

https://dspace.org/

THE EFFECTIVENESS OF LONG-TERM SENTENCING AS A CRIME

THOKOLO, TLABO AGOSE

2011-06-23
http://hdl.handle.net/10539/10187

Downloaded from a DSpace repository. https://dspace.org/

CHAPTER ONE

INTRODUCTION

1.1 Introduction and background

In November 1997, the government of the Republic of South Africa passed the Criminal Law Amendment Act 105 of 1997 to lay the foundation for the application of minimum mandatory sentencing (MMS). The crime situation in the country was the cause for this, though some people including experts in this matter complain that this legislation has taken away the independence of the courts. Crimes like murder, rape and robbery with aggravating circumstances are listed as deserving minimum sentences.

In an attempt to reduce levels of violent crime in the country, the amended Act was put into operation on 1 May 1998, and section 51 of the amended Act indicates which offences should be given minimum sentences. This was meant to send a clear message of zero tolerance to any person who intended to commit a violent crime. This research examines the actual impact that MMS has as a deterrent for crimes such as murder, rape and robbery with aggravating circumstances.

This topic is interesting and important to be researched because since 1998, after the introduction of Act 105 of 1997, the courts started to impose harsh sentences against acts of violent crimes. The Act went on and listed various crime categories that should be given a specific sentence should the accused be found guilty.

For the purpose of this research, Gauteng Province will be taken as a point of departure and though all sorts of crimes are committed in this province only

murder, rape and robbery with aggravating circumstances will be looked at. This research will help to clear perceptions about the impact of long-term imprisonment as a means to deter crime.

1.1.1 Minimum mandatory sentencing

Since the commencement of minimum mandatory sentencing on 1 May 1998, courts have passed extremely long sentences for certain categories of crime. “Automatic life imprisonment is given when a crime such as murder has been committed and it has been found to be planned or premeditated and when murder has been caused by the result of rape and robbery with aggravating circumstances”, (Criminal Law Amendment Act 105 of 1997). “Rape committed in circumstances where the victim was raped more than once, by more than one person. When the victim is a girl of 16 years or under has also an automatic life sentence”, (Criminal Law Amendment Act 105 of 1997). This meant that magistrates and judges could no longer use their discretion in passing sentences for certain classified crimes like murder, rape, robbery with aggravating circumstances, etc. Not only does the legislation force the courts to pass long sentences but, in the absence of the death penalty, society which is so affected by crime expects the courts to impose harsh sentences.

However, the big question is does minimum mandatory sentencing deter crime? Are ordinary people, the poor, the unemployed, and even the rich and the educated aware of the severity of the punishment they will get once convicted of the listed crimes? Does the knowledge of the Criminal Law Amendment Act 105 of 1997 act as a deterrent against committal of any crime?

This Act is also supported by other acts, eg the Correctional Services Act 111 of 1998, which has increased life imprisonment from 20 years to 25 years from 1 October 2004. All offenders who were sentenced to life sentences after 1 October 2004 have to spend 25 years in prison before they can be considered for parole.

The Criminal Procedure Act 51 of 1977, as amended, also introduced tougher bail conditions, so that arrested people could not get bail easily. The late Minister of Safety

and Security, Mr Steve Tshwete, told police officials to deal with criminals like a "bull dog" deals with a bone. The message was also very clear to the sentencers that tough sentences must be handed down, which indeed happened.

The whole idea was to scare criminals, potential criminals and indeed the whole country with the message that the government would not allow criminals to do as they wished. Though the South African Police Services (SAPS) statistics of 2007/2008 show some decrease in the crime categories of murder and rape, robbery with aggravating circumstances is on the increase. Robbery is increasing despite the get-tough messages from all the state agencies in the criminal justice cluster. The decrease of other categories of crime could not be attributed to MMS. Everybody had hoped that people would be deterred by the knowledge that they would go to jail for longer periods if arrested and convicted of committing any of the classified crimes as outlined in the Act.

People who are able to read or write are quite aware that they can be arrested and convicted, yet they continue to commit all sorts of crimes, not limited to murder, rape and robbery with aggravating circumstances. It can always be argued that if punishment were indeed working, South African prisons would not have been as full as they are now, because the majority of people would be scared of committing any crime because of unpleasant results associated with it.

Zimring and Hawkins (1973:37-38) argue that "punishment for deterrence seldom involves administering harsh penalties solely for deterrent motives to people". They stated that "the main objectives for deterrence through imprisonment are:

- Physically isolate robbers and thus preventing some crime
- Assist in the rehabilitation of the robber
- Express society's feelings toward robbers

- Add potency to the threat of the law in order to promote the deterrence of apprehended robbers and others who might become robbers".

Under this Act, sentenced offenders can only be released after they have served pre-determined time in prison, have undergone some rehabilitation programme and are certified to have achieved a change in behaviour.

My view is that the introduction of MMS has not resulted in crime reduction in this country.

1.1.2 The impact of crime

Crime continues to be a serious problem in South Africa. Moreover, with the prospects of employment being so little for young men and women, serious crimes like armed robbery, murder, rape, hijacking, etc are likely to continue to rise. This has a direct influence on the economy of the country as international companies cannot invest where the crime rate is high. Shezi (*Business Day*, 6 October 2006) reports that the South African Chamber of Business confidence fell to 97.7 during September 2006 as compared to 99 in August 2006 because of the crime rate that is affecting the country.

Violent crime does not only have an impact on the economy of the country, it also affects the running of the entire criminal justice system, with lengthy police investigations, long court rolls and overcrowded prisons, both for the unsentenced and the sentenced.

In order to curb this, the government had to come up with a strategy of reviewing the criminal procedure through the South African Law Commission by establishing a law that allows magistrates to impose long prison terms once a person has been convicted of the classified crimes, hence the promulgation of the Criminal Law Amendment Act 105 of 1997.

The SAPS crime statistics released in June 2008 for 2007/2008 show some significant decrease in contact crime. However, aggressive crime is still a major cause for concern. Even if rape and murder are reported to have decreased, a significantly high number of people are still raped and murdered in the country. Robbery has increased. It shows that crime statistics are actually fluctuating. They move from one angle to the other. The statistics for 2007/2008 revealed that 18 487 people were murdered, 36 190 were raped and 118 312 robberies with aggravating circumstances took place.

Terblanche (1999:27) noted that "the effects of crime are very real for the victims and their families. After becoming a victim of crime, many people's lives change for worse". They have to live with the fear of crime with little support from the government. The South African government has no formal victim support programmes that cater for the victims of violent crime. Even among the non-governmental organisations (NGOs) there is very little support for the victims of crime.

Normally after a crime has been committed and the offender has been arrested, it is the responsibility of the courts to speak on behalf of society to pass a sentence that suits the committed offence. There is a general perception that long-term imprisonment is a deterrent to crime. But with crime on the increase and prisons filled to the rafters, this claim casts some doubts.

1.1.3 Impact of MMS on prison overcrowding

Since the introduction of MMS prisons are extremely overcrowded. In Gauteng alone, by March 2008 correctional facilities were over 177% full (DCS overcrowding statistics: Gauteng Region). Overcrowded prisons lead to a situation where corrective or rehabilitation programmes cannot be run effectively, thus only help to keep offenders out of circulation for certain periods after which they are sent back to the community from where they came, with little or no intervention programmes that could have changed their

lives. The approved accommodation of Gauteng prisons is 25 347, whereas the actual number of offenders, sentenced and unsentenced, was 44 831 in March 2008. According to the same report, in March 2007 there were 44 651 offenders detained in correctional facilities in the province as compared to 44 831 in March 2008. This implies that there is an increase of offender population which can be attributed to the impact of MMS. Though one cannot deduce that crime has increased, based on the number of sentenced prisoners and prisoners still awaiting trial in prisons, the relationship cannot be ignored. The number of sentenced prisoners has increased as well as the number of prisoners awaiting trial (DCS Statistics Index 2003). Among these numbers are many newcomers and recidivists; something that suggests that long-term imprisonment does not actually deter crime.

The annual report of the Department of Correctional Services (DCS) for 2006/2007 further reports that out of 113 213 sentenced offenders, 64 459 were sentenced for aggressive crimes whereas 17 776 offenders were sentenced for sexual crimes. The numbers for both illustrate a very high figure for offenders serving imprisonment for aggressive crimes. The report also states that over 68% of the offenders are serving a sentence of between five years and life. It is further reported that 9% of those offenders serve a sentence of between 20 years and higher, whereas 7% serve a life sentence. These are very high numbers that can be directly linked to minimum mandatory sentencing.

1.2 Problem statement

The effectiveness of long-term sentencing as a crime deterrent in South Africa is the focus area of this research.

Crime in the country is continuing to make itself felt in the lives of all citizens. Despite efforts by the government to fight it by imposing strict bail conditions and passing out harsher sentences, crime of violent nature is on the increase. According to *Sunday World*,

23 November 2003, "between January 2000 and March 2003, statistics show that there were almost 48 000 murders in South Africa. 27 000 cases were referred to court and only 4 760 ended in convictions. The report further indicated that of the people murdered some include the most prominent members of the community who are valuable to the community. The latest of such case is the one of Dr. Kgomotso Masebelanga". Sefara and Mapiloko in *City Press* (1 October 2006), report that 50 people are killed daily in South Africa.

Based on the SAPS crime statistics for 2007/2008, there is no question as to why Gauteng correctional centres are so overcrowded. The crime rate then leads to a situation where the community and the public are calling for harsher sentences, and the courts armed with MMS duly oblige by sending offenders for lengthy time periods to prison.

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), reports that in 1988, 19 308 rape cases were reported to the SAPS, in 1994 the figure increased to 42 429 and in 1996 the total once again increased to 50 481, (Robertson, 2004). The report further states that women and children are targeted since they are perceived as the weaker individuals in society. On a daily basis media is reporting about the brutal abuse and rape of children and women. And once perpetrators are arrested and convicted, they are sent for lengthy periods to prison. The case of the abduction and rape of British tourist Julie Stevens in Mpumalanga Province in 2002 can be cited as an example where the judge described it as the "worst case of rape" and perpetrators as "wild dogs" and they were given life imprisonment, *(The Citizen,* 16 December 2003).

On a daily basis we read and hear about people who fall victim to crime and society's need to harshly sentence those that have been arrested for committing crimes seems to be justified.

The effect of crime and the impact made by the courts in sentencing are interesting. Whether the message and the intention of the government to put offenders in prison for longer durations, reaches the citizens of this country is what this research is trying to establish.

In support of MMS, the Correctional Services Act 111 of 1998 (CSA) has increased the duration a sentenced offender has to spend in prison before being considered for parole. Section 73(6)(b)(iv) of the CSA states that "a person sentenced to life imprisonment, may not be placed on parole until he or she has served at least 25 years of the sentence. This however does not mean that such an offender will be automatically released by the parole board after serving 25 years". According to section 78 of the CSA "before any offenders sentenced for life imprisonment can be considered for parole such recommendations by the parole board must be sent to court for a final decision". These stipulations from the CSA make things more difficult and it is going to be a mammoth task to reduce overcrowding in South African prisons.

Like MMS, the Correctional Services Act 111 of 1998 also prescribes the minimum duration a sentenced offender must spend in prison before being considered for parole. Chapter VII of the CSA clearly stipulates the duration which a sentenced offender should serve before he or she can be placed on parole.

There is no doubt that these pieces of legislation are meant to complement each other in sending a clear message from the government that crime does not pay. Offenders will have to spend more time in prison serving their sentences. This, however, leads to overcrowded prisons as illustrated by the Gauteng prisons. Judge Fagan in his report titled "Curb the vengeance (Minimum sentences and Correctional Services Act spell worsening prison conditions)" wrote that the effect of the minimum sentence legislation has been to greatly increase the number of prisoners serving long-term and life sentences, and is a main contributor to increased prisoner numbers. On pages 7 - 8 of the same

report in paragraphs 4 - 8, among other things Judge Fagan indicated that long sentences are not achieving the aim of reducing crime, they are on the contrary causing more crime because overcrowding precludes proper rehabilitation and instead prisons are turned into places where criminality is nurtured. He further stated that long sentences also make reintegration into the community more difficult as contact with families tends to be lost.

