



**A Study on
Leadership in the Implementation of Non-Custodial Sentencing by the Department of
Justice and Constitutional Development and the Department of Correctional Services**



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A thesis submitted in partial fulfilment of the requirements for the degree of
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DECLARATION

I declare that this is my own work and that it has not been submitted as a report for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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ABSTRACT

Overcrowding in prisons is a global phenomenon that undermines efforts by prison or correctional system officials to rehabilitate offenders so that they can be successfully reintegrated into society. Overcrowding in South African correctional facilities has been identified as a key challenge, which negatively affects the ability of the Department of Justice and Constitutional Development (DOJ & CD) and the Department of Correctional Services (DCS) firstly, to guarantee the rights of inmates and secondly, to create an environment that is conducive for rehabilitation.

The legislation and statutory framework outline the options available to both South African courts and Correctional Officers for imposing non-custodial sentencing. Non-custodial sentencing can be imposed on: (a) offenders found guilty by courts of law and given non-custodial sentencing; and (b) offenders already in custody who are eligible for parole or correctional community supervision, in accordance with the dictates of applicable legislation. However, despite the visible gains and benefits provided for within the South African legal framework and statutory books on alternative sentencing, South African prisons continue to be overcrowded. Studies show that in the last 15 years South African correctional facilities have not experienced a situation whereby its population was below 120%. This study aims to explore the role of leadership in the implementation of non-custodial sentencing and subsequent reduction in overcrowding within the correctional facilities.

Following a qualitative research approach, the researcher conducted interviews with executive leaders and operational managers of the three Western Cape management areas to determine the role of leaders in the implementation of non-custodial sentencing. In total five (5) executive leaders and ten (10) operational managers were interviewed. The findings showed that there is a need for the Department of Justice and Constitutional Development (DOJ & CD) and the Department of Correctional Services (DCS) to have a structured approach with regard to the implementation of non-custodial sentencing when dealing with problems that affect overcrowding, including the implementation of non-custodial sentences by the leadership of the DOJ & CD and the DCS.

Key words: transformational-transactional leadership; overcrowded prisons; transformation; non-custodial sentencing; correctional services; justice.

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“It is only history that keeps me alive, with some reasoning and the experience of yesterday’s world” –By Nomathemba Mfeketo.

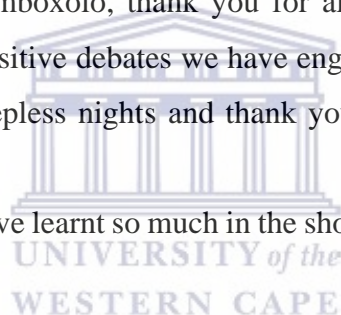
As I approach the end of a long journey, I feel the need to express a word of gratitude to all those who have supported me on my academic journey. To my Supervisor and Mentor, Professor Michelle Esau who has pushed me to new heights, always sharing your knowledge and demanding only the best. Thank you for not giving up on me, and for the wisdom and guidance you have shared.

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Lastly, to the participants during the interviews, thank you for taking time and affording me the opportunity to engage with you. May God bless all of us.



DEDICATION

This thesis is dedicated to my sister Nomatamba Mfeketo, Pointen, who fought a good war for our country to be liberated. It is also dedicated to all the women and men who fought so that we could be free, and finally to my Unit members who paid the ultimate price for our freedom.



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ABBREVIATIONS AND ACRONYMS

CC	Correctional Centre
CPA	Criminal Procedure Act (Act No. 51 of 1977, as Amended)
DCS	Department of Correctional Services
DOJ & CD	Department of Justice and Constitutional Development
MA	Management Area
MTSF	Medium Term Strategic Framework
NDP	National Development Plan
NDPP	National Directorate of Public Participation
NGO	Non-governmental Organisation
NPA	National Prosecuting Authority
RD	Remand detainee
RDF	Remand Detention Facility
RSA	Republic of South Africa
SAPS	South African Police Services
SASSA	South African Social Security Agency
SOE	State-owned Enterprise





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CHAPTER 1

INTRODUCTION

1.1. Introduction

Democracy in South Africa has brought about an extensive overhaul of unjust laws and policies (Du Plessis and Louw, (2005). These policies are based on the Constitution of the Republic of South Africa (RSA) 1996 (Act 108 of 1996), which is designed to protect the basic human rights and conditions of the people within the country. (RSA, 1996). Thus, in keeping with the democratic ideal of the new South Africa, public service leadership requires effective leaders that serve the people and redress the imbalances of the past, across all spheres of government. Public sector leaders are expected to deliver services to the people, to be accountable, practice good governance and deliver on their mandates. The ability of public servants, and particularly administrators and managers, to fulfil these mandates is dependent, in large part, on the quality of leadership.

Research has shown that the performance of any organisation, large or small, is directly related to the quality of leadership. In fact, borrowing Lukensmeyer's (2013) words, the very survival of any organisation depends on the leadership's ability to achieve a goal that has been horribly neglected; this is the goal of engaging the public as genuine partners in deliberating the nation's policies (Lukensmeyer, 2013). This can be said for South Africa's private and public-sector organisations. The point is that effective leadership is key to organisational success. The current focus of the country (RSA) as it celebrates the centenary of its founding leaders, namely Nelson Mandela and Albertina Sisulu, is on the *Thuma mina*¹ campaign. This is a clarion call by the President of South Africa, Cyril Ramaphosa, urging the people of South Africa to invigorate service delivery and bolster people's confidence in the leadership. However, this is happening against the backdrop of a country (RSA) that is on the financial brink of being relegated to junk status, where public services are said to be on the verge of collapse and ailing State-owned Enterprises (SOEs) are affecting the country's economy (Shai, 2017). The poor and ineffective public service leadership has been slated by President Ramaphosa as a "sewer of corruption" where leadership of state-owned entities like Passenger Rail Agency of South Africa (PRASA) and Eskom had been found wanting and in the spotlight for corruption and mismanagement,

¹ *Thuma mina* derives from (language?) and means "send me".

(Kgosana, 2018). On the positive side, however, South Africans were encouraged by ratings agency Moody's recent announcement since the change of leadership in the country, predicting the future of the South African banking system as moving from negative to stable Mahlaka (2018).

The problem of public service leadership and public-sector performance is one that manifests across many government departments and agencies. More specifically and in the context of this study, the slow pace of implementation of non-custodial sentencing of offenders is arguably a problem of ineffective leadership. Non-custodial sentencing is defined as the decision, by a competent authority, to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment. Such a decision can be made at any stage of the administration of criminal justice (Mills, 2011). Stemming from this definition, non-custodial measures are defined as a mechanism for reducing reliance on custody. This method of punishment has gained popularity at a time when there was consensus among political parties and penal reform sectors that addressing the problematically high prison population is bound with the pursuit of better community centres (Singh, 2007; Mills, 2011).

Looking at the origin and intention of non-custodial measures, non-custodial sentencing is a responsibility of a variety of organisations. It is the responsibility of the justice system, which is supposed to determine the suitability of offenders to the non-custodial measure before they are sent to prison. It is also the responsibility of the Department of Correctional Services (DCS) who is supposed to monitor such sentences and in line with the Department of Justice and Constitutional Development (DOJ & CD), commute the court imposition to that of community correction. It is also the responsibility of the community who are expected to embrace those sentenced to community correction (NICRO, 2018). In the United States of America (USA), the federal government have provided sentencing guidelines for a variety of alternative sentencing that can be substituted for imprisonment by means of a combination of both probation and confinement options Semisch, (2015). The introduction of these measures is aimed at breaking the cycle of crime and violence by not bringing low-risk offenders into contact with high-risk offenders. This is because correctional facilities have been labelled as 'universities of crime' Stephens, (2009). There is consensus that staff in correctional facilities are unable to reach all offenders as intended in rehabilitation programmes (Shaw, 1997).

Yet, in the South African context many more correctional institutions are accommodating more offenders than their capacity. As such, the courts have been provided with a range of sentencing options to handle offenders who pose no danger to the society, more effectively (Singh, 2007). This paper argues that there is a disconnect between the organisations that are tasked with the implementation of non-custodial sentencing. This has been alluded to by operational managers who attend case flow meetings (that are meant to regulate the implementation of the non-custodial sentencing). Thus, the expectation is for the Executive leadership to pick up such challenges and develop an intervention strategy. The failure, therefore, to implement non-custodial sentencing as prescribed by legislation points to the inability of those leaders tasked with such implementation. Furthermore, there are strict guidelines that regulate the imposition of non-custodial sentencing where necessary by magistrates. This paper proposes that magistrates should be compelled to explain the failure of not opting for non-custodial sentencing where such conditions existed. Given this context, this study examines the problem of the slow implementation of non-custodial sentencing and the role of Executive leadership and operational leadership within the DOJ&CD & DCS tasked with the implementation of non-custodial sentencing using the transactional -transformational approach model.

1.2. Statement of the research problem

South Africa is experiencing a serious prison-overcrowding problem. This has seen the total population of prisoners growing steadily over the years (Giffard and Muntingh, 2006). Furthermore, more than 10 years since the above statement was made, the political leadership of the DOJ & CD and DCS admit that:

“Overcrowding is still one of the major inherent challenges that the department is faced with due to a continuous increase in the inmate population with DCS correctional centres” (DCS, 2017:8).

In addition to that, the political leadership seem to understand that the challenge of overcrowding does hamper the departments’ abilities to effectively carry out their mandates. These mandates include the rehabilitation of offenders, as well as the facilitation of their re-integration into society (DCS, 2017). The Western Cape in particular, which is the focus of this study, has faced major consequences because of prison overcrowding. For example, in 2015 a massive evacuation of prisoners had to be undertaken due to the outbreak of rodent disease and the subsequent death of one inmate (Essa, 2015). The increase in occupancy levels to 210% in

the 2014/2015 financial year (DCS, 2015) is cited as the cause of the spread of tuberculosis (JICS, 2014). The outbreak of diseases in prisons has exerted extensive financial pressure on the departments. The Constitutional Court Judgement of 2012 held the government accountable for the resultant negligence that caused an inmate to suffer pulmonary tuberculosis (cf. Case of Dudley Lee vs the Minister of Correctional Services Cape of Good Hope Division, Case No. 10416/04). Lastly, the Judicial Inspectorate of the Correctional Services confirms that the leading cause of death in the country's correctional facilities is infectious diseases including tuberculosis (JICS, 2014: 70). Subsequently, correctional services facilities in South Africa had to be listed in the Department of Health's budget in 2015/16 as one of the top three priorities in the country for tuberculosis management, together with mineworkers and communities in mining towns (Motsoaledi, 2015). Overcrowding in South African facilities has reached such disproportionate levels that Professor Robin Wood of the Desmond Tutu Foundation has referred to this prevalence in prisons in South Africa as human rights abuses, particularly where communal cells accommodate more than 20 prisoners per cell (Coghlan, 2012). The seriousness of overcrowding is demonstrated in the 2012 statistics for Pollsmoor Remand Detention Facility, where an estimated 4,200 offenders were being held even though the facility was built to house 1,800 inmates. By the 31st of March 2017 (the closure of the financial year 2016) the 243 correctional facilities in South Africa designed to house 119,134 offenders had 161,054 inmates while 6 of the correctional facilities were also out of operation (DCS, 2017:25). The Western Cape Region was designed to accommodate 19,949 offenders. However, in 2015/2016 they had 29,822 (149%), in 2016/2017 they had 28,489 (142%) and in 2017/2018 with an approved bed space of 20,509 they had 30,280 resulting in a percentage of 147% overcrowding.

