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Prison Overcrowding

1. Introduction

Statistics, generally, tell their own stories, raise their own challenges and allow us to draw our own conclusions on the issues they relate to. The statistics issued by the Department of Correctional Services for the year ending June 2009 invite us to do all of the above, particularly in the vexed area of overcrowding in South African prisons.

On 30th June 2009, 163 108 prisoners were incarcerated in 237 prisons with a capacity for housing 114 822 inmates. Sentenced offenders totaled 116 087, or 71.17%, and this group was further broken down into 2 549 females (including 20 under the age of 18) and 113 538 males (including 888 under 18). Awaiting-trial detainees numbered 46 027 or 28.82%, made up of 994 females (19 under 18) and 45 033 males (670 under 18).

South Africa has the largest number of inmates of any African nation, and the ninth largest prison population in the world. It is worth noting that since 2004/5 the capacity of our prisons has increased by a mere 684 places. However, the Department expects additional capacity for 3 956 more inmates to be created in the next year as additional facilities are completed in places such as Kimberley, Vanrhynsdorp and Brandvlei.[i]

2. Overcrowding and its Consequences

It is clear from the statistics that there is a situation of chronic overcrowding in South African prisons, with all the attendant social, psychological, emotional, safety, sexual, health and other problems. Elena Ghanotakis and others say in this regard:

> 'As a result [of overcrowding], conditions in many prisons frequently fail to meet the minimum standards established in national and international legislation and declarations, and represent serious breaches of rights enshrined in the South African Constitution. The Report of the Office of the Inspecting Judge provides a clear picture of the conditions faced by some inmates: 'Examples in recent reports are: medium and maximum prisoners being mixed; 44 beds for 100 inmates; about 74 inmates in cells for 16…; sharing of beds' (Judicial Inspectorate of Prisons 2006). These conditions and a litany of scandals emanating from Correctional Services in the late 1990s and early 2000s drew significant public attention to the dismal state of South Africa's prisons. To address this, the South African Government appointed the Jali Commission of Inquiry in 2001 to investigate prison conditions and to issue recommendations for improving the state of South Africa's prisons. As part of its mandate, the Jali Commission was tasked with examining sexual violence in South African prisons and recommending strategies to prevent it. During the Jali Commission the South African public heard many chilling stories of pervasive prison rape – including stories of some inmates deliberately raping others to infect them with HIV – a practice reportedly known as a 'slow puncture' (Reuters, 2001).[ii]

Out of the 237 facilities, 21 had occupation levels of between 175% and 200% of capacity, 19 had occupational levels of over 200%, and only 50 were at levels of less than 100%. Quick arithmetic suggests that if prisons are to remain the preferred option for rehabilitation then at least 16 more prisons, each accommodating 3000 inmates, and costing at least R1-billion each, would have to be constructed immediately. Under prevailing conditions it is well-nigh impossible for prisons to successfully carry out the crucial function of rehabilitating offenders so that they can live meaningful lives, be reintegrated into communities and contribute to the well-being of society.

As has been pointed out time and again, overcrowding in prisons also contravenes various

constitutional rights and values. Prison reform was one of the areas looked at during the political transition in South Africa, and the new Constitution consolidated the concept of prisoner rights. In addition to ensuring the protection of human dignity, liberty and equality of all people, and the general protection against cruel, inhuman and degrading treatment or punishment, the Constitution provides specific protection for detained, accused and arrested persons. Section 35(2), for example, provides a right to conditions of detention that are consistent with human dignity, including exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.

To incorporate the new culture a new Correctional Services Act was drafted in 1998. This Act sought to incorporate the values in the Bill of Rights and prescribed a new approach to imprisonment. It recognised international principles on correctional matters and established certain mandatory minimum rights applicable to all prisoners that cannot be withheld for any disciplinary or other purpose. In terms of the new Act, the Department of Correctional Services is committed to a threefold purpose:

- Enforcing the sentences of courts in the manner prescribed by the Correctional Services Act;
- Detaining all prisoners in safe custody while ensuring their human dignity; and
- Promoting the social responsibility and human development of all prisoners.

