

# **INTRODUCTION TO CORRECTIONS SCIENCE**

**ONLY STUDY GUIDE FOR PEN1025**

**DEPARTMENT PENOLOGY**



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## FOREWORD

### General Introduction

It is our privilege to welcome you to the study of penology. We hope that you will find the experience stimulating, informative and rewarding.

We also hope that you will enjoy the study guide as much as we have enjoyed writing it. You will notice that the study guide includes a combination of theory and practice. We do not want to overwhelm you with complicated theoretical premises at first-year level, but to introduce you to philosophical premises on the basis of practice.

### SCOPE OF THIS STUDY GUIDE

The study guide consists of five study units. **Study unit 1** examines the criminal justice system. This study unit is a general overview of the criminal justice system in South Africa. The corrections framework and processes are discussed in **study unit 2** to enable you to see corrections in perspective. **Study unit 3** deals with the basic functions and duties of the correctional officer. In **study unit 4** we deal with respect for the law and the lawful treatment of inmates. **Study unit 5** discusses correctional officers' personal finances and corruption among officers.

We trust that you will have an enriching and fruitful year of study.

## KEY TO ICONS

The following icons are used throughout the study guide to indicate specific functions:

### LEARNING OUTCOMES



Learning outcomes are like a checklist of the things you should be able to do once you have studied the unit.

### ACTIVITY



This icon indicates that you are required to complete certain activities which will assist you with your studies.

### EXAMPLE



Examples are given for further clarification and are indicated by this icon.

### NB/TAKE NOTE



Information of particular importance is indicated by this icon.

### SELF-ASSESSMENT



If you answer the self-evaluation questions indicated by this icon, you will be able to assess the degree of success you have achieved in mastering the study material.



# STUDY UNIT 1

## CRIMINAL JUSTICE IN SOUTH AFRICA

### LEARNING OUTCOMES

After you have completed this study unit, you should be able to:

- ◆ define and discuss the concept of crime and punishment
- ◆ discuss the purpose and structure of the criminal justice system
- ◆ identify and discuss the different role players in the criminal justice system



## 1. INTRODUCTION

The aim of this study unit is to explain criminal justice in South Africa. The study unit discusses the concepts of crime and punishment and explains why we need a criminal justice system. There are many different role players in the criminal justice system, including the Department of Correctional Services, the Department of Social Development, the South African Police Service and Courts and prosecutors, which are discussed here. The valuable contribution of the Judicial Inspectorate of Prisons to the criminal justice system is also discussed.

## 2. THE CONCEPT OF CRIME AND PUNISHMENT

### 2.1 Introduction

In order to explain the concept of crime, it is important to understand that crime is present in all societies. Crime includes acts that threaten the lives and property of people within such a society and should therefore be prevented. The measurement of the nature and extent of crime in a society is a very difficult task because crime, like any other human action, is difficult to measure. The difficulty lies in the uniqueness and unpredictability of actions taken by humans. However, crime is an ongoing occurrence in all societies and will continue in the future (Coetzee & Gericke 1997:32).



### ACTIVITY

Before you study the next section, write down your own definition of crime.

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## 2.2 The concept of crime

Various disciplines like criminology, psychology, education and sociology have their own definitions of the concept of crime. However, for our purposes the following definition of crime is used. Fox and Stinchcomb (1994:44) and Coetzee and Gericke (1997:32) define crime as follows: "Under the legal definition of crime criminal behaviour differs from other forms of social deviance in that it is in violation of the criminal laws promulgated by political authority and subject to punishment administered by agents of the state."



To summarise, crime is a deliberate act that:

- ◆ violates the criminal law of a country
- ◆ is committed without justification or explanation
- ◆ is penalised by the state (Bartol 1995:17; Luyt 1999:3)

An act is only classified as a crime if it includes certain elements or satisfy certain requirements. Therefore an act is only regarded by law as a crime if all these elements are present (Coetzee & Gericke 1997:32). These elements are discussed below:

#### ◆ **The act must be unlawful**

The term unlawful means that the law **prohibits** a person from performing a certain act. For example, the law prohibits a person from taking property that belongs to someone else. This act is regarded as the crime of stealing.

#### ◆ **The act or failure to act must be associated with culpability.**

The act is only punishable if the law includes some sanction or penalty clause for the crime. For example, when parents scold their children for being naughty, they cannot be charged with a crime because the law does

not make provision for the punishment of such an act. However, if the children are assaulted by the parents, the parents commit a crime, because assault is a punishable act in terms of the law.

◆ **The act must be punishable by law.**

The Latin term “mens rea” is used to evaluate such an act, which means that a person’s guilty conscience or “mens rea” plays a role in determining whether an act is a crime. The law determines that guilt can be based on either intent or negligence. Coetzee and Gericke (1997:34) explain intent and negligence as follows:

- ▽ **Intent:** It is when a person deliberately plans to shoot another person and then takes a firearm and performs the act. That person is then charged with murder.
- ▽ **Negligence:** An example of negligence is when a man decides to clean a firearm and then accidentally shoots and kills his wife. The wife was not shot intentionally, but the man was negligent. In this scenario the man will be charged with culpable homicide and not murder.

◆ **An act or omission must have taken place.**

When the act of murder is planned but not actually performed, the act has not yet taken place. In such an instance the planning of the crime is not sufficient to cause the planner to be found guilty of the crime of murder. The act of planning to commit a crime must also be an arbitrary act, which means that the person must consciously decide to perform the act.

◆ **There must be a logical relationship (causality) between the act and the consequence.**

The basic meaning of this statement is that the act that has been committed must have caused the consequences. If the consequences would have been the same regardless of the act, it cannot be said that the element of causality is present.



### ACTIVITY

Now that you have studied the section on crime, revise your definition of crime. Include references to the elements of crime in your new definition.

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## 2.3 The concept of punishment

The consequence of a crime committed by an offender can be regarded as punishment. This punishment can be seen as the injury inflicted by the state on the offender who committed the crime (Neser 1993:18). According to Rabie and Strauss (1981:8) and Neser (1993:18) punishment consists of two elements, namely —

- ◆ the deliberate infliction of agony upon a criminal
- ◆ the expression of the community's disapproval of the criminal and his conduct

Punishment should be inflicted on the offender in the form of a human action, because an offender cannot legally punish himself. Therefore it is safe to say that punishment should be imposed by the judicial authority of the government by means of one of the role-players in the criminal justice system, namely the courts (Neser 1993:22).

## 2.4 Forms of punishment

Here follows a short description of each of the different forms of punishment that can be inflicted on offenders:

### ◆ The death penalty

The death penalty is a topic that is highly debated internationally and nationally (Neser 1993:23). In South Africa this form of punishment is

associated with specific political groupings. During the late 1980s and early 1990s, many political changes took place in South Africa, including the abolition of the compulsory death penalty and the death penalty for burglary set out in Section 277 of the Criminal Procedure Act 55 of 1977 and was substituted by Section 4 of the Criminal Law Amendment Act 107 of 1990. Section 4 of the Act determined that the death penalty could only be imposed by a supreme court in convictions for (Neser 1993:23) —

- ▽ murder
- ▽ treason committed when the country was in a state of war
- ▽ kidnapping
- ▽ child kidnapping
- ▽ rape
- ▽ robbery, including attempted robbery if aggravating circumstances were present

In 1995 the democratically elected South African government declared the death penalty to be unconstitutional. Section 11 of the Bill of Rights enshrined in the Constitution of the Republic of South Africa, 1996, states the following: “Everyone has the right to life.” The last execution in South Africa took place at Pretoria Central Prison on 14 November 1989. Thereafter the government placed a moratorium on executions and introduced life imprisonment as an alternative to the death penalty. The abolishment of the death penalty as a form of punishment in South Africa was handed down in 1995 by the Constitutional Court in its first judgement, the Mankwanyane decision. It was also ruled that the government and all its organs were not allowed to execute any person already sentenced to death (South African Human Rights Commission 2002).

At the time of the Makwanyane judgement, official records of the Department of Correctional Services indicated that there were 430 people on death row (awaiting the death sentence). As a result of that judgement, legislation was passed to stipulate procedures for the setting aside of death sentences. An offender who had been sentenced to death should have had his sentence substituted with alternative sentences (South African Human Rights Commission, 2002).

#### ◆ **Corporal punishment**

According to Neser (1993:24) South Africa was one of the few countries that imposed corporal punishment for certain sentences, including robbery, arson and public violence. The aged of an accused played an important

role in a sentence to corporal punishment, because corporal punishment was not allowed if the accused was over the age of thirty years.

When South Africa adopted the Constitution in 1996, corporal punishment was deemed to be in conflict with the human rights of each South African. The Abolition of Corporal Punishment Act 33 of 1997 gave effect to the Constitutional Court's judgement that corporal punishment as a sentence option is in conflict with the Constitution of South Africa. The commencement date of the abolition Act was 5 September 1997. The main thrust of the Abolition of Corporal Punishment Act was the following: "Any law which authorises corporal punishment by a court of law, including a court of traditional leaders, is hereby repealed to the extent that it authorises such punishment."

#### ◆ **Imprisonment**

According to section 2 of the Correctional Services Act 111 of 1998 the purpose of a correctional system is

"to contribute to maintaining and protecting a just, peaceful and safe society by -

- ▽ enforcing sentences of the courts in the manner prescribed by this Act;
- ▽ detaining all prisoners in safe custody whilst ensuring their human dignity; and
- ▽ promoting the social responsibility and human development of all prisoners and persons subject to community corrections."

Neser (1993:27) says in South Africa the word imprisonment means the admission, locking up and detention of a person in a place of safety. A person who is sentenced to a term of imprisonment will receive a warrant for imprisonment. This warrant, which is also known as the warrant for committal, is issued in all criminal cases by the court for a person's detention in a prison in order to serve the sentence imposed by the court.

The function of the Department of Correctional Services is not only the incarceration of the offender — it also has to take social responsibility for the offender. The aim of the Department of Correctional Services, namely the rehabilitation of the offender, can be fulfilled through correction and human development within a secure, safe and humane environment (Department of Correctional Services 2005).

A sentence to imprisonment is one of the most general forms of punishment in South Africa. It is imposed at the discretion of the court.

**◆ Fines**

The main objective of the acceptance of fines is to free a prisoner from the stigma of imprisonment as soon as possible and to enable him to return to his next of kin, friends and employer with the least consequences. It is therefore essential that sentenced prisoners who have money and who have been given the option of a fine be encouraged to use such money to pay their fines in full or in part.

In terms of the provisions of the Criminal Procedure Act 51 of 1977 the court may have the money of a particular person seized in order to pay his fine in full or in part. A sentence that contains the abovementioned order grants sufficient authority to members of the Department of Correctional Services to use money found in the possession of an accused for payment or partial payment of the imposed fine.

Where a prisoner's sentence consists of imprisonment with the option of a fine, and it appears after admission that suitable arrangements can be made for postponement or payment in instalments, the head of the prison must bring the matter to the attention of the public prosecutor.

Where prisoners are admitted with sentences of imprisonment with the option of a fine and they have the necessary funds to pay the fine or a portion thereof, they must be encouraged to do so.

**◆ Community corrections**

According to Bruyns (2002:4) community corrections are those sentences imposed by a court of law that are served by offenders within the community. By doing so the offenders are not removed from their family, job and neighbourhood, ensuring the least disruption for the family of the offender.

There are three ways in which an offender can be admitted into community corrections (Du Preez 2002:25):

- ▽ An offender is sentenced directly to community corrections by a court of law and is called a probationer.
- ▽ An offender is sent to prison and, on qualifying for parole, is placed under community corrections. This person is then called a parolee.
- ▽ A person is placed under the supervision of a correctional official in terms of section 51(1)(e) of the Correctional Services Act 111 of 1998.

The sentence of community corrections fulfils a triple function, which can be summarised as follows (Du Preez 2002:26):

- ◆ It keeps offenders from being sentenced and therefore it keeps them out of the criminal justice system. An example of this kind of community correction is diversion programmes.
- ◆ Another function is that it keeps offenders out of correctional institutions such as prisons, even after they have been sentenced. (This step refers to intermediate community corrections.)
- ◆ The last function refers to the early release of offenders and their smoother integration into the community after a sentence has been served.



### ACTIVITY

People sentenced to death were still detained in South African prisons as late as 2006. These people were not executed. Describe in detail what happened to them.

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## 3. THE CRIMINAL JUSTICE SYSTEM

### 3.1 Introduction

Questions which inevitably arise with regard to criminal justice are where, by whom and how punishment is imposed and carried out. The answer is that the state machinery is responsible for the prosecution of offenders and for the imposition and execution of punishment. Such state machinery is commonly referred to as the **criminal justice system**.



**ACTIVITY**

Describe in your own words what you think the purpose of the criminal justice system should be. When you have written down your ideas, compare them with the literature that follows.

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**3.2 The purpose of the criminal justice system**

One of the key elements in the criminal justice system is the offender. The role of the offender will be discussed later in this study unit. The purpose of the criminal justice system is to maintain order by preventing and controlling crime. The creation of order ensures peaceful coexistence among members of the community. From this it follows logically that the various components of the system perform specific functions in order to realise the relevant objectives. If the **maintenance of order** is viewed as the principal objective, then two further categories of objectives may be distinguished, namely abstract objectives and pragmatic objectives:

- ◆ **Abstract objectives** include retribution for the crime committed, the deterrence of the offender and of potential offenders, the rehabilitation of offenders, and the incapacitation of criminals by way of detention.
- ◆ **Pragmatic objectives**, in contrast, refer to the protection of the rights of victims and offenders, crime prevention, effective planning, fairness in decision making and the evaluation of research.

**3.3 The structure of the criminal justice system**

The criminal justice system is normally divided into four components:

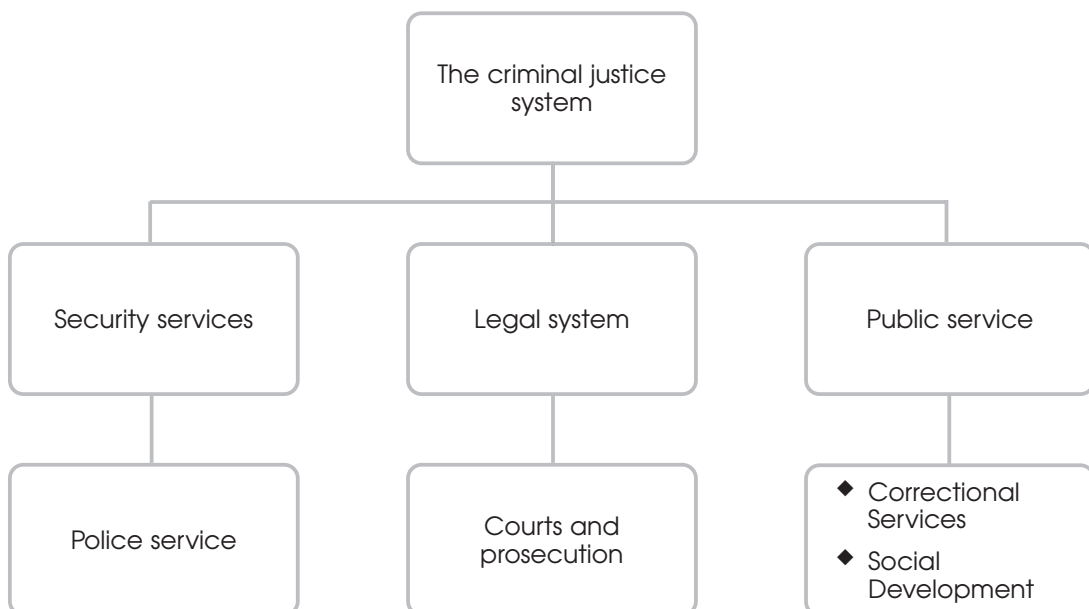
- ◆ the **law enforcement component**, which is concerned with tracing and arresting suspected offenders

- ◆ the **prosecution component**, which is concerned with charging (indicting) and prosecuting alleged offenders
- ◆ the **court component**, which determines the guilt or innocence of the accused and is responsible for sentencing after an accused has been found guilty
- ◆ the **correctional component**, which is charged with the function of executing the punishment imposed and, as part thereof, with treating the offender with a view to the positive modification of his or her behaviour

The government of the Republic of South Africa adopted a system of integrated governance in 1999/2000. As a result certain departments in the government became an integral part of the integrated justice system. These departments have a major role to play and contribution to make in nurturing the culture of justice for all. The government departments that form the Integrated Justice System, are the following (Department of Correctional Services 2005:99):

- ◆ Department of Social Development
- ◆ South African Police Services
- ◆ National Prosecuting Agency
- ◆ Department of Justice
- ◆ Department of Correctional Services

The criminal justice system in South African can therefore be illustrated as follows (Du Preez 2002:24; Luyt 1999:6):



**ACTIVITY**

Describe the structure of the criminal justice system. Use the necessary diagrams and examples to illustrate your answer.

**3.4 The offender in the criminal justice system**

The most important role player in the criminal justice system is the offender. According to Coetzee (1997:40) and Reid (1990:6), there are two ways in which a person can start his or her journey through the criminal justice system:

- ◆ The society can report the crime that was committed.
- ◆ The police can arrest the person who has allegedly committed the crime.

Many alleged offenders also leave the criminal justice system for different reasons, such as that the police does not have enough evidence to charge the alleged offender and therefore has to let the person go free, or the alleged offender is not found guilty by the court (Coetzee 1997:40; Reid 1990:6). However, once an alleged offender has been found guilty, he or she will only be allowed to leave the criminal justice system after the sentence has been served satisfactorily. This route is known as the **administration of justice** and is discussed in more detail in the section entitled “The role of courts and prosecution” later in the study unit.

**ACTIVITY**

Discuss the role of the offender in the criminal justice system in your own words.

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## **4. DIFFERENT ROLE PLAYERS IN THE CRIMINAL JUSTICE SYSTEM**

From an official point of view the different role players in the criminal justice system are those state organs that are involved in the administration of justice.



These role players are the following:

- ◆ South African Police Service
- ◆ Courts
- ◆ Department of Social Development
- ◆ Department of Correctional Services
- ◆ Judicial Inspectorate of Prisons

Next we discuss the roles assigned to each of these organs in the administration of justice.

### **4.1 The South African Police Service**

#### **4.1.1 Introduction**

The security services of the Republic of South Africa consists of the defence force, the police service and any intelligence services of which all three services must be established in terms of the Constitution (South Africa 1996:112).

**ACTIVITY**

What do you think are the duties of the South African Police Service?  
Compare your ideas with the information below.



According to the Constitution of the Republic of South Africa, 1996, the duties of the South African Police Service are the following:

- ◆ to prevent, combat and investigate crime
- ◆ to maintain public order
- ◆ to protect and secure the inhabitants of the Republic and their property
- ◆ to uphold and enforce the law
- ◆ to create a safe and secure environment for all people in South Africa
- ◆ to prevent anything that may threaten the safety or security of any community
- ◆ to investigate any crimes that threaten the safety or security of any community
- ◆ to ensure criminals are brought to justice
- ◆ to participate in efforts to address the causes of crime

**4.1.2 Structure of the police service**

The South African Police Service is structured in a way that enables it to function in the national, provincial and local spheres of the government. The powers and functions of the police service are established by national legislation. These powers and functions enable the police service to discharge its responsibilities effectively according to the requirements of the provinces.

### 4.1.3 Code of conduct

According to the mission of the South African Police Service, all SAPS members are subjected to a code of conduct. The code of conduct is a written undertaking which each member of the South African Police Service is obliged to uphold in order to bring about a safe and secure environment for all people of South Africa. The code of conduct of the South African Police Service says the following (South African Police Service 2006):

As members of the South African Police Service we will perform our duties according to the following principles:

- ◆ **Integrity:** Employees of the SAPS regard the truth as being of the utmost importance.
- ◆ **Respect for diversity:** Employees of the SAPS acknowledge the diversity of the people of our country and treat every person with equal respect.
- ◆ **Obedience of the law:** Employees of the SAPS respect and uphold the law at all times.
- ◆ **Service excellence:** Employees of the SAPS work towards service excellence.
- ◆ **Public approval:** Employees of the SAPS always work with and for the approval of the community —  
[www.saps.gov.za/SAPS-PROFILE/code-of-ethics.htm](http://www.saps.gov.za/SAPS-PROFILE/code-of-ethics.htm)



#### ACTIVITY

Explain each of the following in your own words:

Integrity: .....

.....

Respect for diversity: .....

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Obedience of the law: .....

.....

/continued ...

Service excellence: .....

.....

Public approval: .....