For reasons mentioned above, it is necessary and important to understand the problem of the delay and/or the failure to implement non-custodial sentencing. This is more so, considering that the Constitution as entrenched in the Bill of Rights, makes provision for the right of prisoners to have conditions of detention that are consistent with human rights (RSA, 1996). Therefore, this paper argues that failure to curb overcrowding rests with the leadership's willingness and ability to implement, facilitate, and embrace the principles of non-custodial sentencing. This belief is influenced largely by studying the DCS' strategic publications, wherein the issue of overcrowding is always cited as one of the key priorities that needs to be addressed by the DCS (DCS, 2015; 2016; 2017; 2018). Furthermore, the DCS Annual Performance Plans for 2013/14, 2015/16 as well as 2016/17 mention the following as one of

the department's strategic objectives: "[To] contribute towards a humane environment by managing overcrowding in correctional facilities" (DCS, 2018:106). Yet, plans or actions taken to address these challenges have been non-existent. The Judicial Inspectorate (JICS, 2015) has also flagged overcrowding in correctional facilities on numerous occasions as a cause for concern, yet, there are no records to suggest that it is being addressed (cf. JICS, 2015, 2016, 2017). The lack of visible signs that these anomalies are being addressed call to question the actions (or lack thereof) undertaken by the leadership in this regard.

1.2.1. Aims of the study

The primary aim of the study is to examine the role of leadership within the Department of Justice and Constitutional Development (DOJ & CD) and the Department of Correctional Services (DCS) in the problem of the slow implementation of non-custodial sentencing. The objective of the study includes:

- To review and critically analyze the theoretical debates
- To critically review the scholarly literature on transformational and transactional leadership with the view to developing an integrated theoretical framework through which to examine and understand the role of leadership in the slow implementation of non-custodial sentencing;
- To critically examine and present the regulatory framework that governs the non-custodial sentencing in South Africa;
- To examine and probe the insights and experiences of officials occupying leadership and management positions in the DOJ & CD and DCS on the implementation of non-custodial sentencing in South Africa;
- To identify and discuss the impediments to the implementation of non-custodial sentencing;
- To summaries and critically discuss the main findings; and
- To propose recommendations to address the problem of the slow implementation of non-custodial sentencing.

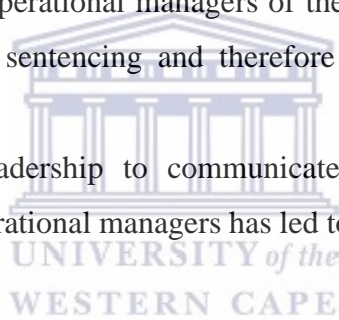
In pursuing the above stated aims of the study, the following is the main research question:
What role does Executive leadership and Operational managers within the DOJ & CD and the DCS play in implementing non-custodial sentencing so that there is a reduction in prison overcrowding?

The secondary research questions are:

1. Are the vision and mission statements of the DOJ & CD and the DCS clearly articulated, understood and communicated to all those responsible for public policy implementation, particularly about the implementation of non-custodial sentencing?
2. Are the necessary leadership skills, abilities and competencies to drive change management present in the departments under investigation?
3. What perceptions, experiences and insights on non-custodial sentencing do those who are instrumental in the implementation of the regulatory framework, possess?
4. What are the impediments to implementing non-custodial sentencing?

The research is guided by the following assumptions:

1. The lack of implementation of non-custodial sentencing contributes to overcrowding.
2. The inability of DCS executive leadership and operational management to utilise the non-custodial tools available at their disposal to implement non-custodial sentencing results in overcrowding.
3. Executive Leaders and Operational managers of the DOJ & CD and the DCS do not believe in non-custodial sentencing and therefore will not drive or champion the implementation.
4. Failure of Executive leadership to communicate its vision and mission to the subordinates, namely operational managers has led to the slow implementation of non-custodial sentencing.



1.2.2. Overcrowding status in correctional facilities

The reliance on imprisonment has resulted in severe overcrowding. Studies show that globally higher rates of imprisonment have increased overcrowding five-fold, with one of the countries increasing its prison population by 200%. (Seppala, 2008). The USA remains at the top of the list with 760 prisoners/100,000 citizens. The lowest figures are found mainly in West African countries, as well as in some micro-states reflecting an average of 165 per 100,000 citizens (Seppala, 2008; Zoukis, 2018). Overcrowding in South Africa's facilities is reflected in the departmental annual reports. In 2016, there were 161,054 offenders in the country, versus the approved bed space of 119,134. This implies that correctional facilities were 35% over capacity nationally (DCS, 2018). As indicated above, the level of overcrowding in correctional facilities varies from one facility to another. Some facilities are more overcrowded than others, with the most overpopulated facilities holding more than 200% their inmate capacity at times. The management areas of focus in the Western Cape Region – Allandale Management Area,

Pollsmoor Management Area and the Goodwood Management Area – are examples of these variations. As indicated above, the overcrowding status of Western Cape varies from 149% to 147% within the last three financial years. The figure below depicts the offender population totals in the Western Cape Region over the three-year period.

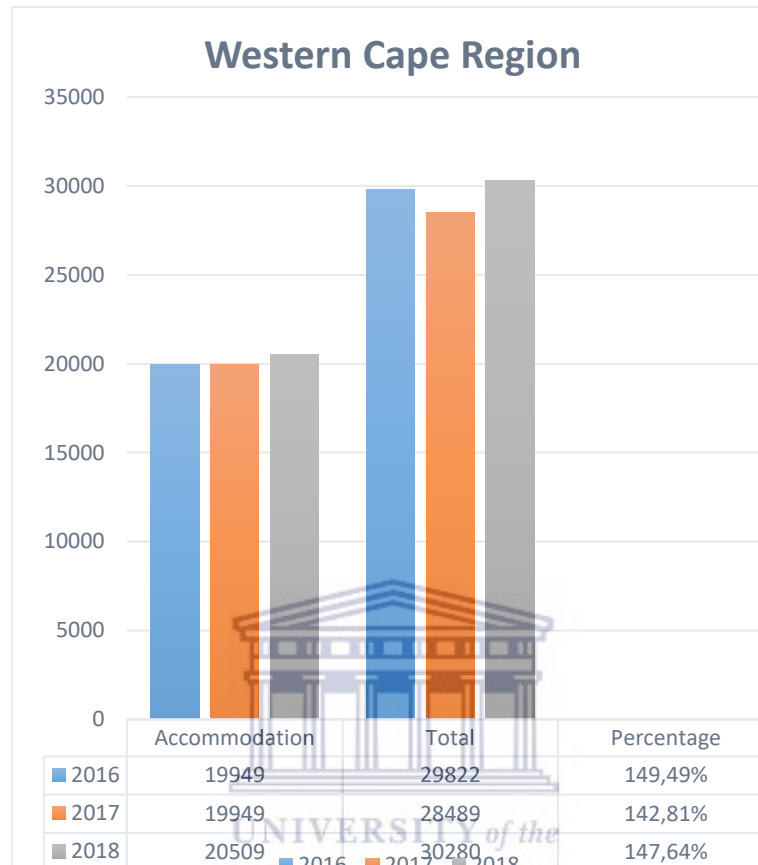


Figure 1.1: Western Cape Correctional Facilities Offender Populations, 2016 - 2018 (Data Source: Western Cape DCS, 2018)

Within this region the management areas also varied with Allandale Management Area which was built to accommodate a total of 1,111 offenders in terms of the approved bed space yet by the closure of the financial year in 2015/16 they had a total of 2,054 (184%), 1,849 (166%) in 2016/17 and by 2017/18 they had a total of 1,872 in a bed space of 1039 (180%). One of their correctional facilities, Allandale Centre which was built to accommodate 342 offenders had 791 offenders by 2015/2016 (231%), 735 (214%) offenders by 2016/17 and 808 offenders (240%) in a bed space of 336 by the end of March 2018 (DCS: Western Cape Region, 2018). The figure below depicts Allandale Correctional Facility's offender population over a three-year period.

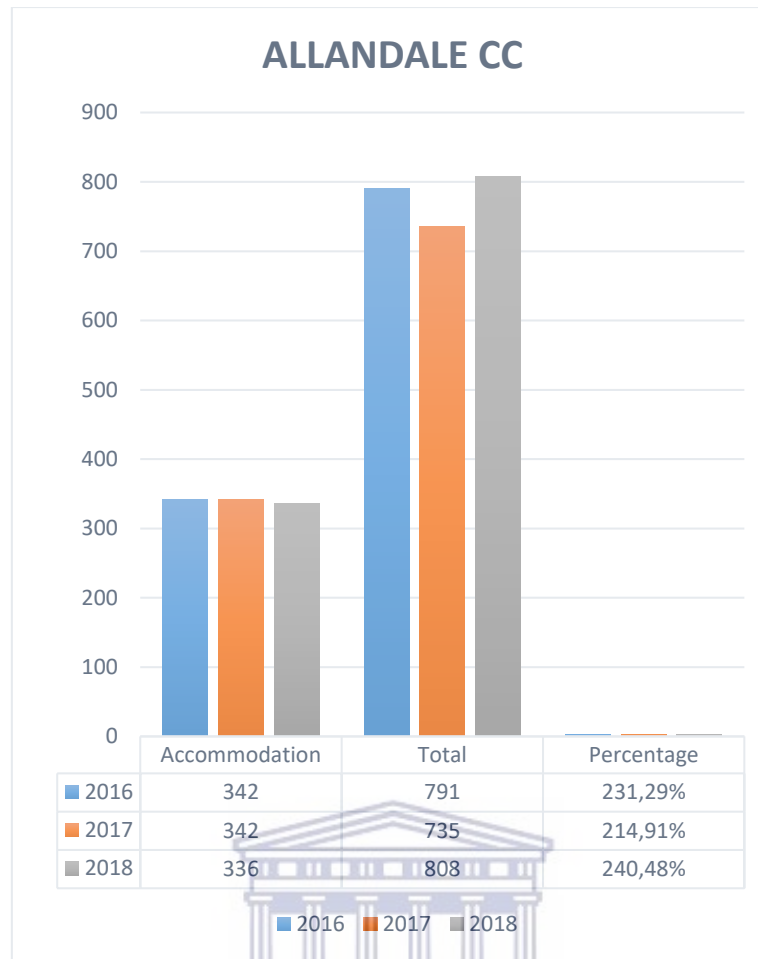


Figure 1.2: Allandale Correctional Facility Offender Population, 2016-2018 (Data Source: Western Cape DCS, 2018)

Pollsmoor Management Area was designed to accommodate 4,336 offenders in terms of their approved bed space but by the end of 2015/16 it had 8,637 (199%) offenders, in 2016/17 it had 7,297 (168%) and by 2017/18 it had a total of 7,902 offenders (182%). One of their facilities, the Pollsmoor Remand Detention Facility (RDF), was built for 1,619 offenders but by 2015/16 it had 4,506 (278%), 2,710 (167%) offenders in 2016/17 and by 2017/18 it had 2,789 (172%) offenders (DCS: Western Cape Region, 2018). The figures below depict offender population numbers over a three-year period in two of Pollsmoor's Correctional Facilities.

