A COMPARISON OF CORRECTIONS' MANAGEMENT FROM A SCANDINAVIAN AND AN AFRICAN PERSPECTIVE WITH THE EMPHASIS ON RELEASE POLICIES

Willem FM Luyt[1]

ABSTRACT

In recent South African correctional history the release of inmates has become the topic of much debate. The researcher investigated the phenomenon in a number of different countries. Release practices in Scandinavia were investigated, with the emphasis on Denmark, where reintegration of inmates back into society after release has proven to be successful. In addition, noteworthy release practices in Africa were also investigated. Included in the discussion is the extra-mural labour practice from Botswana and how the perpetrators of genocide are dealt with in Rwanda. The research is rounded off with discussions about the release of inmates in South Africa.

INTRODUCTION

In recent South African correctional history the release of inmates has become the topic of debate. The Crime and Justice Hub (Institute for Security Studies, 2011:1) reported that during the 2011/12 budget deliberations of the Department of Correctional Services overcrowding was discussed. It was reported that "continued overcrowding resulted in inhumane detention conditions, and this should become a focus area, given that the DCS had major constraints preventing proper rehabilitation of inmates, and the budget was not aligned to it" (Institute for Security Studies, 2011:1). In addition, Majuzi (2009:59) wrote that: "The release on medical parole of a prominent and influential South African businessman, Mr Schabir Shaik, who served less than 3 years of his 15-year prison term, put the issue of medical parole under the spotlight." In addition, Du Plessis (2010:1) reported that "About 60% of prisoners released on medical parole go on to make a full recovery, according to Department figures. Under debate is whether seriously ill prisoners who recover from their illnesses should be forced to return to prison or not."

In addressing release concerns, the government introduced new legislation via the Correctional Services Act 111 of 1998 which provided, *inter alia*, for redesigned release imperatives. The legislation created the impression (and indeed practices) of discrimination, since persons who were sentenced after October 2004 were subjected to different rules than those sentenced before that date. Chapter VII of the Correctional Services Act 111 of 1998 embedded the new release policy (Republic of South Africa, 1998:60).

It took six years to implement the 1998 legislation (promulgated in November 1998). Persons who were sentenced after the enactment of the 1998 legislation, but before October 2004 had to be released in terms of legislation described in the Correctional Services Act 8 of 1959 (Republic of South Africa, 1990:73). The old release policy was also applicable to those who were sentenced before November 1998. Release in terms of the Correctional Services Act 8 of 1959 is more favourable than that of the 1998 legislation, due to the fact that offenders would qualify earlier in their sentences for consideration of parole.

Medical parole is regulated in terms of Section 79 of the Correctional Services Act 111 of 1998 (Republic of South Africa, 2008:46). Medical parole is granted when a person is "in the final

[1] Professor, Department of Penology, School of Criminal Justice, College of Law, University of South Africa. Email: WFMLuyt@unisa.ac.za

phase of a terminal disease or condition to die a consolatory and dignified death." To qualify for medical parole, one has to be terminally ill and release should be recommended by more than one medical practitioner/specialist physician. The objective of medical parole is to allow for a dignified and consolatory death. The case of the medical parole release of Shabir Shaik therefore brought medical parole under scrutiny by focusing public attention on this aspect of release from incarceration.

South Africa is experiencing a rise in the inmate prison population, particularly the long-term category. Overpopulation in correctional centres is a general concern. Van Zyl (2009:16) reported that overcrowded conditions in correctional centres continue to impact negatively on humane detention and proper rehabilitation and reintegration. Although overpopulation is managed continually, the population tendency remains upward, only to be brought down by special measures like amnesties. These amnesties have little influence on the long-term population, as they do not qualify for release under amnesty requirements.

Van Zyl (2010:14-15) states that the number of long sentences has increased dramatically. The average number of inmates serving life imprisonment increased from 1 436 (2000) to 9 651 (2010). This is an increase of 572%. Sentences longer than ten years increased by 128%, from 23 702 to 53 944. It can be speculated what affect such long sentences will have in the future on the inmate population, rehabilitation and conditions prevailing in correctional centres. Long-term sentences make release from incarceration more difficult.

Although Van Zyl (2010:16) stated that progress has been made in reducing the inmate population during the last century, South Africa maintains one of the highest per capita inmate populations in the world (3.5 per 1 000/general population). Statistical evidence of the increased sentence length suggests that it will impact negatively on the number of inmates in custody and on the costs of maintaining the correctional system.

Against this background, incarceration and release was investigated from a wider perspective. The aim of the research was to obtain insight into international practices that may assist South Africa to manage their inmate population through more effective release practices. Release practices in Scandinavia, with a specific focus on Denmark, and the correctional systems of Botswana and Rwanda were investigated in search of unique best-practices that could possibly be implemented in South Africa. All of the above countries, with the exception of Rwanda, were visited during the investigation. However, during October 2010 the researcher was able to interview Rwandan officials in Johannesburg. Although it was the intention to include Namibia, findings indicated that the Namibian system is still strongly modelled on the South African system from which it emanated and was therefore excluded.

SCANDINAVIAN AND SOUTH AFRICAN OVERVIEW OF SENTENCES AND VARIOUS FORMS OF RELEASE

Incarceration is more frequent in Denmark and Norway than in Sweden and Finland, while sentences are longer in Sweden and Finland (Von Hover, nd:290). Despite the differences in Scandinavia, their approaches result in prison populations of a similar size (both per capita and as a percentage). Prison overcrowding is not problematic in Scandinavia, although it can occur in some institutions (Von Hover, nd:290).

Incarceration in Scandinavia starts with the end in mind, namely reintegration of offenders. In Sweden, according to the Prison Treatment Act of 1974, the primary goal of incarceration is to promote adjustment to the community and to counteract the detrimental effects of incarceration (Von Hover, undated:297). A sentencing philosophy called "just deserts" is applied (Center for Problem-oriented Policing, 2011:1). The main proposition of this philosophy is that punishment should be proportional to offences, and not based on extra-legal factors. All sentencing is done with the ultimate liberty and reintegration of offenders in mind.

Sentencing practices influencing Scandinavian correctional systems overlap in many respects. Scandinavian countries are similar concerning inmate release mechanisms and practices. The release process starts when sentences commence. Sentences are served in circumstances that are least restrictive on liberty.

For this study, the practices prevalent in Denmark form the core of the ensuing discussions. The primary reason for this is, that the researcher has experienced it first-hand during a research visit. Approaches to sentencing are the same in Scandinavia (Von Hover, undated:289). The following sentences occur in general in Scandinavian criminal justice systems.

Community sentences

Community sentences were introduced in March 2002 and replaced orders of community service. Under community sentences a fixed number of hours have to be served either by:

- unpaid work;
- participation in programmes; or
- activities aimed at preventing reoffending (Kristoffersen, 2008:7).

Community sentences are alternatives to imprisonment to promote liberty to the maximum. Not only do community sentences allow for less incarceration, but it also contributes to cost-effectiveness, while offenders have access to rehabilitation programmes that are not regularly available in prison. The following are different forms of community sentences.

Community service

Community service is aimed at replacing incarceration. The offender performs unpaid work for a fixed period. The work is usually performed with the offender's consent at non-profit organisations. In Denmark, community service may be a condition attached to suspended sentences or early release. The offender is under supervision during the probation service (Kristoffersen, 2008:7).

The researcher visited a church where community service (organised and supervised by the Danish Probation Service) was performed. This service is independent from the prison service, avoiding issues of stigmatisation and institutionalisation. While work is performed, the probationer is under direct supervision of the church, but a probation officer visits and monitors at any time. In this case, the probation service was a condition for early release. Should these conditions not be met, re-incarceration remains as a last resort.

Conditional release with supervision

This form of release refers to those who have served a prison sentence and according to certain rules are released after a major part of the sentence has expired. Those under probation service

have been conditionally released and have a supervisor. Institution substance abuse treatment may be a condition (Kristoffersen, 2008:8).

Conditional release with supervision can be compared to parole in South Africa, but supervision is done by external probation officers (Probation Services in Denmark is a separate Department from Prisons). In South Africa all parole officials are also correctional officials, i.e. employed directly by the Department. In the Scandinavian model a different group of people manages probationers. The South African approach is to detain offenders for as long as possible, while in Scandinavia release is granted as soon as possible.