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## 4.2 The role of courts and prosecution

### 4.2.1 Introduction

What is the purpose of institutions such as the courts? This is by no means an easy question to answer. In accordance with the *trias politica* principle, the authority of the government of a state is divided into three commonly accepted components, namely:

- ◆ the legislative authority
- ◆ the executive authority
- ◆ the judicial authority (courts)

These three forms of authority function as independently of one another as possible, with the specific purpose of ensuring that each is kept in **equilibrium** by the others. However, while the legislative, executive and judicial (court) authorities in a state must be independent of one another, this does not imply that these three forms of authority can function in complete isolation from one another. Such authorities complement one another in many respects and interact in various spheres. For the purpose of the present discussion, the focus is on the judicial authority (courts). Before we discuss the different courts in South Africa, you first have to understand how courts function. Therefore you need to understand what **administration of justice** and the **doctrine of precedent** mean.

### 4.2.2 Administration of justice

The concept **administration of justice** embraces all those processes by means of which courts of law as recognised organs of state intervene in order to adjudicate both civil and criminal cases:

The administration of justice is the responsibility of the judicial authority, that is, the courts. Within the state, the courts assume the role of a referee — not only with regard to disputes between the subjects of the state themselves, but also with regard to disputes between the organs of government and subjects of the state, and between organs of government themselves. It may therefore be stated that the courts fulfil a controlling function, and that such function demands particular independence on the part of the courts. The reason for the statement is simply that, in handing down judgments, making orders and imposing sentences, the courts influence both lives and institutions.

The courts adjudicate two types of cases, namely civil cases and criminal cases.

In a **civil case**, a party approaches the court for assistance or relief, or for the making of a specific order. What this means is that the court will order someone:

- ◆ either to give or pay something to the person who instituted legal proceedings
- ◆ or to do something for the benefit or on behalf of the person who approached the court, or not to do something which affects such a person

In a **criminal case**, in contrast, it must be decided:

- ◆ whether a crime has been committed
- ◆ if so, who committed the crime
- ◆ what an appropriate punishment would be for the offender



### ACTIVITY

Discuss the role of courts with specific reference to the administration of justice.

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### 4.2.3 The doctrine of precedent

To obtain a sound grasp of the powers and jurisdiction of the various courts, it is advisable to start by considering what is known as the doctrine of precedent. The doctrine of precedent holds that, where a particular court hands down a particular judgment, such court, and the courts subordinate to it, must hand down the same judgment where the same point has to be decided in future. The reason for the existence of the doctrine of precedent is primarily to achieve **uniformity** in the application of legal rules and, at the same time, to ensure a greater measure of **legal certainty**. The implication of the doctrine of precedent is that, once a judge has decided on the appropriate legal rule in a specific case and has interpreted such rule, such interpretation must be adhered to in similar cases in the future.

The doctrine of precedent lays down two very important requirements which must be complied with:

- ◆ There must be a **hierarchy** of courts; in other words, the courts must be divided into a specific rank order so that each court is subordinate to the court above it.
- ◆ There must be an effective system of **court reporting**, so that courts which are lower in the rank order can ascertain what the courts above them have decided. For this purpose, court reports are published. These reports contain the most important judgments of the Supreme Court of Appeal and of the High Court.

#### ACTIVITY

Discuss the doctrine of precedent in your own words.



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## **4.2.4 The different courts in South Africa**

### **4.2.4.1 Constitutional Court**

The Constitutional Court is the highest court in all constitutional matters. The court only deals with constitutional matters. It also deals with issues connected with decisions on constitutional matters, including whether Acts of Parliament and the conduct of the president and executive are consistent with the Constitution. The decisions of the court are binding on all persons, including organs of state, and on all other courts. The court consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine other justices (South African Courts 2006).

### **4.2.4.2 Supreme Court of Appeal**

The Supreme Court of Appeal is the highest court in respect of all other matters. The court is composed of the President and Deputy President of the Supreme Court of Appeal as well as a number of judges of appeal determined by an Act of Parliament. It has jurisdiction to hear and determine an appeal against any decision of a high court. The decisions made by the Supreme Court of Appeal are binding on all courts of a lower order. Decisions made by the high courts are binding on magistrates' courts within the respective areas of jurisdiction of the division (South African Courts 2006).

### **4.2.4.3 High courts**

Decisions made by the Constitutional Court, the Supreme Court of Appeal and the high courts are an important source of law. These courts are required to uphold and enforce the Constitution. It is also required that these courts declare any law or conduct that is inconsistent with the Constitution to be invalid to the extent of that inconsistency. They have to develop the common law in a manner consistent with the values of the Constitution (South African Courts 2006).

### **4.2.4.4 Circuit local divisions**

Circuit local divisions are itinerant courts, presided over by a judge of the provincial division. These courts have to visit areas chosen by the Judge President of the provincial division concerned (South African Courts 2006).

### **4.2.4.5 Regional courts**

The Minister of Justice and Constitutional Development may divide the country into magisterial districts. By doing so he or she can create regional divisions that consist of districts. These regional courts are then established at one or more places in each regional division. The aim of these courts is to hear

matters within their jurisdiction. The penal jurisdiction of the regional courts is limited by legislation.

#### **4.2.4.6 Magistrates' courts**

Currently the magisterial districts have been grouped into 13 clusters headed by chief magistrates. All magistrates in South Africa fall outside the ambit of the public service. The aim of magistrates' courts is to strengthen the independence of the judiciary. Regional courts have a higher penal jurisdiction than magistrates' courts, but even so an accused person cannot appeal to the regional court against the decision of a district court. This can only be done through a high court (South African Courts 2006).

#### **4.2.4.7 Civil jurisdiction**

The area of civil jurisdiction of a magistrate's court is the district, subdistrict or area for which the court has been established. The jurisdiction of a magistrate's court is limited to cases in which the claim value does not exceed R100 000. This value is determined where the action arises out of a liquid document or credit agreement. In other cases the value of the claim can be R50 000. Unless all the parties in a case consent to higher jurisdiction, the magistrate's court jurisdiction will be acceptable (South African Courts 2006).

#### **4.2.4.8 Small Claims Court**

A practising advocate or attorney, a legal academic or other competent person, who offers his or her services free of charge, will usually be the Commissioner of the Small Claims Court. At a hearing in a Small Claims Court neither the plaintiff nor the defendant may be represented by counsel. There is no appeal to a higher court because the Commissioner's decision is final (South African Courts 2006).

#### **4.2.4.9 Other civil courts**

Civil claims arising from indigenous law and custom can be heard and determined by an authorised African headman or his deputy. These claims must be brought before an African headman by an African against another African within his area of jurisdiction. Courts constituted in this way are commonly known as Chief's Courts. Proceedings in a Chief's Court are informal. An appeal against a judgment of a Chief's Court is heard in a Magistrate's Court (South African Courts 2006).

#### 4.2.4.10 Criminal jurisdiction

When a person is charged with any offence committed within any district or regional division, that person may be tried either by the court of that district or the court of that regional division. The High Court may try all offences. A Magistrate’s Court may also try all offences except offences like treason, murder and rape. The Regional Court has jurisdiction over all offences except treason (South African Courts 2006).

#### 4.2.4.11 Other criminal courts

Jurisdiction may be conferred upon a chief or headman or his deputy to punish an African person who has committed an offence. This is allowed in terms of statutory law. The offence must fall under common law, indigenous law and custom, with the exception of certain serious offences specified in the relevant legislation. Procedure at these trials is in accordance with indigenous law and custom. The jurisdiction conferred upon a chief and a magistrate does not affect the jurisdiction of other courts competent to try criminal cases (South African Courts 2006).



#### **ACTIVITY**

Visit <http://www.info.gov.za/aboutgovt/justice/courts.htm> and summarise the different courts as discussed on this webpage.

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## 4.3 The Department of Social Development

### 4.3.1 Introduction

In July 2000, the Department of Welfare was renamed the “Department of Social Development”. In the criminal justice system the Department of Social Development is involved in the detention of youth delinquents. The Department of Social Development manages places of safety and secure facilities in which youth in conflict with the law can be placed. This is done according to the Children’s Act 38 of 2005. The Department of Social Development also makes provision for the placing of youth in conflict with the law under the supervision of private role players (Luyt 2004:51). These private role players are responsible for places of safety and secure facilities which they administer according to certain minimum requirements.

The general priorities of the Department of Social Development can be summarised as follows (Department of Social Development 2006):

- ◆ **Commitment to social transformation:** The Department is committed to social transformation embodied in the principle of social justice and the Bill of Rights contained in the Constitution.
- ◆ **To reduce poverty and promote social integration:** It is the task of the Department to develop and monitor the implementation of social policy that both creates an enabling environment for and leads to poverty reduction.
- ◆ **The work of the Department is based on partnerships and the Batho Pele principles of service delivery:** The work of the Department requires extensive and ongoing consultation with all sectors of the society. The programmes are integrated with those of other government departments and all spheres of government. The Department is committed to the Batho Pele (People First) principles and use them to improve service delivery to clients and the public.
- ◆ **The actions of the Department are based upon solidarity and engender self-reliance:** The Department seeks to empower communities and engender self-reliance by creating conditions for sustainable livelihoods. This involves expanding the range of choices available to communities.

### 4.3.2 The 10-point plan of the Department of Social Development

The Department has adopted a 10-point plan, which represents the priorities to be addressed by the social development sector (Department of Social Development 2006).

- ◆ **Youth development:** Develop a national strategy to reduce the number of youth in conflict with the law and promote youth development within the framework of the National Crime Prevention Strategy and in partnership with the National Youth Commission.
- ◆ **Rebuilding of family, community and social relations:** Restore the ethics of care and human development in all welfare programmes. By presenting programmes for the youth in detention they can help them rehabilitate.
- ◆ **Integrated poverty eradication strategy:** Design an integrated poverty eradication strategy that provides direct benefits to those in greatest need, especially women, youth and children in rural areas and informal settlements.
- ◆ **Comprehensive social security system:** Develop a comprehensive social security system that builds on existing contributory and noncontributory schemes, and prioritises the most vulnerable households.
- ◆ **Violence against women and children, older persons and other vulnerable groups:** Respond to brutal effects of all forms of violence against women, children, older persons and other vulnerable groups, and design effective strategies to deal with perpetrators.
- ◆ **HIV/Aids:** Programmes should include a range of services to support the community-based care and assistance for the people living with HIV/Aids.
- ◆ **Accessibility of social welfare services:** Make social welfare services accessible and available to people in rural and informal settlements, and ensure equity in service provision.
- ◆ **Services to people with disabilities:** Redesign services to people with disabilities in ways that promote their human rights and economic development.
- ◆ **Commitment to cooperative governance:** This includes working with different spheres of government and civil society.
- ◆ **Train, educate, redeploy and employ a new category of workers in social development:** The reorientation of social service workers to meet the challenges of South Africa and link these to regional and global demands.

**ACTIVITY**

Visit <http://www.welfare.gov.za/> and summarise the responsibility of the Department of Social Development towards youth in conflict with the law.



## 4.4 The Department of Correctional Services

### 4.4.1 Introduction

According to Luyt (1999:14) the Department of Correctional Services must fulfil the purposes of the Correctional Services Act 111 of 1998 and complete all the work required for its effectiveness.

The purpose of the correctional system, according to section 2 of the Correctional Services Act (South Africa 1998:16), is to maintain and protect a just, peaceful and safe society by:

- ◆ the enforcement of sentences that was passed by the courts in the way described by the Act
- ◆ the safe detention of all prisoners as well as the upholding of their human dignity
- ◆ the promotion of the social responsibility and personal development of prisoners and persons subject to community corrections (Luyt 1999:14)

The Department of Correctional Services should be self-sufficient as far as possible and operate according to business principles.

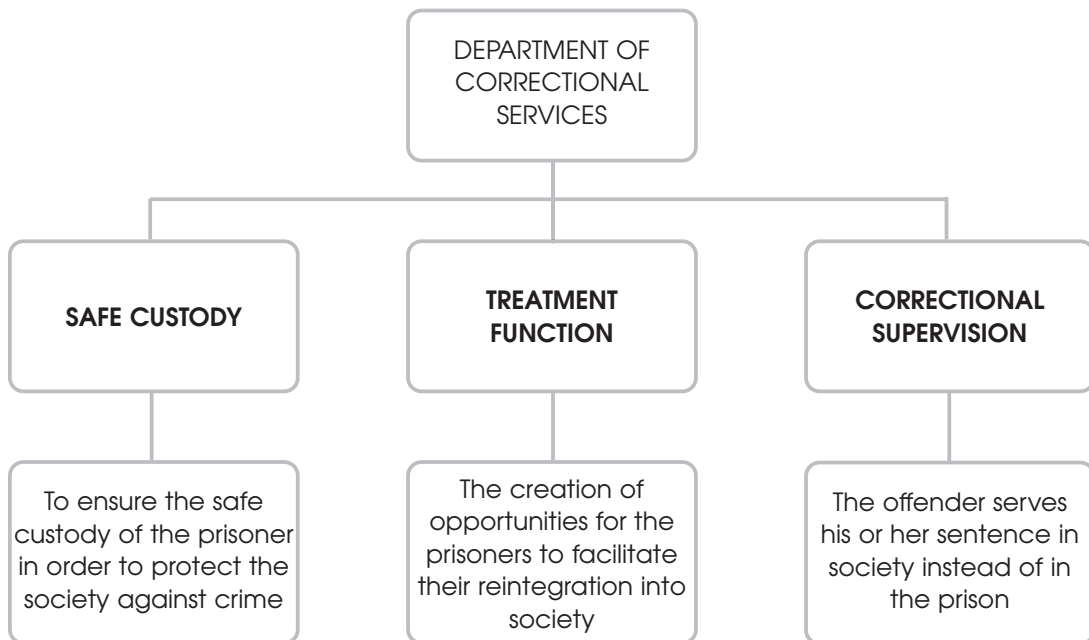


**ACTIVITY**

Visit <http://www.dcs.gov.za/> and study the White Paper on Corrections in South Africa as well as the Correctional Services Act 111 of 1998 on this webpage.

**4.4.2 The structure of correctional services**

There are three main categories in the criminal justice system in which the Department of Correctional Services plays a role. These categories are safe custody, the treatment function and correctional supervision. The categories can be illustrated as follows (Coetzee & Gericke 1997:41).



**ACTIVITY**

Discuss the structure of the Department of Correctional Services. Use the necessary diagrams and examples to illustrate your answer.

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Keeping the three main functions of the Department of Correctional Services in mind, the key objectives of the correctional system can be discussed as follows (Department of Correctional Services 2005:73):

### **4.4.3 Key objectives of the Department of Correctional Services**

#### **4.4.3.1 Implementation of sentences of the courts**

The Department of Correctional Services is compelled to make correctional and developmental opportunities available to all offenders. It should also make sure that the offenders have a positive commitment to active participation and internalisation of the lessons of such opportunities. The result of this is that the Department of Correctional Services should ensure that the offenders in the correctional system understand and accept the need to be corrected and rehabilitated.

#### **4.4.3.2 Breaking the cycle of crime**

The intention of correctional services is the protection of the general public, the promotion of social responsibilities and the enhancing of human development in order to prevent repeat offending or the return to crime. The essence of incarceration is not only deterrence, but also rehabilitation, the positive orientation that crime does not pay. Rehabilitation and not punishment will eventually break the cycle of crime, which eventually leads to a reduction of crime.

#### **4.4.3.3 Security risk management**

The function of the Department of Correctional Services is to provide appropriate measures to ensure that the general public is protected from offenders. Security risk management as well as needs-based correction provides information about incarceration classifications and community correctional supervision classifications of offenders.

#### **4.4.3.4 Providing an environment for controlled and phased rehabilitation interventions**

The function of imprisonment or correctional supervision is not only to promote the safety of the general public, but also to create a controlled environment for concentrated and needs-based rehabilitation, correction and development.

#### **4.4.3.5 Providing guidance and support to probationers and parolees within the community**

The aim of community corrections is to provide an alternative direction towards rehabilitation. Instead of going through a correctional institution, offenders serve their sentences in society. Community corrections also ensure that the

reintegration of offenders back into the community is a supervised process. Community correctional supervision ensures that the services necessary for successful reintegration are available to an offender.

#### **4.4.3.6 Provision of corrective and development measures to the offender**

By providing programmes for offenders the Department of Correctional Services addresses, among other things, the offending behaviour of offenders. It also promotes the social responsibility, ethical and moral values, alternative lifestyle choices, developmental needs and the future employability of the offender.

#### **4.4.3.7 Reconciliation of the offender with the community**

It is important that the Department of Correctional Services must address the reconciliation of the offender with the community. It must also assist in the healing of the offender's relationship with the victims. These activities form an integral part of the rehabilitation of the offender. If reconciliation does not take place, the risk of recidivism will increase and the offender remains estranged from the community.

#### **4.4.3.8 Enhancement of the productive capacity of offenders**

It is the responsibility of the Department of Correctional Services to ensure that offenders are properly skilled in market-related demands. Upon their release the offenders will be in the position to take their place in the economically active and gainfully employed sector of society. It should also be the objective of the Department of Correctional Services to contribute to the self-esteem and sense of worth of offenders by paying a gratuity for the labour of the prisoners.

#### **4.4.3.9 Promotion of healthy family relations**

The success in rehabilitating an offender is built on healthy family relationships. The Department of Correctional Services should ensure that there is contact between inmates and their family.

#### **4.4.3.10 Assertion of discipline within the correctional environment**

The aim of discipline in corrections is the reinforcement of the objective of rehabilitation and correction. It should encourage self-discipline through a restorative justice approach to all offenders. Disciplinary measures within the correction environment should take the form of community service directed towards other inmates.

**ACTIVITY**

You can learn more about the activities of the South African Department of Correctional Services at the following website: <http://www.dcs.gov.za/>



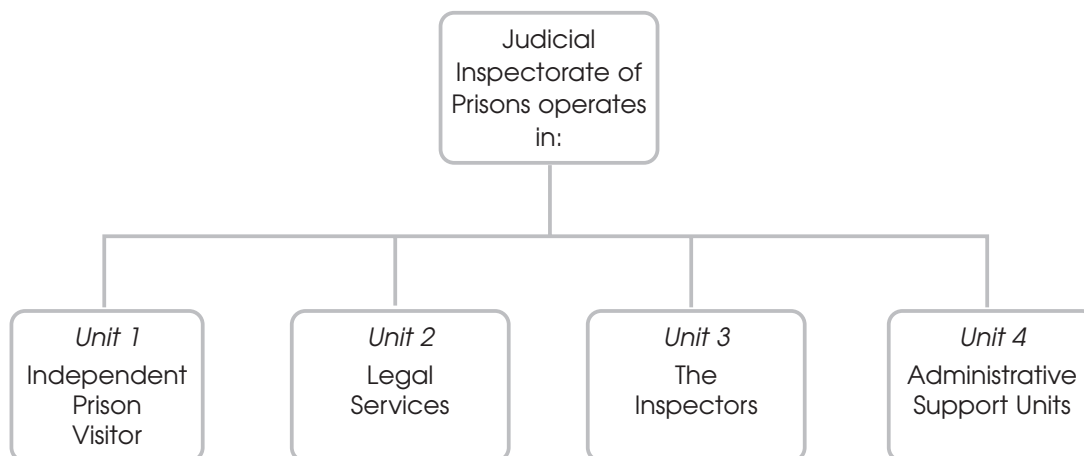
## 4.5 Judicial Inspectorate of Prisons

### 4.5.1 Introduction

The Judicial Inspectorate of Prisons as an independent statutory body was established in terms of section 85 of the Correctional Services Act 111 of 1998 (Judicial Inspectorate of Prisons 2006:6). The mandate of the Judicial Inspectorate is to monitor conditions in South African prisons and the treatment that prisoners receive. The results of their findings must be reported to the President and the Minister of Correctional Services. The Judicial Inspectorate has further been mandated to appoint independent prison visitors (IPVs). These IPV's have to visit prisoners and if they receive complaints from the prisoners about matters such as their treatment, for example, the IPV's should attempt to resolve matters.

### 4.5.2 Structure of the Judicial Inspectorate of Prisons

The Judicial Inspectorate of Prisons operates in four units (Judicial Inspectorate of Prisons 2006:6):



These four units all strive to achieve the set objectives of the Inspectorate, namely (Judicial Inspectorate of Prisons 2006:6):

- ◆ to ensure that the treatment of prisoners are humanely
- ◆ to deal effectively with complaints received from prisoners and their families

- ◆ to contribute to the improvement of the conditions of prisons
- ◆ to provide accurate, high-quality information about the treatment of prisoners and the prison conditions
- ◆ to promote community involvement in matters concerning corrections

**ACTIVITY**

Discuss the structure of the Judicial Inspectorate of Prisons. Use the necessary diagrams and examples to illustrate your answer.