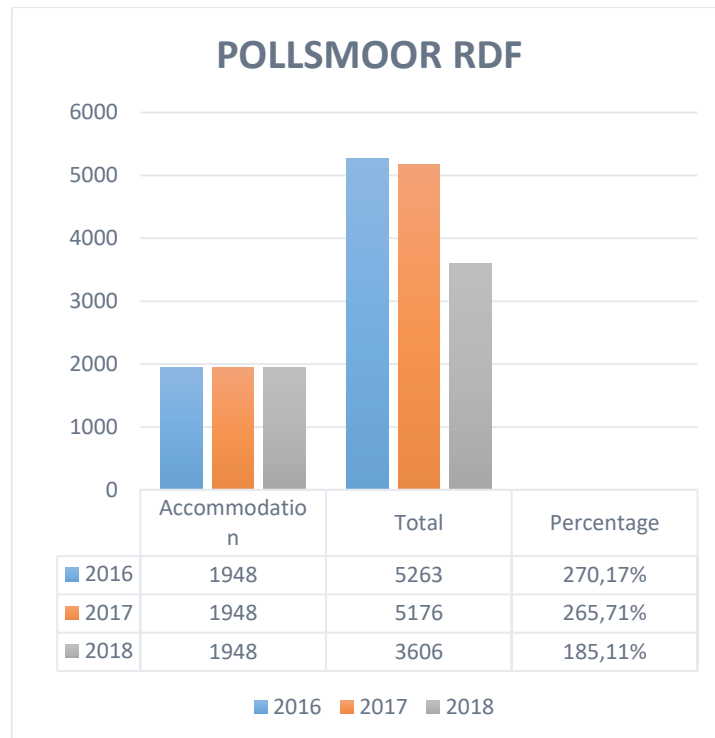


Figure 1.3: Pollsmoor Remand Correctional Facility Offender Population, 2016-2018 (Data Source: Western Cape DCS, 2018)

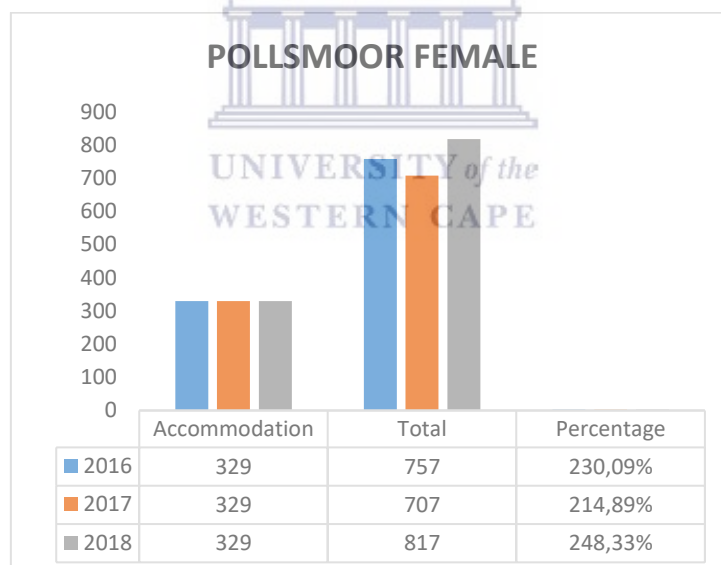


Figure 1.4: Pollsmoor Female Correctional Facility Offender Population (Data Source: Western Cape DCS, 2018)

The Goodwood Management Area is one of the management areas that is part of the study. Its offender population is also depicted in figure 1.5 below.

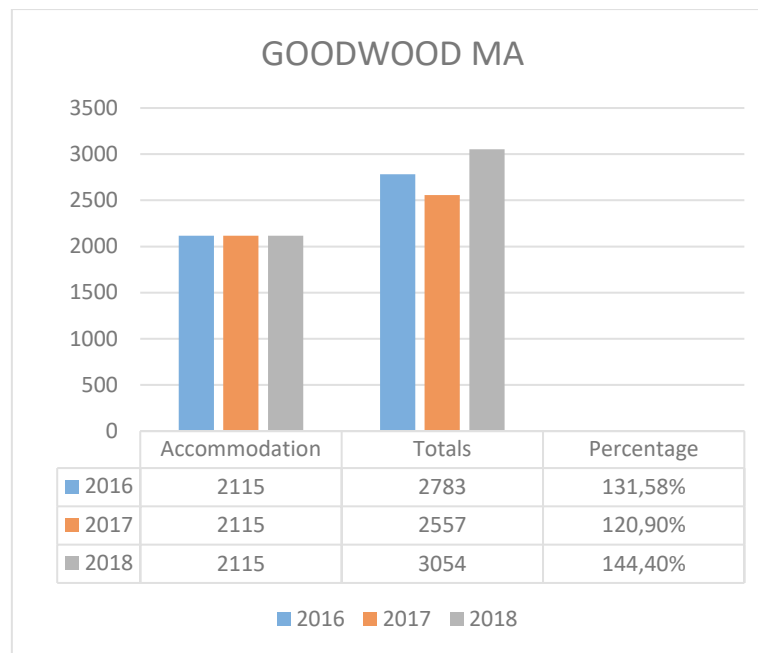


Figure 1.5: Goodwood Correctional Facility Offender Population, 2016-2018 (Data Source: Western Cape DCS, 2018)

1.2.3. The Department of Justice and Constitutional Development (DOJ & CD) and the Department of Correctional Services (DCS) – Places of change

It is useful at this stage to make a distinction between the Department of Justice and Constitutional Development and the Department of Correctional Services. Prior to the merger of these departments, these were separate departments, with separate Ministries. However, after the amalgamation in 2010 they both fell under one Ministry and referred to as Department of Justice and Constitutional Development and Correctional Services. This distinction is drawn to assist the reader to determine whether there is more coordination or not now that the departments are one. The DOJ & CD is where, according to Section 165 of the Constitution of South Africa (RSA,1996), the judicial authority of South Africa is vested. The DOJ & CD is tasked with overseeing the administration of justice through the court systems and constitutional development. It performs these tasks with the assistance of judges, magistrates, the National Directorate of Public Prosecutions (NDPP), the National Prosecuting Authority (NPA) and Directors of Public Prosecutions. Together, these bodies are referred to as the Justice Cluster.

The DCS, formerly known as the Department of Prisons, has evolved from the 1900s prison system, and is regulated by various Provincial Ordinances. These ordinances have been associated with inflated inmate population levels, particularly through the transgression of pass

laws. Major reforms of the 1990s included dealing with certain categories of offenders within the community rather than inside prison (DCS, 2005). Therefore, in a democratic South Africa the DCS has moved from being a department that focuses on the incarceration of offenders, to a department which focuses on correcting offending behaviour and the subsequent social re-integration of offenders (DCS, 2005). DCS officials are the custodians of the sentenced offenders and they have the responsibility of advising the courts on the implementation of non-custodial sentencing. However, despite the post-1994 constitutional reforms and the avenues for non-custodial sentencing available both to the courts and the DCS, the DCS leadership continues to face the challenges of overcrowding.

1.2.3. Transactional-transformational leadership – the key to change

The concept of leadership has been described by scholars as one of the least understood concepts across all cultures and civilisations. Over the years, many researchers have stressed the prevalence of this misunderstanding, stating that the existence of several flawed assumptions or myths concerning leadership often interferes with an individual's conception of what leadership entails (Bennis, 1975 cited in Abbas and Asghar, 2010). Based on this, it is clear why studies and research on leadership have produced a wide range of theories. Burns and Bass as cited in Steward (2006). Burns viewed leadership as a power relation, where human need and social change can be looked at, he further believed that leadership is a moral undertaking that would result in the expression of happiness and global peace if followed. Bass on the other hand identified components of transactional leaders making use of an empirically confirmed and logical supported factor analytical framework of transformational and transactional model. These scholars drawing on Max Weber, map leadership as a model with three frames namely, *bureaucratic*, *charismatic* and *traditional*. The classical view of Public Administration evolved from the Weberian theory of bureaucracy, which implied a top-down approach to management, hierarchical in nature, centralisation of power with specific rules and regulations which are supported by standing operational procedures and a vertical chain of command. The *charismatic model* was described as a strength of an individual personality where the capability of an individual was irrelevant if followers believed that the individual had the power, and the followers continued to legitimise the authority of the leader which led to difficulties when the followers realised that the power was waning. The third tenet was *traditional authority or leadership* that Max Weber identified as the authority of the monarch, where leaders derived their rights from traditional acceptance by individuals or groups as the sole custodians of traditional rights and were not challenged as they were viewed as hereditary

(Bass, 1995). The above-mentioned leadership frames were focussed on an administrative structure as a mode of operating where the administrative structure and bureaucracy was the key, and there was a strong contrast between politics, administration and a Weberian approach that advocated only one best way. This is opposed to Burns and McGregor's model of transactional and transformational leadership (Bass, 1985; Babou, 2008; Barling et al., 2000), which is described as a transformation from *public bureaucracy* to *a model of public administration that recognises financial effectiveness* (Naidoo, 2005). The new model is outlined below.

1.2.3.1. The importance of transactional-transformational leadership

The transformational and transactional leadership theories as described by Bryman (1992) link leadership to several aspects of the visionary. Leaders are judged by the vision they mould for their institutions. This vision needs to be communicated to all others in the institution to create a corporate culture. The ability to imbue trust and confidence are the ingredients that a successful leader should have because without trust and confidence no leader can communicate the vision of the institution and be followed. To a large extent the vision of the leaders holds a central position.

Speaking to the theories, Bass and Steidlmeier (1999) claim that transactional leadership places an emphasis on contingent rewards and perceives it as promoting a form of laissez-faire management. This form of leadership operates on the principle of a transaction, where the employee has agreed to exchange her/his skills and competence in return for various kinds of compensation rewards. The transactional leader holds the employee to account for the role, functions and activities of the job. Based on the conditions of employment this can also result in punitive measures in the case that the employee does not perform according to the conditions of employment.

In a South African context transactional leadership can be characterised as an occurrence that takes place between the leaders and their followers; politicians who win votes by promising housing, employment or other related benefits to lure voters to vote for them (Naidoo, 2005; Ntseke, 2016). Alternatively, there are the popular service delivery protests across South Africa during which people say they will withhold their votes if the demands for service delivery are not met. Contrary to this approach, transformational leadership introduces more vigorous attitudes that lead to organisational improvements (Bass and Steidlmeier, 1999). According to

Babou (2008), transformational leadership comprises of four distinct behaviours, namely *idealised influence*, *inspirational motivation*, *intellectual stimulation*, and *individualised consideration*.