Conditional sentence with supervision

Conditional sentence with supervision refers to a conditional prison sentence, in which case the offender will be under probationary supervision for a specified period. The offender must abide by the conditions of the probation, one of which is the requirement of regular meetings or interviews with supervisors are required. During probation, the sentence can be changed to imprisonment if new offences are committed or conditions breached. Conditions of treatment (e.g. substance dependency) may apply. In Finland this condition concerns only juveniles between the ages of 15 and 21 years old when the offence was committed (Kristoffersen, 2008:8).

This sentence can be compared to a sentence of community corrections in South Africa. It also entails in part a suspended sentence. In South Africa a suspended sentence is imposed by the Judge but not required to be served, unless the defendant fails to satisfy specific conditions of the Court's sentencing order (Merritt, 2009:1). A common condition is that offenders do not commit crime within a set period. It is therefore similar to a sentence to community corrections, probation or a deferred adjudication with the addition of a suspended sentence.

Supervision by means of electronic monitoring

This order implies serving a sentence of a maximum of three months outside prison (the target group was widened in Sweden to include incarceration of up to six months). Such sentenced offenders cannot leave their place of residence, except at specified times and for specified reasons. Electronic equipment is used to check on breaches of restrictions. Sweden was the first Nordic country that made use of such electronic monitoring of released persons outside of prison. Since October 2001, and after serving four months prior to the conditional release, it has been applied as a "back door" order for Swedish inmates incarcerated for at least two years (Kristoffersen, 2008:13).

Denmark introduced electronic monitoring in 2005 for those incarcerated for a maximum of three months. The initial target group was persons convicted of drunk driving and driving without a license. Since October 2006 the order included offenders younger than 25 years of age with an unconditional sentence of up to three months. The minimum requirements are having a place of residence, consent from cohabitants and employment (Kristoffersen, 2008:13).

South Africa investigated electronic monitoring during a pilot project in Pretoria in the late 1990s. It was never fully implemented. The Commissioner of the South African Correctional Services argued in 2008 that “it had then been decided to postpone electronic monitoring since the technology could not reach all the areas” (Department of Correctional Services, 2008:1). The latest project in this regard was the electronic tracking of incarcerated inmates. Although it was

mentioned before Parliament that electronic monitoring is a future option, it was stated that the lack of finances is the biggest obstacle to its implementation (Department of Correctional Services, 2008:1).

Preventative detention

Preventative detention refers to similar orders in all Scandinavian countries, meaning that offenders are considered dangerous and confinement is necessary. In Denmark it implies imprisonment for an indefinite period for those who repeatedly commit serious crimes and who are a danger to others. Courts make the decision regarding the release of such incarcerated offenders (Kristoffersen, 2008:10).

In South Africa, this sentence refers to habitual criminals who have been declared a 'dangerous criminal' in terms of section 286A of the South African Criminal Procedure Act. A habitual criminal may be incarcerated for a maximum of 15 years and may only be considered for parole after serving a minimum of seven years of the sentence (Republic of South Africa, 1998:60). In South Africa the courts must also decide about release (Republic of South Africa, 1998:60 & 64).

In both Scandinavia and South Africa dangerous crimes like murder, rape and robbery are treated circumspectly regarding release. Emphasis is placed on preventative incarceration and liberty (early release) is less important. Even though Scandinavia focuses on liberty and release inmates at the earliest possible opportunity, they value security considering dangerous inmates. Therefore, early release for dangerous offences is more difficult.

Life-sentenced prisoners

A life-sentenced prisoner is self-explanatory. In Sweden, life sentences usually amount to prison terms of 11 to 15 years (Green & James, 2004:3). In 2006, in Finland life imprisonment was abolished altogether for repeat offenders (in serious crime like rape and armed robbery) and was replaced with determinate sentences up to 15 years of which at least five-sixths has to be served. Life without parole (for murder) was replaced with life imprisonment with the possibility of parole after 12 years. In Finland and Sweden the sentence is considered served if the person is pardoned. In Denmark, conditional release is considered when the inmate has served twelve years. If granted, a probation period of a maximum of five years needs to be served (Kristoffersen, 2008:9).

In South Africa, offenders sentenced to life imprisonment and offenders sentenced in terms of section 286B of the Criminal Procedure Act 51 of 1977, who have been declared as dangerous criminals, are referred to the *court a quo* for a decision. Offenders sentenced prior to the implementation of the new Act have to be referred to the Minister (in terms of section 136 of the Correctional Services Act 111 of 1998) (Department of Correctional Services, 2005a:29). This approach has already caused increased case loads at courts that may cause delays in release decisions.

Mentally-ill inmates

Persons, who at the time of the crime were mentally incapacitated, are not liable for punishment according to the Danish penal code. Courts may place them under supervision by probation services (Kristoffersen, 2008:12). In South Africa courts establish mental capability through psychological analysis. Some categories of mentally challenged inmates are incarcerated. Where

mentally ill inmates are transferred to psychiatric hospitals, they become the responsibility of the Department of Health to be dealt with according to the Mental Health Care Act (2002). Should mental health improve, they may be transferred to correctional centres (Luyt, 2005a:9-11). As correctional centres do generally not have the capacity to deal with these cases effectively, the approach in both countries is laudable.

OVERVIEW OF THE DANISH PRISON AND PROBATION SYSTEM

The Danish approach to incarceration is aligned to those of other Scandinavian countries. This discussion will focus on Danish practices, but it is sometimes necessary to provide the broader Scandinavian perspective.

The Danish Prison and Probation Service resorts under the Ministry of Justice. The Department of Prisons and Probation consists of 13 state and 37 local prisons, 23 local probation districts, eight hostels and a staff training centre. It is the responsibility of the Director-General of Prisons and Probation to enforce all penal sanctions and to ensure remand in custody for alleged offenders. The age of criminal responsibility is set in the legislation at 15 years old (Langsted, Garde, & Greve, 1998:20).

The main objective of the Danish Prison and Probation Service is to reduce criminality. The Danish Prison and Probation Service enforces punishments imposed by courts, including prison sentences, suspended sentences, probation orders and community service orders. In addition, remand orders, pre-sentence reports and deprivation of liberty under the Aliens Act are also included. Supervision of mentally ill offenders convicted under sections 68 and 69 of the Criminal Code completes the list of responsibilities (Department of Prison and Probation, 2002).

Individual correctional and probation institutions report directly to the Department of Prisons and Probation. There are no regional structures. The treatment philosophy contained in the Criminal Code of 1930 was to make the **sanction fit the offender** (Langsted, Garde, & Greve, 1998:202), something which is in stark contrast to South Africa where all offenders are forced into certain pockets of sentencing. One example is the minimum sentencing legislation in South Africa, where the type of offence is much more important than the circumstances surrounding the individual. According to Kristoffersen (2008:14) in 2006 Scandinavian courts instituted 35 368 individual prison sentences, 14 % more than were passed in 2002. Denmark experienced a large increase in 2005 because the country dealt with a waiting list of more than 2 000 sentences that year (offenders were sentenced to incarceration, but had to wait for space in prison before they could serve their sentence). In 2006 there was a 4% reduction in prison admissions in Denmark.

New entries into probation are rising in Scandinavia. There were 41 681 entries in 2006, which is 19 % more than occurred in 2002. The increase in Denmark was 25 % since 2002. In 2006 there were 1 088 more new entries to probation in Denmark compared to 2005. The introduction of electronic monitoring was the main contributor to the rise in 2006. It was found that this trend continued up to 2009 (Kristoffersen, 2008:15; Warner, 2009:7).

The average number of inmates per capita of the general population decreased in Denmark and Finland for the period 2005/2006, whereas the situation in Iceland and Sweden remained stable (Kristoffersen, 2008:17). By 2008 the average number decreased even more. In 2009 Warner

(2009:8) stated that the rate of incarceration in Denmark was lower than 20 years before. It remains one of the lowest in Europe.