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**4.5.3 Duties**

Certain duties of the Judicial Inspectorate of Prisons are described in section 90 of the Correctional Services Act 111 of 1998. These duties can be summarised as follows (Luyt 1999:15):

- ◆ The Judicial Inspectorate of Prisons has to inspect prisons in order to report on:
  - ▽ how the prisoners are treated in prisons
  - ▽ how the prison conditions are
  - ▽ if there are any corrupt or dishonest practices in prison
- ◆ The Judicial Inspectorate of Prisons has to deal only with complaints submitted by:
  - ▽ the National Council
  - ▽ the Minister
  - ▽ the Commissioner
  - ▽ a Visitors Committee
  - ▽ an Independent Prison Visitor (in case of urgency)
  - ▽ of own volition deal with any complaint

- ◆ After each inspection, the Judicial Inspectorate of Prisons has to submit a report to the Minister. An annual report should be submitted to the President and the Minister.
- ◆ During an investigation, the Judicial Inspectorate of Prisons has to make inquiries and hold hearings.
- ◆ The Judicial Inspectorate of Prisons can delegate any of its functions (except hearings) to inspectors appointed in terms of section 87 of the Correctional Services Act 111 of 1998.
- ◆ The Judicial Inspectorate of Prisons can perform any other function ascribed to the Inspectorate in the Correctional Services Act 111 of 1998.

**ACTIVITY**

Discuss, in your own words, the duties of the Judicial Inspectorate of Prisons according to the relevant literature. You can read more on the Judicial Inspectorate of Prisons on the website: <http://judicialinsp.pwv.gov.za>



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**5. SUMMARY**

The daily exposure of citizens of a country to crime makes it necessary to take action against the criminal via the criminal justice system. The aim of the criminal justice system as an entity is to protect society against crime. The South African Police Service, the Department of Justice and the Department of Correctional Services each plays an important role in the criminal justice system. The role of each of these departments is unique, and in this study we discussed these unique roles. Other contributors to the criminal justice system include the Department of Social Development and the Judicial Inspectorate of Prisons. They contribute significantly towards the success of the criminal justice system. Their roles were also discussed in the study unit.



# STUDY UNIT 2

## THE CORRECTIONAL FRAMEWORK AND PROCESSES

### LEARNING OUTCOMES

After you have completed this study unit, you should be able to:

- ◆ demonstrate an understanding of the correctional framework
- ◆ identify the different correctional processes



### 1. INTRODUCTION

There are several myths about corrections and what they entail. For most citizens the term corrections conjures up images of grim, fenced buildings surrounded by guard towers. The confusion about corrections may be ascribed to the fact that corrections in South Africa were kept out of the public eye; for many years the laws of the apartheid era (1948 to 1994) even prohibited the media from reporting on prisons.

In an attempt to address the confusion about corrections, what they entail and the activities that are regarded as correcting, corrections will be defined in this study unit. The aim is to enable the student to identify the different forms and levels of corrections and the conglomerate of institutions involved in providing corrections within the society. The different processes in corrections will also be addressed only briefly here as they are discussed in detail in other modules of the study field. This module focuses on the final level of corrections in society and looks at the constitutional origin of corrections as well as the statutory frameworks, policies and procedures that are applicable to corrections in the South African context.

### 2. CORRECTIONS FRAMEWORK

#### 2.1 Corrections defined

There are always several different views on the actual definition of any field of study. The same is true of corrections — there are many different definitions of

the term. To explain this dilemma, three different authors' definitions of corrections appear below. Note that these three definitions have a lot in common.

Champion (1998:3) states that "corrections are the vast number of persons, agencies and organisations that manage accused, convicted, or adjudicated criminal offenders and juveniles".

According to Fox and Stinchcomb (1994:13) "corrections are the combination of public and private services with legal authority to provide care, custody, and control of those accused or convicted of criminal ... offences".

The White Paper on Corrections in South Africa (WPCSA) provides a different view. It does not define corrections per se, but gives an overall description of what correction in the South African contexts entails. In South Africa the Department of Correctional Services is one of several important role players in creating and maintaining a correcting environment for South African citizens. It believes that the family unit is the primary level at which correction should take place. The secondary level at which correction should take place is schools, churches and organisations that focus on installing values and norms in society. The overall facilitator and driver of corrections is the government, which has different departments that make the laws of the country. Within the government the Department of Correctional Services renders the final level of correction. Corrections are therefore not only the sole duty of a particular government department, but the responsibility of all social institutions and individuals. It is only when all other social mechanisms in a society have failed that the criminal justice system and the Department of Correctional Services become involved (White Paper on Corrections in South Africa 2005:65–67).

The biggest differences between the definitions provided are the following: Champion (1998), and Fox and Stinchcomb (1994) state that corrections only comprise the criminal justice system of government. The White Paper, on the contrary, includes all of society its definition of corrections. As this module focuses on the correctional framework in South Africa, the definition that is used in the White Paper is adopted. The South African version can be summarised as follows: "(C)orrections do not only mean one thing. It is a vast array of different programs, government departments and non-government organizations reaching from the community into the most secure institutions" (Mays & Winfree 1998:27)



**ACTIVITY**

After you have read the above section, compile from the information provided your own definition of corrections. Ensure that your definition contains all the relevant components mentioned by the Champion, Fox and Stinchcomb and the White Paper.



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The definitions make it clear that corrections encompass a wide range and framework, and therefore comprise a conglomerate of institutions each with its unique contribution to society as a whole.

**2.2 Correctional conglomerate**

In private enterprise, a massive business corporation with far-flung markets, numerous customers and a vast array of products and services would be called a conglomerate. Any government enterprise that is made up of many different departments with many employees, clients and diverse activities relating to corrections can also be considered a conglomerate. The biggest difference between a business and corrections is that people have a personal stake in a business, whilst in corrections they are working with taxpayers' money (Fox & Stinchcomb 1994:5).

It is important to note that no person can enter the final stage of the corrections framework, which is administered by the Department of Correctional Services, the Department of Social Development or the Department of Education, without a warrant or order from the courts. (See the study unit on the criminal justice system and other role players for more information about the different courts in South Africa.) The following few scenarios describe the activities that occur on a daily basis in our country and involve the correctional framework. In all the given scenarios the offender is a correctional client. All the institutions constructed, programmes developed and services provided to accommodate them are part of the corrections conglomerate:



- ◆ A number of women were killed. A suspect has been apprehended and is currently in police custody, waiting to appear before the court.
- ◆ Gang members of the 26 gang and 28 gang were involved in a gang fight. The suspects are awaiting trial in a correctional centre as they have previously been sentenced to imprisonment.
- ◆ A person was apprehended for housebreaking and theft. He received bail from the court, but could not afford the sum. He is currently awaiting trial in a correctional centre.
- ◆ A person has been charged with murder. He has been denied bail by the courts and is currently awaiting trial in a correctional centre.
- ◆ A women’s cell phone was snatched from her while she was walking down the street. The offender is on probation for 12 months.
- ◆ A young teenager is found in possession of drugs. He is found guilty and sent to a reformatory owing to his age.
- ◆ A serial killer is serving a life sentence in a correctional centre.
- ◆ A person found guilty of armed robbery has served a significant time of his sentence and is currently being considered for parole.
- ◆ A person found guilty of culpable homicide has served one year of his sentence, which is currently under review for conversion to community corrections.
- ◆ A young teenager is found guilty on robbery charges for the third time. He is currently serving an eight-year sentence in a juvenile correctional centre.



**ACTIVITY**

Identify and list the different institutions and types of incarceration that form part of the corrections conglomerate.

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The conglomerate of corrections in South Africa is an extreme large operation which involves massive amounts of fiscal and human resources. The following gives a bird’s-eye view of the costs and people (employees and clients) involved in the system:

- ◆ **The cost of corrections:** The annual expenditure for the 2003/2004 financial year was R7 387 100 million, which increased to R8 301 537 million for the year 2004/2005 (Department of Correctional Services 2004/2005:17). South Africa has a population of approximately 47 million residents, which means that the cost of corrections in 2003/2004 was R157,00 and in 2004/2005 R176,00 per citizen per year. The cost of corrections is escalating at a rapid pace — a rise of 12,3 per cent was recorded in the years mentioned here.
- ◆ **Number of employees and cost per employee in corrections:** In the 2004/2005 financial year there were 35 960 positions in corrections of which 33 346 were filled at an average cost of R138 382 per employee (Department of Correctional Services 2004/2005:130–131).
- ◆ **The clientele of corrections:** On 31 December 2005 the clients of the corrections conglomerate numbered 196 545. The different categories of clients are explained in table 1 below.

**ACTIVITY**

You are required to obtain the latest annual reports of the Department of Correctional Services and the Judicial Inspectorate of Prisons. (These are available via the Internet or in hard copy from the Government Printer in Pretoria.) Use these reports to update the following table:



	2005/2006*	2006/2007	2007/1008	Increase/decrease in expenditure
Annual expenditure				
Cost per citizen				
Number of employees				
Numbers of clients				

\*Use the last three years’ data.



After you have completed the table above, make a note of matters that have changed and may need attention from the government or the Department of Correctional Services.

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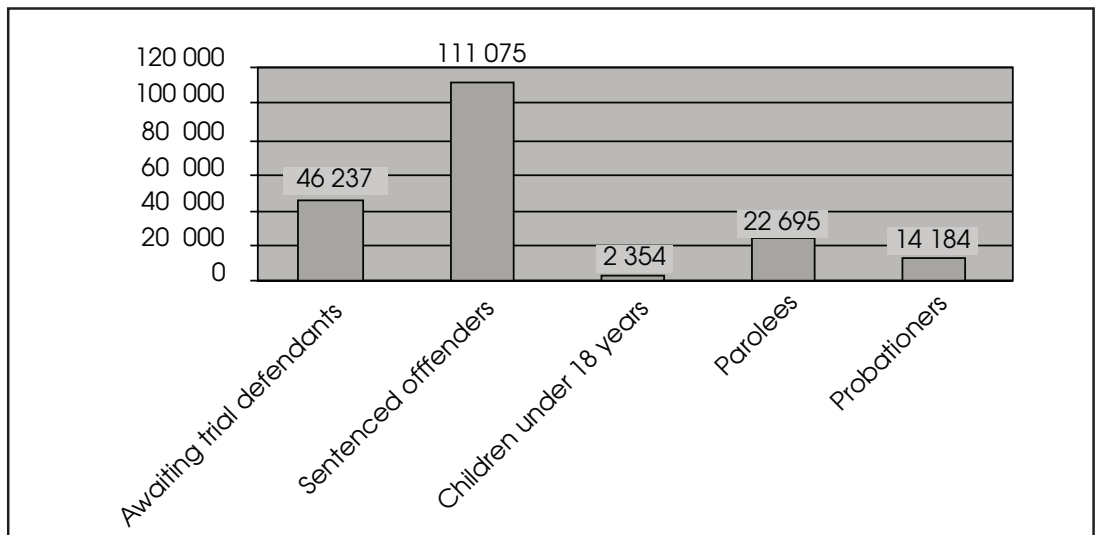
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Table 1: Number of offenders as on 31 December 2005



Source: Department of Correctional Services homepage: Basic information

It must be noted that these figures only indicate the statistics of the Department of Correctional Services and do not include persons in youth care centres, which are administered by the Department of Social Development. Nor do the figures include children in reformatories or industrial schools administered by the Department of Education.

It is clear that the clientele in the corrections framework is large and comprises many different categories of people in one or another form of corrections in the country. In order to make sense of all this, we first distinguish between different correctional processes, such as the pretrial and sentenced stage, and then we look at custodial institutions and noncustodial alternatives.

### ACTIVITY

Identify and list the different role players in the correctional framework.

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## 3. THE CORRECTIONAL PROCESS

The correctional process is not static. An offender enters at the pretrial stage, but can leave the system at different stages. This section introduces the student to the different subprocesses in the correctional process.

### 3.1 The pretrial process

Figure 1 shows the simplistic view of the pretrial process. If a person is arrested by the police because they suspect that he or she has committed a crime, two conflicting goals come into play. These goals are the goal of the community and the goal of the suspect. The goal of the community is to bring the offender to trial. The suspect relies on the notion that a person is innocent until proven guilty and prepares for the trial. To ensure that the interests of both the community and the suspect are served, section 33(1) of the Constitution of the Republic of South Africa, 1996 stipulates how the administration of justice should be performed. It also stipulates that citizens of the country “has the right to administrative action that is lawful, reasonable and procedurally fair”. Section 35 of the Constitution of the Republic of South Africa, 1996 specify the rights of arrested, detained and accused persons. The following two parts of section 35 are important in this regard:

According to section 35(1)(e) “everyone who is arrested for allegedly committing an offence has the right ... at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released”. Section 35(1)(f) goes on to say that everyone has the right “to be released from detention if the interests of justice permit, subject to reasonable conditions”.

To ensure that adherence is given to the Constitution, the Criminal Procedure Second Amendment Act 75 of 1995, provides the courts with the following authority:

- ◆ to regulate the detention of arrested persons
- ◆ to provide for accused persons to be entitled to be released on bail in certain circumstances
- ◆ to give a court a discretion to postpone bail proceedings in certain circumstances
- ◆ to empower a court, in respect of certain serious offences, to order the accused to satisfy the court that the interests of justice do not require his or her detention in custody
- ◆ to set out the factors which should be taken into account in considering bail



### ACTIVITY

Identify the conflict of interest between the community and the suspect, and indicate how the Constitution of South Africa, 1996 and the Criminal Procedure Act 75 of 1995 contribute to resolve the conflict.

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The above paragraph focuses on the bigger picture, but different provisions are made for children in terms of the Constitution of the Republic of South Africa,

1996. Section 28(1)(g) stipulates that a child has the right “not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years and treated in a manner, and kept in conditions, that take account of the child’s age”. Irrespective of these provisions children are held in correctional centres during the pretrial stage. The Inspecting Judge of Prisons stated that 9 079 juveniles aged 18 to 21 years and 1 217 children under 18 years were detained in South Africa in December 2005.

In the case of petty offences the police have the same authority as the courts.

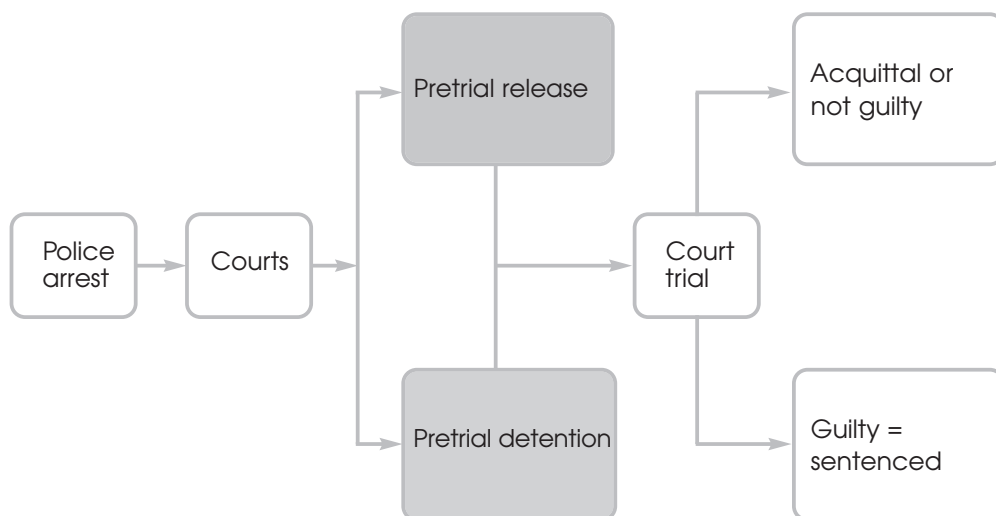


Figure 2.1: The pretrial process

As is indicated in figure 2.1, the courts have two options after due consideration of the Criminal Procedure Act 75 of 1995, namely to release or to detain the suspect. The courts may then choose one of several ways to realise the option taken.

### 3.1.1 Pretrial release

The court may decide that a person is to be released from custody for all or a part of the time before prosecution. The release of defendants is normally granted on condition that they return to the court to stand trial on a given date. Sometimes the defendants simply undertake to appear before court, but at other times a financial obligation is imposed on the defendants. The required guarantee could therefore be either a verbal promise or a financial obligation, and both these are called bail (Reichel 1997:9). If defendants are released on a promise, they may leave the court immediately and are released. If financial bail is set, defendants should pay the amount before they are released. If the

defendants do not pay the amount or cannot afford to pay the amount set by the court, they are taken for pretrial detention. During 2005, 63 932 defendants were admitted for pretrial detention, but were later able to pay their bail and subsequently released (Judicial Inspectorate of Prisons 2006:13). Note that a large number of defendants who receive financial bail cannot afford to pay it. These defendants are not released; they remain in detention until their cases are heard and verdicts are given by the courts.



### **ACTIVITY**

Reread the above section and identify the different options that exist for the pretrial release of a suspect.

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### **3.1.2 Pretrial detention**

In South Africa the common name for centres where pretrial detention is administered, is awaiting-trial centres. As has been mentioned above, defendants incarcerated in these centres have not been afforded noncustodial alternatives or pretrial release. As these defendants form a large part of the corrections framework it is necessary to described where they are detained and how they are accommodated in the criminal justice system.

#### **3.1.2.1 Awaiting-trial centres**

In South Africa it is the responsibility of the Department of Correctional Services to take care of offenders awaiting trial. This differs from international practices, where the police or the courts are generally responsible for offenders awaiting trial. The situation in South Africa arose during the early 1950s when corrections (then called prisons) were administered by the Department of Justice. As the



burden of awaiting-trial prisoners increased, it was decided to transfer the responsibility for the housing of awaiting-trial offenders from the Department of Justice to the Department of Correctional Services. Since the early 1950s, prisons (as they were called) went through different stages and were housed by different ministries, but in 1981 an independent department charged with prisons was created within the Department of Justice. Today corrections has its own independent department (the Department of Correctional Services), but the responsibility to take care of offenders who are awaiting trial has not been transferred to the police or Department of Justice where it actually belongs. In its White Paper, the Department of Correctional Services (2005:89) questions this state of affairs, as it is “internationally recognized that there must be a clear separation of the functions between the agencies which are responsible for investigating crimes, and the administration which is responsible for detaining accused persons”.

**ACTIVITY**

Consult the Internet and determine how three other countries of your choice deal with awaiting-trial offenders. Note that various different terms are used in other countries, including terms such as remand prisoners and unsentenced prisoners. After you have determined how systems in other countries work, compare them with the South African system.



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Prisoners who are awaiting trial have a great impact on the correctional system (see table 1), but we do not discuss the legality of their detention in this study guide. However, note that these prisoners have a unique status and are protected by a set of rights and requirements different from those of sentenced offenders. Their status and rights are enshrined in the Constitution of the Republic of South Africa, 1996. Constitutional provisions that have a direct bearing on their detention in awaiting-trial centres are laid down in section 35(2) of the Constitution, which stipulates:

Everyone who is detained, including every sentenced prisoner, has the right -

- (a) to be informed promptly of the reason for being detained;
- (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
- (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
- (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
- (f) to communicate with, and be visited by, that person's -
  - (i) spouse or partner;
  - (ii) next of kin;
  - (iii) chosen religious counsellor; and
  - (iv) chosen medical practitioner.

In the light of their rights, awaiting-trial prisoners cannot be subjected to compulsory attendance of correctional programmes until they have been proven guilty. They may also not be compelled to wear the clothes provided to sentenced inmates. If their clothes are improper for whatever reason, the government must provide them with clothes, but these clothes may not be the same as those of sentenced inmates (Department of Correctional Services 2005: 93).

Although the Constitution stipulates that the detention period of persons awaiting trial must be as short as possible, these persons are often in detention for extended periods. Table 2 shows the number of defendants in detention for longer than three months during the period January 1996 to January 2005. The table clearly shows that the average duration of detention is increasing. Note that the number of persons awaiting trial in detention for periods longer than 24 months increased from 28 in 1996 to 1 424 in 2005.

Table 2: *Unsentenced prisoners in custody for longer than three months: January 1996–January 2005*

DURATION	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
3–6 months	2 820	4 367	7 474	11 705	11 485	10 419	10 483	11 186	10 391	9 438
>6–9 months	725	1 394	3 090	4 816	5 491	4 778	4 348	4 591	4 614	4 729
>9–12 months	220	542	1 371	2 819	3 354	3 052	2 678	2 693	2 963	2 761
>12–15 months	76	280	635	1 351	1 988	2 227	1 771	1 850	1 779	1 920
>15–18 months	53	105	363	854	1 348	1 445	1 209	1 272	1 215	1 231
>18–24 months	35	90	270	689	1 211	1 539	1 386	1 267	1 182	1 431
>24 months	28	30	106	259	530	1 093	1 412	1 400	1 445	1 424
All duration	3 957	6 808	13 309	22 493	25 407	24 553	23 287	24 259	23 589	22 934

Source: *Annual report*, Judicial Inspectorate of Prisons (2006:14)

**ACTIVITY**

Get hold of the *Annual report* of the Judicial Inspectorate of Prisons and add the information available for 2006 and 2007 to the table above. Then discuss the trends in the different categories with your colleagues or fellow students.

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If a person stands trial, he or she has the right to receive a verdict. This is true for persons on bail and those awaiting trial in detention centres. The verdict can be either guilty or not guilty. If a person is found not guilty, or is cautioned or reprimanded, he or she is acquitted from the system. Table 3 shows the number of people who had been detained pretrial, but did not return from court for the period 2003 tot 2005. The reasons for their acquittals are unknown, but we can

assume that they ranged from charges that had been dropped and a lack of witnesses to verdicts that the persons were not guilty.