Transformational leaders are also believed to be motivated by a moral commitment to the collective good, rather than acting solely on self-interest (Babou, 2008). The author explains that *inspirational motivation* involves leadership behaviour that stimulates employees to perform beyond their expectations. Furthermore, *intellectual stimulation* involves leaders who elevate their followers by allowing and encouraging them to think for themselves. In this regard, the transformational leader also challenges followers and subordinates to question long-held assumptions. Finally, *individualised consideration* takes place as leaders provide emotional and instrumental support to their employees. Bass (1996) expresses the view that a transformational approach fosters personal and work-related development.

The argument for a combination of the transformational and transactional continuum was provided by Bass in the 1980s stating that, transformational leadership could apply to situations in which the outcome was not positive and therefore the two theories are not mutually exclusive (Naidoo, 2005). Furthermore, Bass (1980 as cited in Naidoo, 2005) alluded to the emotional elements and the origin of charisma by suggesting that they are necessary but not sufficient conditions of transformational leadership. The literature shows that transformational leaders motivate followers to do more than is expected, (a) raising the level of their consciousness about the importance and value of specified and idealised goals; (b) getting followers to transcend their own self-interest for the sake of the team or institution, and; (c) challenging followers to be self-introspective (Bass and Avolio, 1994). The basic elements of transformational leadership are thus vision, trust, corporate value and more importantly, the ability to communicate these elements to the followers.

In the South African context, the Public Services are in crisis, although the Constitution (RSA, 1996) provides a clear idea of the kind of Public Services management that is needed and a clear goal for the transformation process – professionalism, accountability, participatory policy making, efficiency, equity, and the development of a mental service orientation (Franks, 2014). The crisis deepened as soon as the South African Public Services embraced the transformational leadership principles of trust, integrity, vision and values. The sooner these are communicated effectively, the better it will be in a nation where the first democratic

government inherited a racially skewed public service in which 95.5% of the top 3,239 civil servants were white and only 0.6% were black African (Franks, 2014:1). The amalgamation of the different administrations of the central government and various former 'homelands' into one coherent administration has presented challenges for the effective running of the public service administration, notwithstanding the daunting task of transforming such an organisation into one central effective administration. It then becomes critical to have a leader who embodies both qualities of a transactional and transformational leadership style. That is a leadership that connects with people and directly addresses what is important to them.

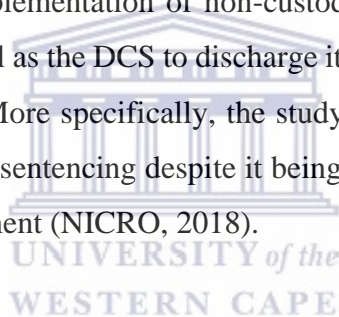
The effectiveness of leadership and the importance of a relationship between leadership and their followers was demonstrated in the result of the study conducted by Davids and Esau (2012) on transforming the organisation confronted by the dismal failure of local municipalities across South Africa. The aim was to determine if the skills and strategies adopted by the City of Cape Town were viable and appropriate for addressing the skills crisis experienced by many municipalities across South Africa. They concluded that the success of the organisation rests on the competency of those in leadership and management positions (Davids and Esau, 2012). The findings highlighted that the efficacy of the leaders is important for identifying the skills gaps, and the constraints that confront the staff. Furthermore, the study found that leaders and managers must have buy-in from the followers. Hence, it is pivotal that individuals in leadership positions must be equipped to deal with the many diverse and often complex issues confronting members (Davids and Esau, 2012).

In summary, transformational leadership is viewed as the continuation of transactional leadership. One form of leadership cannot be independent of another. This means that while transactional leadership involves operational issues such as rewards, the transformational approach involves motivating employees to higher levels of self-preservation and the attainment of satisfaction that is realised for the benefit of all parties. However, transactional leadership may be more appropriate within static organisational contexts because it is characterised by an emphasis on procedures and contingent on rewards, to mention a few examples. In transformational leadership on the other hand, the leader must be more adaptive, innovative and perceptive to changes that may influence the organisational environment. Given the developmental nature of the South African agenda, transforming from a previous apartheid dispensation to a new democratic government and the large-scale organisation with its diversity, this study recommends a combination of a transactional/transformation paradigm.

1.3. Rationale of the study

There is a visible gap in the literature pertaining to the role of South African leadership and management in facilitating non-custodial measures within the context of correctional facilities (Muntingh, 2005). Consequently, very little is known about the role that leadership occupies in facilitating non-custodial measures in their various fields. Limitations are thus placed on the extent to which there could be a broader understanding on the causes of overcrowding in South African correctional facilities. While this state of affairs exist, South African correctional facilities are overcrowded and are hazardous to the health of those incarcerated, as well as the broader communities. Moreover, existing literature, government sources and media reports have highlighted the influence of leadership in organisational performance and/or success (Davids and Esau, 2012; Warrilow, 2017; Collins, 2016).

This study endeavours to bring to the fore the challenges associated with the non-implementation, or the slow implementation of non-custodial sentencing resulting from the inability of the DOJ & CD as well as the DCS to discharge its mandate of creating a conducive environment for rehabilitation. More specifically, the study explores the reason for the slow implementation of non-custodial sentencing despite it being on statutory books and legislated as an alternative form of punishment (NICRO, 2018).



1.4 Significance of the study

The study focuses on the potential role of leadership in facilitating changes that will influence the efficient and effective implementation of non-custodial sentencing. Moreover, the specific focus on the role of leadership may bring to the fore the impediments that lead to the slow or non-implementation of non-custodial sentencing. The findings of this study are intended to add value to the existing literature on the role of leadership about the implementation of non-custodial sentencing within the South African context.

1.5. Research Methodology

Research methodology focuses on the research process and the kind of tools and procedures used to answer the research questions (Babbie and Mouton, 2009). This section briefly outlines the research methodology followed in this study, including the research design, the methods used in the study, data gathering, data analysis, ethical considerations as well as the risks and benefits of the study.

1.5.1. Research design

Punch (2005) views the research design as the plan for a piece of research which includes four main ideas: (i) the strategy; (ii) the conceptual framework; (iii) the question of whom or what will be studied; and (iv) the tools and procedures to be used for collecting and analysing empirical materials. The research design chosen for this study is qualitative in nature. Polit and Hunger (1995: 517) describes qualitative research as holistic as it is concerned with people in their immediate environment. Qualitative research also provides the researcher with opportunities to engage with participants, thus gaining further insight into their worldviews. Punch (2005) explains qualitative research as the process that allows the researcher to be in touch with the participants. In turn, qualitative research provides research participants with an opportunity to understand and make sense of their experiences through participating in the research process. Accordingly, this approach affords the researcher the opportunity to view, both directly and longitudinally, the local processes underlying a temporal series of events. Punch (2005:52) further posits that “this process will lead to a specific outcome and ruling out rival hypotheses in effect we get inside the black box, we can understand not just that a particular thing happened, but how and why it happened”.

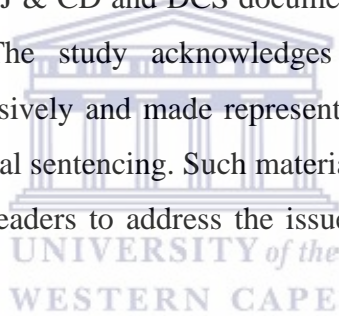
In this study, the qualitative approach enables the researcher to understand the participants' perception of a specific situation and as Bless et al (2006:44) state, that “language provides a far more sensitive and meaningful way of recording human experience.” Consequently, a qualitative research approach assists the researcher to gather rich narratives (Punch, 2005). This is based on the experiences and understandings of the participants involved in the implementation of non-custodial sentencing in the DOJ & CD and the DCS. It also allows the researcher to analyse and interpret the responses in trying to make sense of the problem under investigation. Essentially, the qualitative approach allows for a richer understanding of the context and the problem through the perspectives of the people directly involved in the implementation of the policy of non-custodial sentencing.

1.5.2. Data collection

According to Creswell (1994:195) qualitative researchers rely on “collecting data in the field at the site where participants experience the problem or are part of the event under study”. Data gathering methods are, therefore, tools that are used to collect data to answer the research question that is being investigated. Data collection is also referred to as the “precise, systematic

gathering of information relevant to the research purpose or the specific objectives of the study” (Burns and Grove, 2001:794). In qualitative research, multiple methods and multiple sources of data are used to study spoken and written representations and records of human experiences (Punch, 2005).

For the purposes of this research, qualitative interviews were conducted. The primary data was collected through the semi-structured interviews which consisted of a set of predetermined questions which the researcher asked the participants in face-to-face interviews. The response from participant’s were collated and discussed in the context of Kotter’s change management model. More specifically Kotter’s eight steps categories resonate with responses of the participants, with the following themes specifically identified: (a) Sense of urgency (b) Communication (c) Powerful coalition (d) Support structure (e) Enabling structure and Leadership. The interview data as supplemented by the analysis of relevant documents collected through desktop research. These documents include, but are not limited to, annual reports and budget speeches, DOJ & CD and DCS documents, audit reports including media reports, to mention a few. The study acknowledges that several non-governmental organisations have written extensively and made representations to the DOJ & CD and the DCS on the issues of non-custodial sentencing. Such material was also analysed to investigate their efficacy in equipping the leaders to address the issues of the implementation of non-custodial sentencing.



1.5.2.1. Interviews

In research there are various forms of interviews ranging from structured interviews, semi-structured interviews and unstructured interviews (Welman et al., 2005). Interviewing is regarded as one of the main data collection tools in qualitative research (Punch, 2005). Bless et al states that information could be gathered using other means other than observation, one of the way is the use of an interview which is a direct personal contact with the participants who is asked question in relation to the research problem (1995). The researcher adopted semi-structured interviews for this study since they are flexible, offer a way of collecting data and may be used for all age groups (Welman et al., 2005). Furthermore, semi-structured interviews provide greater flexibility and, consequently, may be used during interviews, given the specific organisational context that is countered in relation to the research topic (Welman et al., 2005:166). Bless et al. (1998:119) define semi-structured interviews as:

“The process that helps to clarify concepts and problems and allows for the establishment of a list of possible answers or solutions which in turn facilitate the construction of more highly structured interviews”.

During semi-structured interviews additional questions may be required to explore the research questions and objectives given the nature of events within organisations (Welman et al., 2005). In this study additional questions were formulated, focussing on the appointed leaders who act as advisors to the elected political leadership on their role as implementers of the policy to determine whether they were able to influence the management in terms of policy decisions and the importance of implementing the non-custodial sentencing as stipulated in the legislation. Braun and Clarke (2006) conclude that semi-structured interviews afford researchers with an opportunity to ask participants a series of open-ended questions, which do not restrict them to certain answers, as they are entitled to use their own words in answering these questions. Furthermore, interviewers can initiate their own style of conversation.