1.3 Overview of research

This research study was a qualitative one and had two main aims that formed the basis for the research questions namely:

- To examine the impact of long-term imprisonment as a crime deterrent subsequent to the minimum sentencing legislation adapted in South Africa with effect from 1 May 1998.
- To explore and discuss other options of sentencing as opposed to direct imprisonment.

This research was qualitative in the sense that it only relied on interviews conducted as well as the literature that was read. Opinions of the respondents guided this research. According to Welman and Kruger (2001:191), “qualitative data are based on meanings expressed through words and other symbols or metaphors”.

Various sources were used to gather the information needed to complete this research. An extensive literature review was conducted to lay a theoretical foundation. Questionnaires were drawn and relevant people were interviewed one on one. Similar questionnaires were used for different participants and only differed according to the field of work of each participant. However, participants doing the same work but at different offices were asked similar questions. A copy of the questionnaire is included in the appendices of this research.

Magistrates and prosecutors from various backgrounds were interviewed in order to allow more representativity and divergent insight.

1.4 Research limitations

The research is not exhaustive. It only covered crime rates, sentencing and prison populations in Gauteng Province. Gauteng Province was chosen as a sample province. Any research study has limitations that need to be taken into account, eg time frames, relations between the respondents and the researcher, opinions of respondents, which might be subjective, biases, etc. The phenomenologists argue, "what the researcher observes is not the reality as such, but an interpreted reality", (Welman and Kruger 2001:181). This interpreted reality causes some research limitations.

Based on the nature of their work, magistrates and prosecutors are very conservative. Magistrates will always refer to the judicial independence in order to limit the discussions. This is because the topic is challenging what they are doing on a daily basis.

Respondents were expressing personal opinions and therefore subjectivity cannot be ruled out.

1.5 Structure of the research

The research is structured as follows: It comprises five chapters. Chapter One deals with the introduction; background to the research question; rationale for conducting the research; problem statement; sentencing; and an overview of the literature. The introductory chapter is followed by a theoretical discussion and a review of the literature related to the research in Chapter Two. This chapter examines the sentencing; deterrent theories in detail; impact of imprisonment and alternatives to imprisonment.

A thorough description of the research approach and methods used for this research is outlined in Chapter Three. It further deals with how research subjects were chosen.

In Chapter Four, the data collected through the research process is presented and analysed in relation to the theoretical framework discussed in Chapter Two. Conclusions and recommendations regarding the findings are presented in Chapter Five.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Generally, it is believed that once a person is convicted for committing a violent crime, they should be sent to prison for the rest of their life and should not see the light of day again. In some countries including those developed countries like the USA, capital punishment is still applied. Tonry and Hatlestad (1997:4) state, "many American states over the past twenty-five years have enacted death penalty statutes, and increasing numbers of people are executed". Whereas these states are still using capital punishment as a means of deterring crime, capital punishment is illegal in South Africa, (Criminal Law Amendment Act 105 of 1997*).* In fact it can be argued that the main objective of punishment is to deter future crime/misconduct.

Zimring and Hawkins (1973:1) define "deterrence by punishment as a method of retrospective interference by holding out threats that whenever a wrong has been actually committed, the wrongdoer shall incur punishment". It is also believed that seeing severe punishment metered out for misconduct serves to discourage others, who see the individual being punished, from committing any act that will result into them receiving the same treatment, as well as acting as a deterrent for the offender to re-offend.

The SAPS crime statistics released in June 2008 for 2007/2008 show some significant decrease in contact crime. However, aggressive crime is still a major cause for concern. Even if rape and murder have been reported to decrease, a significantly high number of people are still raped and murdered in the country. Robbery has increased. It shows that crimes statistics are actually fluctuating. The statistics for 2007/2008 revealed that 18 487

people were murdered, 36 190 were raped and 118 312 robberies with aggravating circumstances took place.

In this chapter, the theories on deterrence, sentencing, mandatory minimum sentencing, purpose of imprisonment as a crime deterrence and alternative to imprisonment as a sentencing option will be discussed.

2.2 Deterrence theories

The courts might take two positions when sentencing with deterrence in mind viz:

"Demonstrating to society the fearful consequences of committing an offence and teaching the offender the unprofitability of repeating his offence and thus prevent him from committing any crime in future", (Ruby 1980:8). Deterrence theories regard the prevention of further offences through a deterrent strategy as a rationale for punishment. As an exercise of state power, sentencing can be justified by its consequences only. With the deterrence theory, a first offender may require little or no punishment while the recidivist may require much heavier penalties. Those theories emphasise the general deterrence nature of the punishment rather than that of individual deterrence. They believe that the greatest good of the greatest number represents the supreme value and that the individual counts only for one. They argue that punishing an individual only serves an individual purpose. "But when punishment is set to deter the rest of the potential offenders, it helps to deter the large potion of the society", (Maguire, Morgan and Reiner 1994:820). In all the instances, the type of the sentence imposed should suit the type of the offence committed. It is strongly believed that once a person sees another one being punished for an undesirable behaviour, chances are that the next person will refrain from committing a similar act. When looking at the spate of crime in the country where more than 74% of cash in transit robbery takes place on a daily basis, (SAPS Crime Statistics on robbery, 2007/2008) this cannot be true. It appears as if different

syndicates are trying to outsmart one another in committing crime. According to Walker (1985:94), “when passing sentence, the sentencer expects that the effect of sentencing an individual will have on the conducts of the others. Most sentencers often hope for deterrence and education”.

However, the biggest challenge is whether offenders sentenced to long-term imprisonment come back to society as corrected, rehabilitated or better people than they were before being sentenced to prison. Though it is not what this research is trying to find out, it is widely believed that most offenders come from prison being better criminals, more sophisticated than they used to be before entering the prison.

Von Hirsch, Bottoms, Burney and Wikstrom (1999:5) state that “criminal deterrence is usually subdivided into special and general deterrence. In this regard special deterrence refers to the discouragement of already identified offenders from re-offending”. The level of recidivism is a cause for concern in the country, a thing that might imply that individuals are not discouraged. The same can be said about the general deterrence which is aimed at discouraging members of the public from offending. However, from the look of things and the way crime has had its grip on the country, people are not being discouraged from committing crime. People are still being murdered, women and children are raped and killed daily, and vehicles transporting cash attacked on a daily basis. According to the latest South African Police Services (SAPS) statistics, of June 2008, *an average of 50 people are murdered in South Africa every day*.

2.3 Rationale for deterrence

When courts pass sentences, the purpose is to discourage any future occurrences of that action. According to Zimring and Hawkins (1973:18), “when confronted with a crime, legislators often agree that the best hope of control lies in getting tough with criminals by increasing penalties”. Severe punishment is seen as a means to demonstrate to the society

that government is treating crime seriously and that the right message is being sent to an offender as well as to potential offenders.

With deterrence in mind, punishment must always suit the offence so that offenders can learn some valuable lessons from their action.

2.3.1 General deterrence

"General deterrence is any discouraging effect which has threats upon people who might otherwise commit an offence", (Walker & Padfield 1996:100). Indeed many legislators and sentencers believe that the penalties, which courts impose, discourage potential imitators. Cross (1971:50) stresses that "punishment of an offender may have an educative effect on others".

Von Hirsch, Bottoms, Burney and Wikstrom (1999:5) define criminal deterrence as "the avoidance of criminal acts through fear of punishment". In this regard, the public and individuals are discouraged to commit any sort of crime for fear of the consequences. It is believed that once a severe sentence is imposed on an individual, all the like-minded people will be discouraged by the severity of the sentence.

2.3.2 Individual deterrence

Walker (1985:98) defines "individual deterrence as the discouraging effect of actually experiencing what is threatened". As much as imprisonment and punishment have general deterrence, they also have individual deterrence. Rabie (1979:11) states that "the underlying idea is that a person who has once been subjected to the pain which punishment brings about will be conditioned thereby in the future to refrain from any criminal behavior". Through punishment, the offender is taught a lesson so that he will be deterred from committing further crimes. However, in this regard the author forgot to

mention the high level of re-offenders and the new entrants to crime, as well as that the level of overcrowding in prisons on a global level is on the increase, despite lengthy prison terms given once a person is convicted of a classified offence.

Does long-term imprisonment deter individuals to commit crime? In South Africa, people are sent for lengthy times to prison, only to be released and to commit another crime again, whether similar or different, and to go back to prison. Therefore, it cannot be irrefutably concluded that long-term imprisonment deters crime. In its annual report for the DCS for 2006/2007, the Minister of Correctional Services admits that recidivism is one of the major challenges faced by his department.

Punishment can further be viewed as a social defence since the community needs to be protected from crime and criminals. Therefore, it is important to send criminals to prison so that they can learn from their actions that crime does not pay. With individual deterrent in mind, criminals are temporarily put out of circulation for a few years, with the hope that once in prison they will learn valuable lessons, taught life skills, engaged in corrective programmes, and come out as better and rehabilitated individuals who will live productive lives away from crime. It should be stated that there is no guarantee for this, because while in prison most offenders get an opportunity to meet other criminals who then share their crime expertise. One can further argue that on the contrary long-term imprisonment serves as an opportunity for offenders to increase their network of criminals and sharpen their crime skills. According to Walker (1985:145), “the usual hope is that the experience of imprisonment will be unpleasant a memory that it will discourage ex-prisoners from risking another prison term which serves as an individual deterrence”. Based upon this background it is the belief of the South African government that severe sentencing by the courts will discourage both individual offender and the general public.

2.4 Sentencing

According to the South African Law Commission (2000:1), "the sentencing of the offender is a public ritual of symbolic and practical significance. It is the moment when the court, speaking on behalf of society by declaring the penalty that is deemed appropriate for the conduct of the offenders who have been convicted of contravening the law".

The South African Law Commission (2000:43) states that "the purpose of sentencing is to punish convicted offenders for the offences of which they have been convicted by limiting their rights". Sentencing is also aimed to deter an individual who has been found guilty of committing a crime not to re-offend and to discourage potential transgressors not to commit any crime by seeing others being punished. Through sentencing, the courts should clearly illustrate that crime does not pay. But with crime in South Africa being so high and sentencing being so harsh after the promulgation of the Criminal Law Amendment Act 105 of 1997, are individuals and the general public being discouraged from committing crime by seeing others being condemned to the prison for life after committing murder, rape and robbery with aggravating circumstances?

Amid the evil of crime affecting this country, particularly in Gauteng, sentencing has become the much talked about matter after crime.

2.4.1 Principles of sentencing

The main objectives of sentencing according to Ruby (1980: 5) are "*retribution and deterrence*. With retribution it is believed that the infliction of punishment by the courts becomes a source of security for all". This in return will cause the public to trust the judicial process to protect them. When the public is satisfied by the punishment given to

criminals, it feels protected, and when the public feels that criminals are not punished enough, they turn to take the law into their own hands through vigilantism.

The purpose of sentencing is to ensure that the punishment fits the crime.

In South Africa, when sentencing its considered, it is aimed at addressing, but not limited to, the following:

- Restoring the rights of victims of the offence.
- Protecting society against the offender.
- Giving the offender the opportunity to lead a crime-free life in the future. When imprisonment is being considered, it is to ensure that programmes being run by correctional services will lead to addressing the offending behaviour and rehabilitate the offender.
- Discouraging a person who is sentenced to commit any sort of crime in future.
- Discouraging the public by seeing others being punished.