For the faith communities prison overcrowding presents an acute pastoral challenge. Two papal comments underline this. In a Jubilee Year speech in July 2000, Pope John Paul II said:

> "Not to promote the interests of prisoners would be to make imprisonment a mere act of vengeance on the part of society, provoking only hatred in the prisoners themselves… For all to play their part in building the common good they must work, in the measure of their competence, to ensure that prisoners have the means to redeem themselves, both as individuals and in their relations to society… Regulations contrary to the dignity and fundamental rights of the human person should be definitively abolished from national legislation, as should laws which deny prisoners religious freedom."

Pope Bendict XVI recently reaffirmed this need:

> 'Judicial and penal institutions play a fundamental role in protecting citizens and safeguarding the common good (cf. Catechism of the Catholic Church, 2266). At the same time, they are to aid in rebuilding "social relationships disrupted by the criminal act committed" (cf. "Compendium of the Social Doctrine of the Church," 403). By their very nature, therefore, these institutions must contribute to the rehabilitation of offenders, facilitating their transition from despair to hope and from unreliability to dependability. When conditions within jails and prisons are not conducive to the process of regaining a sense of a worth and accepting its related duties, these institutions fail to achieve one of their essential ends. Public authorities must be ever vigilant in this task, eschewing any means of punishment or correction that either undermine or debase the human dignity of prisoners. In this regard, I reiterate that the prohibition against torture "cannot be contravened under any circumstances" (Ibid., 404).'[iii]

3. Causes of Overcrowding

The Department ascribes chronic overcrowding to various factors, including:

- The fact that many awaiting-trial prisoners are accused of violent and/or sexual crimes and thus have difficulty qualifying for bail.
- The imposition of mandatory minimum sentencing. Statistics show that since 1996 the percentages of offenders sentenced to very long periods of imprisonment, 10-15 years, 15-20 years and over 20 years, have increased by 11%, 8%, and 14% respectively. This has meant a very much slower turn-over rate of prisoners.
- The imposition of short sentences of less than six months makes it difficult to present rehabilitation programs. This is exacerbated by a chronic skills shortage (social workers, psychologists) which impedes the functioning of rehabilitation programs, and results in re-offending by petty criminals.
- Delays in processing court cases, leading to long periods of awaiting-trial incarceration.
- Amendments in parole regulations in 1997, which extended the time to be served before a prisoner can become eligible for parole.
- Reluctance by the courts to explore diversion options, such as correctional supervision, in place of imprisonment.

4. Addressing the Problem

A serious and sustained exploration of innovative, creative alternatives to incarceration needs to happen urgently. To this end civil society, especially those NGO's concerned with issues of rehabilitation, crime prevention and the restoration of the moral fibre of the nation, need to contribute more robustly to the debate around alternative forms of punishment.

Over the years various recommendations have been made by official bodies. For example, the Judicial Inspectorate, in charge of independent oversight of prisons, has made a number of recommendations to reduce the prison population over the longer term. In response, the Department of Correctional Services has committed itself to the enhancement of 'community corrections' by diverting low-risk awaiting-trial prisoners to community service projects, and by utilizing electronic monitoring on awaiting-trial prisoners and those serving parole. [iv]

An academic expert has described the challenge thus:

> 'Alternative options to the prison crisis fall under two categories, alternative sanctions and a different management structure. The government has started to explore both options. Legislation touches upon 'community corrections', highlighting various methods of alternative sentencing. Although the Department is exploring this concept, it is still in its embryonic stage. Evidence has shown that alternative sentencing has proven to be effective in reducing the prison population in several developed countries. Alternative sanctions include many different initiatives, such as victim-offender reconciliation programmes, restitution and compensation, day fines, community service, electronic monitoring, intensive supervision programmes and boot camps. Nonetheless, it should be highlighted that such alternatives require both investigation and experimentation. In addition, these initiatives are not cheaper options of punishment because they require community involvement. On the contrary, such initiatives need a high number of trained personnel, as well as established administrative departments. The purpose is to emphasise that there are many creative and proactive ways of limiting the number of people sent to prison, as well as of reintegrating them back into society.' [v]