The key advantage of semi-structured interviews is their flexibility. Although some of the questions are drafted ahead of time, these questions serve as a guide and the order of the questions can be changed during the interview (Babbie and Mouton, 2009). Most of the questions are created during the interview. Furthermore, the conversational style of semi-structured interviews enables two-way communication. Therefore, semi-structured interviews provide researchers with an opportunity to learn, provided questions are not prescriptive or leading. It also allows for probing questions to be asked, allowing the researcher to obtain more detail on certain aspects that are pertinent to the research. Some of the probing questions asked during the interviews of this research, include the following:

- You mentioned that there are tools at your disposal for managing overcrowding? What are these tools?
- Of the strategies that exist for managing overcrowding in DOJ & CD and DCS you just mentioned, which ones, in your opinion, have the potential to be the most effective?

These probing questions, amongst others, allowed the researcher to gain insight into the officials' expectations with regard to their role in the implementation of non-custodial sentencing.

15.2.2. *The sample*

Research participants were chosen from the DOJ & CD and the DCS so that they could provide information and be probed on their experiences. Although the study was based in Cape Town, it included three management areas in the Western Cape Region, namely Pollsmoor Management Area, Goodwood Management Area and Allandale Management Area. Interviews were also conducted with officials at the Bellville National Prosecuting Authority. Participants were identified and selected on the basis of their job descriptions, their ability to make decisions, assimilate, and implement strategic objectives of the organisation. Fifteen participants were identified from the levels of leadership and management. Those identified are executive leaders who specifically provide strategic and operational direction to the organisation, by setting goals, developing strategies and overseeing the executing of these strategies. From executive's leadership category, commissioners, deputy commissioners and managers of the identified centres falling within the DCS were identified to be part of the study. From the DOJ & CD, directors from the National Prosecution Authority who are responsible for determining the prosecution or non-prosecution of cases were included.

1.5.3. *Data analysis*

De Vos (2002:338) refers to data analysis as a process that “brings order, structure and meaning to the mass of collected data.” This process involves three steps: data reduction, display and conclusion drawing or verification. According to Hesse-Bieber (2010), data reduction is the process through which a large amount of data is rendered manageable. Accordingly, the researcher needs to be familiar with the data through listening and (re)reading interview transcripts in search of commonalities within the collected data and arrange these commonalities into themes (Hesse-Bieber, 2010). This process also involves the researcher thinking through and acknowledging his/her personal biases. Punch (2005) notes that data reduction occurs continually throughout the various stages of analysis.

The second stage, data display, involves the organisation of collected information. During this process data is organised, that is, grouped according to themes, and summarised (Punch 2005). The author concludes that while drawing conclusions logically follows the reduction and display of data, summarising, verifying and reaching conclusions are taking place simultaneously. This may lead to conclusions which may not necessarily be finalised and hence, there is a need to conduct data after the conclusion has been reached (Punch, 2005). This means, for purposes of the current research, that during the coding process (which is the

process through which data is analysed and grouped into themes), there is a need for the researcher to constantly verify conclusions drawn against the findings. This, in some instances, necessitated follow-up interviews for the purposes of (i) elaboration and (ii) ensuring that conclusions drawn from the data are indeed accurate and do not misrepresent the participants' words in any way.

1.5.4. Ethical considerations

This researcher committed to conducting the research in an ethical manner. The researcher's conduct was influenced by the rules prescribed by the institutional structures of the University of the Western Cape (including the university's Ethics Committee). Upon receiving permission from the DCS centres, all participants were informed of their rights in relation to participation in the research. They were also told about the purpose of the research. Participants had the right to ask questions and were informed of the research objectives before partaking. They were given consent forms and information sheets containing information about the study prior to the interviews. Furthermore, it was explained to each participant that participation was voluntary and that they had the right to withdraw their participation at any point of the interview. The researcher also explained the anonymity and confidentiality clauses and how those would be upheld, using pseudonyms when the data was analysed, interpreted and presented. Lastly, the data was stored in a secure place that only the researcher had access to. It would remain securely stored for a period of five years, at which point it would be destroyed.

1.5.5. Financial implications

The financial implications to the researcher was minimal as the focus was in the Western Cape Region to minimise costs.

1.5.6. Permission to conduct research

The researcher wrote to the Department of Justice and Constitutional Development and the Department of Correctional Services to obtain permission to visit the Western Cape Management areas of Pollsmoor, Goodwood and Allandale, to explain to them the purpose of the research and to gain the written consent from the departments.

1.6. Chapter Outline

The thesis is organised into five chapters.

Chapter One: Introduction

In addition to providing the background information on the problem under study, this chapter contextualises the study. This chapter also includes the rationale and significance of the study, the statement of the research problem, the aim and objectives of the study and the methodological approach that is employed.

Chapter Two: Theoretical and analytical framework

This chapter presents a comprehensive discussion on the relevant leadership paradigm used in the study. As part of this discussion, a definition of the concept of 'leadership' is put forward. This discussion entails critical engagement with the literature on leadership.

Chapter Three: The context of non-custodial sentencing in South Africa

This chapter examines the concept of the non-custodial sentencing in South Africa. The chapter looks at the rationale provided by those who advocate this concept in relation to the regulatory framework for the implementation of non-custodial sentencing in South Africa. The chapter concludes with an examination of the factors that impede the implementation of the non-custodial sentencing.

Chapter Four: Research methodology

In this chapter the methodology used to conduct the research is discussed. This chapter outlines the research design, sampling strategies, data collection methods, as well as the process of data analysis.

Chapter Five: Research findings and discussion

This chapter presents the responses of participants to interview questions. The responses are discussed in relation to the themes which arose during the coding stage (Braun and Clarke, 2006).

Chapter Six: Conclusion and recommendations

In this chapter, conclusions from the research that has been conducted are drawn. This chapter also contains a reflection on the limitations of the study and puts forward several recommendations.

CHAPTER 2:

THEORETICAL AND ANALYTICAL FRAMEWORK

2.1. Introduction

This chapter presents a discussion of the leadership paradigm used to analyse the case. This entails a critical engagement with the literature on leadership. The chapter commences by providing a definition of leadership. This is followed by an overview of some of the prominent theories on leadership, thereafter, focussing on transactional and transformational leadership approaches, which is the backbone of this study.

2.2. Defining Leadership

Scholarly work illustrates the variety of definitions pertaining to leadership. Some refer to the role of leadership in inculcating values and virtue into an organisation, while others refer to the influence of one over another. It is evident that leadership can be viewed through multiple lenses. The debate is whether leadership comes from the personal quality of an individual or if an individual gains popularity as a leader through what he/she does or achieves (Abbas and Asghar, 2010). One of the most common views on leadership is that it is the process of directing the behaviour of others towards reaching the organisational missions and goals (Smith and Cronje, 2011). Northouse (2001:1) defines leadership as:

“[T]hose who articulate particular values within institutions and who negotiate those values into the institutional illusion that shape, sustain, and justify behaviour”.

Belias and Koustelio (2014: 457) state that leadership is the art of mobilising others to want to struggle for shared aspiration. Conger (1992:18 cited in Abbas and Asghar, 2010:9) views leadership in a slightly different manner and understands leadership as:

“[I]ndividuals who establish direction for a working group of individuals and who gain commitments from the group of members to establish direction and who then motivate members to achieve the direction’s outcome”.

Conger’s (1992) emphasis is, thus, to obtain a commitment from the working group to establish a direction for the group to achieve its ultimate goals. This study adopts Conger’s definition as it implies a relation between the leaders and the followers.

Kotter (1996) contends that, neither scholars nor practitioners have been able to define leadership with precision and conciseness. This implies that the definition of leadership is relative. However, for this research the term leadership is used to refer to a leader who is responsible for organisational matter as defined by Conger (1992). In a South African context, which is rapidly making leaders accountable to the citizens of the country, the role of a leader who can communicate his/her vision, instil trust into the followers and be trusted by the followers becomes more crucial. Rost (1993) argues that leadership must be synonymous with management, implying that if you cannot manage and do not have the trust of the followers, your leadership days are numbered. The following section provides an overview of selected theories of leadership.

2.3. Theories of Leadership

Over the years, many theories have been developed and advanced to explain why and how leaders behave, and the influence they have over their followers. These theories evolved from the *Great Man Theory* (Bowden, 1927; Carlyle, 1841; Galton, 1869), the *Trait Theory* (1900), to the *Transformational Leadership Theory* (Burns, 1978; Bass, 1985; Tichy and DeVanna, 1986) and the *Transactional Leadership Theory* (Burns, 1978; Bass, 1985; Tichy and DeVanna, 1986), the *Self-fulfilling Prophecy Leadership Theory* (Field, 1989; Eden, 1984) and the *Performance Beyond Expectation Approach* (Bass, 1985). For this study the evolution of leadership will be categorised in its developmental context to appreciate all the contributions in arriving at a holistic integrated framework theory of leadership.

During the first three decades of the twentieth century, leadership was associated with control and the centralisation of power (Rost, 1993). The second phase was characterised by behaviourist theories which understood leadership in relation to shared goals (Naidoo, 2005). The mainstream views which were characterised by institutionalised and behaviourist approaches were later challenged, and excellence, vision, performance and management became qualities associated with the new leadership theory Rost (1993). Given the different approaches of the time, it can be argued that each era was reflecting the realities and periods of the time and one could observe an overlapping of theories over time.

In recent years one observes that theories have evolved but the fundamental principles have remained the same. This is particularly the case with the transactional/transformational paradigm which this study views as the most appropriate paradigm for organisational change. Therefore, based on the discussion above, the chapter now turns to a brief discussion of the three theories that are applicable to the study in question. The theories are: the contingency theory, the transactional and transformational theories. These three theories are discussed below.

2.3.1. Contingency theory

According to Fielder in Bolden et al (2003) the contingency theory of leadership identifies the three most important factors that have an effect on the performance of the leader, as: (a) leader-member relations; (b) task structure, and; (c) position power. The first factor, *leadership-member relation* refers to the mutual relationship between the leader and the employees, as well as the level of trust the leader generates from the employees. This implies that leaders need to be a source of inspiration to their subordinates and they must look up to them for the needed support (Fielder, 1996). The second factor, *task structure*, investigates the work schedule of the employees, their duty sheet, what they are expected to accomplish. This, therefore, demands a leader who understands the tasks that need to be carried out by his/her subordinates, to motivate, and reward them when necessary and inculcate a work ethic that will be good for the organisation. Thirdly, *position power* relates to the hierarchical level the leader has in the organisation. The more decision powers the leader has, the more he/she will be able to make decisions.

The DOJ & CD and the DCS present a unique challenge to the Senior leadership. With the amalgamation of the former 'homelands' with various departments forming one public service sector, the amalgamation of different cultures and style is bound to be challenging.. The contingency theory can assist the leaders to apply their leadership to the situations as they arise.

2.3.2. Transactional approach of leadership

The transactional theory was first formulated by Max Weber and further explored by Bernard M. Bass in the 1980's (Unpani n.d.: online). The theory assumes a behavioural approach and seeks to explain the behaviour of employers when undertaking given tasks. It also explains the behaviour of people when given specific tasks with rewards and punishment as a motivational

tool. Adair (cited in Bolden et al., 2003) posits that the transactional theory entails the exchange process between the leader and the subordinates. The transactional approach involves, firstly, management by exception. Also known as active management, management by exception involves a leader searching and monitoring their followers. Once followers deviate from the norms, corrective measures are put in place. Secondly, an active management style is when managers only interfere if rules and processes are not adhered to. Thirdly, the transactional type of leadership is one where good performance is recognised and rewarded.

