

Life After the Death Penalty: Different penal options to be considered in the light of the abolition of capital punishment

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Life After the Death Penalty: Different penal options to be considered in the light of the abolition of capital punishment

Presenter: Mongezi Mnyani

Mongezi Mnyani is a former Researcher at the Centre for the Study of Violence and Reconciliation.

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Introduction

Since the death penalty has been ruled as unconstitutional in South Africa by the Constitutional Court, many people have been asking questions about what suitable punishment will replace the death penalty.

The aim of this paper is to outline what different penal options can be used since the death penalty has been scrapped. I will outline some but not all the alternatives to imprisonment, also some problems of life imprisonment will be outlined briefly.

In this paper I will also try to outline the problems that imprisonment has on people sentenced to prison. People tend to think that by sending people to prison the community is actually protecting itself from dangerous criminals, this might be the case, but as people involved in penal reform we need to inform and tell people about the problems of imprisonment.

I will also talk briefly about other forms of punishment such as, Community service orders and Correctional supervision which are one of the alternatives to imprisonment that can be used for reducing prison overcrowding and making sure that the offender serves his/her sentence in the community.

Imprisonment

What is the aim of imprisonment

Imprisonment is used as the key element in the system of social control in South Africa. This is true in the general sense that a very high proportion of the total population of the Republic of South Africa is incarcerated, either awaiting or as sentenced prisoners. South Africa has one of the highest prison population per capita in the world. As of December 1994 the total number of prisoners held was in the range of 113.856.¹ Whilst imprisonment serves to punish the offender, he/she seldom learns the skills or strategies needed to become a contributing member of society.

Theoretically, the aim of imprisonment is to protect the society by separating offenders who are a serious threat to the lives and personal security of members of the community. The other aim of imprisonment is to condemn behaviour that society considers to be highly disgraceful and which constitutes a serious violation of basic values. Imprisonment also compels offenders who wilfully refuse to obey to other sanctions.

Traditionally, the purposes of the prison have been identified, as, rehabilitation, deterrence, retribution and incapacitation. Generally, there has been a debate over these purposes of imprisonment. The aspect here under consideration is the extent to which imprisonment makes provision for the realization of rehabilitation as an objective of punishment. In simple terms rehabilitation means to restore to a previous stage.

The aim of rehabilitation has to do with the reorientation, re-education or reform of an offender with a view of self improvement, self-uplifting and personality change. The aim is to make sure that an offender is being prepared for his/her release into society. Rehabilitation has not achieved its aims because of the infrastructure of prison system. In South Africa there are not enough programmes available in most prisons, also very few prisoners understand the importance of programs set up in prison for their own benefit. What also makes rehabilitation unsuccessful is that there is little being done to upgrade the prisoner's level of thinking and skills.

When a person finds himself in prison, he is isolated to a large extent from society and freedom of choice. This, therefore, results in a person being restricted of his lifestyle. He is therefore deprived the meaning of a true and simple life to a greater extent. If we compare life that prisoners are subjected to whilst in prison and that of living in a normal society, we can deduce that prisoners are finding it hard to perform duties that are forced upon them.

Sometimes, depending on the seriousness of the crime, when an individual has committed a crime against the community he is removed from it for its own protection. According to Rabie and Strauss (1994:253) "imprisonment is seen more and more as a harsh and drastic punishment to be reserved for callous and impenitent characters". Up to now, imprisonment throughout its history has been considered as one of the measures of social control imposed by organised society upon a transgressor of its norms.

The issue is however whether imprisonment as a model of social control destined to achieve these goals of punishment has succeeded or failed to do so. If we look presently at the South African situation, imprisonment neither act as a significant deterrent of crime nor serves to rehabilitate prisoners. South Africa is still having the highest prison population and there is also a high rate of crime. The Department of Correctional Services parole board release approximately 4 300 prisoners each month and an average of 354 of them are later rearrested for committing more of similar crimes which they were originally imprisoned for.²

Life Imprisonment

Life imprisonment has become more common since the reduction in the number of death sentences in 1990. In South Africa only the Supreme Court can sentence an offender to life imprisonment.