There was some discussion in the Portfolio Committee on the issue of electronic monitoring and dismay was expressed that this system was still not functioning properly. The following passage from the Department's presentation is instructive in this regard:

> 'Electronic monitoring has been most popular in the United States. Experiments carried out in 1964 showed that, on the one hand, *"it would reduce recidivism and on the other, communication with a central station would have an educative and humanising effect."* There are two types of monitoring systems: an 'active' system whereby a transmitter in the form of an ankle or wristband is worn and a receiver telephonically transmits signals to a central computer. The second 'passive' system controls the whereabouts of the offender by means of irregular telephone calls.
> The implementation of electronic monitoring is not without problems. These include technical failures, such as transmitter breakdown, overloading of the telephone system and incorrect reports of the offender violating rules. In addition, the use of electronic monitoring goes hand in hand with an increase in supervisory staff. The consequence is an increase in the cost of running such a programme.'

In addition to electronic monitoring, the Department of Correctional Services acknowledged that their plans for decreasing overcrowding included the building of more prisons, ensuring that they are both cost effective and rehabilitation-orientated. It also hopes to manage levels of sentenced offenders through increasing the conversion of sentences to correctional supervision, especially for less serious crimes, and by a more effective use of the parole system. There is also an obvious need to effect transfers between correctional centres in order to even out the overcrowding. [vi]

At the end of the day, the need for punishment must be matched with the need for rehabilitation; overcrowding clearly undermines, even destroys, any possibility of rehabilitation. This clearly calls for alternatives, and there is overall agreement that there needs to be a widespread consultation with civil society, so that new insights, community practices, and on-the-ground wisdom can be engaged and the goodwill of societies profitably harnessed.

5. Catholic Social Teaching (CST)

The Church generally lacks the competence to adjudicate on the merits of various technical theories and practices concerning punishment and rehabilitation, but it does have insight into the kinds

of values which should be part of such programmes. The United States bishops, in their November 2000 pastoral statement on prisons, pinpoint the core values succinctly: they speak of Responsibility, Rehabilitation and Restoration.

Again, according to the *Catechism of the Catholic Church*, punishment by civil authorities for criminal activity should serve three principal purposes: (1) the preservation and protection of the common good of society, (2) the restoration of public order, and (3) the restoration or conversion of the offender. From the perspective of CST, therefore, the following ideas – expressed by the US bishops – should be borne in mind:

Human Life and Dignity: The fundamental starting point for all of CST is the defence of human life and dignity: every human person is created in the image and likeness of God and has an inviolable dignity, value and worth, regardless of race, gender, class or other human characteristics. Therefore, both the most wounded victim and the most callous criminal retain their humanity, which must be recognized, promoted, safeguarded and defended. For this reason, any system of penal justice must provide those necessities that enable inmates to live in dignity; food, clothing, shelter, personal safety, timely medical care, education and meaningful work adequate to the conditions of human dignity.

Human Rights and Responsibilities: Crime and corrections are at the intersection of rights and responsibilities. Those who commit crimes violate the rights of others and disregard their own responsibilities. But the test for the rest of us is whether we will exercise our responsibility to hold the offender accountable without violating his or her basic rights. Even offenders should be treated with respect for their rights.

Family, Community and Participation: Maintaining community and family connections can help offenders understand the harm they have done and prepare them for reintegration into society. Isolation may be necessary in some rare cases, but while cutting off family contact can make incarceration easier for those in charge, it can make reintegration harder for those in custody.