(South African Law Commission 2000:43)

2.5 Rationale for mandatory sentences

Drug Policy Alliance Network "What's Wrong With The War On Drugs" http://www.drugpolicy.org/drugwar/mandatorymin/ (7 September 2008), defines mandatory minimum sentencing as "laws, which force judges to deliver fixed sentences to individuals convicted of a crime, regardless of culpability or other mitigating factors". These laws are made to be adhered to during sentencing of an offender for committing a specified crime.

Wikipedia "Mandatory Sentencing" http://en.wikipedia.org/wiki/Mandatory_sentencing (7 September 2008), refers to a mandatory sentence as a "court decision setting where judicial discretion is limited by

law. Typically, people convicted of certain crimes must be punished with at least a minimum number of years in prison". In this regard, judges and magistrates just have to follow without any deviations what the law has prescribed.

According to Neser (2003), "the rationale for mandatory minimum sentences can be traced back to a call from the community for heavier penalties and for offenders to serve a more realistic term of imprisonment. There was also a general dissatisfaction with the leniency of sentences imposed by the courts for serious crimes".

The South African Law Commission (1997:21-22) concludes that in mandatory minimum sentences:

- A simple message is conveyed to potential offenders. This supports the general deterrence theories as it states that punishment is imposed with the aim of deterring the community from committing an offence similar to that of the convicted person and is based on the claim that the average person is deterred from committing crime by the punishment imposed upon others, (Schonteich, 1999:9).
- Individuals are discouraged to re-offend. It is generally believed that once an individual is severely punished after committing an offence, he will be discouraged to engage in similar activities in future.
- Leniency by the courts is avoided.
- Give the community a feeling that justice is being done.
- Give a clear message about the consequences of violent crimes.

As stated before, Act 105 of 1997 was intended to help the government fight crime by passing lengthy sentences for violent and serious offences.

"The legislation was introduced as a temporary measure which has to be renewed initially after two years, or it lapses. However, the Act has since been renewed every two years

and there are already reports that MMS will still be applicable in the future. When this Act was introduced, there was a strong belief at that time that long-term sentences will deter criminals", (Judicial Inspectorate of Prisons: Annual report 2005/2006:22).

This research will try to answer some of the questions regarding the impact of long-term imprisonment as a crime deterrent. It will further try to come up with some alternatives to imprisonment. Though one should not be naïve that imprisonment is not helping in fighting crime, the truth is, imprisonment is not the only option available to fight crime.

It is further very interesting to see the pattern of sentencing in the country since the introduction of this legislation.

2.6 Purpose of imprisonment

The South African Law Commission report (2002:56) states that "imprisonment is a drastic penalty and the most expensive exercise to implement because many role players are involved". Imprisonment only serves to take an offender away for a specified period. It is used to protect the society by separating offenders who are a serious threat to the lives and personal security of members of the community.

Toch in Flanagan (1995:247) has noted that "*long-term inmates are long-term problems* because they quietly and undramatically suffer and silently permit us to ignore them". Little activity is taking place for offenders sent to long-term imprisonment as rehabilitation is directed at inmates serving short terms. In most instances long-term offenders are left idling without any constructive engagement, something that can be regarded as a waste of human resources.

Walker and Padfield (1996:125-126) distinguish nine purposes of imprisonment:

- Hold people until they can be tried, sentenced or taken to the place to which they have been sentenced, or until they can be extradited or deported.

As much as detaining people while waiting to be tried has some advantage to the state, like minimising the chances of escapes and non-appearance on court dates, there are some associated disadvantages to the detained person. When a person is eventually acquitted by the court, in most cases they would have lost their source of income and disrupted their families.

- Coerce people into compliance with the order of the court

When being subpoenaed to appear in court for non-payment of traffic fines, people will always opt to pay for the outstanding fines instead of appearing in court where they might face the possibility of imprisonment. Abusive husbands are often being given court interdicts not to come near their spouses with clear conditions that any failure to comply can lead to imprisonment.

- Protect members of the public from offenders by taking them out of circulation

The government must show its citizens through the sentences imposed by the courts that it cares. It has to illustrate through harsh punishment that crime and criminality do not pay. That the citizens must feel more secure knowing that whoever offends, the law will take its course. The government might be getting tough on criminals by removing them temporarily from society, but at the same time, more criminals are being produced.

- Hold a person long enough to make possible a prolonged course of treatment

When imprisonment is being considered, it will be aimed at giving an offender an opportunity to undergo treatment programmes while serving a term in prison. But up to this day nobody can tell as to what is the best therapeutic treatment sentenced people must follow in order to change their offending behaviour. When passing sentences, magistrates and judges will normally comment by saying that "offenders are being sent to prison in order for them to be rehabilitated". The question is, are these offenders being rehabilitated while in prison?

Keeping a person for a long period in prison does not mean that he will come out of prison changed for the better. They come out to commit another crime, hence South African prisons are so overcrowded. If long-term imprisonment and rehabilitation programmes were working, prisons in South Africa and all over the world would not be as overcrowded as they are now.

- Act as an individual deterrent

Walker and Padfield (1996:126) states that, "in the hope that the memory of the experience will discourage the ex-offender from risking another sentence, imprisonment is considered". When sentencing, sentencers often hope that sending individuals to prison will serve as a lesson. They often hope that individuals will learn from their mistakes and refrain from committing any sort of a crime in future.

- Act as a general deterrent

It is strongly believed that when the majority sees others being punished severely, they get discouraged and fear that they too will be punished similarly if they are arrested for an offence. It simply states that people become fearful of the punishment particularly

when it is imprisonment. When the Criminal Law Amendment Act was passed in 1997, it was aimed among others at discouraging potential offenders to commit any sort of crime. However, the irony is that there is suddenly a high increase in crime in the country. Prisons are extremely overpopulated and there seems to be no end to the crime affecting this country, particularly violent crime. “Therefore, it cannot be assumed that legislation which merely makes tougher sentences permissible has much effect in discouraging others to refrain from committing crime by seeing others being punished” as stated in Walker and Padfield (1996:99).

- Symbolise degrees of disapproval of the offence

Society expects the courts to act on its behalf by punishing offenders in relation to the crime they have committed. This is normally indicated by the comments of magistrate and judges when passing judgments. These types of comments encourage the public to have confidence in the judiciary and the law. When sentencing a person to imprisonment the courts, on behalf of the government, clearly show that they don’t approve of that offence. It is a way of telling an individual and others, what you have done is not acceptable. The more severe the sentence, the more it illustrates the degree of disapproval.

- Inflict retributive punishment

Negative behaviour, like committing a crime, should be penalised by punishment and imprisonment. When people are being sent to prison, it is an attempt to illustrate that they will reap what they have sown. Through retributive punishment, it is widely accepted that the punishment muted should fit the offence.

- In exceptional cases, to protect a very unpopular offender against retaliation by victims or sympathisers of victims

In most cases child molesters find themselves being attacked by fellow inmates, victim's families and other sympathisers. Walker and Padfield (1996:154) distinguished four areas for which people can be put in prison for fear of retaliation, namely:

- Those believed to have sexually molested or ill-treated children.
- Those believed to be informers.
- Those involved in gang feuds.
- Those who do not pay debts incurred in gambling.

2.7 Alternatives to imprisonment

Junger-Tas (1994:1) reports that "alternative sanctions, or 'intermediate sanctions', 'community sanctions', or task sanctions, have become widespread throughout the western world in the last ten to fifteen years". This implies that imprisonment is not the only form of punishment that can be imposed by the courts; there are other forms of punishment that can be considered once a person has been found guilty of committing a certain offence.

There is no doubt that imprisonment is losing favour in recent years particularly in the developed countries. As a result, a new form of sentencing that is alternative to imprisonment is being considered. Carlen and Cook (1989) indicated that "alternatives to imprisonment are the way to go if we want to keep our prisons empty and prisoners socially responsible for their committed crimes". Alternatives to imprisonment include sanctions like community sanctions, compensation, fines, electronic monitoring, community services, etc. Section 276 of the Criminal Procedure Act 51 of 1977 makes provision for different types of sentencing options. These include fines, warnings,

correctional supervision community services, etc. Nevertheless, the type of sentence passed should suit the offence committed. This section gives presiding officers the option to decide on a suitable sentence. Junger-Tas (1994) in her book of alternatives to prison sentences, also recommends the above-mentioned sentence options as an alternative to imprisonment. The development of these options was made solely to reduce the use of prison sentences which are seen to be too expensive.

2.7.1 Mediation projects

"Mediation is based on a conciliatory meeting between the offender and his victim and some form of restitution which is usually compensation by the offender. The principle objective of this method is to recognize the interests of the victim, promote a real conciliation between the parties involved, and to make the offender explicitly aware of what he has done", Junger-Tas (1994:20).

2.7.2 Restitution and compensation

"In most instances, compensation forms part of offender and victim reconciliation. It is the payment of compensation, the return of the stolen property and also the reparation for the damage and doing work as redress", Junger-Tas (1994:19). Currently the Department of Correctional Services is engaged in aggressive marketing of restorative justice, which is simply victim compensation. This will help the DCS to reduce the level of overcrowding currently affecting South African prisons. These sentencing options should, however, be implemented cautiously as they might be wrongfully interpreted that criminals with more money are buying their freedom. The other negative aspect is that both the perpetrator and the victim might pretend to have forgiven each other only to restart their hostility.

2.7.3 Day fines

"Normally fines are used as a replacement of short-term imprisonment. It should also be stated that day fines can be as harsh as a prison sentence. With day fines, the sanction must reflect the seriousness of the offence and should fit the financial position of the offender. It should be enforceable and be paid in full", Junger-Tas (1994:22). However, care should be taken that the rich are not simply paying their way out of prison. The system should be designed in such a way that those who have financial resources cannot manipulate it.

2.7.4 Community service

Community service is being used in most countries as an alternative to imprisonment. With community service, "the offender does unpaid community work for the benefit of the community for a certain number of hours and over a restricted period", Junger-Tas (1994:19). Community service as a sentence means that the offender is still economically active, does not become a burden to the state and is still able to fend for his family while serving a sentence.

2.7.5 Electronic monitoring

According to Junger-Tas (1994:31), "electronic monitoring reduces overcrowding in prisons and it also helps with social re-integration as an offender is not required to remain indoors". This method allows the offender to move freely in the community while being monitored.

2.7.6 Intensive supervision programmes

"The objectives of the intensive supervision programmes are the efficient utilization of limited prison space, cheaper alternative for loss of liberty, reduction of criminal behavior and the administration of appropriate sentences", Junger-Tas (1994:33).

According to the research conducted by Davies, Takala and Tyrer (1996:59), "prisons did little to improve the future behavior of people sent to them and were aware of the dysfunctional consequences of incarceration in terms of enhancing rather than reducing criminal tendencies. Imprisonment has had a limited role to play in the deterrence of crime. In a research conducted in three countries viz California, England and Finland it was discovered that community sanction is the most type of the preferred sanctions rather than imprisonment. The advantage of community sanction is that the offender still maintains ties with his family while serving a sentence, he retains his job and reintegration becomes effective". Davies et al (1996:59) further state that "a multi-purpose community sentence should provide for multiple elements of restitution, community work, fines and electronic monitoring". This type of sentence is cost effective as the cost of maintaining a person in prison is reduced.

"Not only is community sanction utilized by these three countries but most of the democratic countries are using this type of a sanction", (Tonry and Hatlestad 1997). In today's overcrowded prisons, sentencing should be different. Again overcrowding in prisons globally is due to failure of long-term imprisonment. This resulted in the 1990 Blue Ribbon Commission by the Californian Justice Department (Davies et al. 1996). In South Africa, community sanctions are also considered, though they are being applied reservedly.