*Table 3: Number of people that had been detained pretrial but did not return from court for the period 2003 tot 2005*

RELEASES	2003	2004	2005
Detained awaiting-trial prisoners not returned from court	199 058	225 373	246 912

Source: *Annual report*, Judicial Inspectorate of Prisons (2006:13)

If the person is found guilty, he or she is removed from the pretrial detention phase and sentenced.

### 3.2 Sentencing

If an offender is found guilty, the sentences that may be imposed by the courts according to section 276(1) of the Criminal Procedure Act 51 of 1977, are the following:

- ◆ imprisonment, including imprisonment for life or for an indefinite period
- ◆ periodical imprisonment
- ◆ declaration as an habitual criminal
- ◆ committal to any institution established by law
- ◆ a fine
- ◆ correctional supervision
- ◆ imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or parole board

This is not a complete list as it does not contain all the orders which the court may use to finalise a criminal case. Other orders that should also be viewed as sentences are the unconditional postponement of sentencing, a formal caution or reprimand (with a discharge), and measures that may only be taken with respect to offenders under the age of 21 (Terblanche 1999:5 & 375).

**ACTIVITY**

List the different sentences that can be imposed on an offender when found guilty in a South African court.




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From the above it is clear that there are two categories of sentences, namely non-custodial measures and imprisonment. Each of these categories is discussed below. Sentencing is within the jurisdiction of the court that has found the defendant guilty and the philosophy of the punishment imposed is that of the court. The philosophy of the punishment can be any one of the following: deterrence, incapacitation, rehabilitation, retribution or restoration. Each of these philosophies has a different goal and focus. These philosophies are discussed in detail in Fundamental Penology.

**3.2.1 Noncustodial measures**

The following sentences are regarded to be noncustodial measures:

- ◆ committal to any institution established by law
- ◆ a fine
- ◆ correctional supervision
- ◆ unconditional postponement of sentence
- ◆ formal caution or reprimand (with a discharge)

Terblanche (1999:5) is of the opinion that the latter two sentences do not comprise punishment, because unlike the other sentences they do not cause any discomfort for the offender. Next the administration of these sentences is briefly discussed.

**3.2.1.1 Committal to any institution established by law**

Section 296 of the Criminal Procedure Act 51 of 1977 provides for committal to a treatment centre. According to Terblanche (1999:399) the purpose of this sentence is “to give a full go at the rehabilitation of the offender who commits

crime, not so much because of the criminal propensity but because of the dependence on drug or alcohol". These treatment centres are administered by the Department of Social Development.

### **3.2.1.2 Fines**

Many different options exist in the case of fines imposed on offenders, including only a fine; a fine and in default of payment imprisonment; or both a fine and imprisonment. The administration of the collection of fines is the responsibility of the court. However, if the offender is in default of payment, he or she is admitted to a correctional centre. If payment takes place after admission to a correctional centre, the fine is administered by the Department of Correctional Services. On 31 December 2005, 2 480 offenders were in prison because they could not afford to pay their fines (Judicial Inspectorate of Prisons 2006:15).

### **3.2.1.3 Correctional supervision**

Terblanche (1999:331) defines correctional supervision as a form of punishment which the offender serves in the community and during which the offender is not incarcerated in a prison at any time, subject to conditions such as the court may prescribe. The conditions prescribed by the court invariably include house arrest and community service, as well as submission to programmes aimed at the offender's training, rehabilitation and improvement.

An offender who is subjected to correctional supervision is referred to as a probationer. In cases where the probationer is an adult, the supervision is administered by the Department of Correctional Services. However, the administration of community service conditions is generally administered by the Department of Social Development in collaboration with the Department of Correctional Services.

If a probationer does not comply with the conditions that are set by the court, the sentence can be converted to imprisonment. According to table 1, 14 184 probationers were subjected to this form of sentence on 31 December 2005.

Correctional supervision comprises many different components and is regarded as a study field in its own right, therefore the whole concept of correctional supervision is addressed in detail in the module Community Corrections.

### **3.2.1.4 Special provisions for offenders under the age of 18**

According to section 290 of the Criminal Procedure Act 51 of 1977, the following noncustodial measures can be ordered when a person under the age of 18 years is convicted and not sentenced to imprisonment:

- ◆ that he be placed under the supervision of a probation officer or a correctional official

- ◆ that he be placed in the custody of any suitable person designated in the order
- ◆ that he be dealt with in terms of both the above-mentioned noncustodial measures

These provisions in the Act create two supervision options, namely supervision under a probation officer in the Department of Social Development or supervision under a correctional officer of the Department of Correctional Services. It also allows for custody by a suitable person, who may be any suitable person found fit for the responsibility by the courts.

If the supervision is administered by the Department of Correctional Services, the same provisions are applicable as for adults (see paragraph 3.2.1.3), but no child under the age of 15 may be subjected to community service. If a child under 15 is placed under the supervision of a probation officer, it is the task of the probation officer to work out a treatment plan in collaboration with the offender, the parents and the school or the employer (Terblanche 1999:388).

This is just a brief introduction to youth offenders. The whole field of study will be dealt with in detail in a different module on youth corrections.

### 3.3 Imprisonment

If convicted, an offender can be sentenced to

- ◆ imprisonment
- ◆ imprisonment for life
- ◆ periodical imprisonment
- ◆ declaration as an habitual criminal
- ◆ imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner

Although the wording gives the impression that these sentences are separate entities, they are essentially the same. The main difference is found in the duration of the sentence and the procedures which are to be followed when the prisoner is released (Terblanche 1999:45). Imprisonment is administered by the Department of Correctional Services in correctional centres. If the person is a child under the age of 18 years and sentenced to a reformatory, the sentence is administered by the Department of Education. However, sentenced child offenders are first admitted to correctional centres where they await transfer and placement in a reformatory. (Table 4 shows how many children are currently awaiting transfer from correctional centres to reformatories.)

### **3.3.1 Correctional centres**

In South Africa there are 240 correctional centres. They include 132 facilities for men, 87 facilities for both men and women, eight facilities for women and 13 facilities for offenders under the age of 18. These centres are distributed as follows:

- ◆ Northern Cape and Free State: 47
- ◆ Eastern Cape: 44
- ◆ Western Cape: 43
- ◆ KwaZulu-Natal: 42
- ◆ Limpopo, Mpumalanga and North West: 38
- ◆ Gauteng: 26

*(Judicial Inspectorate of Prisons 2006:16).*

### **3.3.2 Prison population and sentence categories**

On 31 December 2005, 111 075 prisoners were serving sentences of imprisonment ranging from a few days to life. Table 4 below shows the age and sentence categories of prisoners as at 31 December 2005.



Table 4: Age and sentence categories of inmates as on 31 December 2005

**AGES**

<b>SENTENCE GROUPS</b>	<b>&lt; 20 Years</b>	<b>20–25 Years</b>	<b>&gt; 25 Years</b>	<b>All ages</b>
<b>0–6 months</b>	671	1 510	2 019	4 200
<b>&gt;6–12 months</b>	619	1 479	1 714	3 812
<b>&gt;12–24 months</b>	510	1 158	1 421	3 089
<b>2–3 years</b>	1 331	3 560	4 763	9 654
<b>&gt;3–5 years</b>	1 176	3 816	5 683	10 675
<b>&gt;5–7 years</b>	573	3 033	5 483	9 089
<b>&gt;7–10 years</b>	664	5 287	12 347	18 298
<b>&gt;10–15 years</b>	446	5 810	17 484	23 740
<b>&gt;15–20 years</b>	152	2 416	8 554	11 122
<b>&gt;20 years</b>	68	1 556	7 862	9 486
<b>Habitual criminal</b>	0	7	1 137	1 144
<b>Life sentence</b>	36	1 147	5 432	6 615
<b>Periodic imprisonment</b>	5	3	12	20
<b>Day parole</b>	0	0	32	32
<b>Reformatory</b>	17	5	15	37
<b>Ordered by court as dangerous*</b>	0	1	29	30
<b>Death sentence</b>	0	0	28	28
<b>Mental instability</b>	0	1	1	2
<b>Totals</b>	<b>6 268</b>	<b>30 789</b>	<b>74 016</b>	<b>111 075</b>

Source: *Judicial Inspectorate of Prisons* (2006:15)

- \* If an offender has been declared to be dangerous, he or she is sentenced to an indefinite period of imprisonment. The offender returns to court on a predetermined date for the reconsideration of the sentence.

**3.3.3 Prison population and security levels**

Correctional centres are classified according to their levels of security. In South Africa there are maximum security, medium security and minimum security correctional centres for male, female and juvenile offenders.

Table 5 shows the composition of the prison population according to security levels as on 31 December 2005. The table clearly shows that the majority of inmates are held in medium security centres.

*Table 5: Prisoner population per security level as on 31 December 2005*

<b>Security Level</b>	<b>Women</b>	<b>Men</b>	<b>Total</b>
Maximum	267	37 917	<b>38 184</b>
Medium	1 422	58 074	<b>59 496</b>
Minimum	28	1 073	<b>1 101</b>
<b>Total</b>	<b>1 717</b>	<b>97 064</b>	<b>98 781</b>

Source: Website of the Department of Correctional Services (Basic information)

The difference of 12 294 in the totals of tables 4 and 5 is ascribed to the fact that some sentenced youths and children are not subjected to the security levels and are housed in juvenile detention facilities. It is therefore fair to assume that 12 294 youths and children were incarcerated in youth detention facilities on 31 December 2005.

### **3.3.4 Reformatories**

These institutions are the responsibility of the Department of Education. There are three reformatories in South Africa, two for boys and one for both boys and girls. The latest figures for these school populations are not available, but in 2002 the three reformatories could house 520 children. Two of these reformatories are in the Western Cape and one is in Mpumalanga. The seven other provinces have no institutions for the reception and care of sentenced children. This situation leads to serious problems. For example, some children sentenced to a reform school spend extended periods of time waiting in prison for space to open up (Situational Analysis of Reform Schools and Schools of Industry in South Africa 2002 [website]).

## **3.4 Responsibility of Department of Correctional Services towards sentenced offenders**

All sentenced offenders are the responsibility of the Department of Correctional Services. The mandate or purpose of the correctional system, according to section 2 of the Correctional Services Act 111 of 1998, is to “contribute to maintaining and protecting a just, peaceful and safe society by enforcing sentences of the courts in the manner prescribed by this Act and to detaining all prisoners in safe custody whilst ensuring their human dignity; and promoting the social responsibility and

human development of all prisoners and persons subject to community corrections”. The responsibility for sentenced offenders is therefore not limited to keeping individuals out of society or to enforcing the punishment meted out by the courts. The Department of Correctional Services has an extended mandate, as it has to promote social responsibility and the human development of all prisoners and persons subjected to community corrections. This latter part of the mandate is fulfilled by facilitating rehabilitation to avoid recidivism.

Rehabilitation is achieved through the delivery of key services to offenders, including both correction of the offending behaviour and the development of the human being involved. Within the departmental environment, rehabilitation is facilitated through a holistic sentence planning process that engages the offenders at all levels — social, moral, spiritual, physical, work, educational, intellectual and mental (Department of Correctional Services 2005:72). The rehabilitation of an offender is carefully planned by the Case Management Committee. Note that rehabilitation comprises six distinct plans, each with its own objectives. The six plans are a corrections plan, a security plan, a care plan, a development plan, a facilities plan and aftercare plan (Department of Correctional Services 2005:133). These different plans will be discussed in detail in other modules of the course.

#### **4. RELEASE MECHANISMS**

As all offenders who are sent to prison will be release from prison in the future, some earlier than others, the aftercare plan focuses on the social reintegration of the individual into society. Offenders who have served their sentences are released. In some cases, offenders become eligible for parole after they have served a predetermined period of time (in terms of sections 73 to 83 of the Correctional Services Act 111 of 1998). These offenders appear before the parole board, which decides whether they can be released on parole or not, and what conditions of their release are. Parole means that a convicted offender sentenced to a term of imprisonment is allowed to serve the remaining portion of the sentence outside prison on condition that he or she (the parolee) abides by certain predetermined rules. Parole is therefore a “conditional release” (Palmer 1997:144; Weiss 1991:17) and a bridge between imprisonment and social reintegration into the community (Department of Correctional Services 2005:83). During the remainder of the sentence that is served outside the correctional facility, the parolee is under the supervision and care of a community corrections officer. It is the duty of this officer to determine whether the parolee honours the conditions of release, as parole is regarded as a treatment programme (Weiss 1991:18; Nxumalo 1997:8).

## 5. SUMMARY

Corrections are not only one thing — they comprise a vast array of different programmes and involves government departments, nongovernmental organisations and various other role players. Corrections involve a conglomerate of institutions, each with its unique role and contribution. These institutions include the courts, the Department of Education and its reformatories, the Department of Social Development and its youth detention centres, and the Department of Correctional Services and its awaiting-trial and correctional centres. The sentence imposed by the courts determines where in the framework the offender finds himself or herself and when he or she will finally be released back into society.



## 6. SELF-ASSESSMENT

Complete the following table after you have read this study unit. Write down all the different correctional subprocesses.

	Processes	Subprocesses	
The correctional process	Pretrial process	(a)	
		(b)	
	Sentencing	(a)	
		(b)	
		(c)	
		(d)	
		(e)	
	Imprisonment	(a)	
		(b)	
		(c)	
		(d)	
	Release	(a)	

# STUDY UNIT 3

## BASIC FUNCTIONS OF A CORRECTIONAL OFFICIAL

### LEARNING OUTCOMES

After you have completed this study unit, you should be able to:

- ◆ explain the basic functions of a correctional official



### 1. INTRODUCTION

What are the images you see in your mind's eye when you hear the words "correctional official"? Many people think all correctional officials are like the ones they see on television and in movies, or the ones they read about in novels that feature correctional officials and their work environment. When you ask people what they see in their mind's eye when they hear "correctional official", some people will say they see a person who guards a prison in a guard tower. Others will see a person armed with a rifle or baton walking behind inmates to guard them, or a person that gives orders and coerces people into submission. Correctional officials function within a correctional centre that is a closed environment. This closed environment creates perceptions about the basic functions and the role of the correctional official in society. If the reports that reach the public are negative, they form negative perceptions; if nothing is reported and the centre is managed well, the public tends to become apathetic. Yet, there is reason to believe that the functions of correctional officials are much more demanding, broader and richer than is generally believed (Johnson, 1996; Lombardo, 1989; Toch, 1978; Toch & Klofas, 1982; Zupan & Menke, 1988 in Hemmens & Stohr, 2000:327).

The philosophy of warehousing inmates in prisons until they are released has changed. In 1990 the Department of Prisons was renamed the Department of Correctional Services, and this name change was more significant and important than had been anticipated. The concept of dealing with certain offenders within the community in a system known as correctional supervision was introduced. This added system led to additions to the functions and roles of the correctional official — he or she now also had functions and roles in the community. Other factors that influenced the functions of the correctional official were the introduc-

tion of minimum sentencing, because it meant offenders sentenced to imprisonment could spend longer periods in a correctional centre.

In 2005 a decision was taken to replace the word “prison” in the South African system with “correctional centre”. This name change is significant as it indicates a change in philosophy — the focus has shifted from treating inmates to the rehabilitation of the offender. It should be noted that the name change was preceded by many other strategic actions in the Department of Correctional Services.

The changes that were effected in corrections created new responsibilities for correctional officials in the system. In addition, the changes had a great impact on basic functions in correctional services. This study unit addresses the environment within which the correctional official functions and puts the basic functions of correctional officials in context. In the discussion of the correctional environment we also take into account the major challenges faced by the correctional official as the result of the mission and objectives of the correctional system.

## 2. MISSION OF THE CORRECTIONAL SYSTEM

It is important that correctional officials demonstrate an understanding of and commitment to the mission and key objectives of the correctional system, and that they align their functions, duties and roles accordingly (Stojkovic & Frakas 2003:59).



### ACTIVITY

Obtain the mission statement of the Department of Correctional Services (DCS) in South Africa and write it down below. The mission statement is available in all DCS annual reports and on the website, [www.dcs.gov.za](http://www.dcs.gov.za).

Mission statement of the Department of Correctional Services:

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### 3. KEY OBJECTIVES OF THE CORRECTIONAL SYSTEM

The White Paper on Corrections (Department of Correctional Services 2005:73) describes the key objectives of the South African correctional system in detail.

#### ACTIVITY

Obtain a copy of the White Paper and summarise the key objectives of the Department of Correctional Services below. Your understanding of this study unit as a whole depends on how well you complete this activity. The White Paper is available at offices of the Department of Correctional Services and on its website, [www.dcs.gov.za](http://www.dcs.gov.za).



All correctional officials should know what the mission and key objectives of the DCS are, because the objectives inform the basic functions and roles that are required of a correctional official. It is after all the responsibility of the correctional official to ensure that the correctional system accomplishes its key objectives.

### 4. THE WORKING ENVIRONMENT OF A CORRECTIONAL OFFICIAL

The study unit on the corrections framework makes it clear that there are three different levels of corrections, namely awaiting-trial correctional centres, sentenced correctional centres and community correction. The functions and roles of correctional officials differ in each of these, because the different levels of correctional centres each has its own mission.

- ◆ **Awaiting-trial centres:** The key objective is to ensure that offenders are secure and cannot leave the centres. No other key objective is applicable to offenders in these centres. The rights of these offenders are mentioned in

the study unit that deals with the corrections framework and should be adhered to.

- ◆ **Correctional centres:** Almost all the key objectives of corrections are applicable to correctional centres that house sentenced inmates. The objectives that are not applicable are those for parolees and probationers in the community.
- ◆ **Community supervision:** Offenders sentenced to community supervision are no longer housed in a correctional centre, therefore the role of the officials involved differs from that of officials in a correctional centre.

Although we have different levels of corrections, it is common practice to transfer correctional officials from one level of corrections to another. It is therefore important that all the functions and duties of correctional officials are discussed. All officials should know which functions and duties are applicable to which level of corrections.

Correctional officials at all correctional centres with their different key objectives work in a hostile environment. Their working conditions always cause stress — though their tasks are a boring routine, the possibility of an imminent outbreak of violence is always present (Ross & McKay 1981:17 in Luyt 1999:3). Since the beginning of the 1980s many researchers have described the work of the correctional officers as challenging (Hemmens & Stohr, 2000:327). Luyt (1999:19) indicates that those offenders with the worst prognoses usually end up in prisons (correctional centres).

## **5. DEFINITION OF A CORRECTIONAL CENTRE**

Luyt (1999:3) defines a correctional centre as an institution “where both offenders and staff reside together under laws; rules; and codes of behaviour for periods from one week to a lifetime”. Other correctional centres are independent and have their own unique cultures and environments.

### **5.1 Unique characteristics of a correctional centre**

Correctional centres have unique characteristics that distinguish them from other organisations. These characteristics includes the following:

- ◆ Offenders are forced to be in prison against their will due to a lawful element of compulsion.
- ◆ There is a power disparity between correctional officials and offenders.
- ◆ A high level of deprivation is imposed on offenders. (They are denied their liberty, normal sexual relations, freedom of movement, and ability to purchase items at free will.)



- ◆ Offenders are subjected to great levels of surveillance.
- ◆ Privacy is infringed, even during showers and meetings with family members.
- ◆ Control over all activities is very high (offenders cannot decide when to go to work, exercise, sleep or eat) (Luyt 1999:6).

## 6. CHARACTERISTICS OF A GOOD CORRECTIONAL OFFICIAL

The characteristics of correctional centres, as discussed above, cause the administration of correctional centres to be unique and unlike any other managerial or administrative task. However, the key to correction and rehabilitation is the relationship between correctional officials and offenders (Luyt 1999:3; Department of Correctional Services 2005:110). It is therefore important that a correctional official should exhibit the characteristics of a good official. According to Campbell, Zupan and McCampbell (in Cornelius 2005:34–35) these characteristics are as follows:

- ◆ a desire to help people (caring attitude)
- ◆ an ability to work without fear or anxiety
- ◆ knowledge of human behaviour
- ◆ the ability to maintain a healthy and organised lifestyle
- ◆ the ability to manage a safe and humane environment
- ◆ the ability to handle inmate discipline and maintain order
- ◆ a desire to respond promptly to offenders' requests
- ◆ the ability and desire to build and maintain personal credibility and to develop an ongoing rapport with offenders
- ◆ the ability to perform duties among inmates in a clear, well-organised manner that gets their attention
- ◆ the ability to resolve conflict among offenders and offenders' problems fairly and promptly
- ◆ effective relations with the correctional centre administration and staff

The White Paper on Corrections (Department of Correctional Services 2005:111) adds the following to this list of characteristics:

- ◆ A correctional official should find affinity and identifies with the Code of Ethics and Conduct adopted by the Department.

