.

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