The table below illustrates the number of inmates sentenced to imprisonment or probation in the relevant systems. A total of 47 997 offenders served community service orders (19.4/1 000 of the general population). Around 61% of offenders were subjected to probation orders, while around 39% served prison sentences. The proportion of people serving probation orders compared to those serving imprisonment is high in Denmark (Kristoffersen, 2008:19).

Table 1: Average number of inmates (called clients) in the Scandinavian correctional system (2006)

	Denmark	Finland	Iceland	Norway	Sweden	Total
Probation	8 839	4 593	308	2 352	13 346	29 438
Prison	4 140	3 778	145	3 300	7 196	18 559
Total	12 979	8 371	453	5 652	20 542	47 997

New annual entries into the Danish correctional system are illustrated below.

Table 2: New entries into the Danish correctional system (2002-2006)

	2002	2003	2004	2005	2006
New entries into prison	8 059	8 830	8 958	11 173	10 689
New entries into the probation service	9 223	9 856	10 311	10 410	11 498

From the above table one can deduce that incarceration and probation entry rates have had an upward trend since the beginning of the previous decade. However, emphasis on liberty (release) as a point of departure in sentencing approaches remains clear, judged against the fact that more people enter the probation system annually (apart from 2005), compared to entries into the prison system. Figures show that sentencing authorities are in general more inclined to use community sentences.

Danish figures for 2008 are reflected in the tables below (Department of Prison and Probation, 2008:7):

Table 3: Danish inmates and probationers (2008)

Prisoners/100 000 (general population)	65
Capacity in state and local prisons	4 100
Capacity utilization	92%
Sentenced	2 230/day
Remand	1 200/day
Female	155/day
Detained asylum-seekers	50/day
Young offenders under 18 (0.6% of all inmates)	20/day
Ethnic inmates (non-Danish)	22%
Admissions	17 200/year

The rate of incarceration at 72/100 000 of the general population (2010) is at the lower end of international averages. Compared to South Africa (NationMaster.com, 2011:1), Denmark also managed to keep inmate numbers below design capacity. Offenders under 18 form a very small portion of the total inmate population.

Table 4: Danish Probation Service (offices and half-way houses) (2008)

Residents of half-way houses	165/day
Subjected to electronic monitoring (2009)	160/day
Under supervision	7 800/day
Pre-sentence reports	9 400/year
Community service orders	3 600/year

The sentencing philosophy of just deserts and starting with the end in mind plays a significant role in the fact that daily numbers for probation services are much higher than for incarceration. Justice systems can take note of this fact, particularly against the background of the cost of the system as well as avoidance of institutionalisation.

A set of principles for correctional management

Since 1993 Denmark implemented a set of principles for correctional management. These are normalisation, openness, exercise of responsibility, security, least possible intervention and optimum use of resources. The principles were developed to ensure optimal reintegration into society (Department of Prisons and Probation, 2002:21).

Normalisation

This refers to activities that must be arranged to correspond with responsibilities in society. Offenders would, for example, prepare their own food in equipped kitchens inside living units. Inmates obtain all ingredients and work out their own menu, a daily routine for all Danish citizens.

Openness

This to ensure inmates maintain contact with family and the community through visits and leaves (being absent from the prison with permission of authorities for an agreed period). Both the principles of openness and normalization reduce negative effects of the deprivation of liberty. It also facilitates smooth re-entry into the community.

Exercise of responsibility

So that offenders have the opportunity to develop a sense of responsibility to improve their chances of living as law-abiding citizens. It is incorporated at all levels of correctional activities. Inmates are motivated to take decisions and bear the consequences thereof.

Security

In order that sanctions are enforced with due protection of ordinary citizens from crime and protection of inmates from aggression and damaging influences emanating from other inmates, or even staff.

Least possible intervention

Means that no more force or restrictions than necessary to be used. This aspect was observed in open prisons where inmate restriction is minimal. Normal societal functioning was observed

within the prison. One such activity was coed units, where men and women are incarcerated together.

Recidivism

Danish authorities define recidivism as "new offences within a period of two years after release." According to the 2002 Danish statistics, 42% of offenders re-offend within the period. This relapse varies greatly among different groups of offenders, reporting that:

> For offenders sentenced to imprisonment the total recidivism is 44%, whereas it is 38% for offenders who received a suspended sentence without community service. The highest recidivism, 83%, is found in the group sentenced to imprisonment whose application for release on parole was denied, exactly because the risk of a relapse was too big. The lowest percentage of recidivism is found in the two groups of offenders who have either been sentenced to community service or who have been sentenced to imprisonment and are released on parole with supervision upon having served half of their sentences. The recidivism for these two groups is 17% and 32%, respectively. The overall percentage of recidivism has been fairly constant in recent time (Department of Prisons and Probation, 2002:23).

The 2007/08 figures were in line with the 2002 figures.

INSTITUTIONAL VISITS IN DENMARK

The investigation into release from Danish prisons allowed for visits to the head office, the electronic monitoring office (Copenhagen), two correctional facilities (Nyborg State Prison and Horserød State Prison), and a probation centre in Copenhagen. Nyborg is a closed prison that hardly releases inmates. Inmates are normally transferred to other institutions.

Concerning release, one important indicator is the extent to which sentences are served in open prisons. It is generally accepted in Scandinavia that open prisons have less detrimental effects than closed prisons and they facilitate reintegration better. They rely primarily on positive relationships and on the inmate's sense of responsibility, rather than physical restraints and obvious barriers (Warner, 2009:12). Horserød is one of the Danish so-called 'open prisons'.

Horserød State Prison

Horserød is an open prison incarcerating 221 inmates in 10 units. Five units accommodate both men and women. Two drug-free units accommodate 23 inmates. No drug treatment takes place here. Both units prioritise a calm, considerate alcohol- and drugs-free environment. Furthermore, there is a half-open unit where inmates are placed as an alternative to a closed prison.

There is a family unit with 14 places where inmates can bring their children (up to three years). The family unit provides accommodation for parents with children and married couples. Authorities strongly emphasise that the unit is alcohol-, drugs- and other intoxicants-free. Inmates who wish to be admitted to these units declare in writing that they will observe the rules and that they realise that violation of rules will result in transfer to a restricted unit. These units are more homely, compared to other units.

RELEASE FROM DANISH PRISONS

Release philosophy

Denmark's penal code dates back to the 1930s (Roth, 2005:3). Interviews with managerial staff confirmed that Denmark does not regard deterrence and retribution highly as philosophical approaches to punishment. Instead, Denmark has a history of short sentences. Only 15% of sentences of incarceration are longer than a year. Only 2% of prisoners spend more than two years inside the prison (Taylor, 2009:1). More than 50% of all sentences are shorter than three months. Denmark releases inmates early, allows them family visits, concentrates on education/development, provides anger management training and practices other soft approaches, like work release.

Despite these "soft" approaches, the Director-general reported that Denmark has less crime than most European countries (Damon, 2003:1). By January 2009 the incarceration rate stood at 63 per 100 000 of the population (Taylor, 2009:1). Pearce (Taylor, 2009:1) reported that "Denmark does all it can to keep people out of jail, and once there, to prepare them for life back in the community." This means that the "get-tough-on-crime" approaches experienced in the United States and elsewhere need serious reconsideration.

Release on parole

Inmates are released on parole after serving two-thirds of a sentence of three months or longer (in South Africa parole is considered only for inmates who serve sentences of more than two years). Participation in treatment programmes may lead to earlier release after half of the sentence was completed. Offenders serving life sentences are considered for parole after 12 years. The risk of recommitting crime after release is considered as the most important criteria for parole. Should parole be breached through crime, the remainder of the previous sentence is added to the new sentence. Supervision during parole is important. Should conditions be violated it may result in continued imprisonment.

About 3 000 inmates are released annually on parole in Denmark, while 1 100 inmates are refused parole, corresponding to about 30%. Around 7 700 inmates are released every year. Many offenders serve less than three months and are not calculated in parole figures (Department of Prison and Probation, 2008:8).

Forms of release from Danish prisons are discussed below for more clarification.

Release on parole according to section 38(1) in the Criminal Code

At the expiration of two-thirds of the term of imprisonment, the prison service shall deicide whether a prisoner is to be released on parole. Prisoners who serves prison sentences with a total length under 90 days cannot be released on parole.