2.7.7 Suspended sentences

In South Africa, suspended sentences are mostly considered for offenders who have been convicted for committing minor offences. Ancel (1971:34) states that “though this type of sentencing has been in existence for a long time, it is one of the least considered sentencing options”. Sentencers appear to be sceptical in granting offenders suspended sentences. The advantage of this sentence is that people who have been found guilty of a crime are saved from the stigma of imprisonment. They still remain productive and able to cater for their families. If given to school-going children, they will still be able to finish their studies without much disruption. However, should the offender commit another crime while serving a suspended sentence, he will be put into prison because suspended sentences are conditional sentences. “Since the offender is only sentenced subject to a condition, which is the commission of another offence, all the consequences of the sentence are suspended until that condition is fulfilled”, Ancel (1971:34).

2.8 Summary

The research conducted, was based on all of this literature and showed that “imprisoning offenders for long periods has failed as a social policy. It has shown itself to be costly, inhumane, and discriminatory. Even under the best conditions, long-term confinement disrupts the fabric of human relationships a person develops over a lifetime. It has the most severe consequences for the inmate’s family, who are innocent victims of his incarceration”, Sommer (1976:171).

If a person commits a crime, is arrested and sentenced, they are the only one that can describe how painful it was to be sentenced to a lengthy time in prison. They are the only ones that can tell how is it to loose their natural freedom and be under guard for the duration of their sentence. It must further be argued that there is no measurement for rehabilitation. Regardless of the number and the type of corrective programmes in which

the offenders participate, nobody can tell and truly certify that a serial rapist, a serial murderer or a serial robber has repented and is fully rehabilitated and is ready to live a normal life within the community.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This research was aimed at examining the effectiveness of long-term sentencing as a crime deterrent in South Africa. In order to arrive at the desired results, the Criminal Law Amendment Act 105 of 1997 and its minimum mandatory sentencing (MMS) was critically examined. In 1997, the government of South Africa introduced the Act as a strategy to fight crime. This crime fighting strategy was introduced as a temporary measure, which was supposed to be reviewed after two years after its commencement, but it has since been renewed every time it lapses, (Judicial Inspectorate of Prisons Annual report 2005/2006:22).

This research aims to examine the impact of MMS in fighting crime, ie the effectiveness of long-term imprisonment as a crime deterrent in South Africa.

This chapter provides a description of the methodology employed to gather this information from interviewed people. Both the research process and the rationale behind it are described and discussed in some detail. Various methods were used in this study in order to unpack this topic. These methods include the design, data collection, data analysis, observation and the limitations of the study, which will be discussed in this chapter.

The remaining two chapters of the research concentrate on a presentation of the research findings, and the conclusion, which includes a discussion of some recommendations.

3.2 Research approach

The research approach used in the compilation of this research is qualitative. Reichardt and Cook (1979:7) define qualitative methods as "including ethnography, case studies, in-depth interviews, and participant observation". For the purpose of this research, in-depth interviews were the only method used to obtain data. Qualitative research is based on the belief that first-hand experience provides the most meaningful data. It was for this reason that the methodology employed in this research project was of a qualitative nature. It was decided that, because of the nature of the study, quantitative analysis would be inappropriate. The respondents were asked questions based on their own experiences and based on their daily encounter with Act 105 of 1997. In this regard, numbers were not necessary.

In addition, it was felt that it would be impossible to make a realistic quantitative evaluation, as the study is based on perceptions and opinions of the respondents and therefore cannot be scientifically measured.

"Qualitative research is intentionally non-random in data selection and their sampling is purposeful. Individuals that or objects that will yield the most information about the topic under selection are selected", Leedy and Ormrod (2005:145). This will allow the researcher to come to the relevant findings and conclusion on their research without influencing the respondents. Qualitative research also allows for recognition of change and development in the research environment.

Reichardt and Cook (1979:10) outline some attributes related to qualitative paradigms which are: "naturalistic and uncontrolled observation, close to the data; the 'insider' perspective, grounded, discovery-orientated, exploratory, expansionist, descriptive, and inductive, valid; 'real', 'rich', and 'deep' data, subjective, holistic and assumes a dynamic

reality". All these are important elements of this research, which aimed to find out the opinions of people serving sentences handed down in accordance with MMS.

Ongoing evaluations to measure effectiveness of policy are important within government departments, and qualitative evaluations are appropriate in this instance.

Reichardt and Cook (1979:88) state, "evaluation today has become a major activity of social services programs". It is therefore necessary to assess policies from time to time that have been passed by the legislative authority with the aim of addressing a specific social problem. The purpose of this type of evaluation will be to ascertain whether the new legislation is succeeding in addressing that specific problem or not. In South Africa, the high and increasing crime levels have resulted in the passing of minimum sentencing legislation.

However, it cannot just be accepted that the legislation has been passed and therefore the social problem of crime has been resolved. It is for this reason that this research has been initiated. The research question is, is this new policy successful enough in fighting crime in this country?
According to Welman and Kruger (2001:191), "qualitative research is not concerned with the methods and techniques to obtain appropriate data for investigating the research hypothesis but based on words and other symbols or metaphors". It is based on this that opinions and comments from various people will be used in order to arrive at a conclusion.

3.3 Sample selection

Leedy and Ormrod (2005:145) state that "how you identify your sample must depend on what research question(s) you want to answer". Altogether 18 respondents were interviewed for this research. There are four categories of the selected sample and the

selections were based on specific reasons. These categories consisted of experts on MMS because of their knowledge on the subject. Magistrates, because it is part of their daily work to apply mandatory minimum sentencing in passing sentences, and prosecutors, because it is their responsibility to prove the guilt of the accused and recommend a suitable sentence. Members of the Department of Correctional Services (DCS) were selected because they have to deal daily with offenders serving lengthy jail terms because of MMS. The researcher specifically approached experts and members of DCS, whereas magistrates and prosecutors were availed to the researcher by their supervisors.

Purposive non-probability sampling method was used in the selection of the sample.

Respondents were specifically chosen and approached because of their knowledge on the subject though DCS officials were specifically targeted by the researcher because of the impact MMS is having on the execution of their duties.

It must be stated that the experts interviewed were not the only experts in the field but because of some limitations, these were the only experts interviewed by the researcher who were willing to assist with this research.

According to Leedy and Ormrod (2005:206), “in purposive sampling, people or units are chosen for a particular purpose”. Experts chosen in this research were solely targeted based on their knowledge of the subjects and organisations they are representing.

Leedy and Ormrod (2005:206) further state that in purposive sampling; a group or people are chosen because they represent diverse perspectives on an issue. In this research, experts approached and interviewed were from the Centre for the Study of Violence and Reconciliation (CSVR), one from the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and one from the Council for Scientific and Industrial Research (CSIR). The experts were specifically asked whether they were

willing to assist in this research because of their knowledge of the subject. Organisations represented by these experts had for many years made inputs and submissions to Parliament about MMS. For example on 31 July 2007 the CSVR submitted a paper on MMS titled:

Submission on Criminal Law (Sentencing) Amendment Bill 15 of 2007
Centre for the Study of Violence and Reconciliation
31 July 2007.

However, still many other organisations have experts in this subject. Time limitations did not allow the researcher to interview as many experts as he would have liked.

The selected sample was made up of representatives from various population groups within South Africa. This was necessary in order to come to acceptable results. Magistrates and prosecutors from different courts were selected and interviewed. The majority of the interviewed magistrates were from the regional courts that deal mostly with MMS. However, some magistrates from district courts were interviewed based on their knowledge of MMS.

On a daily basis, regional court magistrates are using MMS in determining the appropriate sentences for people found guilty of a criminal activity. Four magistrates from regional courts were interviewed. Two were from Randburg Regional Court, one from Johannesburg Regional Court and another one from Soweto (Protea) Regional Court. One senior magistrate from Soweto District Court, who had acted many times as a regional court magistrate, was interviewed and a magistrate who presides in the Johannesburg District Court dealing with juveniles was interviewed.

Three prosecutors from Soweto Court and one prosecutor from Johannesburg Court were interviewed.

Experts on the topic from various institutions were interviewed: One each from CSVR, NICRO and CSIR. When selecting experts, the population group was not considered but knowledge about what was researched was the determining factor.
Five officials from DCS were interviewed, one working in the Gauteng region for the DCS, two Heads of Correctional Centres from Baviaanspoort and Krugersdorp. The Head of Community Corrections at Johannesburg and the Area Coordinator Corrections working at Leeuwkop were also interviewed.

3.4 Research method and data gathering

It must also be stated that the sample chosen does not necessarily represent the view of all the people in this field of research.

"Since it is impossible to conduct a research from a large population, researchers have to obtain data from only a sample of this population", Welman and Kruger (2001:47). This is exactly what happened during this research. Usually views from the sampled population that is being researched are regarded as a representation of the whole population. All the respondents were based in Gauteng Province.

The main data that was collected in this instance was through open-ended structured interviews with magistrates, prosecutors, correctional officials and some experts on MMS.

Various methods were used in conducting the interview depending on the availability of the respondent.

With regard to magistrates, the president of the Regional Court Transvaal Division was approached, who gave the researcher permission to talk to the available magistrates of the regional courts. Thereafter appointments were made with the respective magistrates. A

senior magistrate (supervisor) also assisted in availing magistrates who were not in the regional courts. Regarding the prosecutors, senior prosecutors (supervisors from Johannesburg and Soweto courts) were responsible for making appointments for the researcher.

With regard to experts and DCS officials, the researcher made appointments by phoning them.

Face-to-face interviews were conducted with magistrates, prosecutors and two experts and were recorded in writing and electronically. Questions were emailed and faxed to all DCS officials and one expert, and in return they emailed and faxed their responses back. This was due to their unavailability and to eliminate any biasness since they are colleagues of the researcher.

Since qualitative research is subjective in nature, the respondents were allowed to state their own opinions regarding the impact of MMS as having a deterrent factor in fighting crime.

Information was also gathered from reviewing literature relevant to the researched topic.

A questionnaire was designed which guided the researcher in the semi-structured interviews, particularly where respondents were interviewed face-to-face. Leedy and Ormrod (2005:209) refer to the semi-structured interviews as “an approach where the research may follow the standard questions with one or more tailored questions to get clarification or probe a person’s reasoning”. Where there was a need, the researcher was able to pose follow-up questions without necessary influencing the respondents.

Short and simple questions were asked. This was necessary because none of the respondents spoke English as their home language and it allowed them to have a clear

understanding of what was asked, so they could respond appropriately. Since questions were open-ended, they allowed for some explanations that helped to clear the research topic further.

Questions started with a short background of Act 105 of 1997. This was necessary in order to allow respondents to understand the rationale of the questions and make sense to them. Questions and responses will be dealt with in detail in the next chapter.

Language was not a problem since all the respondents use English daily as part of their medium of instruction in the workplace.

As stated earlier, some questionnaires were distributed in the form of emails and faxes. Where face-to-face interviews were conducted, the researcher was able to ask follow-up questions, where necessary, without influencing the respondents.

Only individual interviews were conducted because of time constrains and no group interviews were conducted.

During the interviews, the researcher was personally making notes and using a tape recorder with the consent of the respondents.

3.5 Data analysis

Data analysis according to Holliday (2006:99) is “a process of making sense of what is encountered in the field”. It is necessary that information gathered is analysed and interpreted for it to make sense. After all the data has been collected, it must be presented and interpreted in order to give meaning to the research or topic.

Selltiz, Jahoda, Deutsch and Cook (1969:386) state that “the purpose of interpretation is search for the broader meaning of answers provided in the research by linking them to other available knowledge”. This means that the results of the research cannot just be published as the true reflection of the study without interpreting them and attaching meaning to what was found. Data gathered through the questionnaires was analysed and interpreted as required.