- ◆ A correctional official should embody the values that the DCS hopes to instil in the offender, as it is this official who is to facilitate the rehabilitation processes of the offender.

These characteristics are comprehensive because the functions and duties of correctional officials in the different environments are varied.

## **7. THE FUNCTIONS, DUTIES AND ROLE OF THE CORRECTIONAL OFFICIAL**

In correctional centres we distinguish between the basic functions and the fundamental duties of correctional officials.



### **7.1 Fundamental functions of correctional officials**

The fundamental task of correctional officials is to keep offenders in custody. Custody refers to the level of immediate control exercised over offenders to ensure that the correctional centre operates smoothly and orderly (Hepburn 1989:191; Allen & Simpsen 1998:450; Luyt 1999:6). This merely means that the public must be protected against escapes, that staff and visitors must be protected against aggressive acts by offenders, and that offenders must be protected against one another and themselves (Cornelius 2005:24). This is an oversimplification of the functions and duties required of correctional officials, as the mission of DCS states that correctional officials must fulfil an effective correcting and encouraging role in correctional centres. This statement in the mission requires a far more comprehensive approach. Research done in Texas in the United States of America identified as many as 351 different task statements for correctional officials (Sandall 1997:4).

The fundamental duty of the correctional official is to exercise control in the correctional centre or in the community (see figure 3.1). To fulfil this purpose the correctional official is responsible for several basic functions, and within each function there are various duties that need to be executed. Basic functions and fundamental duties can become integrated because the one influences the way in which the other is achieved, but each will be dealt with separately.

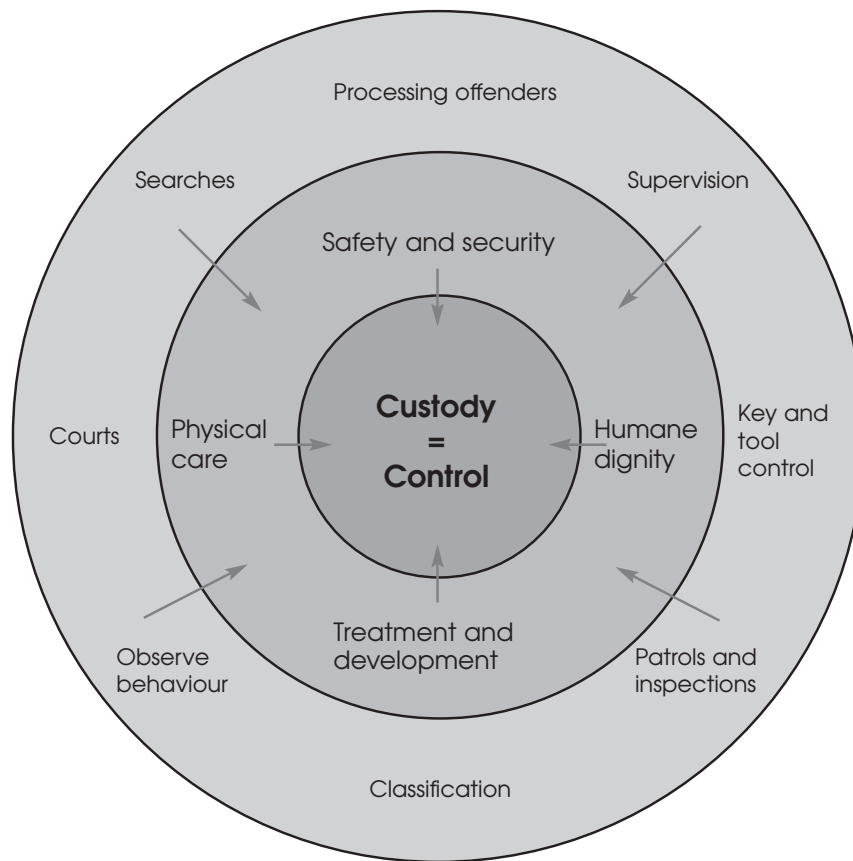


Figure 3.1: Visual presentation of the functions and duties of correctional officials

In order to perform the main purpose, namely control, correctional officials have to perform the following basic functions:

- ◆ safety and security functions
- ◆ human dignity functions
- ◆ physical care functions
- ◆ treatment and development functions in a correctional centre

The fundamental duties and basic functions are comprehensive, therefore it is impossible to deal with them in detail in this introductory study unit. These aspects are dealt with in detail at different stages of your studies of corrections science. Let us take a brief look at these functions:

## **7.2 Fundamental duties**

### **7.2.1 Control in correctional centres**

Control is the overarching function and is achieved by different means. It includes the utilisation of buildings and people, and the procedures and rules that are applied in a specific correctional centre.

#### **7.2.1.1 Buildings**

The architecture of the correctional centre where offenders are incarcerated provides the first measure of control. In South Africa different correctional centres have been built over a period of many years, some dating as far back as the 1920s. Although the old buildings have been renovated, their architecture, security systems and so on differ from those of newer buildings. Older correctional centres were built to fulfil the needs of the linear system, which still uses keys. Newer correctional centres such as the ones at Emthonjeni, Malmesbury and Klerksdorp, were built to facilitate the implementation of unit management principles. In these centres, keys have generally been replaced with an electronic system.

Irrespective of the principles and modernity of a correctional centre, the best developed prison building (correctional centre) represents only part of what is needed for control in prisons (Fox & Stinchcomb 1994:281).

#### **7.2.1.2 The people in correctional centres**

The second part of control is primarily dependent on the people working in the correctional centre. Many different people work in correctional centres, including the managers, psychologists, social workers, medical staff and correctional officials. Each occupation plays its own role in control, but the fundamental control function is vested in the correctional officials who are in 24-hour contact with the offenders. The contact may not always be direct contact; it could take the form of surveillance, for example.

#### **7.2.1.3 Procedures in correctional centre control**

Procedures play an important role in correctional centres, depending on the security level. In South Africa we have maximum and medium security centres, as well as open centres. High-security institutions (maximum security centres) employ more severe procedures to control movement and correctional officials will be much less tolerant towards infringements (Luyt 1999:8). In open security centres, on the other hand, the control of movement is enforced by far less severe procedures.

Control of movement can be described as the most important part of control in correctional centres. Closely controlled movement within the prison physically restricts offenders, and these restrictions limit the chances of disruptions and escapes (Luyt 1999:12).

The correctional official can only exercise control if he or she can perform the basic functions discussed below.

## **7.3 Basic functions**

### **7.3.1 Safety and security function**

The safety and security functions have been prioritised at the expense of other functions in most correctional systems over the world. As offenders come from the community and return to the community, Luyt (1999:16) doubts whether more emphasis should be placed on the safety and security functions than on the other basic functions. This view of Luyt is supported by the mission statement of the Department of Correctional Services. The correctional official is the prime security agent in a correctional centre and conflict does occur with the other functions, such as the humane treatment function (Hemmans & Stohr 2000:347).

It is said that a secure facility is a safe facility (Criminal Justice Institute 1997:2, in Luyt 1999:9). It is therefore fundamental for correctional officials to maintain a safe and secure correctional centre, because they need to safeguard the centres for themselves and for those who work and live (offenders) within. Webster defines security as freedom from danger, fear or anxiety, a place of safety that adheres to two principles, namely the prevention of escapes and the maintenance of peace and order (Cornelius 2005:139).

However, it must be remembered that correctional facilities operate 24 hours per day, and safety and security must be upheld at all times. All operations in a correctional centre influence and affect the climate in the centre and the safety of the correctional officials who function in that climate. The survival of correctional officials and offenders as workers, clients and dignified human beings is dependent upon the overall atmosphere, or climate, of the correctional centre. The climate or atmosphere, in turn, is a reflection of the total correctional process. An unhealthy atmosphere breeds hostility, resentment, tension, anxiety and arousal, and disturbances. A healthy atmosphere is positive, professional, firm, fair, orderly, flexible, concerned, secure and interactive (Luyt 1999:14).

The safety and security of those who work and live in correctional centres are dependent upon the knowledge of and adherence to all rules, policies, and procedures by staff and offenders alike.

### **7.3.2 Maintaining human dignity**

The purpose of the correctional system, as specifically referred to in section 2(b) of the Correctional Services Act 111 of 1998, is to detain all offenders in safe custody whilst ensuring their human dignity. Correctional officials have to realise that the maintenance of their own human dignity and the human dignity of other staff members is just as important as the maintenance of the human dignity of the offender or person subject to community corrections.

Examples of how one can uphold your own human dignity and that of others include the following: refrain from dishonest conduct; prevent brutality; prevent prejudice; do not offer or accept bribes and refrain from involvement in scams that can humiliate you at a later stage; do not give false testimony; show respect for the property of offenders; prevent violation of constitutional and other civil rights; avoid and prevent discourteous conduct and violation of laws and regulations; give an effective and impartial service to all offenders or persons subject to community corrections; reflect honour on your superiors, subordinates and the organisation you work for; maintain the integrity of private information; update yourself with the diversity realities of the community you function and live in; demonstrate consideration, co-operation and respect for others by showing courtesy through tone of voice, word selection and usage, attitude, positioning of the body and mannerisms.

### **7.3.3 The physical care function**

Section 35(2)(e) of the Constitution of South Africa, 1996 determines that all offenders must be detained humanely, specifically with regard to sufficient accommodation, nutrition, personal hygiene, clothing, bedding and health care. These provisions of the Constitution are in line with the Standard Minimum Rules for the Treatment of Prisoners (SMRs) Rules 10 to 25.

#### **7.3.3.1 Accommodation**

It is the duty of the correctional official to ensure that all offenders are placed in appropriate accommodation and that they remain in the accommodation where they have been placed, and that complaints and requests about accommodation are dealt with appropriately (Luyt 1999:17).

In terms of accommodation, the minimum requirements regarding floor space, lighting, ventilation, sanitary installations and general health conditions must be adhered to. This means that offenders must be detained under conditions of human dignity (Luyt 1999:17).

### 7.3.3.2 Separating offenders

SMR Rule 8 deals with the separation of offenders. Sentenced and unsentenced offenders must be separated, while male offenders must be kept separate from female offenders. Children must not only be kept separate from adults, but must be kept in accommodation appropriate to their age. It can also happen that offenders can be separated in terms of specific age (elderly persons), health categories and security risk categories (Luyt 1999:19).

### 7.3.3.3 Nutrition

The correctional centre must provide an adequate diet to promote good health; make provision for diets of different religions; provide offenders with food at intervals of not less than four and a half hours and not more than 14 hours between the evening meal and breakfast for each 24-hour period; and provide offenders with clean water at all times.

**Note:** Unsentenced offenders may be allowed to receive food and drink from outside the prison.

### 7.3.3.4 Personal hygiene, clothing and bedding

Correctional officials must see to it that offenders are provided with the means to keep themselves and their clothing, bedding and cells clean and tidy.

Offenders must receive sufficient clothing and bedding to meet the requirements of hygiene and climatic conditions. Unsentenced offenders may not be compelled to wear prison clothes (see study unit 4 on the correctional framework).

### 7.3.3.5 Health care

The Department must provide adequate primary health care services to ensure that the offender lives a healthy life.

Qualified nursing personnel render this service, but the correctional official has to pay attention to complaints and requests from offenders in terms of health, and refer them to the medical division.

Offenders are entitled to ask for the services of a medical practitioner of their own choice and at their own expense.

As part of health care services, correctional officials must ensure that offenders have ample opportunity to exercise regularly to remain healthy. Offenders are entitled to at least one hour of exercise daily. This exercise must take place in the open air, unless weather conditions prohibit it.

### **7.3.3.6 Reading material**

Offenders should also be allowed the opportunity to read. Reading material with a security risk or material that is not conducive to rehabilitation may not be allowed. Offenders can draw reading material from the library or may receive it from outside the prison (in a manner prescribed by regulations).

### **7.3.3.7 Mental health**

Health care functions also include mental health care. One basic form of maintenance of mental health care is to allow for the offender to be visited by family and friends, and to maintain positive contact with the world outside the prison.

## **7.4 The treatment and development function**

The treatment and development function can be described as the most important function of the correctional official.

This function basically means that every effort is made to empower the convicted offender to live a crime-free life after he or she has been released. Treatment and development make an immense contribution to the recognition of human dignity and to ensuring that the offender sees his or her life as meaningful.

### **7.4.1 Needs of offenders**

The needs of offenders are assessed by the case management committee. The committee develops a case plan according to which the sentence of the offender is served.

The case management committee must ensure that a sentenced offender has been assessed in terms of the following:

- ◆ security classification for purposes of safe custody
- ◆ health needs
- ◆ educational needs
- ◆ social and psychological needs
- ◆ religious needs
- ◆ specific development programme needs
- ◆ work allocation
- ◆ allocation to a specific prison or unit within a specific prison
- ◆ needs regarding reintegration into the community

It is the function of the correctional official to assist the case management committee by providing information on the behaviour of the offender. Case management is a specialised field in corrections and therefore it will be discussed in detail in a separate module.



## 8. DUTIES OF CORRECTIONAL OFFICIALS



The duty of a correctional official is to execute his or her functions in a way that allows the objectives of the Department to be realised (see key objectives in White Paper on Corrections).

Therefore correctional officials perform the following control, safety and security duties on a 24-hour basis to contribute to the security risk management key objective of the Department:

- ◆ regular checks and head counts
- ◆ frequent patrols and inspections, and thorough searches of offenders and their living and working environments
- ◆ adequate key and tool control
- ◆ proper control over the movement or transport of offenders
- ◆ observing offender behaviour, which requires accurate visual perception and hearing abilities
- ◆ indirect and direct supervision
- ◆ appropriate interpersonal communication
- ◆ proper application of defence techniques
- ◆ provide information for the classification of offenders

The following duties are performed when the situation requires action:

- ◆ adequate emergency procedures
- ◆ following hostage procedures when required (a sound knowledge of hostage procedures is required)
- ◆ crime prevention techniques when required (Luyt 1999:14; Cornelius 2005:25–27)
- ◆ processing inmates who enter the facility



### ACTIVITY

Indicate which duty of correctional officials supports which function in the following table:

Duty of the correctional official	Functions supported by the duty
E.g. Regular checks and head counts	Safety and security function

## 9. THE COMMUNITY CORRECTIONS FUNCTION

The community corrections function of the correctional official derives from the community-based sentence option, where offenders or persons subject to community corrections serve their sentence under strict provisions in society (Coetzee 1995:161). Community corrections are regarded as a separate function and are dealt with in a separate module. The duties of the correctional official involved in community corrections are also discussed in detail in that module.

## 10. SUMMARY

From the content of this study unit it is evident that the functions and duties of the correctional official are comprehensive. Students are required to do extra reading about the mission statement and key objectives of the Department of Correctional Services to ensure that they understand the work done by correctional officials. Students must understand all the functions and duties of a correctional official if they wish to equip themselves for tasks and functions in a correctional centre.

# STUDY UNIT 4

## THE IMPORTANCE OF RESPECT FOR THE LAW

### LEARNING OUTCOMES

After you have completed this study unit, you should be able to:

- ◆ demonstrate a basic understanding of the concept of law
- ◆ explain to convicted offenders the rationale behind the existence of laws and the law in general
- ◆ explain to convicted offenders the rationale for respecting the law
- ◆ explain the relation between a lack of respect for the law and offending behaviour
- ◆ demonstrate a basic understanding of how law is created
- ◆ demonstrate a basic understanding of the different sources of law and of the fact that the law consists of more than only legislation
- ◆ explain the consequences of disrespect for the law
- ◆ demonstrate an ability to motivate offenders to respect the law in future



### 1. INTRODUCTION

The primary expected outcome of this study unit is that the student should understand the importance of respect for the law. This implies that you should understand the importance of respecting the law yourself, but also that you should convey the message to inmates or offenders in your care in terms of your appointment.

As a community we expect people to respect the law. You expect your neighbour to respect the law even in such simple terms as to respect the border between your respective properties.

We expect our fellow citizens to respect a simple rule such as to stop at a stop sign.

Respecting the law does not only mean respecting and abiding by a set of rules created by the state, it also means that we should respect one another. We

should respect one another's rights, and we should understand the relationship between our own rights and the obligations we have towards others.

If all people were free to disrespect the law whenever they pleased, then there might as well have been no law. It serves little purpose to have well-thought-out and plausible rules that would be likely to create order in society if nobody respects those rules.

The law does not apply only vertically, but also horizontally. Rules applied vertically are rules enforced by the state on its citizens, while rules applied horizontally are the rules applicable between citizens or individuals.

## 2. WHAT IS THE LAW?

There are different ways to define the concept of law, and some definitions of law are more complex than other.



### ACTIVITY

Formulate your own definition of the concept of law in an attempt to explain the concept to a colleague or a friend. Keep the definition as brief as possible, but ensure that you capture the essence of the meaning of law. Write down the definition in the space provided below.

Once you have completed this study unit, you should return to this definition and amend it.

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**COMPLETE THE ACTIVITY BEFORE YOU TURN TO THE NEXT PAGE.**

As we have mentioned earlier, there are different ways to define the concept of law. It is important to mention that the concept "law" or "the law" refers to law in its broadest sense. In this module, "the law" is used as the broadest term for any legal concept.

This means that the concept "law" includes (encompass) all the following concepts:

- ◆ constitution
- ◆ legislation
- ◆ statutes
- ◆ regulations
- ◆ orders
- ◆ directives
- ◆ policies
- ◆ rules
- ◆ norms
- ◆ principles, etc



It also encompasses the following:

- ◆ rights
- ◆ privileges
- ◆ powers
- ◆ duties
- ◆ legal obligations
- ◆ legal conditions, etc



The law is the sum of all those norms (legal principles) created by or recognised and enforced by the authority of the state for a particular community (area in which it is in force), which determine the powers, rights and duties of individuals, and which regulate the relationship between the state and individuals, and between individuals and other individuals, with the purpose to maintain order in society through retribution, on the basis of justice.



The above definition is quite a mouthful! Let us clarify it:

The law consists of:

- ◆ those norms (legal principles)
  - ▽ created by the authority of the State
    - ❖ for a particular community (area of validity)
      - which determine the powers, rights and duties of citizens
      - and which regulates the relationship between the
      - State and individuals, and between individuals and other individuals
  - ▽ with the purpose to maintain order in society through retribution, on the basis of justice .

### **3. THE PURPOSE OF THE LAW AND ITS BENEFIT FOR SOCIETY**

Now that we have briefly dealt with the question of what the law is, let us discuss the question: "Why do we need the law?"



#### **3.1 The rationale for the existence of law**

The question "Why do we need the law?" is already partly answered by the definition of the law. A number of reasons why the law has a place in the world can be derived from the definition above. The important conclusions from the above description of what the law entails are the following:

- ◆ The law comprises a whole set of legal norms that human conduct should comply with.
- ◆ The law is created in different ways and enforced by the authority of the state.
- ◆ The law maintains order in society by regulating the relationships between the state and its organs, between the state and its citizens, and among citizens.
- ◆ In regulating all these different relationships the law strives to find a balance that promotes justice.
- ◆ The said balance sets the framework in which the rights, powers and duties of the state, its organs and its citizens are determined.
- ◆ To achieve a balance (even though such balance does not necessarily entail equal positions) the rights of the different stakeholders or role-players in

society have to be interdependent. This means that the rights of an individual do not exist at the exclusion of the rights of others, but rather in relation to (and in balance with) the rights of others.

- ◆ The interdependency implies that the rights, powers and duties of a specific individual are counterbalanced to the rights, powers and duties of other individuals, groups and the state.

The rights of a prisoner are not determined in isolation, but in relation to the powers and rights of correctional officials (in representing the state) and also in relation to the rights of fellow prisoners. The powers of correctional officials in the execution of their duties cannot be adequately understood without relating them to the rights of prisoners.



- ◆ In striving to achieve a balance (which in a simplistic sense equates to justice), the law dictates or orders certain conduct, prohibits certain other conduct, and allows or authorises certain other conduct.
- ◆ This means that the law determines what a person must do, may do and may not do.
- ◆ The overall purpose of the law is to maintain order in society.
- ◆ When this order is disturbed in an unlawful manner, the law restores it through retribution, which means that there is a sanction by which a wrong is corrected to restore the order.

When a correctional official assaults a prisoner, that prisoner may lay a criminal charge against the correctional official who (if convicted) will be punished by the law. Alternatively that prisoner may institute a civil claim for damages against the correctional official who (if found liable) will be forced by the law to compensate for the damages suffered. Both of these sanctions aim at restoring the disturbed balance.



### 3.2 The general purpose of the law

The main purpose of the law as a set of rules of human conduct, is to regulate society and prevent people from "taking the law into their own hands", and thereby to preserve the social order and justice.