Rooted in the transactional approach is the view that leadership entails a transactional relationship between the leader and the subordinates in return for some form of reward. Cameron and Greene (2004) refer to this theory as the *leader-member exchange* and *reciprocal approach*, while Hollander (1978, as cited in Cameron and Greene 2004) refers to this approach as the *social exchange theory*. These theories encourage followers to follow rules and regulations with the result of being rewarded or reprimanded when they fail to achieve such outcome.

2.3.3. Transformational approach

Evolving from the transactional approach, is the transformative approach, which contends that leadership involves the ability to raise the follower's sense of purpose and levels of motivation (Cameron and Greene, 2004). Bass (1998) describes transformational leaders as leaders who inspire their followers to reach high expectations, leaders who articulate their vision thereby challenging their followers to attain high standards. Bryman (1992) further argues that transformational leadership addresses the connection between the leaders and the followers, a connection that gives rise to morality and motivates both parties. Burns (1978) contends that leadership is inseparable from the needs of the followers and is not about displaying power. Furthermore, Bryman (1992) identifies four characteristics of transformational leadership. These are: (a) charisma; (b) inspiration; (c) intellectual stimulation, and; (d) individualised consideration.

Firstly, charisma entails a leader who has a vision, mission and instils pride, respect and trust amongst his/her fellow employees. Mahatma Gandhi and Nelson Mandela are among the leaders that can be identified with this. People all over the world want to follow and emulate their deeds. For example, today the world acknowledges Mandela Month during which

everybody wants to emulate Mandela's moral and ethical standing. According to Bass (1985) these leaders provide a mission and a sense of vision for their followers. Secondly, inspiration involves communication by the leader and raises high expectations. Employees are encouraged to reach a high standard, following the motivation of their leaders. The research shows that leaders can inspire their followers to greater levels of attainment, through a shared vision and motivating followers to be part of the team (Northouse, 2001; Bass, 1985 cited in Cameron and Greene, 2004). Intellectual stimulation promotes intelligence and rational thinking as a problem-solving mechanism. Followers can be innovative; the leader plays a supporting role and pushes followers to achieve greater heights (Bryman, 1992). Lastly, individual consideration occurs when leaders show interest in their employees as individuals, not as a group. Furthermore, more Bass (1998) contends that individualised considerations highlight the fact that each employee has different needs that may change over time. If those needs are met, the employees become motivated.

It is important to note that charisma and emotions are viewed as necessary, but not sufficient conditions for transformational leadership (Bass, 1978). From the above it could be argued that transformational leadership is concerned with the process of empowering their subordinates to work for the benefit of their institution's mandates and objectives. The components of transformational leadership are depicted in figure 2.1 below.

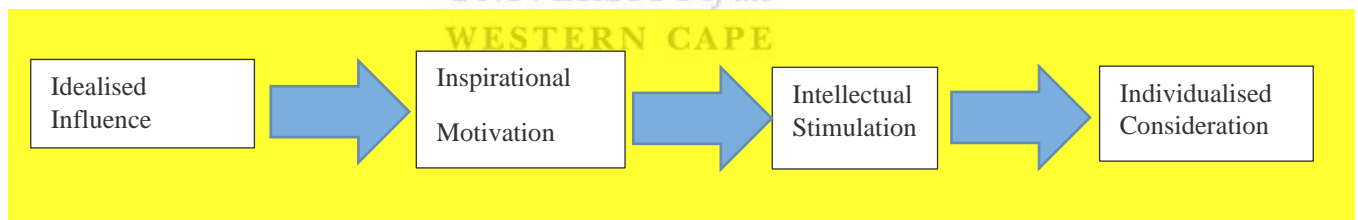


Figure 2.1: Components of transformational leadership (Adapted from Naidoo, 2005)

The literature shows that transformational leadership transcends all boundaries. This theory seeks to provide trust and build support, amongst other things (Daft, 1998). Furthermore, Naidoo (2005) argues that transformational leaders:

- can work as change agents;
- have the courage to take bold steps;
- can trust others;
- are value driven;
- have good learning ability;
- can work in complex situations; and

- have a clear vision.

The transformational approach is, therefore, viewed as the continuation of transactional leadership. While the transactional approach involves operational issues, the transformational approach involves motivating employees to higher levels of self-preservation, where the attainment of satisfaction is realised for the benefit of all parties. Whilst transactional leadership may be more appropriate within an organisational context due to its static characteristic and emphasis on procedures, contingent, reward and so forth, the strength of transformational leadership lies in being adaptive, innovative and perceptive to changes that may influence the organisational environment. An assumption can, therefore, be drawn that the transactional approach is not synonymous with the transformational approach. However, the two are interdependent. In the context of the DOJ & CD and the DCS, the study argues that this is an example of a public sector organisation that has embraced the hierarchical organisational theory and successfully complements the department with a variety of New Public Management (NPM), Public Value and New Governance concepts. The features of this new public management could be drawn from the speeches of the political leadership of the DOJ & CD and the DCS Minister Masuthu (2018, cited in DCS, 2018), when he talks about setting explicit service standards, efficiency within the public service, greater competition in the public service as well as forming partnerships with counterparts in government and civil society, including non-profit organisations (NPOs).

It is instructive to note that leaders and senior management of the DOJ & CD and the DCS are expected to abide by the mandate of the Constitution (RSA 1996), the National Development Plan (NDP) Vision 2030, and the Medium-Term Strategic Framework (MTSF) 2014-2019, in contributing to a just, peaceful and safer South Africa as prescribed in Chapters 12 and 14 of the NDP (DCS, 2017: 8). The above policies of the DOJ & CD and the DCS talk to the qualities embedded in the transformational approach. Therefore, pursuant of a leadership style that is suited for organisational change, it is therefore correct to assume that the leadership of the DOJ & CD and the DCS have already signalled an intention to embrace attributes that talk to the transactional/transformational paradigm.

Davids and Esau (2012) argue that organisational success is largely dependent on the competences of those in leadership. These leaders should be visionary and strive to transform

their organisations. Furthermore, Warrilow (2017) asserts that leaders in the public sector must possess qualities that will enable them to address personal aspects of individual managers, as well as dealing with change and inspiring and motivating followers to achieve the goals of the public service. Warrilow (2017) further argues that leaders and managers are supposed to adapt their leadership style to the situation and that one of the leadership's traits is being able to recognise and deal with the inner psychological and emotional adjustments that people experience in response to external organisational change.

While there are many leadership theories many of them can be grouped into major eight types starting from great Man theories to Relationship theories. Below are leadership qualities that command respect, have high moral standards and provide a mission and vision for the benefit of the organisation (Bass, 1985:44).

TRANSFORMATIONAL LEADERSHIP	TRANSACTIONAL LEADERSHIP	LAISSEZ-FAIRE LEADERSHIP
Factor 1	Factor 5	Factor 7
Idealised Influence	Contingent Rewards	Laissez-faire
Charisma		Non-transactional
Factor 3	Factor 6	
Intellectual Stimulation	Management by Exception	
	Active and Passive	
Factor 4		
Individual Consideration		

Table 2.1 Leadership factors (Adapted from Bryman, 1992: 50)

2.3.3.1. The case for transactional and transformational approaches

In the context of South Africa, the post-1994 period brought about institutional reforms that saw the country advancing to good governance practices (Davids and Esau, 2012). This was no different to the DOJ & CD and the DCS which underwent an amalgamation of previous distinct public entities that included former 'homelands' Transkei, Bophuthatswana, Venda, Ciskei (TBVC) and apartheid South Africa coming together to form a diverse public service entity from different cultures and ethnicities. This implies that leadership needs to take cognisance of existing differences and seek to unify all members to work for one institution with a unified mission and vision. It is the position of this study that the integrated approach of the transactional and transformational leadership paradigm is suited for the above scenario, as

leadership would be able to motivate followers making use of the applicable approaches. In the case of the DOJ & CD and the DCS the transactional/transformational integrated approach must be able to exert influence over members through rewards, while at the same time striving to change the members' work ethic for the betterment of society. This may boost confidence and personal growth when reward is replaced by motivation and driven by high ethical aspirations of good for the benefit of the organisation. These approaches focus mainly on processes and transforming individuals for the betterment of society.

Birkinshaw and Mark (2017) distinguish between management and leadership, where management is about getting work done through others and leadership is a process of influence, but being an effective leader is difficult because ultimately, it is about how others perceive the leader. Therefore, leaders and managers are expected to be agents of change and serve to drive a supportive response for change from the stakeholders (Birkinshaw and Mark, 2017). In the context of the DOJ & CD and the DCS, leaders and managers must have a clear understanding of how change is accomplished. To achieve that, this study suggests that they adopt Kotter's (1996) model of leadership change. This model talks to the leadership that creates a culture that enables and motivates followers for the achievement of the mission. Kotter's (1996) model provides a structured approach that may be followed by both leaders and managers of the DOJ & CD and the DCS when dealing with the slow implementation of non-custodial sentencing. The basic tenets of Kotter's model rest on eight steps to be followed by leaders and managers. They are:

- a) there must be urgency in what they do;
- b) they ought to create a powerful coalition with relevant stakeholders;
- c) they should create a vision for change;
- d) they should communicate the vision;
- e) they must remove obstacles;
- f) they must create short-term wins;
- g) they must build on the change; and
- h) they must anchor the change in the corporate culture.

(Birkinshaw and Mark, 2017).

This study argues that it is the responsibility of those in the leadership and management of the DOJ & CD and the DCS to follow these structured steps or amend where appropriate as they would lead to more common goals and understanding of what they need to achieve.

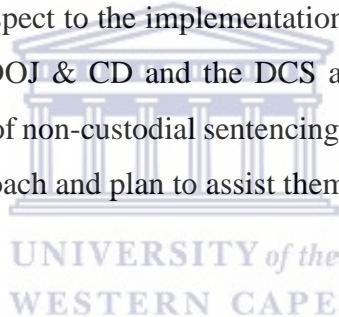
2.4. Chapter Summary

The chapter has defined leadership, for the purposes of this study, as:

“[I]ndividuals who establish direction for a working group of individuals and who gain commitments from the group of members to establish direction and who then motivate members to achieve the direction’s outcome”.

(Conger, 1992:18, cited in Abbas and Asghar, 2010:9).

This chapter argued that a transactional-transformational leadership framework is the most appropriate style of leadership for effective and efficient leadership and management in the DOJ & CD and the DCS with respect to the implementation of non-custodial sentencing. The chapter also proposed that the DOJ & CD and the DCS adopt a structured approach when dealing with the implementation of non-custodial sentencing. This approach enables leadership to have a clear step-by-step approach and plan to assist them attain their goals.