Questionnaires for the same categories of respondents were similar and as such it was easy to interpret, compare and analyse them. Since the researcher recorded and taped the responses, they were carefully studied, interpreted and clustered into themes. Similar responses were clustered together and it was easy to determine as to who said what.

Secondary information, like gender and the demographic composition, did not play any role in influencing the results, since responses were purely based on the understanding of MMS in deterring crime and its impact thereof. Though there was some commonality in some of the responses provided, it was interesting to realise that respondents from the same organisations provided some similar responses. Selltiz et al (1969:390) support this view when they state that “interpretation leads to the establishment of explanatory concepts”. By mere studying the responses, it was easy to tell from which category of respondents they were coming and thus made it easy to cluster them.

Once the collected data was clustered according to some similarities, it was easy to analyse and interpret. This process of analysing and interpreting data has made it easy for the researcher to come up with some findings and conclusions without much difficulty.

The interpretation of the responses from the interviews was also done taking into consideration the theoretical information gathered in Chapter Two. These findings are presented in Chapter Four, and the recommendations and conclusions that emanate from them in Chapter Five.

3.6 Limitation of the study

Researchers should always guard against an element of biasness whenever conducting their research so that they can come to valid conclusions. Leedy and Ormrod (2005:208) define “bias in research as any influence, condition or set of conditions that singly or together distort the data because data are delicate and sensitive to unintended influence”.

“Bias may creep into a research project in a variety of subtle and undetected ways and attacking the integrity of the facts”. Leedy and Ormrod (2005:209).

Due to his position in the Department of Correctional Services, the researcher knew some of the magistrates, prosecutors and his colleagues in the department, an element which might have led to some bias. In order to guard against this, the questions were structured to help the researcher to eliminate influencing the subjects, as they only had to respond to the pre-determined questions. The researcher was just reading the questions to the respondents without interfering with their responses or guiding them.

Though both the subjects and the researcher did not speak English as their first language, it was never difficult to use English as the language of communication since all the interviewees and the researcher use English daily in the workplace as their work language.

Based on the timelines, the research only covered a limited number of respondents. Therefore, it cannot be concluded that it covered all the areas that were supposed to be covered and this leaves room for future explorations.

Six magistrates were interviewed, four prosecutors, five correctional officials and three experts on the subject.

CHAPTER FOUR

RESEARCH FINDINGS

4.1 Introduction

This chapter presents the findings of the study into the effectiveness of long imprisonment as crime deterrent. The research was conducted within a sample that consisted of two magistrates from Soweto (Protea) Court, two magistrates from Johannesburg Court and two magistrates from Randburg Court. All but one makes use of the Criminal Law Amendment Act 105 of 1977 daily whenever passing sentences to convicted offenders. It also included three prosecutors from Soweto Court and one from Johannesburg Court. Three experts from NICRO, CSVR and CSIR also helped with their insight into the subject. Five officials from the Department of Correctional Services (DCS) were also interviewed. In total, 18 interviews were conducted for this research.

As discussed in Chapter One, the main aim of this research was to *examine the effectiveness of long-term sentencing as a crime deterrent in South Africa.*

Judicial Inspectorate of Prisons (Annual Report of 2004/2005:23), reports that "in 1997 parliament feared that crime was getting out of hand in that long sentences would act as a deterrent, passed the minimum sentence legislation". The need to fight rampant crime, which has been affecting South Africa since the 1990s, needed a new approach that the government could use to fight it, hence the promulgation of Act 105 of 1997. From the responses to the interviews, it will be seen whether the introduction of the Act was successful enough in fighting crime. The researcher also felt that it is important that the officials responsible for handing down sentences be informed about the impact their decisions are having in reducing the problem of crime in this country.

The importance and relevance of this research has been discussed in prior chapters and relevant literature relating to the impact of sentencing offenders to lengthy jail terms has been reviewed.

The research also explored what alternative methods could be considered in sentencing offenders in order to eventually have an impact on reducing the crime rate in this country.

The findings of the research have been generalised and are presented in this chapter. The finding is divided into two components, which are the data-based findings and the analysis and discussion. A number of recommendations arose during the course of the research and these are presented in Chapter Five. The findings that are presented are all based on the views and perceptions expressed by the respondents in the course of the research.

4.2 Overview of respondents

The research was conducted on a sample of 18 respondents all of whom completed questionnaires. Of the sample of 18, 13 were male and five female. This research was not necessarily focusing on gender representivity, however, based on the fact that the South African criminal justice cluster (CJC) is male dominated, this is an accurate reflection of the gender representation of the CJC. Of the 18 respondents, six were White, 10 African, one Coloured and one Indian; also a fairly accurate representation of the racial representation in this area.

Out of the six magistrates interviewed, five were senior magistrates working in different regional courts who apply mandatory minimum sentencing daily when passing sentences. One was working in the district court dealing with juveniles and also applies special sentencing measures for this category of offenders.

The four prosecutors interviewed always make recommendations to the magistrate for the suitability of sentence sanctions as part of their daily responsibilities.
The three experts interviewed indicated to the researcher that they are well experienced in their field. They had all been involved in a submission on MMS to parliament through their organisations. *In fact, an expert from CSVR handed a copy of the input she made to parliament about MMS on behalf of her organisation to the researcher*. The interviewed experts were quite conversant with the Act.

All five interviewed members of the DCS are deputy directors responsible for different portfolios. One deputy director is a white male who is the Regional Coordinator Corrections in Gauteng and responsible for monitoring the overcrowding levels in Gauteng correctional facilities, and monitors the impact of rehabilitation programmes that are put into place. The other deputy director is also a white male who is the Area Coordinator Corrections at Leeuwkop Management Area. He was the Head of Leeuwkop Maximum Correctional Centre until 31 May 2008.

The other deputy director is a black male who is the Head of Community Corrections at Johannesburg responsible for all the offenders who are on parole and sentenced to correctional supervision at Johannesburg Magistrate District. The other deputy director is a black male who is the Head of the Centre (Prison) at Baviaanspoort Management Area in Pretoria and the last one is a deputy director who is a black male who is the Head of Krugersdorp Correctional Centre.

All the respondents from DCS but one deputy director have post-matric qualifications.

From the respondents, the following themes were established: Overcrowding in South African correctional facilities, rehabilitation of offenders, the effectiveness of MMS in deterring crime, the effect of imprisonment on ex-offenders, and alternatives to imprisonment.

4.2.1 Data-based findings

4.2.1.1 Overcrowding in correctional centres

15 out of the 18 respondents stated that they thought that long-term imprisonment leads to overcrowding in correctional facilities. They claim that criminals come out of prison as more sophisticated criminals rather than rehabilitated ones. This view is supported by the research conducted by Davies, Takala and Tyrer (1996:59), "prisons did little to improve the future behaviour of people sent to them and were aware of the dysfunctional consequences of incarceration in terms of enhancing rather than reducing criminal tendencies". They claim that there are no proper rehabilitation programmes rendered by DCS.

Gauteng correctional facilities are the most overcrowded centres in South Africa, (Annual report of the Department of Correctional Services (DCS) for 2006/2007). One of the respondents from DCS provided the researcher with overcrowding figures in the province as follows, "the approved accommodation level of all the correctional centres in Gauteng is 25 347 whilst the prison population is in the region of 45 000". This view is supported by the March 2008, DCS overcrowding statistics: Gauteng Region. All respondents from the DCS indicated very high levels of overcrowding in their centres.

Five respondents from DCS provided overcrowding figures in their facilities as follows: Baviaanspoort: 147%; Johannesburg provided national figures on overcrowding as 143.11%; Krugersdorp: 66.98%; Leeuwkop: 103% and Gauteng Region: 78% for the entire Gauteng Region. These respondents together with 11 others had the strong opinion that minimum sentencing is contributing to overcrowded prisons. Dissel (2007:5) supports this view, in her report submitted to parliament regarding MMS that "The size of the prison population and the rate of incarceration has long been a concern in South Africa. The prison population reached a high in excess of 187,456 during 2005 with

overcrowding levels over 160% nationally, and more than 388% in certain prisons. Conditions in overcrowded prisons are inhumane and contrary to the fundamental human rights as enshrined in our Constitution".

Respondents were of the view that despite high levels of prison populations, there were other indirect consequences of overcrowding. They claim that a high prison population breeds other criminals, as there is no rehabilitation taking place. "Other offenders are likely to pick up diseases like HIV/AIDS, because of degrading and inhumane treatment and miserable conditions resulting from the large numbers in prison with inadequate space and facilities. Offenders are then forced to share beds with others suffering from tuberculosis and HIV/AIDS", Annual report of (2005/2006:18), from the Judicial Inspectorate of Prisons.

Cavadino and Dignan (1997:120) support this view when they write that another consequence of overcrowding is the need to transfer prisoners around the system in the quest for available accommodation, which is highly disruptive to prisoners and their families.

The respondents, particularly experts, were of the view that Act 105 of 1997 is directly causing overcrowding in prisons and the government needs to reconsider the application of this Act if it is serious about reducing prison populations in this country. They all agreed that the population of incarcerated offenders is too high.

4.2.1.2 Provision of rehabilitation programmes

One of the main objectives of direct imprisonment is that offenders should learn a lesson from their mistake. In fact, a section of the White Paper on Corrections (2005:71) states, "the responsibility of the Department of Correctional Services is first and fore-most to correct offending behaviour, in order to facilitate the achievement of rehabilitation and

avoidance of recidivism". This is further supported by section 41 of the Correctional Services Act 111 of 1998. Upon incarceration, the Department of Correctional Services undertakes to ensure that offenders come out of prisons as better citizens, having been taught life skills. The DCS is not doing well in this regard based on the confirmation of high levels of recidivism by the respondents.

16 of the 18 respondents were of the opinion that there is not enough improvement of offenders. They were of the view that educational programmes should be rendered to offenders sentenced to lengthy jail terms. This view is supported by Cavadino and Dignan (1997:120) when stating that "prison overcrowding results in restricted regimes since there is not the space, the facilities nor the resources to provide inmates with a full range of training, work and educational opportunities when there are too many prisoners to cope with". All respondents from the DCS have confirmed this by stating that recidivism is too high in the department. High levels of re-offending illustrate that rehabilitation programmes are not effective enough in providing the necessary life skills to offenders due to overcrowding levels.

To the question "what is the level of recidivism in your prison?", all respondents indicated very high levels. Rehabilitation of offenders is expected to take place in a supporting environment but the current environment within the DCS is not conducive to proper rehabilitation. With levels of recidivism being indicated to be high, this simply means that offenders are released only to commit other crimes, (Annual Report, DCS 2006/2007). This also illustrates the failure of mandatory minimum sentencing in deterring crime both on an individual and general basis.

All respondents from DCS were of the opinion that recidivism is very high in their centres. Dodge (1975:5) also supports this opinion when he wrote that "one of the disadvantages of imprisonment was that so many of its *graduates* came back".

Four of the five respondents from DCS indicated the recidivists in their centres as follows: Gauteng Region: estimated as 70%; Leeuwkop: estimated as 50% and Krugersdorp: estimated as 10%.

The DCS respondents were also of the opinion that South African Correctional Centres are not built to accommodate such high levels of prison populations and there is a strong belief by all respondents that South African prisons are breeding grounds for more serious and violent crimes. Cavadino and Dignan (1997:120) support this view when they write that "the increase in tension and frustration caused by overcrowding is widely believed to aggravate the crisis of control by increasing the risk of disturbances".

4.2.2 Analysis and discussion

4.2.2.1 Effectiveness of MMS in deterring crime

All the respondents were asked about the effectiveness of MMS in addressing crime in this country and the majority indicated that, in their opinion, it is not effective at all in deterring crime. They indicated that MMS is the actual cause of overcrowding in South African correctional facilities. They were of the view that the Act has overstayed its period as crime fighting strategy.