The above purpose is achieved by

- ◆ regulating the relationships between the different members of society to ensure that they are in harmony
- ◆ creating legal certainty for people, which means that they know what they are allowed, not allowed and obliged to do

- ◆ determining and balancing the rights, powers and obligations of the members of society in relation to one another
- ◆ balancing the rights and powers of an individual with the obligations and boundaries that accompany those rights and powers
- ◆ restoring a disturbance in the balance through retribution



### **3.3 Law determines what individuals and organs may do, may not do or must do**

Law preserves the social order and promotes justice. Law can be described briefly as a set of rules of conduct made for people by the state. This set of rules only applies to a particular society. The law determines (regulates) what people may do, must do and may not do.

Some provisions in law (e.g. the Correctional Services Act 111 of 1998) determine that correctional officials are allowed to act in a certain way. Such provisions are directory provisions. Other provisions determine that correctional officials are obliged to act in a certain way and are called peremptory provisions. Finally there are provisions that aim at preventing certain conduct. The latter are called prohibitive provisions.

Legal provisions contained in legislation can therefore be divided into directory, peremptory and prohibitive provisions. Each section in the Correctional Services Act 111 of 1998, for example, can be classified as one of these forms of provision. Note that some sections may also contain a combination of the different forms of provision.

#### **3.3.1 Directory provisions**

A directory provision stipulates how one may act. It stipulates what is permissible or grants authorisation for a particular action. It creates (through the authorisation) a power that normally leaves some discretion to the organ of government regarding the exercise of that power. The freedom of choice entailed by such discretion depends on what the specific statute allows. The Act therefore gives permission to perform certain actions in a certain way.

The fact that someone has the power or is authorised to do something does not mean they are obliged to do it. If the Commissioner is authorised to release a prisoner on parole on certain grounds, this does not mean he or she is obliged to release the prisoner — he or she may use discretion in this regard. The only obligation created by a directory provision, therefore, is to consider the case in respect of which you have discretion. Directory provisions usually contain words such as "may", "can", "is authorised to", "is permitted" or "has power to".



Hypothetical examples of directory provisions are:

- ◆ "The head of the prison may permit a prisoner to attend a funeral."
- ◆ "Correctional officials may use the minimum force necessary to ward off an attack from a prisoner."
- ◆ "Prisoners who request to be segregated may be segregated from other prisoners."



### 3.3.2 Peremptory provisions

A peremptory provision states an obligation and therefore orders an action to be followed. A consequence (such as a sanction or penalty) is usually defined and may come into effect when the peremptory provision or obligation is not complied with. This means you must do what the Act commands. Such provisions usually contain words such as "must", "shall", and "is obliged".

Hypothetical examples of peremptory provisions are:

- ◆ "The Department shall make development programmes available to prisoners."
- ◆ "Every prisoner is obliged to participate in development programmes."
- ◆ "Correctional officials must search the prison cells daily."



#### ACTIVITY

Think of any rule of conduct which you as a correctional official must comply with and write it down in the space below.

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### 3.3.3 Prohibitive provisions

A prohibitive provision forbids certain actions. It therefore stipulates that certain actions are not permissible. Normally it is coupled with a sanction or punitive measure that takes effect if the prohibition is transgressed. For example, it may identify certain actions as being offences and prohibit them.

The offence of escape by prisoners is coupled with the sanction or punitive measure of imprisonment upon conviction. The absence of such a sanction or punitive measure does not alter the prohibitive nature of the provision. The action concerned remains impermissible.



#### ACTIVITY

Think of any rule of conduct that prohibits you as a correctional official from acting in a certain way and write it down in the space below.

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Such provisions usually contain words such as "nobody may", "no person shall", "may not", "it is impermissible that" and "shall not".



Hypothetical examples of prohibitive provisions are:

- ◆ "No person shall take a prisoner out of the prison without authorisation."
- ◆ "Nobody may assist a prisoner to escape in any way."
- ◆ "No correctional official shall assault a prisoner."

**ACTIVITY 1**

Read selected provisions of the Correctional Services Act 111 of 1998.  
Identify a few examples of peremptory, directory and prohibitive provisions.



**Peremptory provisions**

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**Directory provisions**

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**Prohibitive provisions**

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## **ACTIVITY 2**

Use the sections that you have identified and written down above. Now write down the keywords of each provision that confirm, in your view, that the provision concerned is peremptory, directory or prohibitive in nature.

You need not study the full content of the provisions for this purpose. However, you should be able to explain or indicate why a particular or given provision is regarded as directory, peremptory or prohibitive.

### **Peremptory provisions**

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### **Directory provisions**

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### **Prohibitive provisions**

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### 3.4 How does the law benefit society in general?

There is great benefit for society in the existence of the law. The law benefits society in the following way:

- ◆ The law creates legal certainty about what you are allowed and not allowed to do.
- ◆ The law applies to everyone in society.
- ◆ It prevents chaos and ensures order.

The law creates legal certainty because it is applicable to everybody. Nobody can claim to be excluded from the uniform rules that prevail for society. Therefore nobody is above the law, whether you are an ordinary citizen or the leader of the country. This also implies that the state is not above the law and neither are correctional officials who represent the state (when performing their duties).

The law provides for certain rules that are created with the aim to ensure order in society. Without the rules for human conduct determined by the law there would be chaos, because everybody would probably do as they pleased.

If a valid firearm licence was not a prerequisite for purchasing or possessing a firearm, any person (without qualification) could purchase and/or own a lethal weapon.



#### ACTIVITY

What do you presume would have been the consequences if anyone could simply enter the local supermarket and purchase a lethal weapon over the counter without any requirement of a valid licence? What do you think the consequences of such an arrangement would be for society? Write down your answer in the space below.



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Law regulates society by determining what rights, duties and powers each citizen in society has. Thus every citizen can be certain about what he or she may and may not do and act accordingly, because his or her actions are prescribed by fixed rules of conduct. On the one hand the law limits citizens' freedom, but on the other hand it also protects citizens against the violation or infringement of their rights by others.



A rule that is applicable to correctional officials in the performance of their duties is that they may only use the minimum force that is necessary to achieve the lawful objective for which force is allowed. This rule does not only protect the prisoner against unreasonable conduct and force, but also offers the correctional official guidelines for his own conduct to protect himself and the state against claims.

Law exists for the sake of the people in society and is created to regulate their lives. Uniform legal rules which apply to everyone guarantee legal security in society and prevent complete chaos.

Imagine playing a rugby or soccer game, or a tennis match, without any rules. Not only would there be a strong chance of sustaining a serious injury, but the match might also go on for ever because nobody would know when it has been won or which team has won!

Making provision for clear rules in laws that apply to all citizens ensures that everyone knows what the rules entail and thereby ensure legal certainty. The law offers security to society because there are uniform legal rules which apply to everyone.



### ACTIVITY

Imagine driving on a road for which there are no traffic rules. What do you think would be the consequence if there are no set traffic rules and all drivers are free to act at their own discretion?

Can you imagine a world in which there are no rules that people are bound to follow and all arrangements are left to coincidence?

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Of course the law of one will differ from that of another country.

In South Africa the law stipulates that all motorists must drive on the left-hand side of the road, while in France the law stipulates that all motorists must drive on the right-hand side of the road. This is a typical example of how the law differs from country to country.



While adultery is regarded as a crime punishable by law and carries serious sentences in some countries, it is not regarded as a crime in other countries and therefore does not lead to punishment in those countries.



## 4. THE LAW AND CORRECTIONS

### 4.1 The relation between the law and corrections

The whole system of Correctional Services is founded on law. Correctional Services and the Department of Correctional Services exist because of the existence of law.

As a correctional official you do not have an easy task. In fact, research has shown that performing this task expects much more of a person than is generally believed acknowledged. Nobody should be required to performing an already difficult task without guidelines on what may or may not be done. The law provides the framework for the guidelines that correctional officials need.

The duties that correctional officials have to perform are linked to legal implications and legal consequences.

All the duties performed daily by correctional officials, especially those who work directly with prisoners, can have legal implications. As a correctional official you represent the state while you are performing your duties. If you do something wrong, you are not the only who is blamed and held liable — the state is also blamed and held liable for your actions.

### 4.2 Advantages of the law for correctional officials

The law provides for the authorisation of officials to perform their legal duties.

**NO CORRECTIONAL OFFICIAL MAY ACT WITHOUT AUTHORISATION.**



There must be authorisation for everything public officials, including correctional officials, do. An action lacking authorisation is invalid and could have serious implications.

The Correctional Services Act 111 of 1998 is the main source of authorisation for your action. Without it you would have to obtain authorisation from the authorities for virtually every action you wish to take. It should be clear from the above that a particular benefit of the law for correctional officials is that it authorises correctional officials to perform their duties. This is achieved by awarding certain lawful powers to correctional officials.

The lawful powers assigned to correctional officials were not grabbed out of thin air — they were specifically provided for by legislation enacted by parliament in the form of the Correctional Services Act 111 of 1998.

These powers are granted with the specific aim and intention of ensuring that correctional officials are enabled to perform their legal duties. Note that they are granted for that purpose alone and nothing more.

The very same authority that granted these powers also made provision for strict conditions attached to these powers. In other words, there are legal limits to the powers granted to correctional officials.



A rule of limiting effect (in that it limits the power) which correctional officials have to comply with in the performance of their duties (and execution of their powers) is that they may only use the minimum force that is necessary (if it is necessary) to achieve the lawful objective for which force is allowed. This rule does not only protect the prisoner against unreasonable conduct and force, but also offers the correctional officials guidelines for their own conduct to protect themselves and the state against claims.

The law grants certain powers to correctional officials in order to achieve the objectives of the Department of Correctional Services. It does not leave correctional officials in the dark about the extent and limits of their powers — it determines those boundaries. The boundaries of correctional officials' powers are clearly described by the same legislation that grants them those powers.

It also determines the rights of prisoners. These rights have an influence on the powers of correctional officials, because indirectly they determine the limits of the powers and obligations of these officials.



If a prisoner does not have the right to watch television for 24 hours a day, it follows as a matter of course that you do not have the obligation to provide access to a television for 24 hours a day.



If a prisoner does not have the right to stab you with a knife, you are not obliged simply to accept what is coming to you. In fact, you have the right to use the necessary force to terminate the attack, because you have the right to defend yourself against the prisoner.



If you do not know whether a prisoner is allowed by law to be in possession of a specific item, you will not know whether you are allowed to seize (confiscate) that item.

### 4.3 Correctional officials and knowledge of particular aspects of the law

Fortunately you do not have to know everything about the law in order to be able to perform your duties successfully. The law (in general) provides the basis for specific laws that are applicable to the correctional official's task. The most important of these are the Constitution of the Republic of South Africa, 1996, the Correctional Services Act 111 of 1998 and the Correctional Services regulations.



Fortunately you do not need to know the whole Constitution by heart. However, you need detailed knowledge of Chapter 2 of the Constitution, which deals with fundamental human rights. These rights are applicable to you as well as to prisoners. Knowledge of Chapter 2 of the Constitution will also disabuse you of the notion that prisoners have more rights than correctional officials. You will understand that all people have these human rights as a natural asset, which means that people are not required to deserve the rights. When prisoners' human rights are limited, it does not mean that they have less rights. Their rights are merely more limited than those of free persons in order to secure the effective implementation of the sentence by the court.

The Correctional Services Act 111 of 1998 will provide further guidance and more detail about lawful and unlawful conduct in specific situations.

The Correctional Services regulations contain even more detail. They specify the procedures that should be followed in dealing with specific issues.

It is not an absolute prerequisite that you know all these legislative documents by heart (word for word). The law is available to you in the form of legislation, therefore you are in the enviable position to be able to consult the relevant Acts whenever you need to. You can consult the Correctional Services Act and the regulations whenever you are confronted with a particular problem. However, you do need the ability to use the Act and the regulations as sources of reference, and you should have a basic understanding of the provisions that relate directly to your task.

Correctional officials who respect the law should be familiar with the legislation that is supposed to guide their official conduct. Every correctional officer needs

to make a serious effort to obtain adequate knowledge of the Correctional Services Act 111 of 1998. Without sound knowledge of this Act, no correctional official can claim to respect the law.

Correctional officials need to have knowledge of the legislation governing correctional services and, more specifically, the Correctional Services Act 111 of 1998. The extent to which such knowledge is required will depend on your post level. The higher the post level occupied, the more extensive the required knowledge.

Note that these expectations do not mean that you have to know every word and provision of the Act by heart. Not even legal experts in the field of Criminal Justice are expected to know the Act by heart. This is simply not necessary as the Act can be consulted continuously and whenever clarity is needed on a specific matter.



## **5. WHAT DOES IT MEAN TO RESPECT THE LAW?**

To respect the law means to respect why laws are there in the first place and to accept that they exist for the better good of society as a whole. Respecting the law means that one accepts what the law requires of you.

Respecting the law does not require you to be fond of every aspect of the law or to be in absolute agreement with every word that a law provides for. However, it does require that one accepts the authority of the law and accepts what it requires of citizens, despite their potential disagreement with some of its terms.

Even people do not agree with every law in every respect, they can claim to respect the law in as much as they obey the law and do not deviate from what the law determines or requires.

Someone who claims to respect the law should at the very least be prepared to obey the law and to avoid deviating from the requirements of the law.

Respecting the law also requires one not to deviate from legal rules just because others do so or because the rule is not strictly enforced.



The lack of respect that is generally shown for the legal rules that prohibit people from speaking on a hand-held cellphone while driving a car is a good example. Many people probably ignore this rule because they regard it as petty, because they realise that it is not strictly enforced, or just because they see so many other persons ignoring the rule. However, the view that the rule is petty and the fact that others frequently break the rule do not provide anyone with a valid excuse to break the rule!

These days there seems to be a severe problem with people who are willing to buy stolen goods or goods which they might not know were stolen, but at least suspect or should reasonably suspect might be stolen goods.



Someone who claims truly to respect the law should be able to say that they would never buy goods that might have been stolen. Respecting the law also implies that when you consider buying some goods which you at least suspect may be stolen goods, you should decide not to buy those goods, because if you bought them your action would contribute to crime in a moral sense.

**ACTIVITY**

What in your opinion is the consequence of presumably innocent people that buy stolen goods because they are not careful enough? What effect do you think it has on crime, specifically on theft and robbery?



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Correctional officials who respect the law should be familiar with the legislation that is supposed to guide their official conduct. Every correctional officer needs to make a serious effort to obtain adequate knowledge of the Correctional Services Act 111 of 1998. Without sound knowledge of this Act, no correctional official can claim to respect the law.

Crimes that are committed are not the only form of conduct that confirms disrespect for the law. Respecting the law implies more than only refraining from committing crimes.

There are practical examples of cases where a correctional official negligently (that is unintentionally) caused an injury to a prisoner, but the correctional official did not commit a crime and would not have been found guilty of a crime. However, the conduct of the correctional official still confirms disrespect for the law because he or she should have foreseen the injury to the prisoner and yet omitted to apply the necessary care that the law requires of a reasonable person.

If a correctional official negligently causes the death of a prisoner, that correctional official could possibly be found guilty of the crime of culpable homicide. Even if the correctional official had not intended to harm the prisoner, he or she would still be blamed by the law for not applying the expected degree of care (reasonable care) that the law requires of a reasonable person.



Respecting the law implies more than only refraining from committing crimes. Respecting the law includes the following:

- ◆ Taking cognisance of the rules created by the law
- ◆ Abiding by the rules created by the law
- ◆ Avoiding conduct that are in conflict with the law
- ◆ Respecting the rights of others
- ◆ Fulfilling obligations that are attached to the exercising of one's rights
- ◆ Reporting deviation from the law to the relevant authorities (e.g. reporting crime to the police)
- ◆ Reporting corrupt conduct by fellow correctional officials
- ◆ Testifying in court to observed conduct that was in conflict with the law (e.g. crime committed in your presence)
- ◆ Executing lawful powers granted by enabling laws, but adhering to the limits and conditions attached to those powers
- ◆ Executing lawful powers with due respect for human rights
- ◆ Avoiding unlawful human rights infringement
- ◆ Following correct procedures, as prescribed by law, in the execution of lawful duties

Respecting the law does not merely mean that you do not commit crimes. It means that you have to demonstrate respect for the law in general in your day-to-day conduct, which includes the execution of your work. It means that you must respect the rights of others. In the performance of your duties, you must respect the rights of prisoners and the rights of your colleagues.

## **6. THE IMPORTANCE OF RESPECT FOR THE LAW WITHIN THE CONTEXT OF CORRECTIONS**

Just like in society at large, it is extremely important within the particular context of corrections that people should respect the law. Everything that has been discussed so far is equally important (if not more important) for the purposes of

the correctional environment. The correctional society can be seen as a smaller mirror image of society at large. Note that all the preceding discussions are applicable within the context of corrections.

There are several reasons why correctional officials need to respect the law. However, the two main reasons are as follows:

- ◆ Correctional officials need to obey the law and abide by the law to ensure that the negative consequences of not abiding by the law are avoided.
- ◆ Correctional officials need to obey the law and abide by the law to ensure that their example inspires inmates and offenders to respect the law in future.

### 6.1 The prevention of negative legal consequences

Correctional officials prevent liability for the state by respecting the law.

Correctional officials avoid becoming convicted offenders themselves by respecting the law.

### 6.2 The rehabilitation of offenders

There are two main reasons why correctional officials have to respect the law, namely:

- ◆ Correctional officials should respect the law to set an example to those in their care who are there because of a lack of respect for the law.
- ◆ They need to set an example to inmates and offenders if they wish to make any contribution to the rehabilitation of prisoners in their care. In aiming to achieve the rehabilitation of inmates, correctional officials need to show respect for the law. If they do not respect the law, how could they expect the behaviour of inmates to change? Do you think inmates would be inspired to become law-abiding citizens in an environment where their rights are trampled on by disrespecting correctional officials that ignore the law and act in an unlawful manner in their interaction with inmates?

Imagine that inmates observe corrupt behaviour of correctional officials who are responsible for them. What do you think would be the impact of such observances on their willingness to change their own behaviour in future and on the respect that they would show for authority (the state) and the law?



Correctional officials who disrespect the law would probably have a tendency to exceed the boundaries or limits of their lawful powers.



### ACTIVITY

Provide examples of the lawful powers at the disposal of correctional officials who need to provide safe custody and security in the prison.

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Now describe the consequences that would follow if these correctional officials exceeded the boundaries of their lawful powers.

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Ignorance of the law might be an excuse in exceptional cases, but this definitely does not apply to correctional officials. Ignorance of the Correctional Services Act 111 of 1998, which is specifically intended for them, is inexcusable. A correctional official may therefore not say he or she did not know that the Correctional Services Act prohibits a particular action. Action that conflicts with the Act may cause very serious problems for the official and the employer (the state), and waste taxpayers' money.

## 7. CONSEQUENCES OF DISRESPECT FOR THE LAW

It goes without saying that there is a link between offending behaviour and disrespect for the law. One can at least expect with more certainty that people who respect the law would show a lower tendency to break the law.

Sooner or later someone who does not respect the law will probably act in a way that is in contradiction to or conflict with the law.

If you do not have respect for other peoples' rights, you will probably infringe on their rights. As in natural sciences, where every action has a reaction, the infringement of peoples' rights will be followed by retribution. If you violate a

prisoner's right to human dignity, the Department that employs you will be held liable for that infringement.

As we have stated earlier, the main aim of this study unit is to enhance students' respect for the law. In outlining the consequences of disrespect for the law, we hoped to show you how important it is to have respect for the law.

## 7.1 Liability as a consequence of disrespect for the law



If correctional officials act in ways that defy the law, two main forms of liability normally arise, namely criminal liability and delictual (civil) liability.

If correctional officials do certain things while they are performing their duties, their actions may result in the commission of crimes. For example, the use of force, even if applied in circumstances that justify its use, may lead to a conviction on a criminal charge such as assault, culpable homicide and even murder if force (although allowed in the circumstances) is not used lawfully.

Correctional officials have a difficult task to perform. It is recognised that the stressful situations they often have to deal with can tempt correctional officials to commit certain crimes and transgressions in terms of the Correctional Services Act and put them at risk.

The unlawful conduct of correctional officials can lead to criminal liability, which means that you will be prosecuted by the state and punished if you are found guilty of a criminal act.

Criminal conduct will be prosecuted by the state and if the accused is found guilty, he or she will be punished by the court (as representative of the state) in terms of the powers entrusted to it. The punishment can include imprisonment, correctional supervision, paying compensation to the victim and/or the payment of a fine to the state. Surely correctional officials should do everything to avoid the possibility of ending up in prison, among those who were supposed to be in their care (especially if they were to become aware of the sentenced correctional officials' background).

The same unlawful conduct can also lead to delictual (civil) liability, which means that you are liable to restore the position of the person to whom you have caused damage or injury. In other words, you become responsible for ensuring that the person returns to the same position he or she was in before suffering the damage or injury. The effect of this could be that the state has to pay substantial amounts to the injured party, because your conduct while on duty caused the Department of Correctional Services to be liable to pay for the damage you have caused.

Delictual conduct (which causes unlawful damage or injury to others) can lead to a civil suit. If you are found liable, the court will order you to restore the position

of the person to whom you have caused damage or injury. In other words, you become responsible for ensuring that the person returns to the same position he or she was in before suffering the damage or injury.