The Common Good: The social dimension of our teaching leads us to the common good and its relationship to punishment. The concept of 'redress', or repair of the harm done to the victims and to society by the criminal activity, is also important to restoring the common good. This often neglected dimension of punishment allows victims to move from a place of pain and anger to one of healing and resolution. In our tradition, restoring the balance of rights through restitution is an important element of justice.

The Option for the Poor and Vulnerable: This principle of CST recognizes that every public policy must be assessed by how it will affect the poorest and most vulnerable people in our society. Sometimes people who have themselves been harmed early in life (for example, people who have been physically, sexually or emotionally abused, the mentally ill, and people who have suffered discrimination) turn to lives of crime out of desperation, anger or confusion. Unaddressed needs – including proper nutrition, shelter, health care and protection from abuse and neglect – can be stepping stones on a path towards crime. Our role as Church is to work continually to address these needs through pastoral care, charity and advocacy.

Subsidiarity and Solidarity: These two related principles recognize that human dignity and human rights are fostered in community. **Subsidiarity** calls for problem solving initially at the community level: family, neighborhood, city and state. It is only when problems become too large or the common good is clearly threatened that larger institutions are required to help. This principle encourages communities to be more involved. Criminal activity is largely a local issue and, to the extent possible, should have local solutions. 'Neighbourhood Watch' groups, community-oriented policing, school liaison officers, neighbourhood treatment centres and local support for ex-offenders all can be part of confronting crime and fear of crime in local communities.

Solidarity recognizes that 'we are all really responsible for all'. Not only are we responsible for the safety and well being of our family and our next-door neighbour, but Christian solidarity demands that we work for justice beyond our boundaries. Christians are asked to see Jesus in the face of everyone, including both victims and offenders. Through the lens of solidarity, those who commit crimes and are hurt by crime are not issues or problems – they are sisters and brothers, members of one human family. Solidarity calls us to insist on responsibility and seek alternatives that do not simply punish, but rehabilitate, heal and restore.[vii]

Restorative Justice: This relatively new approach seems to offer a positive way forward. Some exploratory attempts have been made to use this process in the criminal justice system, but it has been infrequent and insufficiently promoted, and perhaps hesitantly applied. The central idea of restoring the broken relationships between victim and offender, and between community and offender,

undoubtedly echoes much of what CST calls for. The usual objection – that it is a 'soft' option, and not suited to serious crime – overlooks the fact that most crimes, even where violence is involved, are relatively petty, and ignores the reality that much more can be achieved by a true and hard-won reconciliation between the parties than is generally achieved by straightforward punishment.

6. Conclusion

In the short term it may well be necessary to build more prisons in order to address overcrowding with the urgency that the problem requires. However, simply enlarging this capacity cannot be considered as an acceptable approach in the longer term. Alternative forms of punishment and resolution must be promoted and resourced; much more must be done to reduce the absolute number of offenders and to reduce the number of offenders that require direct imprisonment.

We would do well to hear again (and apply to the question of prisoners) the words of Pope Paul VI, writing more than 40 years ago, that we must

'…open paths which lead to mutual assistance among peoples, to a deepening of human knowledge, to an enlargement of the heart, to a more brotherly way of living within a truly universal human society.'[viii]

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[i] Presentation: Dept. Correctional Services to Portfolio Committee, Parliament, September 2009
[ii] Ghanotakis, Elena et al. 'Stop Rape in Prison.' Agenda (74) 2007 p.70
[iii] Address of Benedict XVI to the 12th World Congress of the International Commission of Catholic Prison Pastoral Care, 6th September 2007.
[iv] Presentation: Dept. Correctional Services to Portfolio Committee, Parliament, September 2009.
[v] Dissel, Amanda. 'Alleviating the Crises: Correcting Corrections.' October 1998.
[vi] Presentation: Dept. Correctional Services to Portfolio Committee, Parliament, September 2009.
[vii] USCBC. Pastoral Statement: Responsibility, Rehabilitation and Restoration. November 2000
[viii] *Populorum Progressio* 85, 1967.