CHAPTER 3:

THE CONTEXT OF NON-CUSTODIAL SENTENCING IN SOUTH AFRICA

3.1. Introduction

From a technical point of view overcrowding is the result of the justice system sending too many people to prison, and for longer periods than the prison capacity allows. The immediate cause of overcrowding is either overuse of imprisonment or insufficient prison capacity. Therefore, the remedy is either to send fewer people to prison or build more facilities. But as construction of facilities does not provide a sustainable solution, researchers have focused their attention on alternative forms of punishment, namely non-custodial sentencing (Seppala, 2008). This chapter examines the concept of non-custodial sentencing in South Africa. The chapter looks at the reasons and rationale provided by those who advocate for the implementation of this concept. Following this regulatory framework for the implementation of non-custodial sentencing as provided in South Africa, is explored. The section concludes with an examination of the factors impeding the implementation of non-custodial sentencing in South Africa.



3.2. A Case for Non-Custodial Sentencing

Historically, non-custodial sentencing in South Africa and internationally has been viewed under the lenses of the Criminal Justice System. This system includes the courts, enforcement officials, and other organisations that are concerned with rehabilitation, social justice and various other issues (Mills, 2011; Singh, 2007; NICRO, 2018). Non-custodial sentencing can be traced back to the colonial period when Americans sought to distance themselves from the British way of incarceration. They resorted to banishment, corporal punishment and death as the alternative methods of punishing law breakers (Campers, 2012).

Post-18th century revolutionary reforms questioned the efficacy and morality of colonial laws, proposing that penal codes should treat individuals with dignity. Despite the implementation of these reforms, overcrowding persisted. As a result, more prisons have been built to accommodate law breakers (Campers, 2012). This system became costly for the state, and to counteract this, the Auburn system was introduced in early 1819. The Auburn system relied

mainly on the bureaucratisation and regimentation of prisons. It was argued that prisons can only function through order and a set of rules that need to be adhered to (Campers, 2012). The early 19th century witnessed a wave of penal activism. It advocated that other forms of prison other than incarceration were “reformatory, indeterminate sentences, parole and probation” (Camper, 2012:3). It was found that despite their good intentions these practices did little to curb the problems of overcrowding.

The failure to implement these changes has been placed squarely on the inabilities of leadership within these institutions to implement policies. It is noted that “probation and parole officers were responsible for an overwhelming number of cases that resulted in recidivism which contributed to overcrowding” (Camper, 2012:3). Additional research illustrates that despite the effort and energy spent by penal reformers promoting community sentencing partly with the hope of slowing and reducing overcrowding in prisons, the application of community sentencing did not translate into the much-needed reduction in prison population numbers (Mills, 2011). The slow implementation of policies relating to non-custodial sentencing is a cause for concern. This is despite the consensus represented in the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (1995) that urges member states to explore various means of non-custodial sentencing and use prison as a last resort.

3.3. Non-Custodial Sentencing in South Africa

In South Africa, the concept of non-custodial sentencing or alternative sentencing other than prison has been interlinked with the Criminal Justice System for centuries. Penal activists like the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) have, over the years, advocated for criminal justice reforms which include community service orders as an alternative to imprisonment (NICRO, 2018). Non-custodial sentencing options have been on South African statute books for some time, yet, overcrowding continues to be one of the vexing concerns for the DOJ & CD and the DCS, to an extent that the Minister of DOJ & CD and the DCS, Minister Masutha, has alluded to the challenges faced by the department:

“[D]espite some achievement made in technology and infrastructure modernisation, overcrowding is still one of the major inherent challenges that the department is faced with, due to a continuous increase in the inmate population within DCS correctional centres” (DCS, 2018: 8).

The Minister further states that the department, in collaboration with strategic partners, can reduce overcrowding once the strategy is implemented. This strategy focuses on the diversion of remand detainees (RDs), advocating for non-custodial sanctions or alternatives to imprisonment, consideration of offenders for parole and correctional supervision (ibid).

3.3.1. Rationale for the implementation of non-custodial sentencing

Non-custodial sentencing has considerable potential value for offenders as well as the community. Hence, it is viewed as an appropriate sanction particularly for offenders who are not likely to repeat the offences. This includes offenders convicted for minor crimes as well as those who need psychiatric and/or social help. These are cases where incarceration cannot be considered an appropriate sanction as it damages community ties, hinders reintegration into society and therefore reduces offenders' sense of responsibility and their ability to make their own decision (Mills, 2011). Non-custodial sentencing makes it possible to control an offender's behaviour, at the same time allowing it to evolve under natural circumstances. Non-custodial measures tend to reduce social costs since the administration of criminal justice imposes a very heavy financial burden on the state. The individual offender and ultimately the entire society benefit from the use of non-custodial sentencing. The encouragement of community involvement in the implementation of non-custodial sentencing is of paramount importance. The *White Paper on Corrections* dictates that correction is a societal responsibility (DCS, 2005). Involvement of the community is necessary for the successful reintegration of the offender into society. Community involvement can reduce the risk of stigmatisation. Therefore, non-custodial measures are less expensive for society in general, than deprivation of liberty.

While imprisonment is necessary in many cases involving violent offenders, it does not always constitute a panacea about either crime prevention or social re-integration of offenders. Furthermore, in many countries the correctional services systems (with South Africa being no exception) face major challenges because of overcrowding and outdated facilities. The result is that offenders often find themselves in deplorable conditions whilst in detention. These conditions tend to have adverse effects on their physical and mental health as well as impeding their educational and vocational training. Therefore, their chances of future adjustment to an ordinary life in the community are affected (DCS, 2018). This has resulted in growing

scepticism with regards to the effectiveness of incarceration, compelling leadership to develop other useful measures to help offenders while keeping them in the community. Various reports confirm that more than 62% of sentences imposed in South Africa are incarceration-related (Hopkins, 2018). This is despite several scholars (Camper, 2012; Coghlan, 2012; Muntingh, 2005; Nicro, 2018) agreeing that non-custodial sentencing has proven itself to have several benefits. Hence the growing scepticism with regards to the effectiveness of incarceration. Several principles need to be considered when non-custodial sentencing is implemented. These principles describe the fundamental aims, the scope as well as the legal safeguards of non-custodial measures in the administration of justice.

One needs to understand that the underlying principle of non-custodial sentencing is to punish the offender in the community where the offence was committed, away from prison. This enables the offender to offer some compensation to the community, whilst ensuring the community that the offender's behaviour is being punished and corrected (Singh, 2007:151). This implies the individualisation of sentencing in a transparent manner that permits the offender to continue working, studying and being involved in family life. This, therefore, requires that in order to safeguard human rights, human dignity standards must be set for the imposition as well as the implementation of restrictions and conditions when non-custodial measures are implemented. Therefore, it is in supporting the above imperatives that those who advocate for non-custodial sentences argue that, sending offenders to prison is unwise, as more prisoners could be dealt with by community sentencing resulting in cost-effective measures and reducing recidivism (Mills, 2011; NICRO, 2018).

Studies conducted both internationally and locally support the notion that the underlying principle of non-custodial sentencing is to punish the offender in the community, where the offence was committed away from prison. In this way, correction is visible to the community and instils a sense of community responsibility (Singh, 2007; Campers, 2012; NICRO, 2018). Researchers argue that imprisonment creates an endless cycle of crime and punishment as overcrowding presents a barrier to the implementation of rehabilitation programmes and institutions become 'universities of crime'. This is echoed by one offender being interviewed in Pollsmoor prison by psychologist Sandy Hoffman (cited by Hopkins in City Press, 2018):

“I am scared of the outside world, because in prison I am a gang leader and a somebody, but outside prison I am nobody and a criminal”.

The above observation supports studies that have found high rates of recidivism amongst offenders who were incarcerated compared to those who have been sentenced out of the correctional system. In submitting their comment on the revised parole system for South Africa, NICRO (2018:1) states that:

“Recidivism remains high and to date we do not believe that the present factors that are contributing to these challenges have been sufficiently addressed by the Department of Correctional Services”.

The high rate of recidivism has been alluded to, by the then National Commissioner Modise in Hopkin (2018) who has been quoted as saying that the recidivism rate of offenders is between 60% and 70%. This places South Africa as the country that has the highest incarceration rate on the continent, ranking 12th in the world. The question asked by non-custodial sentencing advocates is: why does Government not focus on keeping people out of prison, which is a more cost-effective and humane solution? In addition, overcrowding has resulted in several challenges, including the spread of TB, gang violence and poor sanitation. These challenges have led to litigations with the government as the defendant (Hopkins, 2018). Furthermore, NICRO questions the amount spent on social reintegration by the DOJ & CD and the DCS. This amount is 3% of the DCS budget, while the recidivism rate is at 67% (Hopkins, 2018).

Overcrowding continues to place a heavy burden on the correctional system. It remains a burden on correctional infrastructure and the capacity of correctional services managers. This has led the Lawyers for Human Rights (LHR) taking the DOJ & CD and the DCS to court over Pollsmoor prison’s abominable conditions, especially in the remand section, where in 2016 overcrowding was at 300% (Hopkins, 2018). The argument advanced by human rights lawyers as well as non-governmental organisations (NGOs) is that the government needs a complete mind-shift to invest in more reintegration efforts and alternative methods of incarceration.

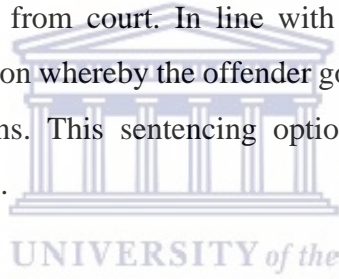
3.4. Polices and Legislative Framework for the Implementation of Non-Custodial Sentences in South Africa

Before discussing the regulatory frameworks specifically for non-custodial sentencing in South Africa one needs to acknowledge the fact that South Africa as a country operates in a global village. Hence, South Africa as a developing country subscribes to several international bodies that have an influence on the formulation of the country's legislative framework on good governance. As indicated above, since 1994 South Africa had to re-enter the global arena and with that had to take up membership with several international organisations such as the United Nations (UN), the European Union (EU), the Commonwealth, the Organisation for African Unity (OAU), to mention a few (Nowak and Ricci, 2005). Furthermore, South Africa also had to obtain funding from the various donors such as the European Union, the Dutch Government, USAID, AUSAID, the Open Society, the Ford Foundation and the Kellogg Foundation. Therefore, these international organisations have set the standards against which national policy formulation in South Africa had to take place (Cayley, 2013). Hence, the South African policies and legislation show a clear indication of global influence and interpretation of good governance. This is inclusive of the South African Constitution, the National Development Plan, the 10 Government Priorities, the Millennium Development Goals, the White Paper on Local Government and the Integrated Development Plan for the local governments, and the Correctional Service Act.