Fundamentally, a life sentence is an attempt on the part of the members of the society to expel from their community a member for the rest of his/her life. Life imprisonment as a form of punishment should be applied to the most difficult or the most dangerous criminals.

The sentence of life imprisonment is not a strange phenomena in most countries where the death penalty has been abolished as the harshest sentence which may legally be imposed as punishment for the most serious crimes. On the other hand, the sentence of life imprisonment is used as form of indefinite preventive detention to protect society against dangerous or unruly offenders, whose specific offenses may not necessarily require harshest punishment available. Although the sentence is called life imprisonment very few prisoners are kept in prison for the rest of their life. According to Correctional Services Department spokesperson Brigadier Jonker, prisoners sentenced to life imprisonment in South Africa are automatically considered for parole once they have served 20 years.³

Presently there is a growing public anger about the early releases and paroles which are being given by the Department of Correctional Service through its administrative measures. Criticism has been made from all sectors of society about the failure of prisons to keep dangerous criminals in prison and fingers have been pointed out to the Correctional Services for releasing prisoners early.

In a recent case four murderers were sentenced to 140 years each with out the possibility of parole for at least 30 years. Judge Weyers emphasised that, the Department of Correctional Services was under no circumstances allowed to consider a parole hearing for any of the four within 30 years and it should first obtain a permission from a judge.⁴

In some countries, like South Africa, life imprisonment has in the past been overshadowed by the sentence of death penalty. Punishment under life imprisonment should not be viewed as a form of revenge but re-socialization of offenders towards becoming law abiding citizens should be the primary goal. The prison institution also have the duty in the case of prisoners sentenced to life imprisonment, to strive towards their re-socialization, to preserve their ability to cope with life. They should

also counteract the negative effects of incarceration and destructive personality changes which go with it.

In Canada, for instance, offenders sentenced to life imprisonment for murder in the 1st degree are eligible for parole, but they must apply to be considered for parole after serving 25 years. Those sentenced to life for 2nd degree murder are eligible to apply for parole after serving between 10 and 25 years. Offenders who are paroled while serving a life sentence will remain on parole for the rest of their life unless their parole is revoked. Without parole, an offender will usually remain imprisoned for life.

Problems with Imprisonment

Prisons in South Africa are seriously overcrowded. The situation in some of our prisons is appalling. Some prisons that were originally designed to house a certain number of prisoners now house 100% more prisoners. The Minister of Correctional Services has recently ordered that three prisons be closed down because conditions in those prisons do not allow to house prisoners any more.

Overcrowding is perhaps the most obvious prison problem, although others, such as the denial of human rights and dignity, are of more fundamental significance. Overcrowding has a negative effect on the living conditions of prisoners, because the normal space and floor is reduced. It also causes a heavy burden being placed on the rest of the prison infrastructure. Overcrowding has the negative impact on the human detention and treatment of prisoners.

Prison overcrowding will not be addressed by building more prisons, but should rather be addressed by maximising the use of non-custodial sentences. In some countries the building of more prisons has not helped or solved the problem of overcrowding but simply the committal of more people to prison.

Imprisonment is very expensive and it costs a lot of money to keep prisoners. The cost of maintaining an inmate in a prison establishment is on the average of R64.97 per day according to the Department of Correctional Services budget 1995/96. This figure does not take into account the indirect costs, for example, resettlement in the community, the benefits paid to families when the bread winner is taken into custody, and the social services costs when children are taken into care.

Imprisonment does not always have a positive influence on the prisoners themselves. The prison environment considerably affects behaviour of the prisoner and also the way in which prisoners are being treated will affect his response to rehabilitation. The relationship between staff and inmates is sometimes a problem because if prisoners feel that staff are arbitrary then a set of stereotypes builds up which produces worse control features, worse attitudinal features and less chance of rehabilitation.