Release on parole according to section 38(2) in the Criminal Code

Release on parole may, in special circumstances, take place earlier, provided that the prisoner has served at least half the sentence, with a minimum completed period of at least 2 months. If a court has decided that a foreign prisoner should be expelled from the country when released, this prisoner will be released after having served at least 7/12 of his sentence.

Release on parole according to section 40a in the Criminal Code

Release on parole according to Section 40a rewards good behaviour by granting probation to 'worthy prisoners' who have served half their sentences. The target group is offenders with strong societal ties or abilities, or offenders who have actively tried to improve their situation by engaging in activities such as education or treatment programmes.

Leave

Inmates may be granted leave for various purposes. Every third weekend opportunity is given for visits to family or friends, provided that certain time conditions have been met. Leave is also given for special purposes (seriously ill close relatives, funerals, court hearings, medical examinations, etc.). Day release for education or employment purposes is also available.

Leave is conditional that the risk of abuse thereof is deemed **non-existent**. Leave may be subject to additional conditions. Around 55 000 instances of leave are granted each year to individuals. Abuse in the form of re-offending occurs in 0.1% of cases. Abuse in the form of failure to return, late return or return while under the influence of alcohol or drugs occurs in about 2.3% of cases (Department of Prison and Probation, 2008:8). According to Warner (2009:14) an increased emphasis on security, largely driven by penal populism in the political field, has led to a recent reduction in leave in Denmark, but it is still more popular than in most countries.

Work release at Horserød

Scandinavian countries make greater use of open prisons. Here, incarceration costs are about half that of secure prisons, largely because of different staffing levels, i.e. need for lower staff numbers. The real benefits of open prisons come from decreased institutionalisation and better prospects for reintegration (Warner, 2009:41).

Quality of life and normality in Danish prisons are exemplified by the fact that most sentences are mainly served in open prisons. In Horserød State Prison clear human rights-based treatment and social attitudes (normally present in welfare states) counteract the stereotyping of inmates typical of the culture of control.

One excellent practice observed in Denmark is the work release programme. It is managed through day release. Within the work release system employers actively select inmate employees (Warner, 2009:29). This phenomenon was confirmed during an interview with the Governor of the Horserød State Prison, as well as during interviews with inmates and staff. This means that the community becomes actively involved in sentence management. Through work release, sentenced inmates spend on average seven hours a day in work, training, education or therapy outside the prison. They make use of public transport on their way to work in the same way the general public does. Work release is not disruptive to the general institutional management, as single-cell occupation is fully achieved in Denmark (Warner, 2009:43). This would mean that opening and closing of large dormitories would not be necessary and security levels can be kept at the minimum.

RELEASE FROM INCARCERATION IN SOUTH AFRICA

Overview

An integral part of the purpose of the South African correctional system is to enforce sentences of the courts as all sentences remain valid until they have expired. The enforcement of sentences is clearly noticeable, as it is much more difficult to be released, whether early, on parole, medical

parole or even day or work release, in South Africa than is the case in Scandinavian countries. This does not imply that entire sentences of incarceration must be served in correctional centres. Policy provides for early release, allowing that a portion of sentences could be served under supervision in the community. Courts also sentence offenders directly to correctional supervision. Sentences of incarceration may be converted into correctional supervision, under certain provisions.

According to O'Donovan and Redpath (2006:2) minimum sentencing legislation in South Africa has succeeded in raising sentence lengths in the country (for example, 'ordinary' rape to an average of seven to twelve years from the earlier norm of two to three years' incarceration). These longer sentences have resulted in correctional centres already operating beyond their capacity, not because more offenders are being incarcerated, but because fewer people are being incarcerated for longer. Conditions of overcrowding are brutalising and not conducive to preparing inmates for re-entry into society.

O'Donovan and Redpath (2006:12) stated that academics too have been critical of the minimum sentencing provisions, believing them to have undermined judicial discretion, increased inconsistency in sentencing, negatively affected the rights of victims and the rights of children and worsened overcrowding. As a result offenders are no longer judged as individuals, but become objects who would serve a sentence imposed because of a specific approach to a type of offence.

The majority of those who become incarcerated will receive their freedom at some stage. Some punishments are harsh and longer sentences are increasing in South Africa, while it becomes more difficult to be released. Reintegration of offenders into the community is a challenging aspect of the sentencing process. Offenders are especially vulnerable at the outset of the community reintegration process. It is therefore crucial to have strategies in place that would allow for mechanisms to facilitate smooth reintegration from correctional centres and to allow offenders to serve a portion of a sentence in the community. South Africa is a signatory to the United Nations Standard Minimum Rules for the Treatment of Prisoners, which stipulates in Rule 60 (2) (Melander & Alfredsson, 1997:457) that: "Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society."

On the surface one does not realise how much public life and prison life is integrated. Fagan (2006:13) indicated that there is a high turnover rate of people admitted to and released from South African correctional centres. In 2003, during any month, more than 25 000 inmates were released. Nearly the same number of inmates was admitted (Fagan, 2004:18). By the end of 2010 that monthly number still fluctuated above 20 000. Nearly 250 000 innocent citizens revolved through the criminal justice system in 2005 and 2006/7. During the previous two years the total was nearly 425 000. As Luyt (2005:77) stated, these innocent people 'served' an average 'sentence' of three months in a criminal justice system where one is supposed to be innocent until proven guilty.

Sentences for periods longer than five years increased from 49% of the sentenced inmate population in March 1998 to 67% in March 2009 (Van Zyl, 2010:20). This all happened while,

according to Louw (2010:3) the Management and Information System of the Department of Correctional Services clearly shows the extent of the problem of overcrowding as experienced in South Africa. Within the Gauteng province alone, the overcrowding was at 178% for 2009. Although fluctuating, the incarceration trend in South Africa is only going upwards. From time-to-time, the rate is manipulated downwards through special measures, like the amnesties granted in 2005.

As on 31 March 2010, the national average occupation level in correctional services was 139%. This situation existed despite the opening of the new Kimberley Correctional Centre and the renovation of other centres, all of which extensively increased design capacity. South Africa remains the country with the highest incarceration rate within Africa, at 3.5 per 1 000. Of particular concern are the 19 centres which recorded occupation levels of 200% and higher (Van Zyl, 2010:11). Unlike Denmark, release measures in South Africa are not utilised optimally to manage the inmate population effectively.

On the other hand, the parole process has its own challenges. For the period 2008/2009 there were 10 966 parole violations, compared to a target of 10 780 (Department of Correctional Services, 2009:67). Even though every violation of parole conditions may not be a reason for re-incarceration, the high number of violations is cumbersome. It may partly explain why less people are released on parole than on sentence expiry date. The trend is completely opposite in Denmark.

Release-related problems in South Africa are compounded by the number of complaints in this regard. Should these complaints be solved effectively, releases statistics may increase. The following table shows the extent of these complaints for 2009/10 (Van Zyl, 2010:37):

Table 5: Extent of complaints against DCS (2009/10)

Nature of complaint	Number
Appeal	15 057
Bail	25 828
Conversion of sentences	2 216
Medical Release	748
Parole	15 912
Rehabilitation programmes	17 762
Remission of sentence	477

RELEASE IN SOUTH AFRICA

The following are forms of release from South African correctional centres (Department of Correctional Services, 2005a:5-10). Each form is discussed to clarify it.

Parole

Parole entails non-custodial supervision of offenders in the community after serving a portion of his/her incarceration until the initial period of sentence reaches a natural end. Parole supervision is the responsibility of the Department of Correctional Services. Should a person not qualify, s/he would be released at the natural end of the sentence.

Day parole
Day parole is a placement option to ensure effective control over selected offenders who are not ready for placement on parole. It is regarded as a pre-parole phase. Sentenced offenders who qualify for day parole are those with practical resettlement problems, those who are institutionalised or experience adaptation/socialisation problems, and those with a doubtful prognosis and a higher release security risk.

Day parole aims at combating institutionalisation to allow offenders to gradually become used to their freedom. Control and supervision is exercised over offenders during day parole. They are systematically exposed to more responsibility in society. They leave the correctional centre during office hours for work, to seek employment or accommodation, and to attend programmes, but return to the correctional centre at night.