Of the 18 people interviewed, 13 felt that minimum sentencing is not effective in deterring crime; three indicated yes MMS is effective in deterring crime. Only two provided a yes and no answer.

All experts were very critical of the Act and they were of the opinion that this Act does not deter crime. Their opinions were that the government needs to consider alternative options to imprisonment. Four magistrates out of six felt that the Act is not effective enough in deterring crime whereas two felt the Act is effective in deterring crime.

Three prosecutors felt that the Act is not effective in deterring crime and one provided a yes and no answer.

Three DCS officials were of the opinion that long-term imprisonment does not deter crime, one provided a yes and no answer, and the other one was of the opinion that long-term imprisonment deters crime.

All females were of the opinion that long-term imprisonment does not deter crime. Two black magistrates supported the Act as a means of fighting crime.

Respondents who felt that long-term imprisonment does not deter crime, were further of the opinion that other than overcrowding problems caused by the Act, offenders were not rehabilitated during the time they spent in prison to become law-abiding citizens upon their release. Dodge (1975) states that "prison is simply not, and from all the evidence cannot be, conducive to the rehabilitation of offenders, and it is not a deterrent to most people who commit crime" also supports this view.
Respondents who felt that the Act is not effective in addressing crime were all in agreement that, in their opinion, the majority of the South African population is not aware of the Act, including criminals, and felt that the Department of Justice is not doing enough to sensitise the community to the Act.

Two magistrates, who felt that the Act is effective in deterring crime, reasoned that the Act has created consistency in sentencing and is necessary to fight crime. This view is stated in the Law Commission Report (2000:3-4). It identified some shortcomings in sentencing since 1994 that lead to the introduction of Criminal Law Amendment Act 105 of 1997. One of the magistrates felt that the significant decrease in some violent crime, shown in the released crime statistics by the South African Police Services (SAPS) of 2007/2008, were because of the effectiveness of minimum sentencing legislation. Cavadino and Dignan (1997:32) further supported this when they reported that

"*retribution and reductivism* justify punishment. Retributivism justifies punishment on the ground that it is deserved by the offender; and reductivism justifies punishment on the ground that it helps to reduce the incidence of crime".

One official of the Department of Correctional Services (DCS), who was of the opinion that the Act is effective in solving crime, indicated that the Act is good in dealing with recidivists because they learn their lessons by spending some time in prisons. Maguire, Morgan and Reiner (1994:820) support this view; they wrote that "a recidivist might be thought to require an escalation of penalties".

The prosecutor who was of the opinion that the Act is good and bad reasoned that the Act is effective in deterring crime, because offenders who are dangerous and violent are sent to prison for a long time and the community remains safe. However, on the other side he was of the opinion that there is no rehabilitation taking place in prisons.

The DCS official, who was of the opinion that the Act is neither good nor bad reasoned that the Act is effective because it allows offenders to be rehabilitated while serving long sentences, particularly those that are willing to engage in self-studies. On the other hand, he acknowledged that some offenders do not want to engage in any rehabilitation programmes, and even if they are being sent to prison for long periods they still remain the same.

The other interesting outcome from this research was that contrary to the view that the Act has actually taken the discretion of magistrates away, there was a split of opinion by the magistrates. Three were of the opinion that the Act has taken away their discretion and independency; and the other three were of the opposite view because they experience no restriction by the Act in terms of passing prescribed sentences. The annual report (2005/2006:23) from the Judicial Inspectorate of Prisons, reports that "Judges and magistrates are compelled to impose those long sentences unless substantial and

compelling circumstances justify a lesser sentence". The three magistrates who support the Act regard it as only a guiding instrument.

All 18 respondents were of the opinion that the public does not get discouraged from committing crime by seeing others being punished. *Five of the six magistrates even stated that offenders in particular only become aware of the long period they will spend in prison when the sentence is pronounced.*

All prosecutors and two magistrates were of the opinion that the lack of public knowledge about MMS is due to the lack of marketing from the Department of Justice. These respondents were of the view that there is a lot of marketing that has to be done by the Justice Department in order to educate people about this Act and its main objectives.

In view of the opinions of the 13 respondents who indicated that the Act is not effective in deterring crime, and the opinion of the other two respondents who provided a yes and no answer, there is a feeling that the Act was not successful in deterring people from committing any sort of crime. This further implies that individuals and members of the public in general are not scared of punishment and are not frightened when seeing others being severely punished for their wrongdoings.

4.2.2.2 The effect of imprisonment on ex-offenders

13 out of 18 respondents were of the opinion that long-term imprisonment is not effective in deterring crime. This view is supported by Dodge (1975:5) who wrote that "imprisonment as an instrument of reform was an early failure. It also was thought to deter people from crime by fear of imprisonment". Two of the 18 respondents were of the opinion that long-term imprisonment is neither effective nor ineffective in deterring crime and supplied different reasons. One was of the opinion that dangerous and violent offenders should be sent for long periods into detention, but also indicated that lack of

rehabilitation while in prison makes long-term imprisonment not effective in addressing crime. The other respondent supported his opinion on the effectiveness of long-term imprisonment by stating that offenders sentenced to lengthy jail terms get an opportunity to engage in self-studies which lead to rehabilitation, but he also indicated it is not effective because there are those offenders who do not want to do anything while serving long terms.

It was made clear that imprisonment should only be considered under serious circumstances. That less serious offences do not require a direct imprisonment particularly when the person is a first offender. It was indicated that imprisonment creates a lot of stigma for ex-offenders. Cavadino and Dignan (1997:112) support this view, by writing that "the stigmatizing effect of imprisonment enables those on the outside to distance themselves in terms of their own moral self-perceptions from those who have been publicly labelled in this way". One prosecutor even said that the people are being punished many times. Firstly by the courts that sentence them to lengthy jail terms, secondly after being released from serving their sentences, the community in which they stay treats them with suspicion. Cavadino and Dignan (1997:80) support this opinion when they state that "a change in a defendant's domestic circumstances, like eviction from rented accommodation, dismissal from work, loss of family ties could well have an adverse effect on the choice of sentence following conviction". Their peers who never committed a crime are being discouraged by their families to associate with them, as they are viewed as bad company who might lead them into crime and then they find themselves on the wrong side of the law.

This makes the ex-offenders feel very isolated, lonely and they easily re-offend. This view is support by Cavadino and Dignan (1997:120), when they state that "imprisonment not only results in overcrowding, disruptive to offenders and their families; but also contributes to the sense of bitterness and hostility, a factor increasing the likelihood of re-offending on release". They are further punished and isolated by the employment

policies. South African employment policies discriminate against any person who has been found guilty of committing a crime. It is very difficult for jobless offenders to enter the job market, as they are expected to disclose their criminal record on all application forms for employment or to the prospective employers. Once they disclose, they are not considered for employment despite how good they might be. The other dilemma faced by ex-offenders, as indicated by the respondents, was that once they do not disclose their criminal record and the employer discovers that they were not honest in providing personal information, they are summarily dismissed for dishonesty.

The respondents also stated that criminal records are kept forever in one's personal file regardless of how long ago that crime was committed, which is a disadvantage to the ex-offender. They further indicated that their crimes are never forgotten and always count against them, hence it was viewed that imprisonment does not necessarily deter crime because, once you are sentenced and have served your sentences in full your chances of re-entering the job market are very slim.

The other view by the respondents and literature is that imprisonment can also lead to broken families. Cavadino and Dignan (1997:80) support this view when they indicate that "a change in a defendant's domestic circumstances, like eviction from rented accommodation, dismissal from work, loss of family ties could well have an adverse effect on the choice of sentence following conviction". When a person is sentenced to a term of imprisonment, he loses his freedom, his family, and if he was working, his job is also lost; if he was self-employed or running a business, all that is lost while in prison serving his jail term. He comes back to a disintegrated family, lost income, lost accommodation and many more individual needs for survival. All these broken relations are a recipe for re-offending. They claim that instead of sentencing people to direct imprisonment particularly for minor offences, they should be given suspended sentences and community sentences.

4.2.2.3 Sentence options

11 of the 18 respondents were of the opinion that under compelling circumstances, they would consider different sentence options. This view is supported by the Judicial Inspectorate of Prisons Annual Report (2004/2005:23), when it reports that the "use of the numerous alternatives to imprisonment that are available to them should be encouraged". This view is also expressed by Cavadino and Dignan (1997:204), when they call for the use of "'*strategy of encouragement*' i.e. extension of the range of non-custodial options that is available to sentencers, and encouraging *but not directing* them to use these instead of imprisonment". The respondents were of the opinion that where an accused is a first offender and/or a juvenile should not be sentenced directly to prison.
The four respondents, who were of the opinion that MMS is the correct sentencing approach, were of the view that offenders should pay for their crime through imprisonment. They have deterrence in mind, which is supported by Cavadino and Dignan (1997:33), who wrote that "deterrence is the simple idea that the incidence of crime is reduced because of people's fear or apprehension of the punishment they may receive if they offend".

Though all the three experts support other sentencing options, they were of the opinion that imprisonment is necessary for more serious offences like murder, rape and robbery with aggravating circumstances. They felt that these offences should still be punishable by imprisonment but not the way that is prescribed by the Act.

Respondents suggested that diversion programmes should be considered and that many people should be saved from being sentenced to direct imprisonment. Dodge (1975:79) when he wrote that "prisons create crime, rather than correcting criminals and coercion that extents beyond basic confinement should be avoided as much as possible, since it further antagonizes offenders and reduces their ability to solve their own problems" supports their opinion.

One of the respondents from DCS was of the view that there is a need for society to engage in the prevention programmes against crime committal instead of just reacting to it.

Four of the six magistrates were of the opinion that sentencing options should be considered under compelling circumstances. Three out of four prosecutors were also of the opinion that different sentencing options should be considered under compelling circumstances.

4.3 Conclusion

From the result of this research, there seem to be consensus among the respondents that mandatory minimum sentencing is not effective in deterring crime and that long-term imprisonment is not good enough in solving the problem of crime in South Africa. There is a need for the judiciary to consider other sentencing options. Newburn (1995:108-109) reports that "the use of custody is always an expensive penal option and the expense is called into question if the incapacitative deterrent and rehabilitative benefits are doubtful. In seeking to limit custody, there should be an introduction and the use of array of alternatives to immediate custodial sentences".

There should be community involvement in crime prevention measures other than waiting for the committal of a crime, and react thereafter.

It was further found that offenders come out of correctional centres as more sophisticated criminals than before being sentenced to lengthy jail terms. Dodge (1975:5) also supports this opinion when he wrote that "one of the disadvantages of imprisonment was that so many of its *graduates* came back".

This chapter has discussed the fact that many of the respondents said that preventing a crime and applying other alternative sanctions as compared to direct imprisonment will bring more positive results as compared to long-term imprisonment which achieves the opposite of what it intended to achieve by producing qualified criminals instead of producing rehabilitated offenders and reformed citizens. When sentencing people to imprisonment, it is hoped and believed that they will come out being corrected and shy away from committing any crime. Alternative to imprisonment and prevention measures will be discussed in more detail in Chapter Five.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

An impact assessment of the effectiveness of long-term imprisonment as a crime deterrent is quite a complex process requiring a great deal of time and resources, which is beyond the scope of this research. However, based on the responses of all the people sampled and interviewed, somehow a quantitative evaluation of the impact of the Criminal Law Amendment Act 105 of 1997 can be established.

Since the main objective of this research was to determine the effectiveness of long-term imprisonment in deterring crime in South Africa, recommendations will be made along these bases.

Literature relating to this topic was presented and discussed in the second chapter of this research. In addition, both the individual and general deterrent theories of long-term imprisonment as a crime deterrent were examined in detail.

The methodology and approach to the research were outlined in Chapter Three, and the research findings were covered in the previous chapter. This chapter aims to make some recommendations arising from the findings and some concluding remarks about the research.