Alternatives to Prisons

Alternatives to custody, or punishment in the community is again in the forefront for the development towards the reduction of the prison population. Other countries

around the world punish offenders by sending them to prison for serious crimes like, murder, rape, robbery etc. People who have argued for doing away with prisons have not succeeded in any country, instead they have lobbied for the use of alternatives to imprisonment. Punishment in the community helps offenders to remain in their natural habitat, that is, community and families and it also helps them to retain their status of being self-reliant and responsible. Alternatives do have a positive and a useful role to play in the criminal justice system.

The use of other forms of punishment other than imprisonment should not be viewed as being soft on criminals. Imprisonment sometimes tends to result to recidivism, rather than in rehabilitation of prisoners.

Community Service Orders

Community service orders is used when an offender is sentenced to community service. This means that he/she serves time outside prison by giving free service to the community in his/her leisure time. The aim of community service is for the offender to repay his/her debt to society while maintaining a stable lifestyle. There is a possibility of enabling him to build himself up into a good citizen, rather than portraying him as an outcast. As far as possible his task in the community will be related to his abilities rather than to his offence.

In South Africa the rendering of community service may be one or more of the conditions of the postponement or suspension of sentence. Section 297(1)(a)(l)(cc) of the Criminal Procedure Act^e allows for postponement or suspension of sentence subject to the performance without remuneration and outside the prison of some service for the benefit of the community. A person sentenced to community service has to perform such duties under the supervision or control of an organisation or institution which in the opinion of the court promotes the interest of the community.

Community service orders can only be imposed on a person of 15 years or older and that the minimum period must not be less than 50 hours.^g Communities approval for this type of sentence is important and must to some extent be crucial to the long term survival of community service orders. This type of sentence require a stable community.

Community service sentences are not used enough because of a variety of reasons, namely:

- it is still a new sentencing option which the judges and magistrates do not know well;
- there is still a lack of community involvement;
- there is insufficient control and supervision by the state or placement agency; and
- there is a lack of suitable organisations where offenders can carry out their sentences.

Correctional Supervision

Correctional supervision was introduced in 1991 as a new form of sentence which attempts to solve some of the problems presented by community services orders. The aim of correctional supervision is the same as that of community service orders, that of a sentence which is served in the community and not in a prison. The Department of Correctional Services is responsible for monitoring people sentenced to correctional supervision.

Offenders may be sentenced to correctional supervision in terms of stipulations of the Criminal Procedure Act of 1977 in the following cases:

- as an alternative to imprisonment;
- as a condition to a postponed sentence;
- as a condition to the suspension of a sentence; and
- as a substitute for imprisonment and as an alternative to a fine.

People serving correctional supervision are subject to measures which they are supposed to follow under strict supervision of correctional supervision official called the probation officer. A probationer may be subjected to do the following:

- stay at home during certain hours, that is, subject to house arrest;
- personal visits by correctional supervision official at work, home or place where community service is rendered;
- work a certain number of hours for the benefit of the community;
- compensate the victim; and
- follow a treatment programme by specialists in order to prevent crime and/or alcohol abuse and drug abuse.

Prisoners who are serving terms of less than five years or who have less than five years left to serve may upon the recommendation of the Institutional Committee be reconsidered for placement under correctional supervision.

When a probationer fails to do what is expected under the sentence of correctional supervision, he/she can be brought before a court and sent to prison. Correctional supervision is a good development because it makes punishment a community responsibility while at the same time it keeps the offender out of prison. However, in South Africa there are still a number of practical questions about its use. There are not enough probation officers, the sentence is mostly used for people who have proper place of residence, supervision in some areas is very difficult, for example, in rural areas, unrest areas, informal settlements, problems of involving the community, legal practitioners and attorneys do not have sufficient knowledge of correctional supervision.