Community Corrections
"Community corrections" is not a form of release. It refers to all non-custodial measures and forms of correctional supervision of persons who are subject to such measures under the supervision and control of the Department of Correctional Services in the community. There is such an option as placement under correctional supervision, which would result in release from incarceration into the community corrections subsystem. The following persons may be subjected to community corrections:

- Persons sentenced directly to correctional supervision as a sentence option or where sentences of incarceration were converted to correctional supervision;
- Persons awaiting trial may be subjected to correctional supervision until their trials are finalised;
- Offenders who are granted permission to temporarily leave a correctional centre; and
- Offenders who are placed on day parole/parole.

Release
A sentenced offender who does not qualify for community corrections is incarcerated until the sentence expires. They are released after serving the full sentence. This action is referred to as unconditional release. Offenders subjected to community corrections are also released from applicable conditions on the expiry date of the sentence. After release they are no longer the responsibility of the Department of Correctional Services.

Management of sentences
Subject to the provisions of the Correctional Services Act 111 of 1998, offenders remain incarcerated for the full period of the sentence and those sentenced to life incarceration remain in a correctional centre for the rest of their life. However, any offender may be placed under correctional supervision or on parole before the term of incarceration expires. Sentenced offenders must be released from incarceration or any form of community corrections when the sentence expires.

Certain minimum periods must be served before placement under community corrections is considered. Examples are determinate sentences (non-parole period determined by the court; If no non-parole period was determined, after half the sentence was served), habitual criminals (after seven years), and incarceration for life (after 25 years of the sentence or cumulative sentences). Any amendments of the Correctional Services Act 111 of 1998 and other related

legislation must be considered to determine the minimum portions of sentences. Persons sentenced under the Correctional Services Act 8 of 1959 qualify for release after different intervals from those sentenced under the Correctional Services Act 111 of 1998. The date of implementation of the 1998 Act (October 2004) serves as distinction between the two groups of offenders.

Management of parole

Parole is managed according to Chapter VII of the Correctional Services Act 111 of 1998 (Republic of South Africa, 1998:60-68). Offenders sentenced to more than two years become parole board inmates, meaning that the parole board must decide about their release. The most important areas of influence on release will now be discussed.

Case management committees and release

In terms of the Correctional Services Act 111 of 1998 (Republic of South Africa, 1998:42) case management committees must be established at correctional centres. They are multi-disciplinary committees consisting of representatives of staff responsible for incarceration and specialists such as educationists, social workers, psychologists and spiritual workers. The case management committee is responsible for ensuring that each sentenced offender is assessed and a correctional sentence plan is created.

The sentence plan should refer to five key delivery areas, including corrections (services aimed at the assessment of security risk and criminal profile of each individual based on social background to target elements associated with offending behaviour); development (services aimed at development of competencies through provisioning of social development and consciousness, vocational and technical training, recreation, sports and opportunities for education to enhance social reintegration); security (services aimed at ensuring safe conditions in an environment consistent with human dignity, the protection of officials, security of the public and safety of offenders); care (needs-based services focusing on physical well-being, nutrition, social links with families and the community, spiritual, moral and psychological well-being and health care) and after-care (services focused on offenders in preparation for completion of sentences, to facilitate social acceptance and effective reintegration into communities).

Interviewing each offender on a regular basis, reviewing the correctional sentence plan and the progress made, and amending such a plan, are the responsibilities of case management committees. Case management committees also have to submit reports to correctional supervision and parole boards, addressing the following:

- The offence sentenced for;
- Previous criminal record of offenders;
- Conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental health state of offenders;
- Likelihood of relapse into crime, the risk posed and how this risk can be reduced; and
- Possible placement of offenders on day parole/parole, and conditions for such placement.

Correctional supervision and parole boards

Correctional supervision and parole boards are responsible to make quality conditional placement/release decisions. They contribute to community protection by facilitating

appropriate, timely reintegration of offenders. Correctional supervision and parole boards are appointed by the Minister under section 74 of the Correctional Services Act 111 of 1998 (Republic of South Africa, 1998:62).

Correctional supervision and parole boards are independent statutory bodies with decision-making competencies regarding parole placement, except in cases of life incarceration, those declared dangerous criminals and the conversion of sentences into correctional supervision (Louw, 2008:14).

Factors considered for parole placement

Factors considered by correctional supervision and parole boards for placement of offenders on day parole/parole are by nature internal (correctional system) or external (community).

Internal factors that are important include citizenship, remarks/recommendations by the presiding judicial official with specific reference to punishment objectives, crime prognosis and physical/mental ability, behaviour and adaptation in correctional centres, degree to which offenders participate in development programmes, custodial and privilege classification, achievements in correctional centres (scholastic, academic, technical, sports, etc.), crime pattern (present and past) and the threat posed to the community, the degree to which inmates have demonstrated opportunity utilisation, expectation of recidivism against the background of crime history, crime rate, lapse of time from previous placement/release to present crime and number of previous convictions, and previous parole/supervision condition breaching (Department of Correctional Services, 2005a:30-35).

External factors include availability and quality of family ties, availability of work and residence/care, fixed residential address that can be monitored, availability and quality of community support systems, surrounding factors related to the crime (number of charges, money involved, nature and seriousness of the crime), degree of leniency by the court (concurrence of sentences, suspension of sentences), crimes committed while a fugitive, accomplices/group context, and age, medical recommendation, condition of health and life expectancy (Department of Correctional Services, 2005a:30-35).

Representation to correctional supervision and parole boards

The offender is allowed to make written representations to the Parole Board and/or appear physically before it. Offenders may also be represented by any person, except a fellow offender or members of the Department of Correctional Services, Justice or South African Police Service. Victims or relatives may be provided the opportunity to make presentations to the board (Department of Correctional Services, 2005a:29).

Conditions for parole

No parolee is admitted into community corrections unless he/she has an address that can be monitored. All parolees are subject to conditions to which they must comply during their time under community corrections. These conditions include:

- house detention (for the time that the offender is not at work or attending programmes);
- limitation to a certain magisterial district;
- drug and alcohol use or abuse is not permitted;

- crime may not be committed during the parole period;
- absconding from the system is not allowed;
- offenders are monitored physically at his/her home address and they are contacted telephonically at their house or work place; and
- compulsory visits must be paid to the community corrections office and they must attend correctional programmes at appointed offices or institutions (Department of Correctional Services, 2005a:30-35).

Non-compliance with community corrections conditions

If a person subject to community corrections has failed to comply with any aspect of the conditions imposed, the Commissioner of Correctional Services may, in terms of the Correctional Services Act 111 of 1998, and depending on the nature and seriousness of such non-compliance, reprimand the person, instruct the person to appear before the court or correctional supervision and parole board that imposed the parole, or issue a warrant for the arrest of such person (Republic of South Africa, 1998:58).

In other words, due procedure needs to be followed. An arrested person must appear before a court within 48 hours for an order as to further detention and referral of the person to the authority responsible to deal with the matter. The parole/correctional supervision of a parolee who did not comply with the conditions may be revoked and the offender be detained in a correctional centre to serve the unexpired portion of the sentence (Republic of South Africa, 1998:58).

In May 2008 the court set aside the revocation of parole of Gary Beuthin, convicted for kidnapping and assault. He committed an alleged crime whilst released on parole, resulting in the revocation of his parole. The court ordered that he be transferred from a correctional centre for convicted offenders to one for awaiting trials. Beuthin argued that:

> I wish to state, no hearing regarding my parole has ever taken place, ever before a court or the parole board committee. I emphasise that ... I was merely informed that my parole had been revoked without giving me an opportunity to make representations in this regard (SAPA, 2008:1).

SOUTH AFRICAN CASE STUDIES CONCERNING RELEASE

The researcher has completed case studies to obtain views of participants concerning approaches to release of inmates in South Africa. Interviews and focus group interviews were conducted. The outcomes of these interviews will now be discussed.