The direct consequences suffered by a correctional official who has been convicted of a crime or found to be liable for a delict may not be the only consequences of his or her actions. The state could also be held liable for the conduct of the correctional official. This happens as the result of vicarious liability, which means that the state as an employer is liable for the damage caused by its employees in the performance of their duties.



If a correctional official is found guilty of assault on a prisoner, that prisoner will probably institute a claim for damages against the Minister of Correctional Services as the first respondent and the correctional official as the second respondent. An individual may be allowed to pay off the compensation awarded to the injured party over a period of time to ensure that the payment is affordable, but agreements like this are not available to the state. The state has to pay whether it can afford to or not. Also, the state cannot declare itself insolvent or go into liquidation to evade payment.

The effect of this could be that substantial amounts have to be paid by the state because your official conduct has caused the Department of Correctional Services to become liable to pay for damages you have caused. This does not mean that you would escape the financial burden of the damages awarded to the injured party, because the state would have the right to claim the payments it had to make back from you. Nothing prevents a person who has suffered the damage or injury to sue both you and the Department of Correctional Services.

As the result of correctional officials' criminal or delictual conduct, there are many prisoners who are smiling all the way to the bank at the expense of law-abiding taxpayers.

## **7.2 Other consequences**

Other consequences include both embarrassment and the danger of being dismissed.

Since correctional services are funded by taxpayers' money, the Department of Correctional Services is watched closely by the public. Imagine the embarrassment that the Department of Correctional Services suffers in the public eye when a newspaper headline reads: "Rehabilitate offenders? Correctional official convicted."

Even though the current labour legislation offers more protection to employees than ever before, a correctional official who is convicted of a crime or who causes substantial financial losses for the state will probably be dismissed.



## 7.3 The difference between criminal and delictual (civil) liability

Although there is a number of similarities between criminal and delictual (civil) liability, they are also substantial differences.

Some of the requirements, namely an act, culpability and unlawfulness are shared. However, other requirements are only applicable to one of the two. Damage or injury is only a requirement of delictual (civil) liability and not of criminal liability. Causation is a specific requirement for delictual (civil) liability, while only certain crimes (e.g. murder) have the requirement of causation, and therefore it is not a general requirement for criminal liability.

Legality is only a requirement for criminal liability, because to be held liable on the basis of a delict does not mean that you are punished, but rather that you are required to compensate for the damage or injury you have caused.

### 7.3.1 Criminal liability

The criminal law is a set of rules that determines what human conduct constitutes a crime, which is punishable by law and what form of punishment may be imposed by the state for such punishable conduct. It therefore determines what unlawful conduct are crimes, provides definitions of different crimes and prescribe punishment for crimes.

A criminal court will determine whether a crime was committed, and if so by whom it was committed and what be a suitable punishment for the offender would be (Du Plessis 1990:87).

Briefly stated, a crime is unlawful, blameworthy conduct punishable by the state (Snyman 1995:6).

### 7.3.2 Delictual liability

The law of delict is a set of rules that determines what human conduct, resulting in damage or injury to another person, should result in compensation for the damage or injury suffered by that person, and what suitable compensation in relation to the damage suffered would constitute.

According to Snyman (1995:6) a delict is an unlawful, blameworthy act or omission resulting in damage to another party and in a right of the injured party to compensation.

In addition to the above, there are also the following significant differences:

- ◆ While a delict results in damage to another party and in the right of the injured party to institute an action (claim) for damages, a crime results in the prohibited conduct being punished by the state (Snyman 1995:6).

- ◆ In the case of a crime the state prosecutes the offender, whereas in the case of a delict the state is not involved as a party. The aggrieved private party institutes action.
- ◆ A criminal court determines criminal liability whereas delictual (civil) liability is determined by a civil court. There is a significant difference in the procedure that governs the two different trials (criminal procedure and civil procedure).
- ◆ A very important difference to take note of is that the burden of proof is less strict in determining delictual (civil) liability. Although in both cases of crime and delict the burden of proof is not on the alleged perpetrator, in the case of criminal liability the state must prove beyond reasonable doubt that the perpetrator is guilty of a crime. In the case of delictual (civil) liability the aggrieved party must merely prove on a balance of probabilities that the perpetrator should be held liable for the damage or injury. It implies that it is easier to be found liable for a delict than to be found guilty of a crime.

The last difference above may have a serious implication for correctional officials. When a correctional official hits a prisoner, for example, that prisoner may choose to lay a criminal charge or institute a claim for damages against the correctional official, or to do both.

If the correctional official is perhaps not found guilty of a crime (assault), it does not imply that he or she would not be held liable for the damage caused. If, on the other hand, the correctional official is indeed found guilty of the crime, the chances are very good that he or she would also be held liable for the damage resulting from committing the crime. Assault is therefore one of those crimes that can be both a crime and a delict. (Murder, culpable homicide, etc. are other examples.) The reason for this is that such crimes normally also cause damage or injury.

## **8. HOW DOES THE LAW (OR LAWS) COME INTO BEING?**

There are different ways in which law comes into being. We call these the sources of law.

There are three main sources of law within the legal system of our country namely:

- ◆ Legislation (statutory law)
- ◆ Common law
- ◆ Court decisions (case law)

A source of law is the means used to bring law into being or to make it valid. When you wish to confirm the existence of a legal rule, consult a source of law.

The meaning of sources of law is twofold. Firstly it refers to the source or origin of a legal rule (which caused such a rule to come into force) and secondly the source serves as authority for the existence of that rule.

## 8.1 Legislation (statutory law)

Statutory law is formed through legislation which is created by parliament through an expressed declaration of intent. The express declaration is embodied in a written document called a statute or an Act, for example the Correctional Services Act 111 of 1998.

For the purposes of a correctional official the most important of these sources is statutory law (legislation). All the Acts (statutes) that you are aware of, for instance the Criminal Procedure Act 51 of 1977, can be classified as statutory law.

One of the important advantages of legislation such as the Correctional Services Act 111 of 1998 is that it provides the possibility for all members of the community to be informed about the law with regard to correctional services. It is easily accessible for the ordinary person who needs to find out about the law pertaining to prisoners, for example. In any event it is much more accessible and understandable than the other two sources of law (common law and court decisions).

The statutory law (legislation) consists of legal rules that are created in society, because that society deems it necessary to create new rules or to adapt or change existing rules. Legislation is also used to adapt common law to typically South African circumstances. Traditionally common law (as adapted and developed in and by case law) is the primary source of authority of South African law. In recent years legislation has been expanded significantly.

The need for creating new rules arises when the common law (which will be explained next) is inadequate or uncertain, or when the common law position is no longer accepted by society, which means that there is the need to renew or reform. The need for new rules also arises when a new development takes place and the common law does not provide for that development.

An example of developments that are not covered by common law is the rapid development of technology which has led to the increasing availability of information on the Internet. The new development has resulted in a need to create new rules by means of legislation, because the existing rules do not make provision for these new phenomena. Therefore provision has to be made for the creation of legal certainty.

The development in the field of transport in the past is another example. When there were very few vehicles on the road, the law (and existing legislation at that

time) did not meet the need for rules (in this case mainly traffic rules) that had been necessitated by the development of the motor vehicle. As the number of cars on the road increased significantly, communities started to experience unacceptable situations, including accidents caused by drunken drivers. The community became intolerant of driving under the influence of alcohol as it caused more and more deaths on the roads. (There were also many other problems.) The need therefore arose to prevent drunken driving, and legislation that declared drunken driving to be a crime was promulgated. It became punishable by law to drive a vehicle while under the influence of alcohol.



**ACTIVITY**

Can you think of an example of how new technology creates a new need for rules relating to driving a vehicle?

Describe the example:

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**8.2 Common law**

In simple terms common law consists of uncoded, contemporary, "living" legal rules. The common law (unlike legislation) is not created by parliament. It comes into being over several generations, and its principles and rules are carried over from generation to generation. Common law is generally accepted by society.



Have you ever read in any Act (statute) that it is a crime to kill another person? You need not be concerned if you have not read this in any Act (statute), because legislation does not determine that murder is a crime. However, we all know that it is a crime to kill another person. It has never been deemed necessary to create a new rule through legislation, because it has been accepted as a rule from the earliest of times and it is carried over from generation to generation.

The rules of the common law are generally accepted by a society and widely adopted to such an extent that they can be regarded as unwritten living legal rules. This is why it is not necessary to include it in legislation.

The common law of South Africa comprises customary law, which has formed by custom, and the Roman-Dutch law and English law, which were adopted in South Africa through custom.

The customary law was created through the tacit declaration of intent by society as confirmed by repetition of identical conduct over a long period. Custom is general conduct that are repeated in the same manner over a long period, to such an extent that it becomes generally acceptable and adopted as a rule.

Not any custom can become enforceable as a legal rule. In addition to the criteria mentioned above, a custom must also comply with the requirements of being reasonable, fair, clear and certain. An example of a custom that is likely to meet the criteria is the sale of goods at a discount sale. The principle of "first come first served" is generally accepted by consumers, because it is generally accepted that the availability of stock sets a limit to the duration of the sale.

The importance of common law lies in the fact that it is much more comprehensive than legislation, mainly because of the much longer time over which it has developed. Note that there is interaction between legislation and common law. When legislation is formulated it often uses the common law as a starting point in the sense that existing rules set guidelines for the creation of new rules. On the other hand, if the common law is inadequate on a certain topic, legislation will complement the common law by creating new rules.

Individual laws can only be well understood and applied if they are interpreted against the backdrop of an existing source of law, the common law. We therefore assume that if all laws were taken away, our courts would still be able to find solutions by simply deriving rules from the core of our legal system, the common law. However, without common law most of our legislation would be incomprehensible. Traditionally common law (as adapted and developed in and by case law) is the primary source of authority of South African law.

### 8.3 Court rulings (case law)

Court rulings serve as the third main source of the South African law.

When a legal dispute is brought before a court of law, the court has to determine two things. It must determine the facts of the particular case, and it must determine, specify and apply the relevant law.

While searching for the applicable law the courts often expand the existing law. This happens because of the *stare decisis* rule that binds courts of a lower

authority to the rulings of courts of higher authority. Literally translated (from Latin) *stare decisis* means "the ruling stands".

The *stare decisis* rule requires the High Courts, for example, to follow the ruling of the Court of Appeal on how a legal rule should be applied. Very simplistically stated, this means that when the Court of Appeal has ruled that prisoners have a right of access to televisions, a high court cannot subsequently rule that prisoners do not have such a right. In this way the court has expanded the existing law by applying a specified principle that now should also be applied by courts lower in the hierarchy.

Court rulings have played a significant role in expanding the legal rules pertaining to the rights of prisoners. In the past, legislation did not clearly determine what the rights of prisoners were. It afforded the Commissioner a rather wide discretion to determine the rights of prisoners. The courts proceeded in a series of subsequent rulings to develop the legal position on the rights of prisoners.

Where in the past prisoners were regarded to retain only those rights that were afforded to them by legislation and the discretion of the Commissioner, the courts have expanded the law. In 1993, for example, the Appeal Court ruled in the Hofmeyer case that prisoners should retain all their basic rights, except those expressly taken away by legislation. As you can see, the courts have changed the law significantly in this regard. The influence of courts on legislation is also significant — for example, the new the Correctional Services Act 111 of 1998, unlike its predecessor, clearly describes the rights of prisoners.

#### **8.4 Understanding that the law consists of more than the sum total of legislation**



From the brief discussion of sources of law here, you should have derived that when we speak about legislation, we are only addressing one of the elements of the law. You should also understand that the combined sources of law are also sources of correctional law in South Africa. You may be surprised to find how many members of the public share the misperception that the Correctional Services Act 111 of 1998 is the only source of correctional law. When you mention to people that you are studying a subject called Correctional Law, many will incorrectly conclude that you are only studying the Correctional Services Act 111 of 1998.

A combination of many different rules, norms, statutes, etc. determines what the law says about a specific issue.



When we speak about the rights of prisoners, even detailed knowledge of the Constitution of South Africa, 1996, would not completely cover the law about these rights. The Constitution only covers the fundamental rights of prisoners,

what these rights entail and the wide requirements connected to the limitation of these rights.

The Constitution comprises a wide framework, but it cannot deal with specific cases (with specific details) without reference to the Correctional Services Act 111 of 1998 and its regulations.

**ACTIVITY**

Consider speaking to a prisoner who was found guilty of murder. How should the prisoner have known that murder is prohibited? Does any of our statutes (e.g. the Correctional Services Act 111 of 1998 or the Criminal Procedure Act 51 of 1977) expressly stipulate that a person may not commit murder? Explain your answer.



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Murder is not prohibited in any of our statutes. Why, then, is it punishable? Murder is a common law crime that is so widely regarded as wrong by communities that it is unnecessary to define it as such in a statute. Everyone knows that it is a punishable crime and the courts simply apply the common law.

Note that you should regard legislation (specifically the Correctional Services Act 111 of 1998) as the main source of reference for gaining an understanding of the law applicable to the performance of your duties. However, the role of the other two sources (especially court rulings) cannot be ignored. No statute is perfect, and because words can be interpreted differently it is important that you take note of what the courts say about the Correctional Services Act 111 of 1998.

How do courts apply the Correctional Services Act 111 of 1998? What do they say about its meaning? Are the powers conferred by the statute really as wide as many people (and maybe you) believe?

Although the Correctional Services Act 111 of 1998 is the primary source of law for your work, remember that it does not always offer an exhaustive solution to any potential problem.

## 9. SUMMARY

As a correctional official it is your legal duty to keep prisoners in safe custody, which means that you must prevent prisoners from escaping and also protect those prisoners, for example against attacks by other prisoners. You work in circumstances that might result in high stress levels and you might often be provoked to lose your temper. These circumstances promote the tendency to act in contradiction to the law, which may cause you to be held liable for such conduct.

This study unit alone cannot enable you to understand the concept of liability adequately. What it does provide is perspective: It is better to be safe than sorry. Protect yourself by avoiding situations and conduct that could result in liability. In this way you can ensure that you do not end up in a court of law. Respect for the law serves as protection against legal action.

## 10. ROLE PLAY



### ACTIVITY

Approach at least five of your colleagues (preferably 10) in your own time and spend approximately 10 minutes discussing the following topics with them individually. Talk about the law in general for five minutes and then discuss the way prisoners should be handled for another five minutes.

After each discussion with a colleague, write down whether you think the colleague (e.g. colleague A, B or C, please do not mention names) shows respect for the law. Also write down the reason for your opinion.

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## 11. SELF-ASSESSMENT



1. Explain the concept of law to a prisoner.
2. Why is there a need for law? Why does law exist?
3. Why do correctional officials need to have a basic knowledge of the law applicable to the performance of their duties?
4. Do you have respect for the law? Give reasons why you respect or disrespect the law.
5. Explain to a friend how laws come into being.
6. Outline the possible consequences of unlawful conduct by correctional officials.
7. Give your own examples of legal rules that:
  - ◆ prohibit an action
  - ◆ order an action
  - ◆ allow an action
8. Where does the Department of Correctional Services fit into the administration of justice? Illustrate this schematically.
9. Describe the role of the correctional official in the administration of justice. Why do you think it is important that they should have a knowledge of the law?
10. What is the advantage of having rules of law that apply to all citizens? Discuss briefly and give an example.

## 12. CASE STUDY

At morning tea two of your colleagues, Speedster and Shoemaker, discuss how fast they have driven their cars. The one refers to his trip to be in time for work and the other one refers to the previous night when he took his girlfriend home after they had a big argument. Both of them referred to speeds exceeding 160 km/h. The discussion could be overheard by prisoners in their vicinity. They often argue about whose car is the fastest.

Your colleague, Justas Lawless, proudly tells people that he cannot remember how he got home after his birthday party one night. In fact, he says that none of his friends can remember either, because they were all drunk. He thinks he drove the car home, but he cannot be sure. He tells this story in the presence of prisoners.

Another colleague tells you that he has achieved a lot in his career and he has done so without any knowledge of the law. He says that dealing with prisoners is rather easy, because the departmental orders contain rules and these rules are all that one needs to know in order to perform your duty as a correctional official. He also states that he does not believe that human rights and the rights of prisoners should influence the way in which he performs his daily task, because he has more than 15 years' experience and knows how things should be done.

Another colleague, Ruff Rambo, is well-known among prisoners and colleagues. They all regard him as a very "strong leader" who gets a reaction from prisoners nine out of 10 times because they are afraid of him. When he gives instructions to prisoners, they are normally carried out immediately. Most of the prisoners carry out these instructions without hesitation. There is a perception among correctional officials that most of the prisoners respect him because he is so strict. However, you have also heard that he loses his temper very quickly and would hit anybody (both prisoners and colleagues) when he is angry.

You often observe him dealing with prisoners' complaints and requests. Normally he convinces prisoners that they have nothing to complain about. He says they deserve their circumstances because they have committed crimes.



1. Would you regard the colleagues described above as role-models whose example you would follow?
2. Do you regard them as persons who demonstrate respect for the law?
3. What aspects of their behaviour or of what they say show you that your opinion is valid?
4. What advice (if any) would you have given to them if you were their supervisor?
5. What do you think is the contribution of these colleagues to the potential rehabilitation of prisoners in their care?

# STUDY UNIT 5

## PERSONAL FINANCES

### LEARNING OUTCOMES

After you have completed this study unit, you should be able to:

- ◆ demonstrate an understanding of the principles of sound personal financial control
- ◆ avoid the related corrupt behaviour in corrections



### 1. INTRODUCTION

Money plays a very important role in the lives of all human beings. In the past, the wealth of people was determined by their possessions, but nowadays people's wealth is determined by the amount of money they possess. Therefore all people want to earn a financial income.

Individuals control their own lives and people are not forced to work, but everyone needs to make a living. There are many different ways of making a living, and some of these ways are illegal. In South African society it is legal to make a living by running your own business (entrepreneur) or working for a private company or the public service. (The employees of the Department of Correctional Services are also public servants.) It is illegal to make a living by means of theft, robbery, dealing in contraband or prostitution.

The principle that governs all legal occupations is that a worker receives money (from an employer or his or her own business) for the labour that he or she provides. Workers therefore offer labour to the employer, but they are only prepared to perform the labour if they receive financial remuneration in return.

Next we discuss personal finances.

### 2. PERSONAL FINANCES

Note that correctional officials who offer their labour to an employer are in fact running their own businesses — their business is to offer labour to the Department of Correctional Services. The individual is referred to as a labourer, worker

or incumbent, but ultimately he is a businessman hiring out labour to his own business or to an employer. Whether persons offer their labour to their own businesses or to an employer, they deal in labour. This automatically means that they are the managers of their own businesses or, in other words, their own time. Remember that a business must always be managed in accordance with financial management principles, which include planning, organisation and control. Leadership skills are necessary if you do not provide only for yourself, but also for a family. In this study unit the emphasis is on financial planning.

### 3. FINANCIAL PLANNING

Financial planning can be defined as follows: It is a process of addressing your financial concerns in context with your overall financial situation (*The practical accountant* 1994:113).



According to *The CPA Journal* (1994:12) the financial planning process comprises the following steps:

- (a) Setting financial goals
- (b) Reviewing net worth statement (financial status)
- (c) Budgeting
- (d) Debt management
- (e) Saving for retirement
- (f) Allocating investments
- (g) Keeping and safeguarding records
- (h) Insuring property
- (i) Estate planning

Each step in the financial planning process will be discussed on the following pages.

According to *The practical accountant* (1994:113), it is important to realise that “financial planning means different things to different people”. The main contributing factor to this phenomenon is the fact that finances comprise a continuum. The less money people have, the less complex is their financial planning. The more people possess, the more complex their financial planning. We suggest that you contact a financial planner to assist you in planning your finances when they become too complex to deal with on your own. However, make sure that you choose a trustworthy financial planner. Investigate his or her track record and make sure that he or she has the necessary skills and expertise. Ask for example whether the financial planner is merely an insurance broker or does he or she have an accounting background. Does the financial planner offer the services, because he or she will earn commission on insurance sold, or do you pay for the advice you get? Judy Collins, folk singer and author, once said the following famous words about experts: “Don’t take advice from any expert

without getting a second opinion. And remember, they work for you — you don't work for them" (Wills 1994:27).

**Step 1: Setting financial goals**

To set financial goals means to develop or maintain a financial plan that provides you with an opportunity to assess your financial situation. When you set your financial goals, you really make a list of the dreams. Some of these dreams might be to buy a house or to move to a better house, to buy a new car, to go on holiday to Durban, to buy new clothes, to refurnish a bedroom, to buy a new lounge suite, to send your children to university and to retire comfortably.

**ACTIVITY**

What do you dream about? Make a list of your dreams.