Diversion

Diversion refers to programs which divert the whole problem before it ever reaches the courts. Most diversion programs deal with first time offenders, many with minor offences. The idea of diversion is to spare the person the whole process of criminal justice system. It also a way of providing offenders with the opportunity to re-think

their lives without getting a criminal record. In diversion, the accused person and the diversion worker begin by his accepting responsibility for the alleged action and go on to plan together what should be done in response.

NICRO emphasises that diversion can be described as the channelling of prima facie cases from the formal criminal justice on certain conditions to extra-judicial programmes, at the discretion of the prosecution.² Unfortunately, as long as punishment is a primary motive, diversion will continue to be little used because it is not perceived as sufficiently punishing.

Committal to an Institution

This type of sentence is mainly used for people convicted of alcohol and drug abuse. The court may decide to send offenders to a place or institution for rehabilitation, instead of sentencing them to prison. People sent to such institutions may be kept for an indefinite period, until they respond positively to the treatment.

Committing people to an institution for rehabilitation sometimes becomes a problem because after being released they again resort to drugs. Social factors under which these people found themselves also make rehabilitation impossible. The following are some of the problems which contribute to the ineffective use of committing people to such institutions:

- few places or institutions are available;
- to run such institutions its very expensive;
- because there is no fixed time at which offenders must be released, this creates a problem and danger that they will be held for longer than what may be necessary for the offence committed; and
- the reality is that offenders may not be rehabilitated.

Fines

Fines may be imposed on their own but are usually given as an alternative to imprisonment. This is done only if offenders do pay the fine. This is an attractive sentence option because it is easy to administer and it does not disrupt the lives of offenders but still punishes them by ordering to pay the fine or failing to do that they go to prison instead.

A fine is only effective where it is heavy enough to make the offender understands the risk of being caught and having to pay such large amount. Problem with fine is that where a person cannot afford to pay any fine, he is often sentenced to imprisonment. In order to make sentence of a fine to work, fines should be affordable.

Conclusion

Prisons do protect the society only to the extent that they temporarily restrain offenders who are prone to commit acts of violence, but for other purposes, like deterrence, they are at best ineffective and at worst counterproductive, because prisoners are not being fully utilised whilst incarcerated. Programmes that are in line with development and skills upliftment must be made available to all prisoners in order to upgrade their level of thinking and to promote responsibility.

It does not make sense to subject people to inhuman conditions or harsh sentences, especially when it is difficult for them to find accommodation and work after release. The result of imprisonment sometimes make prisoners reluctant or even unable to obey the rules of a society which treated them so.

The use of prison needs to be reduced to a level where the population consists only of those from whom the public needs to be protected or who have committed serious offenses. The community at large needs to be involved in the process of re-socialization of offenders. To reach such a position will clearly be a lengthy process and will need to be accompanied by a considerable amount of public education.

In order for the criminal justice system to work properly, the various components of it should work in co-operation with one another. This co-ordination will help in structuring the various departments and also improve communication channels.

Notes:

¹ Department of Correctional Services, Annual Report, 1 January to 31 December 1994, p4

² Star Newspaper, 21 June 1995

³ Star Newspaper, 21 June 1995

⁴ Saturday Star, 24 June 1995

⁵ Act 51 1977

⁶ Section 297 (1A) of Act 51 of 1977

⁷ Nicro, Alternative Sentencing Options, 1994

References

Blom-Cooper, L. (1988), *The Penalty of Imprisonment*, London: The Prison Reform Trust.

Department of Correctional Services Annual Report, January 1994 to December 1994.

NICRO, (1994), *Alternative Sentencing Options*.

Rabie, M.A and Strauss, S.A (1994), *Punishment*, Johannesburg: Lex Patria Publishers.

The Star, 21 June 1995.

The Saturday Star, 24 June 1995.

Vass, A.A (1992), *Alternatives to Prison*, London: Sage Publications Ltd.

Statutes of the Republic of South Africa

Criminal Procedure Act No 51 of 1977.

Correctional Services Act No 8 of 1959.

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