A former chairperson of the parole board

The first case study stemmed from an interview in October 2009 with a correctional official who retired from a senior position. The interview was granted on the basis that the identity of the retired official be protected. The retired official was a chairperson of a parole board. The person was a permanent staff member of the Department of Correctional Services (when chairpersons were still appointed from within the Department). After changes in the legislation (where chairpersons had to be appointed from outside the Department) the person was still involved in the parole board, but in a different capacity. After retirement the respondent wanted to use acquired expertise to establish a service that would support inmates to become successful parole applicants.

The respondent experienced numerous obstacles and could not establish the desired service. When the respondent requested personal information about inmates from the Department of Correctional Services, very little, if any, co-operation was received. The most telling remark was when the researcher was informed (by the former parole board chairperson) that during the respondent's period as a parole board chairperson, that it was the duty of parole boards to keep inmates inside. In other words, if possible, parole should not be granted at all. Now that they (the former parole board chairperson) had wanted to assist the system in getting inmates released, it was found that this attitude still persisted at parole boards (Luyt, 2009). Could this approach be a reason why more inmates are released annually on sentence expiry date than on parole? The matter needs deeper scientific investigation and research. However, in a system where one of the main duties is to "enforce" sentences of the courts, it may be likely that parole as an official release mechanism to manage overcrowding may not be very high on the correctional agenda of priorities.

In addition, Van Zyl (2009:21) argued that overcrowding has become a major obstacle for the treatment and rehabilitation of offenders over the past decade. Overcrowding causes poor treatment practices, while poor treatment records bring about poor parole releases. Poorly implemented parole policies would rather cause overcrowding, instead of relieving it.

Interviews with sentenced male and female offenders

The second case study originated from interviews with sentenced male and female offenders. From the interviews it emerged that the focus from the side of the Department of Correctional Services illustrates an over-emphasis on security to the detriment of the other four key elements of the correctional sentence plan. Luyt (2008) pointed out that too many deficiencies in the correctional system hamper the aim of rehabilitation as a core function. These deficiencies include a lack of staff, absence of rehabilitation and development programmes, overcrowding, ineffective sentence planning from managers at correctional centres, and the inability of staff to promote the well-being of inmates.

In many correctional centres lack of expertise and professional staff lead to absence of correctional sentence plans for the majority of inmates. A ratio of 1:595 social workers to sentenced offenders, as determined by Cilliers and Smit (2007:98), provides a clear picture of the shortage of professional staff the Department of Correctional Services is experiencing. This situation has still not changed. Poorly prepared sentence plans lead to negative parole decisions. Inmates become the victims of negative parole decisions while they are in no position to improve their own situation. Due to a poorly managed correctional system inmates are in no position to improve their own profile in order to ensure early release.

Focus group and individual interviews with families of incarcerated offenders

In the third case study, insightful information was revealed during interviews with family of incarcerated offenders. The interviews were held at Leeuwkop Correctional Centre, as well as in Winburg, Middelburg (Eastern Cape), Oudshoorn and Ladismith.

The participants in the focus group interview near Leeuwkop had an average age of 43 years. Eight respondents participated. Four were parents of incarcerated persons and four were spouses. The respondents represented six inmates who were serving sentences of incarceration varying

between five years and 33 years. The inmates were incarcerated at Leeuwkop Maximum (n = 3) and Leeuwkop medium (n = 2), as well as a minimum security section called "oop kamp" (open camp) (n = 1). The respondents stated that there was no access to programmes at the maximum correctional centre. They complained that they hardly spend sufficient time (less than twenty minutes) with their relatives during visits. Policy provides for visitation of 40 minutes duration at every visitation opportunity. There was particular concern about the lack of job opportunities at this correctional centre. According to Luyt (1994:65) the labour programme at Leeuwkop Maximum Correctional Centre was an area where drastic measures should be taken to improve productivity. It appears that since 1994 the situation has deteriorated. The absence of structured work in correctional facilities makes inmates more prone to gang activities (Luyt, 1994:65). Without constructive labour opportunities the future becomes even bleaker for an inmate serving a long sentence.

Relatives of the inmates who were incarcerated at Leeuwkop Meduim Correctional Centre indicated that their family members were undergoing vocational training (carpentry and welding). Both had been before the parole authorities recently and one of them had received a date to be released on parole. They were concerned that he would be released before he had completed his vocational training. The relatives argued that, once released, chances were slim that he would ever obtain a completed qualification.

The relative of the inmate from 'oop kamp' explained that he was employed as a monitor (an inmate who is allowed to move between his cell and place of work without supervison). He worked in agriculture (prison farm) and had various responsibilities. Release on parole was not a certainty in the near future, mainly because employment could not be obtained outside the correctional centre.

One central theme emanated from the eight interviews held at Winburg (n = 2), Middelburg (n = 2), Oudshoorn (n = 2) and Ladismith (n = 2). (Family members of respondents incarcerated at Grootvlei, St Albans and Oudshoorn correctional centres.) Respondents who were family members of the incarcerated inmates confirmed that their incarcerated family member could not be released on parole because of the problem of not finding employment outside. They argued that the correctional system did not allow for an inmate receiving the type of training and education that would result in employment. Their incarcerated family members were not better off than the day they were incarcerated.

The above findings correspond with findings from research undertaken during the period November 2009 to February 2010 by staff of the Judicial Inspectorate of Correctional Services who visited 178 correctional centres (74% of all correctional centres in South Africa). They performed three tasks, namely:

1. Conducting structured interviews with all heads of correctional centres, aimed at gathering information about the nature, number and frequency of programmes available to inmates;
2. Undertaking a physical inspection of infrastructure available for rehabilitation or work, such as classrooms, workshops and vegetable gardens; and

3. Making unannounced visits, during which they physically inspected classrooms, workshops and other facilities, and recorded the programmes on offer and the number of inmates involved in programmes.
4. In addition, information was complemented with written reports submitted to the Inspecting Judge after every visit (Van Zyl 2010:23).

These reports were analysed using quantitative and qualitative methods (Van Zyl 2010:23). The findings confirmed that on average between 10% (n = 11 575) and 15% (n = 17 362) of sentenced inmates were involved in regular work/rehabilitation programmes. Some correctional centres performed better, especially the private correctional centres and some youth correctional centres, where schooling was offered to most inmates. Of particular concern were the low levels of "production" recorded at most correctional workshops, which averaged 30%. Much of the farming production capacity (at prison farms) was also under-utilised (Van Zyl, 2010:24).

MEDICAL PAROLE IN SOUTH AFRICA

Overview of medical parole in South Africa

The Judicial Inspectorate of Correctional Services highlighted in 2007 that, between the ten year period of 1996 to 2006, on average 73 inmates were annually released on medical parole. During this period the highest number of releases was 117 and the lowest 49. In 2007 a total number of 58 inmates were granted medical parole. During 2008 only 54 people received medical parole, which represents only 5.5% of the 987 deaths recorded in that year (Van Zyl, 2009:25). Between April 2008 and March 2009 the number granted medical parole declined to 25 inmates.

In terms of the Correctional Services Act 111 of 1998 medical release is regulated by Section 79 (Republic of South Africa, 2008:47). It reads as follows:

> Any person serving any sentence in a **[prison]**[2] correctional centre and who, based on the written evidence of the medical practitioner treating that person, is diagnosed as being in the final phase of any terminal disease or condition may be considered for placement under correctional supervision or on parole, by the National Commissioner, Correctional Supervision and Parole Board or the **[court]**[3] Minister, as the case may be, to die a consolatory and dignified death.

Medical parole posed more questions than answers, particularly after the release of Shabir Shaik. Convicted for fraud and sentenced to 15 years incarceration, the medical parole of Schabir Shaik in March 2009, after serving just more than two years, led to harsh criticism by many and resulted in investigations into the matter (SAPA, 2009:1). Soon afterwards, Rademeyer (2009:1) reported that Shaik had been seen driving himself around town and going shopping. Shaik's medical parole was widely questioned since the medical evidence suggested that Shaik suffered from systemic hypertension. In a letter to the Head of Medium B Correctional Centre at Westville (dated 11 September 2008) Prof. Naidoo, a chief specialist at the Department of Cardiology at the University of KwaZulu-Natal and Dr Khan, a principal specialist in cardiology reported that: "We cannot keep him [Schaik] in hospital indefinitely and since the prison authorities are reluctant to manage him at the prison hospital, where conditions are suboptimal,

[2] Before Correctional Services Amendment Act 25 0f 2008 the term "prison" was applicable
[3] Before Correctional Services Amendment Act 25 0f 2008 the court, and not the minister, had to decide.

we recommend that he be considered for medical parole." It was further stated that Shaik "remains at risk for a stroke, heart attack and blindness" (Naido & Kahn, 2008:2). No mention was made of any terminal illness.