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After you have identified your goals, you need to classify them as short-term, medium-term and long-term goals. We used the examples we have given to explain how your goals could be classified in table format:

Short-term goals	Medium-term goals	Long-term goals
0–1 year	1–5 years	
(a) Buy new clothes	(d) Buy a new car	(g) Sending children to university
(b) Refurnish bedroom	(e) Buy a new lounge suite	(h) Comfortable retirement
(c) Holiday in Durban	(f) Buy a house	



**ACTIVITY**

Classify your own dreams as short-term, medium-term and long-term goals.

Short-term goals	Medium-term goals	Long-term goals
0–1 year	1–5 years	

After you have classified your goals and dreams, you need to prioritise them. In other words, you need to determine which dreams are the most important and should be realised first. The easiest technique used to prioritise goals is the paired comparison technique.

The paired comparison technique works as follows:


- (a) Number the goals or dreams from A to Z (see the above diagram).
- (b) Then determine how many goals you have, and draw up a matrix. Remember, the number of goals will determine the number of blocks in the top line.



								Total

(c) Write down the letter of each goal in the matrix, as follows:


								Total
A								
	B							
		C						
			D					
				E				
					F			
						G		
							H	



(d) Then compare the goals with one another to determine their importance. First compare A with B. If A is more important, write down A in the matrix (see example below). Now decide whether A is just a little more important or much more important than B. If A is only a little more important, give it a score of 1; if it is much more important, give it a score of 3.

Now compare A with C, D, etc, until you have compared A with each of the other goals. Then compare B with C, B with D, etc, and repeat the exercise until each goal has been compared with all the others. When you have completed the exercise, add up the total for each goal. The one with the highest score is the most important and the one with the lowest score is the least important.

								Total
A	A 1 or 3							
	B							
		C						
			D					
				E				
					F			
						G		
							H	





### ACTIVITY

Use the paired comparison technique to determine the importance of each of your own dreams.

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- (e) After you have prioritised your goals, you need to quantify the cost of the goals. In other words, add a financial value to the goal.

### Short-term goals



	Quantity	Cost per item	Cost per commodity	Cost of dream
(A) Buying new clothes				
◆ Trousers/skirts	5	R150,00	R750,00	
◆ Shirt/Blouse	5	R120,00	R600,00	
◆ Socks	5 pairs	R15,00	R75,00	
◆ Shoes	1 pair	R250,00	R250,00	R1 675,00
(B) Refurnish bedroom				
◆ Bedroom suite	1	R4 000,00	R4 000,00	
◆ Curtains	30 m <sup>2</sup>	R70,00 per m <sup>2</sup>	R2 100,00	
◆ Carpets	15 m <sup>2</sup>	R75,00 per m <sup>2</sup>	R1 125,00	
◆ Paint	10 litre	R112,00 per 5 litre	R224,00	
				R7 449,00
(C) Holiday in Durban				
◆ New swimsuit	1	R50,00	R50,00	
◆ Petrol (according to fuel consumption of vehicle) or bus ticket or airplane ticket or taxi			R600,00	
◆ Accommodation	10 days	R300,00 per day	R3 000,00	
◆ Food	10 days	R100,00 per day	R1 000,00	
◆ Entertainment, e.g. beers, dining in restaurants	10 days	R50,00 per day	R500,00	
				R5 150,00
Total				



**Medium-term goals**

	Quantity	Cost per item	Cost per commodity	Cost of dream
(D) Buy a new car	1	R75 000,00	R75 000,00	R75 000,00
(E) Buying a new lounge suite	1	R7 000,00	R7 000,00	R7 000,00
(F) Purchase a new house	1	R150 000,00	R150 000,00	R150 000,00

It is extremely important to adopt a realistic view with regard to medium-term goals. Factors that should be taken into account are the following:

- ◆ Current date
- ◆ Possible date of purchase
- ◆ Inflation rate
- ◆ Normal price increases
- ◆ Actual cost today

The following may serve as an example:

Current date	2006/11/01
Possible date of purchase	2007/11/01
Inflation rate: three-year projection	8,7%
Normal price increases per year	9%
Actual cost today	R64 000
Estimated cost at day of purchase	
Calculation	

<i>Number of years</i>	2
Normal yearly increases	$9\% \times 2 = 18\%$

To determine  $R64\ 000,00 \times 18\% = R11\ 520,00$   
 Estimated price =  $R64\ 000,00 + R11\ 520,00 = R75\ 520,00$

The influence on your current budget will be discussed at a later stage.

**Long-term goals**

	Number of years of study	Cost per year	Total cost of goal
(G) Send children to university	4	R25 000,00	R100 000,00



## Step 2: Reviewing net worth statement (financial status)

We use a balance sheet to determine the net worth of a person, a business or an organisation. A balance sheet shows what is owned (assets) and what is owed (debt or liabilities). To create a balance sheet, one has to compile a list of assets and liabilities, and assign a rand value to each item.

What appears on a balance sheet?

### Assets

Assets can be divided into three basic categories: liquid assets, personal assets and investment assets.

- ◆ **Liquid assets** are those assets with an indisputable cash value and they can easily be turned into cash. They include a bank account, a savings account, money on the stock market and the real value of insurance policies.
- ◆ **Personal assets** are the items that a person has bought that have some durability. Personal assets are items such as furniture, a house and its contents, electronic equipment, a car and computer equipment. Although these assets may have a longer life than the fuel in the petrol tank of a car, they may not retain their value. Personal assets are sometimes referred to as wasting assets.
- ◆ **Investment assets** include items such as a house, a holiday home and stands. These assets are also referred to as fixed assets and their value normally appreciates (although the value may also fluctuate).

### Liabilities are what are owed

Liabilities include items such as loans, mortgage loans, credit card debt and bank overdrafts (if applicable).

A person's net worth is determined by calculating the difference between what is owned and what is owed, and this is a measure of wealth.

The following diagram is an example of a simple balance sheet. Note that only those items that are applicable to the personal circumstances of the person are included.



<b>Assets</b>		<b>Liabilities</b>	
<i>(a) Liquid assets</i>		<i>Loans</i>	
Bank account	R4 000	Mortgage	R142 000
Savings account	R6 000	Car (amount not yet paid)	R54 000
Value of insurance	R12 000		
Subtotal	<u>R22 000</u>	<i>Debt</i>	
<i>(b) Personal assets</i>		Woolworths	R6 000
Furniture	R70 000	Edgars	R2 500
Electronics	R4 000	Cash loan	R2 000
Computer equipment	R8 000		
Subtotal	<u>R82 000</u>		
<i>(c) Investment assets</i>			
House	R150 000		
Stocks	R10 000		
Stand	R12 000		
Subtotal	<u>R172 000</u>		
<i>(d) Total of a, b &amp; c</i>	<u>276 000</u>	<i>(e) Total</i>	<u>R206 500</u>
		Net worth (d) minus (e)	R69 500

Remember that a financially responsible person generally tries to improve his or her net worth. A rule of thumb is that a person's liabilities should not be more than 55 per cent of his or her assets. In the example above, the liabilities amount to 74 per cent of the assets, which means the person's net worth does not meet the desired standard.

### Calculation

$$\frac{\text{Total liabilities}}{\text{Total assets}} \times \frac{100}{1} = \%$$

**ACTIVITY**

Determine your own net worth.

**As this is a private matter you are not required to submit any information about your net worth to any person or lecturer.**

**Step 3: Budgeting**

This is the most important part of financial planning, because everything people save and trim from their budget today will make their future that much easier (Rowland 1997:39).

Have you ever overheard correctional officers discussing their budgets, their wills or the merits of different insurance policies? This probably does not happen. Often we think if we can just make the right investment or buy a bargain, all our money problems would be over. The truth is that it does not work that way. According to Rowland (1997:39) the real horror stories about money are not about people who forget to invest, but about people who fail to set aside enough money for their needs or who forget to protect their assets.

Most South Africans think that budgeting is a tedious process. They regard budgeting as punishment. But budgeting should be more than just a groceries bill and deciding where to cut back. Successful budgeting is the secret of personal financial growth and the only way to build net worth.

What are the basic principles of budgeting? Firstly one has to distinguish between necessities and discretionary spending. Note that each person has to develop his or her own definition of necessities, because they have a way of expanding to meet or exceed a person's income. The following may help you to determine what necessities are:

- ◆ Food is a daily necessity, because without food people would die. However, a loaf of bread and a kilogram of meat are both forms of food, even though a loaf of bread costs R5 and a kilogram of meat costs R25.

- ◆ If a person does not have a motor car and makes use of public transport, he or she has to have money for public transport — it is a necessity. If the person chooses to buy a car, the monthly payments and the cost of fuel, tyres, services and so on become necessities.

The next principle of budgeting is that one should budget for dreams. Money spent on things that cannot be regarded as necessities, is called discretionary spending. When you budget for discretionary spending, keep one simple fact in mind: If you want to reach your financial goals, you have to live below your means. In other words, you have to spend less than you can actually afford to spend.

The third principle is never to lose sight of your income and the limits it imposes on you. It is also extremely important to distinguish between fixed income and discretionary income.

A salaried person has to determine what his or her fixed income is. Fixed income is the income a person will receive as long as he or she remains employed in his or her current position.

Discretionary income includes overtime, allowances that are not part of the pensionable income (e.g. danger pay) and income from part-time jobs. The person has very little control over this income.

The following diagram is an example of a budget.



Necessity	Amount per month	Fixed income	Amount per month	Discretionary income	Amount per month estimate	Discretionary expenses	Amount
<i>Mortgage</i>		Own salary after tax, pension and other normal monthly deductions	R8 700	Amount of (B - A) Overtime NB. Amount after tax deductions  Danger pay NB. After tax deductions	R1 100	Entertainment	R400
Monthly instalment	R2 200					Petrol for leisure	R400
<i>Debtors</i>						Compulsory savings	R500
Car loan	R1 300						
Woolworths	R600						
Edgars	R250						
Cash loan	R1 000						
Groceries	R400						
Petrol to work and home	R100						
School fees	R150						
Telephone	R600						
Municipal account	R1 000						
Total (A)	R7 600	Total (B)	R8 700	Total (C)	R2 300	Total of C - D	R2 300
		Difference between A & B	R1 100			This is the dream fund	<u>R1 000</u>

## Another conservative example of a budget



Necessity	Amount per month	Fixed income	Amount per month	Discretionary income	Amount per month estimate	Discretionary expenses	Amount		
<i>Mortgage</i> Monthly instalment	R2 200	Own salary after tax, pension and other normal monthly deductions	R8 700	Amount of (B - A)	- R400	Entertainment	R200		
<i>Debtors</i> Car loan	R1 300			Overtime NB. Amount after tax deductions	R900	Petrol for leisure	R200		
Woolworths	R600			Danger pay NB. After tax deductions	R300				
Edgars	R250								
Cash loan	R1 000								
Groceries	R400								
Petrol to work and home	R100								
School fees	R150								
Telephone	R600								
Municipal account	R1 000								
Life insurance	R800								
Short-term insurance	R450								
Savings account	R200								
Children's savings account	R50								
								Subtotal (D)	R400
Total (A)	R9 100					Total (B)	R8 700	Total (C)	R800
		Difference between A & B	R400					This is the dream fund	- R400 R400



**ACTIVITY**

Use the above example and draw up your own budget




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**Differences between savings account and dream fund**

◆ **Savings account**

Money deposited into a savings account must be regarded as funds for emergencies. This means that you should not use money in that account for things that would be nice to have, but are strictly speaking unnecessary, such as a holiday, a computer or a lounge suite. Emergency expenditure refers to those expenses that are required at unforeseen times. Most people experience emergencies, which range from the need for new tyres for a car to a sudden death in the family. It is advisable to have money available in a savings account for such occasions.

Rowland (1999:28) gives the following advice about a savings account:

To brace yourself for life's big financial emergencies, set aside enough to cover three months' worth of expenses — that need not be three months' salary, but only what you need to pay the rent or mortgage, repay debt, buy food and make the car payment.

◆ **Dream fund**

All the money you intend to use for a special goal is deposited into a dream fund. If this money is kept in a savings account, many people find it very difficult to save it, because they are sorely tempted to use the money to achieve other financial goals. Ask your financial adviser about a better option. He or she would probably be able to advise you about different types of accounts where the money is less readily available and earns more interest.

#### **Step 4: Debt management**

According to Ceridian (2006) a survey in the United States has determined that the largest number of respondents (47%) say their most important goal is to pay off debt. This statement is probably applicable to people all over the world. The question that arises is: Why do people need to pay off debt? The answer is simple: They have debt because at some stage in their lives they have borrowed money.

There are many forms of debt, and most people take on debt at some stage in their lives. Let us look at the different forms of debt:

#### **Different forms of debts: Loans**

##### **◆ Long-term loans over a period of 20 years**

Long-term loans are normally provided by banks to allow people to buy a house. Home loans are granted because ordinary people would find it impossible to save enough money to buy a house in their lifetime. If a house costs R100 000 and the prospective buyer can save R500 per month, it would take him or her 200 months (16 and a half years) to save enough money to purchase the house. (Note that this calculation is very simplistic, because it does not take interest on savings or rising house prices into account.)

##### **◆ Medium-term loans**

Medium-term loans are generally loans that need to be repaid within three to five years. These loans are usually granted to allow people to buy their second largest asset, namely a motor car. As with the largest asset, a house, most people would find it virtually impossible to save enough money to buy a car (depending on the cost of the car).

##### **◆ Short-term loans**

Short-term loans are often the little foxes that spoil the vineyards. People obtain short-term loans because they are not prepared to wait for a short period and save enough money to buy an item cash. Examples of short-term loans are loans taken to purchase furniture, such as a lounge suite. The average lounge suite costs about R3 000,00. If you are prepared to save R500,00 per month for six months, you could purchase it cash, you would not pay any interest on a loan and your savings would even earn interest.

### ◆ Monthly loans

Over the past decade, monthly loans or cash loans have become more and more available to South Africans. People mainly take out cash loans because they do not have enough savings to cover emergency expenses (see Step 3: *Budgeting* in this study unit for a discussion of financial emergencies).

### Debt management principles

By now you should have a clear understanding of the different types of debt or loans. Most people have debt and next we discuss how debt can best be managed.

### ◆ Long-term debt

Most financial institutions (banks) offer a variety of home loans. The most common type of home loan in South Africa is known as the access bond, but ordinary home loans are also granted to buyers.

The main difference between ordinary home loans and access bonds lies in the availability of extra funds paid into the different bond accounts. All the extra money paid into an ordinary bond account is deducted against the principle capital. This ensures that the debt is paid off much quicker. The access bond works on the same principle, but if you pay extra money into the access bond account, it may be withdrawn again in cases of emergency. If the extra money is not withdrawn from the access bond account, the advantages are the same as those of extra money paid into an ordinary bond account: the debt is paid off much quicker and the home owners save on interest.

If you have an access bond, you should consider using the bond account rather than a savings account for your savings. Let us explain why: The interest you save when you put extra money into an access bond amount is much more than the interest you can earn when you put your money into a savings account.

In the following example a home loan of R100 000 needs to be paid off over a period of 20 years. See what happens if an extra R100 is deposited into the loan account every month:



Initial amount R100 000		What happens if a person pays an additional R100?
10% deposit — normal		R100 000,00
Requirement in SA	R10 000,00	R10 000,00
Mortgage amount	R90 000,00	R90 000,00
Interest rate	18%	18%
Monthly payment	R1 388,96	R1 388,96
Additional payment		R100,00
Total payment over 20 years	R343 355,20	R273 348,32
Interest over 20 years	R243 356,31	R173 349,43
Amount saved		R70 006,88
Mortgage term	20 years	15 years 1 month

The amount saved is enormous and has an extremely positive effect on your net worth.

### Medium-term loans

As in the case of long-term loans, financial institutions offer the option of an ordinary loan agreement or an access agreement to their customers.

The following is an example of a loan of R55 000 to purchase a car over a period of 54 months:

Original debt	R55 000,00
10% deposit	R5 000,00
Outstanding loan amount	R50 000,00
Interest rate	18%
Monthly payment	R1 357,57
Interest paid	R23 308,96

### Short-term loans

Short-term loans are normally offered by the greater business corporations to their customers. It is important to remember that these institutions charge an extremely high annual interest rate. The following is an example of a loan to purchase a lounge suite at the price of R3 890,00 over a period of 24 months.

Original debt	R3 890,00
10% deposit	R390,00
Outstanding loan amount	R3 500,00
Interest rate	26%
Monthly payment	R188,56
Interest paid	R1 025,45

Our warning to all people is that a price tag only shows the purchase price, the required deposit and the monthly payment. Ensure that the interest is indicated on the price tag in terms of the Finance Act 2 of 2007.



If you save R188,36 a month, you will be able to buy the lounge suite cash in 20 months' time, saving R1 025,45 on interest.

### Monthly loans

At the time of writing a commission has been appointed by the President to investigate monthly loans or cash loans. It is a matter of the gravest importance that you should realise that cash loans should be avoided at all costs.

The main lesson you need to learn is that debt needs to be paid off as soon as possible. However, it would be even better never to fall into the debt trap at all.

### Step 5: Saving for retirement

Saving for retirement is probably the most neglected part of financial planning in South Africa. In a survey done by the Department of Welfare during 1995, it was determined that only six per cent of all South Africans can retire comfortably.

This phenomenon can be contributed to the fact that most people live only for today and do not care about tomorrow. On the other hand, many people also say they want to keep their income at the same level after retirement as it was when they were still employed. Reread Step 1: *Setting financial goals* in this study unit and page 38 in Rowland (1997) on the financial planning process.



### ACTIVITY

Investigate the retirement policies of the Department of Correctional Services. Do they make adequate provision for a comfortable retirement? Consider the effects of inflation on retirement funds.

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#### Step 6: Allocating investment

If you have any extra money, you should consider appointing a financial consultant to advise you about investments. Always remember: They work for you — you do not work for them.

#### Step 7: Keeping and safeguarding records

Keep proof of payment and copies of receipts for at least 12 months after a debt has been settled.

#### Step 8: Insuring property

This step in the financial planning process does not form part of the learning objectives of this lecture and therefore we do not discuss it here. However, we would like to give you one tip about property insurance: The crime rates in South African communities are extremely high, therefore property insurance is a necessity and not a discretionary part of financial planning.

#### Step 9: Estate planning

Estate planning, like retirement planning, is also an aspect of financial planning that is neglected by most people. Many people either do not have a will, or they have a will that has been compiled by an insurance agent.

If a person passes away without any will, all his or her assets are immediately frozen, therefore it is very important to have a will. If a person dies without a

will, his or her estate is referred to as an intestate estate, and the Master of the High Court will decide how to deal with the estate. All assets in such an estate are normally inherited by the legal spouse of the deceased, but if the person does not have a legal spouse, the assets are inherited by his or her children, parents, or closest family member.

Many insurance agencies offer to draw up wills for their clients. They do this because they are then automatically appointed as the executors of the will when the person dies and become entitled to three per cent of the profit of the estate. We therefore advise you to ensure that you acquire the services of an estate planner who can render this type of service and will offer sound advice.

### **Corruption and personal finances**



Corruption in corrections is not a new phenomenon. As a matter of fact, it is part and parcel of the corrections environment. This is mainly contributed to the unequal relationship between correctional official and inmates. Correctional officials are given certain powers, while inmates' powers are taken away. As a consequence of this power imbalance inmates are always trying to outwit or outmanoeuvre correctional officials. In their quest to outmanoeuvre correctional officials, they use some of the oldest tricks in the book. One of these is to ensure that officials become dependent (normally financially dependent) on them. Once an officer has fallen prey to the games of inmates, for example if he has accepted money in return for special favours, the officer is trapped. Correctional officials who have accepted money from inmates, find that they are painted into a corner. They have been "bought", and therefore they can no longer complain about an inmate because inmates know things about them that they do not want to be revealed to their superiors.

The scenario in the above paragraph is a reality in prisons all over the world. Correctional officials are bribed on a daily basis. This happens mainly because correctional officials do not manage their personal finances wisely (or are greedy) and then they become dependent on illegal additional income. Once the dependence has been established, correctional officials find it virtually impossible to escape from the situation.

In 2001 the Jali Commission of Inquiry was established to investigate allegations of corruption, maladministration, nepotism, intimidation and other improper conduct in the Department of Correctional Services. According to the Report of the Jali Commission (2006) 43 staff members were suspended, 120 cases were prosecuted and a number of staff members left the Department of Correctional Services to avoid being called to account as a direct result of its investigations. The majority of staff members involved were correctional officials who were suspended and prosecuted because they had received bribes from inmates. It is very important that officers make sure that they are fully in control of their

personal finances, otherwise they become vulnerable to the financial trap set by inmates. The only way to safeguard yourself and to stay on the right track in the corrections environment, is to remain independent of inmates.

#### **4. SUMMARY**

The main aim of this study unit was to raise your awareness of the importance of your personal finances. Personal finances can be regarded as a personal matter and should be dealt with accordingly. People's circumstances differ, and therefore every household should determine the best way to administer its finances. Finances are such an important aspect of your life (indeed, of all people's lives) that they should be considered and managed on a daily basis, otherwise you will never enjoy financial wealth.

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