From the literature that was read and opinions from the interviewed people, it was evident that mandatory minimum sentencing (MMS) does not work in deterring crime. Other sentencing options, ie alternatives to imprisonment need to be explored.

There are many options other than MMS available in the fight against crime and the prevention of offending and re-offending.

5.2 Alternatives

Based on some literature and from the researcher's analysis, there are some alternatives to direct imprisonment that can be considered. Cavadino and Dignan (1997:204) argue, "the supply side approach which is increasing prison capacity in order to accommodate more prisoners is extremely expensive and takes time". Newburn (1995:108) supports this view when he states that "the use of custody is always an expensive penal option and the expense is called into question if the incapacitative deterrent and rehabilitative benefits are doubtful". Based on this argument and from some other sources explained in this report, it is therefore necessary to consider some available sentencing options as compared to direct imprisonment.

There are various sentencing options that are available according to the Criminal Procedure Act, Act 51 of 1977 as amended. These sentencing options include the correctional supervision, fines, compensation, suspended sentences and others. Even though South African courts seem to be reluctant to use non-custodial sentences, as evidenced by overcrowding levels in South African Correctional facilities as outlined in Chapter Four, there are a number of alternatives to custodial sentencing that could and should be considered.

5.2.1 Correctional supervision

Section 276(1)(h) of the Criminal Procedure Act as amended, makes provision for offenders to be sentenced to correctional supervision. This section implies that it is not always necessary to sentence offenders to direct imprisonment after they have committed an offence. An offender who is sentenced to correctional supervision is subject to strict

monitoring by the Department of Correctional Services subject to the provision of section 51 of the Correctional Services Act.

5.2.2 Fine option

Section 287 of the Criminal Procedure Act as amended makes provision for offenders to be sentenced to fine options other than direct imprisonment. This implies that once an offender is sentenced for a fine option, he is not regarded as dangerous to the community therefore such an offender can be released under correctional supervision even if he cannot afford a fine to be monitored by Correctional Services till his sentence expires. There is no need to keep people that are unable to pay fines in correctional facilities because imprisonment is expensive.

5.2.3 The suspended sentence

Section 297(6)(b) of the Criminal Procedure Act as amended makes provision for the passing of suspended sentences. Once the court has passed a suspended sentence, it might give conditions attached to it. These conditions will normally inform offenders to refrain from committing any offence while serving a suspended sentence. In this regard, an offender is saved from direct imprisonment and he still remains socially responsible for his family and community.

5.2.4 Compensation and restitution

Section 300 of the Criminal Procedure Act as amended makes provision for the sentence of compensation and restitution by an offender to the victim. This method helps to reconcile the perpetrator and the victim because the offender is made to pay for the damage that he caused to the victim. The two parties gain in this regard because the offender is saved from going to prison where he will loose his employment and social

responsibilities. The victim also gains in the form of compensation because once the offender is sentenced to direct imprisonment; he will have to carry the responsibility of repairing the damage caused by the perpetrator without any help from the state.

5.3 Recommendations for alternatives to imprisonment

If the South African government is serious about fighting crime in this country, it should strongly consider other forms of sentencing and vigorously market prevention strategies through educating the public about crime prevention. The Judicial Inspectorate of Prisons Annual Report (2004/2005:23) states that the "use of the numerous alternatives to imprisonment that are available should be encouraged. They range from diversion to postponement and suspended sentences on applicable conditions".

The current situation is such that the government is more reactive to the rate of crime than preventing it thus makes it difficult to control. The public is not taught at primary level how to detect and prevent crime, but instead they are being told about the consequences of committing crime, which according to the results of this research does not seem effective in dealing with crime, (promulgation of Criminal Law Amendment Act, Act 105 of 1997). Zimring and Hawkins (1973: 37-38) further argue that "punishment for deterrence seldom involves administering harsh penalties solely for deterrent motives to people".

Most of the alternatives to imprisonment were discussed in detail in Chapter Two on literature review and are still relevant here. However, in this chapter, discussions will mostly deal with subjects not covered in Chapter Two.

5.3.1 Preventative measures

Most respondents as discussed in the previous chapter also shared this view. Application of preventative measures could go a long way in addressing the levels of crime affecting this country if they can be properly implemented, (National Crime Prevention Strategy: 1996). This will include methods like community mobilisation to deal with addressing crime and criminal activities at an early stage. “The community should be taught how to identify and detect criminal tendencies in their children at a very early stage”, (Gallinetti, 2007, p. 5-11).

5.3.1.1 Educating school children against committal of any crime

In most cases, bad habits are easily entrenched and difficult to rectify, sometimes resulting in delinquent behaviour by children, which will in turn lead to the committal of serious crimes if not addressed early. One of the aims of section 25 of the National Crime Prevention Strategy (NCPS) is “the education and empowerment of school children to provide skills which reduce the incidence of crime and violence and prepare them to make use of the criminal justice system and play responsible roles as citizens in the prevention of crime”. This implies that crime prevention will be addressed at an early stage before it can manifest itself into serious crime.

5.3.1.2 Involve community and church leaders

This should not be a once-off exercise that is done only for the purpose of public relations. Community leaders and parents should continuously be taught how to identify criminal tendencies before an actual crime is committed by their children.

One of the respondents even spoke of a “social reconstruction” that should be prioritised in preventing crime. This comes from the premise that South African communities are so

used to crime that they no longer see it as a social illness, hence this notion of social reconstruction in order for the people to start saying no to crime. SA Crime Quarterly, (Nov. 2002: Institute for Security Studies (ISS): 10), reports that "considering the nature and dynamics of violent crime, it is unfair and irresponsible to leave sole control and management of these crimes to the criminal justice system; police, courts and prisons".

5.3.1.3 Reporting of crime without your identity being exposed

Most South African citizens are discouraged to report criminal activities, because the system does not guarantee confidentiality of the identity of the person reporting a crime, particularly after the case has been finalised. This discourages people to come forward in fear of persecution by the perpetrators after the trial has been concluded. There is a need for a system where witness protection can be totally guaranteed, whether the trial is still running or completed, (Section 11 of NCPS: 2002).

5.3.1.4 Acceptance of stolen goods

The community should be educated against the acceptance of stolen goods no matter how small the item might be. People selling stolen goods should immediately be reported to the police, (section 23 of the NCPS: 1996).

5.3.1.5 Children roaming the streets during school hours

Serious concerns should be raised against children of school going age roaming the streets during school hours. Community leaders should identify these children and bring them to the attention of their parents. Where the need arises, professional help should be obtained in helping these children and addressing such behaviour, (section 25 of the NCPS: 1996).

5.3.1.6 Enough recreational activities

During school holidays and after hours, most children, particularly in the previously disadvantaged areas, find themselves idle without anything constructive to occupy their innocent minds. Without recreational amenities, children can turn to anti-social means to keep their idle minds busy. It is during these periods that experienced criminals get the opportunity to pollute their innocent minds with wrong things. Without proper attention, these children can develop into violent criminals at a very early age. The importance of developing a coherent system of crime prevention cannot be over emphasised, (section 25 of the NCPS: 1996).

5.4 Community service and correctional supervision

Even though section 276 of the Criminal Procedure Act 51 of 1977 makes provision for other sentencing options, South African courts are not well-known for considering other sentence options other than direct imprisonment. Considering that imprisonment as a sentence is more expensive (Cavadino and Dignan, 1997:111), South African courts should be using other sentence options more often than direct imprisonment. Direct imprisonment as a punishment is more used than any other available methods.

Internationally much research has been done on how ineffective imprisonment is in the rehabilitation and the deterring of crime, but also the active destructive potential of most correctional institutions has frequently been emphasised, (Dodge 1975:101).

There are several advantages related to the use of alternate methods of sentence; the sentenced person is still able to provide for his family while also serving a sentence, there is no disintegration of the family due to imprisonment, the person is still economically active and therefore not a burden to the state. Job security is guaranteed, there is no stigma of imprisonment, neither from the community nor from prospective employers,

(Ancel 1971:34). The negative consequences were indicated by the respondents and discussed in more detail in Chapter Four. Sommer (1976:171) has noted that imprisonment has the most severe consequences for an inmate's family, who are innocent victims of his incarceration.

Section 13 of the NCPS (1996), notes the aim of appropriate community sentencing is the "provision of meaningful alternatives to prison sentences which are focused on community-based programmes aimed at rehabilitating offenders in a way which strengthens community and family support, encourages gainful employment and creates a sense of responsibility on the part of the person being sentenced".
Respondents in the research process indicated that, although imprisonment is necessary for more serious offences, it is a better option to consider other forms of punishment than direct imprisonment particularly for first offenders who committed a minor misconduct.

5.5 Mediation and alternative dispute resolution forums

In a special survey conducted by the Department of Justice and Constitutional Development (doj & cd), the *Sowetan* (Friday, 29 August 2008) reported that the department is studying this method from other countries where it is being successfully implemented, with the aim of implementing in South Africa. Junger-Tas (1994:20) writes that "mediation is based on a conciliatory meeting between the offender and his victim and some form of restitution which is usually compensation by the offender". Mediation saves time and money and sometimes people do not have to stand in a formal court of law, particularly where someone acknowledges the damage they have caused to the other party, and is prepared to take the responsibility and compensate the aggrieved party. Mediations take the form of family sittings, where the families in dispute just sit around the table with a mediator who facilitates the discussions and confirms the agreements. The system is still being successfully practised in rural South Africa and can be well adapted and practised in any part of the country.

5.6 Traditional courts

It is reported in the same *Sowetan* (Friday, 29 August 2008) "these are the best known community structures that promote cohesion and restorative justice". This method is still actively practiced in all rural areas of South Africa where the headmen are tasked to arbitrate on the dispute involving their subjects. In case of unresolved disputes by the headmen, the matter can still be taken to the tribal chief, either as an unresolved dispute, on review or on appeal. What is interesting is that rural societies accept authorities vested in traditional courts, and it is very rare that traditional disputes are referred to formal courts. The other interesting aspect is that formal courts in rural areas acknowledge the importance of these courts in solving some of the disputes, thus reducing formal court rolls. NCPS of 1996 on section 14(1.6.1.3), long recognised the use of sentence options in line with traditional courts by stating that "diversion policy and options for adults who are minor offenders in victimless crimes, or where victims are amenable to such options as an alternative to prosecution should be developed". The question is, why does the whole country not adopt this practice where non-criminal issues can be referred to these courts? Appearance in any formal court, despite how minor an offence is, creates a stigma for the accused person whether found guilty or not.

5.7 Community courts

The *Sowetan* (Friday, 29 August 2008), reports the doj & cd is considering and investigating the implementation of community courts in South Africa. The researcher is of the opinion that these courts can operate on the same basis as the traditional courts. The researcher is also of the view that these courts would be better located in urban areas and cities, where the community is not governed by traditional leaders but by community leaders. Without assuming the responsibilities of the courts, once a minor offence has been committed, community leaders could be mobilised, meet with the victim and the perpetrator and make all attempts to solve the dispute.

Section 13(1.5.1.3) of the NCPS of 1996 states that there needs to be "an emphasize of the restorative and reconciliatory aspects of the criminal justice process, through involvement of communities directly in rehabilitation and re-integration".

However, there is a need for proper training in the application of both methods and people who are in charge of mediation should not think that they are now mini-magistrates or judges. All the above-mentioned dispute resolution methods support the views by the respondents of the preventative measures and the *social revolution* concept as a means of deterring potential criminals.

In order to avoid abuse of authorities by those in charge of the arbitration processes, there should be a carefully designed system for monitoring and supervision by an independent body comprised of elders within that specific community. Any abuse of authority might negatively affect the reputation and impact of these traditional methods of solving disputes, deterring crime and guiding young minds before they can be polluted by criminal minds. The biggest challenge will be the implementation of the systems in urban areas and cities as the systems are well functioning in rural areas.