Although previous departmental administrative rules made provision for the re-admittance of terminally ill inmates, both the Correctional Services Act 111 of 1998 and the Correctional Services Amendment Act 25 of 2008 are silent on the issue. This incident raised new questions concerning the application of release policies.

The Department of Correctional Services (2005:75) claimed to have, as a key objective of the correctional system, the reconciliation of the offender with the community. With the above individual case in point this objective was not realised, particularly if one considers the public outcry about this extremely sensitive and politically loaded individual case. The issue of medical release is compounded by the fact that some inmates have been released on medical parole before they have spent the minimum period required under the relevant laws under which they were sentenced (Mujuzi, 2007:1). As Shaik was released in 2009, it means that he was not the first person to receive medical parole after serving only a short part of their sentence.

The proposed new legislation (October 2010) in the form of the Correctional Matters Amendment Bill (41 of 2010) seeks to change the definition and requirements of offenders who qualify for medical parole. The Bill states that a sentenced offender can be considered for placement on medical parole if:

- such offender is suffering from a terminal disease or condition or if such an offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self care;
- the risk of re-offending is low; and
- there are appropriate arrangements for the inmate's supervision, care and treatment within the community (Correctional Matters Amendment Bill, 2010: s79(1)(a-c)).

The Correctional Matters Amendment Bill, discussed in Parliament at the end of January 2011, also provided for the manner in which a medical parole application should be lodged. The minister also ruled out the re-incarceration of those released on medical parole that had medically recovered in full (News24, 2010:1). Subsequently, The Correctional Matters Amendment Act was enacted on 25 May 2011and is in the process of implementation.

RELEASE FROM INCARCERATION IN OTHER AFRICAN COUNTRIES

BOTSWANA

The Botswana Prison Service was established under Section 5 of the Prisons Act. The mandate of the Botswana Prison Service is to provide safe and secure custody of persons committed to imprisonment and to rehabilitate them in preparation for release (Republic of Botswana, 2008:1). The number of prisons increased from 12 (1958) to 22 plus two holding centres for immigrants (2008). The overall capacity is 3 994 inmates. The Service has a staff establishment of 1 943 for custodial, rehabilitation and administrative duties (Republic of Botswana, 2008:2).

The release of prisoners in Botswana

In Botswana, inmates are called prisoners. They could be released through remission of sentence, on parole and through extra-mural labour. Extra-mural labour will be discussed in detail, while the other two areas of release will only be touched upon. Extra-mural labour is emphasised because it is an alternative to parole for South Africa (where the lack of employment is a major obstacle for parole placement).

The Botswana Prison Service is dynamic in its approach to new developments within the correctional arena. Recognising the shortfalls of a criminal justice system which subscribes to imprisonment alone, one significant initiative from correctional authorities was the active pursuit for the introduction of alternatives to incarceration. The Botswana Prison Service led efforts in the organisation of the National Seminar on Alternatives to Incarceration in December 2003. Represented by all criminal justice agencies, the seminar resulted in twenty-two recommendations which were adopted and tabled to the Botswana Government (Luyt & Du Preez, 2004:49). This seminar was considered a watershed event for the development and introduction of community corrections and the future of imprisonment in Botswana. The following long-term recommendations emanated from the seminar:

1. Imprisonment should not be the sentencing paradigm, but an option only if a suitable form of community sentence is not available.
2. Prison remission should be re-examined (increased from one third to half of the sentence).
3. More awaiting-trial prisoners being released on bail.
4. Society should take collective social responsibility for the upliftment of offenders.
5. Revision of legislation to keep abreast of the needs and challenges of modern society.
6. The day fine should be considered as an alternative sentencing option.
7. Investigate decriminalisation of certain offences.
8. Allocate more money from Government for prisoner training.
9. Investigate and evaluate the powers of customary courts for larger jurisdiction.
10. A permanent law reform commission should be instituted.
11. Widespread use of restorative justice practices should be explored.
12. Government should assist in providing processes and resources to make use of the current systems.
13. Change the name of the relevant Department to a more appropriate one that is aligned with future objectives.

Remission of sentence

A system of remission is in operation in Botswana, according to which a qualifying prisoner may be released earlier than warrant expiry. Normally offenders will receive one-third remission on their sentences if they serve a sentence of more than one month (Republic of Botswana, undated:46). It results in release in terms of Section 90 of the Prisons Act after two thirds of a sentence expired. The following prisoners do not qualify for remission:

- Those serving a life sentence or those who is confined during the President's pleasure; and
- Those who would be discharged before serving a term of imprisonment of one month (Republic of Botswana, undated:46).

Parole

Parole is organised in terms of Sections 83-88 of the Prisons Act (Republic of Botswana, undated: 42-44). Release on parole is possible after half of a sentence has been completed. The National Parole Board is responsible for recommendations to the office of the Minister. Only the Minister can take parole decisions. Strict parole conditions have to be met. Foreign prisoners do not qualify for parole. According to Frimpong (Luyt & Du Preez, 2004:20) parole has not made any significant contribution in reducing the prison population.

The medical release of terminally-ill prisoners is possible. This form of release became more acute after a decision to release terminally-ill AIDS sufferers. Commissioners of customary courts, magistrates and judges also have the authority to release inmates. Although an Ombudsman may investigate certain complaints regarding release, the Ombudsman has no authority to release a prisoner.

Extra-mural labour

Release from prison is possible through extra-mural labour. Extra-mural labour is organised in terms of Sections 96-103 of the Prisons Act (Republic of Botswana, undated:48-52). According to Frimpong (Luyt & Du Preez, 2004:20) extra-mural labour may be considered under three conditions: a) it may be imposed by a court, but the relevant prisoner must have been sentenced to imprisonment of less than twelve months; b) extramural labour arises where a prisoner "has been committed by any court for non-payment of a fine not exceeding P800", and; c) extramural labour may be ordered by the Commissioner or an official visitor in respect of a prisoner who is already in prison provided that such a prisoner's remaining term of imprisonment does not exceed twelve months. Under this system the prisoner has to do certain work for the Government without remuneration while living outside prison. If conditions are violated, prisoners may be ordered to serve the rest of their sentence inside prison.

Extra-mural workers get a daily ration of food. Provision of food to inmates that are not imprisoned anymore is significant and unique. Normally correctional systems take no responsibility for this action. According to Frimpong (Luyt & Du Preez, 2004:20) it is obvious that extra-mural labour release contributes in reducing overcrowding. Significant numbers of male and female offenders benefit from extra-mural labour. Annual numbers fluctuate, but vary from as low as 1 076 inmates in 1999 (when inmates could only qualify if less than six months of the sentence still has to be served) to a high of 2 183 inmates in 2001 (after the minimum sentence still to be served was changed since 2000 to 12 months).

RWANDA

Rwanda is one of the smallest countries on the African continent. Alongside countries such as the United States, China, Russia, Brazil and South Africa, the 1994 genocide would thrust Rwanda to the top ten incarcerators in the world, incarcerating more then 100 000 people (Luyt, 2003:96). With genocide incarceration peaking (1998), there were 18 establishments holding 145 000 inmates with an official capacity of 46 700, of which central prisons held 94 512 inmates

and "cachots communaux" held 17 488. By 2002 the number was reduced to 112 000 (Luyt, 2003:104).

According to Ruremesha (2003:1) Rwanda's Minister of Internal Security, Jean De Dieu Ntiruhungwa, being in charge of prisons, said the overcrowded jails posed "environment and health" problems. Both local and international rights groups have been making similar points since 1994. It was claimed that the consequences of overcrowding due to the genocide have been "dozens of deaths due to suffocation". At that time analysts believed that the only way to solve the congestion in prison is to speed up the hearing of cases of those accused of genocide.

By mid-2002, seven years had passed during which only 6 000 genocide suspects had stood trial. Estimates were that it would require more than 100 years trying all the genocide suspects in Rwandan national courts. This led to problems ranging from injustice to corruption. Thirteen courts were dealing with genocide-related crimes (Kaliisa, 2002:1).

Rwanda promulgated the Organic Law 8 of 1996 to prosecute offences constituting the crime of genocide or crimes against humanity committed between October 1990 and December 1994 (Gabisirege & Babalola 2001:3). The Organic Law would use the *gacaca* law, an ancient system of traditional justice, allowing 11 000 village tribunals to become involved in trying genocide accused. More than 250 000 judges would be involved to clear the backlog clogging up courts. In a *gacaca* court all participants, the judges, juries and accused come from the same village. The important aspect is that *gacaca* courts removed most of the genocide trials from the classical judicial system (Gabisirege & Babalola 2001:3).

Before the introduction of *gacaca*, Rwandan courts had sentenced 600 people to death and nearly 1 800 to life imprisonment. A total of 2 566 suspects were acquitted. Execution of 22 genocide convicts was carried out once during April 1998 (Luyt, 2003:104). *Gacaca* jurisdictions may only trial category 2, 3 and 4 cases as defined by the Organic Law 8 of 1996. Category 2 cases involved those accused of perpetrating homicide or who were accomplices in homicide. In Category 3 people were accused of crimes of aggravated assault without the intention to kill, while Category 4 cases involved looters and those who destroyed property. All Category 1 crimes (planning, organising or supervising genocide and committing sexual torture) would continue in the regular judicial system (Gabisirege & Babalola 2001:3).

Under *gacaca* law, expectations were that genocide-related cases should be tried within a period of five years. Judges received six days of training in the areas of basic principles of law, group management, conflict resolution, judicial ethics, trauma, human resources and equipment and financial management. Each court would have a panel of 19 judges. Thousands of Rwandans arrested for genocide had at that stage already spend up to eight years of incarceration without specific charges against them (Luyt, 2003:105). Many of these were children arrested at age 14, but who were now in their twenties (Kimani 2002:1).

In October 2010 the researcher held an interview with a serving correctional official from Rwanda. The challenges posed by overcrowding due to the genocide formed the core of the discussions. Addressing issues surrounding the genocide inmate population was the most effective strategy to reduce the Rwandan inmate population. This strategy is continuing today.

For various reasons Rwanda cannot improve significantly on design capacity. Effective management of inmate numbers became the most viable alternative. In this regard, a phased policy was decided upon. The Umuvumu Tree Project now forms part of this phased policy, even though it is managed by community institutions. This project will be discussed in more detail.

During 2005, authorities in Rwanda had started to release more than 36 000 genocide offenders from overcrowded prisons. The elderly and those in bad health were released first. Most had confessed to involvement in the 1994 genocide. The released were not accused of the most serious crimes. Similar previous releases had been criticised by the genocide survivors. At that stage the Information Ministry issued a statement saying that their release was provisional and depended on the outcome of their cases. Nonetheless, this extraordinary approach to release from prison largely brought extreme relieve to overcrowding, while restorative justice formed the core of release decisions (subjects had confessed involvement in genocide).

By July 2007 Rwanda established a phased policy for inmate population reduction. The inmate population was reduced to around 80 000 incarcerated in 16 prisons. Even though the inmate population dropped significantly since the dramatic increase after the 1994 genocide, many released inmates had been in prison for ten years or more, while a large number of them had not been tried. The inmate population reduction in Rwanda is tabled below (Walmesley, 2010:1):

Table 6: Inmate population reduction in Rwanda

Year	Inmate population
1998	145 021
2002	112 000
2004	87 000
2006	82 000
2008	59 311
2010 (July)	55 000

As stated, one area that facilitates release is the Umuvumu Tree Project. The project is faith based. It brings inmates and victims together over a period of eight meetings. The focus is restorative in nature and aspects such as responsibility, repentance, forgiveness, reconciliation and restitution are emphasised. Six weeks' of small group discussions among inmates is followed up by two weeks' of presentations by genocide survivors and inmate relatives.

Those offenders who confessed their involvement in the genocide received lighter sentences. Only 5 000 have done so. Within the first six months of the Umuvumu Tree Project those who confessed their involvement had increased to more than 32 000. Once inmates confessed, they are released to the *gacaca* courts for alternative measures/sentencing. One outcome is that inmates realise what they have done wrong, paving the way for reconciliation. While Rwanda has not followed traditional correctional approaches in reducing overcrowding, the Umuvumu Tree Project highlights the fact that correctional populations can be managed effectively through innovative alternatives.

SUMMARY
South Africa is not doing enough to reduce the inmate population through release measures. This notion emanated from research by the Judicial Inspectorate for Correctional Services, experiences of former staff and inmates, experiences of existing inmates, and the opinions of inmate relatives. Practices in other countries can contribute to a more flexible release system in South Africa.

One should admire the Danish approach to sentencing. Sanctions that best fit the offender are in stark contrast with the South African approach of minimum sentencing. The minimum sentencing philosophy largely ignores the individual, while we learn from Denmark that offenders should be the central figure in such release policies. In South Africa, the sanction does not always fit the offender. South African minimum sentencing legislation gives evidence that offenders are rather dealt with in terms of the offence than the offender. Shorter sentences are more effective as they counter institutionalisation and promote successful reintegration. In Denmark, only 15% of sentences exceed one year in length. Community sentences are alternatives to replace incarceration.

Family units allow families to spend time together during incarceration, it is something to consider. Correctional centres are far away from families and it makes more sense to allow family members a whole weekend with the incarcerated person, rather than 20 minutes' visitation at high cost for an already marginalised group.

Electronic monitoring has not been investigated in South Africa with the requisite urgency at all. It remains a viable measure to reduce overcrowding. Electronic monitoring has and is being implemented successfully in various correctional systems elswhere.

Life incarceration should be revisited, since longer sentences create a variety of long-term incarceration problems. In Scandinavia release from life imprisonment is considered after 12 years. This period was initially ten years in South Africa. In 1996 it became 20 years (and 15 years for persons above 65). In 1997, the Correctional Services Act 8 of 1959 was amended and provided that an inmate incarcerated for life shall not be released on parole before serving at least 25 years of the sentence (Majuzi, 2008:25). This needs to be reduced if sentence length is to contribute to the lessening of current overcrowding conditions in South African correctional centres.

The research visit to Horserød State prison revealed that men and women are housed together. However, even though this practice is highly commendable in bringing about a semblance of normality in an already abnormal world. South Africa would appear not to be ready for such transformation, since the structures and such facilities are simply not in place.

Parole in Denmark has an interesting application, since inmates with a sentence of over three months are considered. In South Africa it is only after two years of a sentence being served that an inmate can be considered for parole. Too few incarcerated South Africans have been successful with their parole applications. The numbers confirm that releases on expiry of sentences are significantly higher than those inmates released on parole. It becomes more

significant taking into account that the number of inmates qualifying for parole is much higher than the number qualifying for release at sentence expiry.

Work release in Denmark (day parole in South Africa) has proven to be successful. Inmates also get permission to attend education/treatment programmes outside of prison. In South Africa, only inmates who can confirm being employed in society (private employment) qualify for day parole. Should work release be instituted in South Africa, rehabilitation efforts (which are very low) could possibly be more successful. The example of the 'oop kamp' inmate at Leeuwkop showed the unavailability of meaningful employment inside correctional centres to facilitate work release.

The application of extra mural labour in Botswana deserves investigation for implementation in South Africa. Inmates may find accommodation, but employment and meals become large obstacles. This practice is innovative and commendable.

In Rwanda the approach to the release of inmates indicates that some governments can think creatively and innovatively when necessary. Various alternatives are available to facilitate release from incarceration in South Africa, such as plea bargaining, Section 62 of the Criminal Procedure Act applications and broader application of existing measures (day parole and parole). Significantly, the former senior employee of the Department of Correctional Services revealed that the Department's approach would lead to inmates being incarcerated for too long. All correctional systems should avoid institutionalization, i.e. long incarceration periods of individual inmates. South Africa should take this to heart when reviewing releasing policies and other approaches to reduce overcrowding and length of incarceration.

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