5.8 Recommendations for further research

From this research, there were other claims that can be a subject of some further research.

- The claim that Act 105 of 1997 has a direct impact on the 2007/2008 reduced crime levels released by SAPS. It was interesting to note that three respondents felt that this Act has an impact on solving crime. This is because the majority of the respondents and the literature are reporting the contrary. It is on this basis that some further research could be explored regarding this claim. This might further clear the thinking that the introduction of mandatory minimum sentencing has taken the away the judicial independence.

- The actual levels of recidivism within South African Correctional System. Though some of the respondents, particularly from DCS, have provided some recidivists figures, it might be necessary to explore further research on this matter in order to obtain the official figures of recidivism, as this research was not about recidivism in South African Prisons.
- Some more effective sentencing options other than direct imprisonment by doing international comparisons. In most instances, people are talking about sentencing options, which was also evident in this research as the majority of the respondents indicated that other sentencing should be considered. However, it might be necessary to conduct a study in this regard to find out about some of the success stories around this subject.

5.9 Conclusion

This research was attempting to determine the effectiveness of long-term imprisonment as a crime deterrent in South Africa.

In trying to come to a solid conclusion, literature on the subject was consulted and reviewed; a qualitative research method was used where qualitative evaluations were made and various respondents working within the criminal justice cluster were interviewed and their responses recorded accordingly.

At the end, based on both the literature and the responses from the respondents, it was *found that long-term imprisonment is not effective in deterring crime. Instead, it was found that long-term imprisonment might contribute to crime in South Africa as criminals come out of prisons being more sophisticated criminals.* Dodge (1975:79) reports that "prisons create crime, rather than correcting criminals".

People found guilty for committing minor offences are still sentenced to jail terms and this creates more misery as everything that an offender had, including a stable life, relationships and work is lost while they are serving time in prison.

At face value, it could be assumed that there would be a common response among the respondents. However, the findings suggest differently and it was very interesting the way respondents in the same field responded to the questions.

The research concluded by suggesting various options that could be considered as an alternative to direct imprisonment particularly for minor offences and for first offenders. This view is supported by Carlen and Cook (1989:128) when they indicate that "alternatives to imprisonment is the way to go if we want to keep our prisons empty and prisoners socially responsible for the crimes committed". When non-custodial sentence options are considered and applied, the state benefit because imprisonment expenses are minimised, the victim is compensated by the perpetrator and reconciliation is achieved and the perpetrator is saved the stigma of imprisonment and he remains economically and socially responsible while serving his sentence.

References

Ancel, M. (1971) Suspended sentence. London: Heinemann

Balfour, B.N. (2008, 5 June) Minister of the Department of Correctional Services: Budget Vote Speech 2007/2008.

Beharie, 5. (2003, Nov. 23) Murder take 48 000 lives in mad killing spree. Sunday World, Coxton ed., p. 2.

Carlen, P. & Cook, D. (1989) Paying for crime. Milton Keynes: Open University Press.

Cavadino, M. & Dignan, J. (1997) The penal system: An introduction. (2nd ed.). London: SAGE Publications

Cook, T.D. & Reichardt, C.S. (1979). Qualitative and quantitative methods in evaluation research. London: SAGE Publications.

Davies, M., Takala, J. & Tyrer, J. (1996) Penological Esperanto and sentencing parochialism: A comparative study of the search for non-prison punishments.

Aldershot: Dartmouth.

Department of Correctional Services: Correctional Services Annual Report 2006/2007. Pretoria: Government Printers.

Department of Correctional Services: Prisoner statistics and prisoners in custody. 2003/2004.

Department of Correctional Services: Overcrowding statistics: Gauteng Region March 2008.

Department of Safety and Security: South African Police Crime Statistics. 2007/2008

Dissel, A. Centre for the Study of Violence and Reconciliation

(2007, July 31) Submission on Criminal Law (Sentencing) Amendment Bill 15 of 2007.

Dodge, C.R. (1975) A nation without prisons. Lexington: Lexington Books.

Drug Policy Alliance Network "What's Wrong with the War on Drugs". http://www.drugpolicy.org/drugwar/mandatorymin/ (7 Sep. 2008).

Flanagan, T. J. (1995) Long-term imprisonment: Policy, science and correctional practice. Thousand Oaks: Sage Publications

Gallinetti, J. (2007, July) The dynamics of Youth Justice & the Convention on the Rights of the Child in South Africa. (Article 40, Volume 9 – Number 2, pp. 5-11).

Holliday, A. (2002). Doing and writing qualitative research. London: SAGE Publications.

Institute for Security Studies: (No. 2, Nov. 2002). SA Crime quarterly.

Judicial Inspectorate of Prisons: Office of the Inspecting Judge. Annual Report 2002/2003: Prisoners and Prisons. Cape Town: Formeset Printers.

Judicial Inspectorate of Prisons: Office of the Inspecting Judge. Annual Report 2004/2005: Prisoners and Prisons. Cape Town: Formeset Printers

Judicial Inspectorate of Prisons: Office of the Inspecting Judge. Annual Report 2005/2006: Prisoners and Prisons. Cape Town: Formeset Printers

Junger-Tas, J. (1994) Alternative to prison sentences: Experiences and development. Amsterdam: Kugler Publications.

Lacey, N. (1994) Criminal justice. New York: Oxford University Press.

Leedy, P & Ormrod, J.E. (2005) Practical research: Planning and design. (8th ed.). New Jersey: Pearson Education, Inc.

Maguire, M., Morgan, R. & Reiner, R. (1994) The Oxford handbook of criminology. New York: Oxford University Press.

Masungwini, N. (2003, Nov. 23) He took my bullet. Sunday World, Caxton ed., p. 2.

Neser, J.J. "Mandatory minimum sentences in the South African context". http://www.crisa.org.zaIvolume3/vvs.html *(25* Sep. 2003).

Newburn, T. (1995) Crime and criminal justice policy. London: Longman.

Potas, I. "Life imprisonment in Australia".

http://www.aic.gov.au (25 Sep. 2003).

Robertson, M. "An overview of rape in South Africa".

http://www.csvr.org.za/articles/artrapem.htm (09 Jan. 2004).

Ruby, C.C. (1980) Sentencing. (2nd ed.). Toronto: Butterworths.

Selltiz, C., Jahoda, M., Deutsch, M. & Cook, S.W. (1965) Research methods in social relations. U.S.A: Methuen & CO.

Schonteich, M. (1999) Sentencing in South Africa: Public perception and the judicial process, paper 43.

Sommer, R. (1976). The end of imprisonment. New York: Oxford University Press.

South African Crime Statistics (2001).

http://www.crimevictims.co.za/statsfarside.htm (09 Jan. 2004).

Thomas, D.A. (1979) Principles of sentencing. (2nd ed.). London: Heinemann

Terblanche, S.S. (1999) The guide to sentencing in South Africa. Durban: Butterworths.

Tonry, M., & Hatlestad, K. (1997) Sentencing reform in overcrowded times: A comparative perspective. New York: Oxford University Press.

Viljoen, B. (2003, Dec. 16) Double life for rape and murder. The Citizen, Caxton ed., p. 1.

Von Hirsch, A., Bottoms, A.E., Burney, E. & Wikstrom, P-O. (1999) Criminal deterrence and sentence severity: An analysis of recent research. Oxford: Hart Publishing.

Walker, N. & Padfield, N. (1996) Sentencing: Theory, law and practice. (2nd ed.). London: Butterworths.

Walker, N.(1991) Why punishment? Theories of punishment reassessed. New York: Oxford University Press.

Welman, J.C. & Kruger, S.J. (2001) Research methodology (2nd ed.). Cape Town: Oxford University Press. Wikipedia "Mandatory Sentencing" http://en.wikipedia.org/wiki/Mandatory_sentencing (7 Sep. 2008).

Young, W. (1979) Community service orders. London: Heinemann.

Zimring, F.E. & Hawkins, G.J. (1973) Deterrence: The legal threat in crime control. Chicago: The University of Chicago Press.

Legislation

Constitution of the Republic of South Africa, Act 108 of 1996.

Correctional Services Act t 111 of 1998.

Criminal Law Amendment Act 105 of 1997.

Criminal Procedure Act 51 of 1977.

National Crime Prevention Strategy, May 1996.

South African Law Commission. Sentencing: Mandatory minimum sentences, August 1997.

South African Law Commission. Sentencing: A new sentencing framework, December 2000.

White Paper of Corrections in South Africa 2005

Interviews

Experts

Ms. Holtmann: Council for Scientific and Industrial Research

Ms. Dissel: Centre for the Study of Violence and Reconciliation

Mr. Hendrick: National Institute for Crime Prevention and the Reintegration of Offenders

Magistrates

Mr. Mudau: Randburg Regional Court
Mr. Andrews: Randburg Regional Court
Mr. Machobane: Johannesburg Regional Court
Mr. Nemavhidi: Soweto Regional Court
Mr. Du Plesis: Soweto District Court
Ms. Gangadu: Johannesburg Juvenile Court

Prosecutors

Mr. Bengu: Johannesburg Court
Mr. Mzobe: Soweto Court
Ms. Mnisi: Soweto Court
Ms. Msomi: Soweto Court

Correctional Services

Mr. Wilkins: Regional Coordinator Corrections: Gauteng Region
Mr. Matemane: Head of Correctional Centre: Baviaanspoort Management Area
Mr. Muller: Area Coordinator: Leeuwkop Management Area
Mr. Tshabalala: Head of Community Corrections: Johannesburg Management Area
Mr. Madondo: Head of Correctional Centre: Krugersdorp Management Area

Questionnaires

During November 1997 the Government passed Act 105 with the purpose of fighting crime in the country. The main objective of this Act was to ensure that courts pass suitable sentences/sanctions to classified crimes like murder, rape, and robbery with aggravating circumstances. But despite these efforts, crime continues to be on the increase and one wonders whether this Act is effective enough to stop the high level of crime currently affecting our country. Crimes such as murder, rape, and robbery with aggravating circumstances will automatically get a life sentence if found to have been committed under certain circumstances and the accuses is found guilty thereof. Some people even say that this Act has taken the discretionary powers away from the judges and magistrates.

Amid these concerns and frustrations of crime, the big question is does long-term sentence effective in deterring crime in this country?

Experts (CSVR, ISS and NICRO)

What is your opinion with regard to minimum mandatory sentences?

Do you think that long-term sentencing is effective in deterring crime?

Does the length of sentences passed by the courts deter potential criminals?

Are people being discouraged by seeing others being punished? What is more effective between individual and general deterrent?

Are the South Africans in general aware of Act 105 of 1997 and what its intentions are?

Despite long-term sentences, are there any other sentences that can be considered and why?

What should be an appropriate sanction for people who commit murder, rape and robbery with aggravating circumstances?

Magistrates

How effective is Act 105 of 1997 in reducing crime in general?
What is the level of murder, robbery with aggravating circumstances and rape in your courts?
Have you noticed a reduction of crime since the introduction of minimum mandatory sentences?
Given a chance, would you consider other options of sentencing and why?
Do you think that the type of sentences you are passing to convicted criminals is discouraging potential criminals?

Prosecutors

Does long-term imprisonment deter crime and why?
Are citizens aware of the minimum mandatory sentences?
Given a chance, would you recommend a different sentence to those prescribed in the Act and why taking into consideration murder, rape and robbery with aggravating circumstances?
How effective is minimum mandatory sentence in reducing crime in this country?

Correctional officials

Do you think long-term imprisonment deter crime and why?
Are prisoners discouraged to commit crime by seeing others being punished severely?
What is the capacity of overcrowding in your prison?
What is the level of recidivism in your prison?
Given a chance are there any other sentence options you can think about other than those prescribed by the Act and passed by the magistrates and why?