The South African Constitution of 1996 provides a Bill of Rights as a cornerstone of democracy in South Africa. Enshrined in it are the relevant policies and legislation that bind courts, the judicial system and correctional services system in sentencing as well as managing the offending populations (RSA, 1996). In line with the Constitution of the Republic of South Africa, the Criminal Procedure Act of 1977 (RSA, 1977) pronounces on matters that relate to the sentencing of offenders by courts, as well as the management and treatment of inmates while in custody of the correctional facilities. Furthermore, the Correctional Services Act (Act 111 of 1998, as amended), and the DCS Medium Term Strategic Framework (MTSF) 2014-2019 together with the Constitution envision a just, peaceful, and safer South Africa as prescribed in Chapters 12 and 14 of the NDP. This compels the department to ensure the establishment of an effective criminal justice system, protection of society through incarcerated offenders being secured and rehabilitated, and the provision of services and interventions that contribute to the re-integration of offenders back to the community as law abiding citizens

(DCS, 2016). Several sections of the Criminal Procedure Act make provision for the placement of offenders on non-custodial sentencing by both the courts as well as the DCS. These include Section 49 where a remand detention offender that has exceeded 2 years in detention, must be referred to court for review, Section 62 allows the heads of centres to apply for the amendment of bail conditions, and Section 63A makes provision for the release or amendment of bail conditions. It stipulates that if a head of the correctional facility is satisfied that the prison population of a particular prison is reaching such proportions that it constitutes a material and physical threat to human dignity, physical health or safety of an accused as stipulated, the head of the prison may apply to said court for the release of the accused on warning in lieu of bail or amendment of the bail conditions imposed by that court (cf. RSA, 1977). Section 105 makes provision for an un-sentenced offender to enter into a plea bargain by pleading guilty and lessening the sentence, whereas Section 287 makes provision for the release of offenders by the head of the centre in cases where the offender has a confirmed address and a support system (see RSA, 1977). Lastly, Section 276(1)(h) of the Criminal Procedure Act refers to the correctional supervision straight from court. In line with this Act, a court may impose a sentence of correctional supervision whereby the offender goes directly from the court into the system of community corrections. This sentencing option normally includes compulsory community services (RSA, 1977).



Furthermore, Section 276(1)(1) of the Criminal Procedure Act makes provision for the Commissioner of Correctional Services to place an offender under correctional supervision after serving 1/6 of the imposed sentence. The placement of such an offender under correctional supervision is dependent on the same consideration process applicable to parole considerations. According to Section 287(4)(a) of the Criminal Procedure Act of 1977 the Commissioner of Correctional Services may act in accordance with Section 276(1)(1) of the Criminal Procedure Act 1977 by placing an offender before a Correctional Supervision and Parole Board for timeous consideration if there was an option of a fine and the remainder of the sentence does not exceed 5 years and a positive address for the offender has been confirmed (cf. RSA, 1977). Additionally, Section 276A (3) of the Criminal Procedure Act 1977 makes provision for a sentenced offender to be referred to the court for conversion of the sentence into correctional supervision provided that:

- (a) at least one-quarter of the sentence has been served; and
- (b) the remainder of the effective sentence is not more than 5 years.

There is also provision for conditional or unconditional postponement or suspension of sentence and caution or reprimand, or committal to a treatment centre, or a court may award compensation where the offence caused damage to or loss of property. This is extensively covered in Sections 296/297/300 of the Criminal Procedure Act 1997 (cf. RSA, 1997). In 1993 the Department of Correctional Services introduced amended legislation by establishing several decentralised parole board systems with the primary objective of considering the placement of offenders on correctional supervision. Due to continuous criticism levelled against the department that it was not transparent in its administration of parole and that it was in contradiction to the Constitution, the then Minister of DOJ & CD, Minister Penuel Maduna requested the National Advisory Council to review the release policy during 1994.

Acting on the National Advisory Council the new parole system in South Africa was introduced into legislation in the Correctional Services Act, 111 of 1998 on the 18th of November 1998. Chapter 8 of the Correctional Services Act (CSA), which deals with the “Release from Correctional Centre and placement under correctional supervision and on parole and day parole”, came into operation on the 1st October 2004. Chapter 8 of the Correctional Services Act 1998 (RSA, 1998) provides for the minimum detention periods that offenders need to serve before being considered for possible placement into the system of correctional supervision. The establishment and functions of the Correctional Supervision and Parole Boards as well as the Correctional Supervision and Parole Review Boards and medical parole are covered in the Correctional Services Act (RSA, 1998). Furthermore, in terms of the above legislation, members from the community and other role players such as the Department of Justice and the South African Police Services (SAPS) were included in the decision-making process when offenders are considered for placement on non-custodial sentencing. Chapter 8 of the Correctional Services Act 1998 makes provision for victim(s) of crime and their relatives to make a written submission to the Correctional Supervision and Parole Boards or to attend meetings of the Boards (RSA, 1998) also for the purpose of participating in the consideration of an offender for placement on parole or non-custodial sentencing. The Correctional Services Act 1998 also provides clarity about the parole system, the management and detention of remand detainees (RDs) (Roux-Kemp, 2013). What is relevant in the Correctional Services Act 1998 are the procedures that are aimed at ensuring safety and security of inmates, officials and

the public, as well as the rights to dignity, privacy and safe detention, which may be compromised if the correctional facilities are overcrowded (DCS, 1998).

The Criminal Law Amendment Act 105 of 1997 (RSA, 1997) provides for minimum sentences of imprisonment, including minimum sentencing guidelines. This mandatory sentencing also provides a clause that allows for judicial discretion, wherein a court may impose a lesser sentence in a case in which “substantial and compelling circumstances exist, that justify the imposition of a lesser sentence (RSA, 1997). The Criminal Law Amendment Act 1997 introduces the Mandatory Minimum Sentencing Guidelines which were said to be a temporary measure, yet they have been renewed on a continuous basis since their introduction in 1998. Since their introduction, there has been a wide range of responses about the impact of the Minimum Sentencing Guidelines. It has made a substantial contribution to the sentenced prison population while the impact was not visible with immediate effect, Judge Fagan in Nzimande, (2012) expressed his view that the effect of the Act has been to greatly increase the number of offenders serving long as well as life sentences in the correctional facilities.

3.4.1. Legal safeguards of non-custodial measures

The principles of legality and the protection of basic human rights are enshrined in our Constitution. It is therefore crucial for the state to consider the legality of their actions whenever they interfere with an individual's freedom. This implies that non-custodial measures are governed by legal prescripts and, as such, must be regulated accordingly. So, as alluded to above, the basic principles are to ensure that the nature and gravity of the offence warrants punitive measures, and to consider what measures are to be meted out, the background of the offender, the purpose of sentencing and the rights of the victim (UNHCHR and IBA, 2003). Adherence to and application of these principles would have made South Africa a better place, but instead, South Africa's penal system is in crisis. The crisis is characterised by multiple blockages, which are detrimental to the implementation of a just criminal system in the country (Shaw, 1997).

3.4.2. The role of judges, prosecutors and lawyers in choosing non-custodial measures

The discussion thus far has alluded to the fundamental principles governing non-custodial measures. Some of these principles include fairness, objectivity, rationality and impartiality. Judges, lawyers and prosecutors must seek alternative forms of sanction other than

imprisonment, where possible. This study argues that given the proximity between the judges, prosecutors, detectives and lawyers, amicable solutions to the issues of crime and appropriate sanctions can be found.

3.5. Factors Affecting the Successful Implementation of Non-Custodial Sentencing in South Africa

Non-custodial sentencing is defined as a measure through which a decision is made by a competent authority to submit a person suspected of, accused or sentenced for an offence to certain conditions and obligations that do not include imprisonment. Such decision can be made at any stage of the administration of criminal justice (UNHCHRC and IBA, 2003). The implementation of non-custodial sentencing pre-trial as well as during the trial is the prerogative of the courts of trial. Implementation of non-custodial sentencing post-trial is the prerogative of the National Commissioner of Correctional Services through the functionaries delegated to do so in terms of the policies of the correctional services, including the Correctional Services Act (RSA, 1998) as well as the Criminal Procedure Act (RSA, 1977).

As much as it has already been indicated that non-custodial sentencing has been in the statute books for decades in South Africa, its implementation has proven to be a very slow and poor process as evidenced partly by the visible overcrowding in correctional facilities. This challenge has also persisted despite the courts having prerogatives on the sentences that they need to impose, considering the restoration of relationships in the communities as well as the reintegration of offenders into the society. The DCS also, as provided for by its policies as well as the Criminal Procedure Act, has a responsibility for the implementation of non-custodial sentencing. Yet despite all these provisions, the South African correctional facilities continue to overflow and thus face all the challenges that are caused by the overcrowding. One can also never underestimate the role of the community in the successful implementation of non-custodial sentencing as communities also have a say in this regard. Therefore, it is imperative for the study to look at the factors impeding the implementation of non-custodial sentencing by the courts and the DCS, as well as the role of the community in terms of non-custodial sentencing.

3.5.1. Factors impeding the courts' implementation of non-custodial sentencing

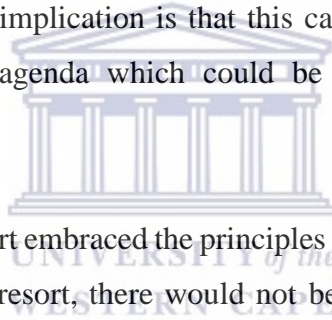
The courts of law have a prerogative when it comes to taking a decision on the imposition of either a custodial or non-custodial sentence on the offender. There is an understanding that while exercising that prerogative the courts need to take into account a number of factors before making a decision in this regard. These include considering the nature and the gravity of the offence, the personality of the offender, the protection of the community, the avoidance of the unnecessary use of imprisonment as well as the rights of the victims. The imposition of non-custodial sentencing is, therefore, subject to review by a judicial or other competent independent authority upon application by either the offender or the victim for the purpose of safeguarding arbitrary decisions. This limits the discretion of the trial courts due to the supervisory power that the appellate court has over the trial courts, as it can overturn the sentence imposed by the trial court. This is compounded by the use of a mandatory minimum sentencing regime, which is applicable to serious crimes including murder, rape, and drug dealing, to mention a few. This mandatory minimum sentencing regime is based on the recommendations made by the committee that was established by the then Minister of Justice before 2000.

In 2000 another committee to review the country's sentencing regime was established. It completed its work and made proposals including the establishment of a Sentencing Council, which was tasked with developing and reviewing sentencing guidelines. Currently, in 2018, the South African Parliament is yet to take up this matter. This calls into question the transformation of the South African Public Service, particularly the DOJ & CD, which is the focus of this study. This matter has been raised by Naidoo (2005: 266), who observes that:

“[T]he DOJ & CD has to deal with the difficult issues of transformation of South Africa's prosecutorial services, the magistrates and judges' fraternity and the introduction of the legislation to ensure that the country's legal systems are in line with the Constitution”.

Naidoo (2005) further stipulates that the department that controlled at least R1.6 billion at the time, has to transform itself into a legitimate, accessible, accountable and effective state department, whilst at the same time striving to reduce crime levels and enhance stability and security. Several scholars have confirmed that the incarceration of offenders has not necessarily

proven to be a deterrent to crime. Why then is the minimum sentencing regime still based only on custodial sentences? Hopkins (2018) further asks: “Why does government not focus more on keeping people out of prison – a more cost-effective approach?” Hopkins’ (2018) article is based on interviews she conducted with several ex-offenders who confirmed that incarceration did not deter them from committing crime. Rather, it connected them to a life of crime even more so than before their initial incarceration (Hopkins, 2018). Sonke Gender Justice (undated) refers to a case in 2008 where a magistrate sentenced a man to nine months’ imprisonment for stealing seven chickens that were valued at R200. The matter was appealed and the appellate court decided that the sentence did not match the crime committed and imposed a fine, stating that, “unless presiding officers become innovative and proactive in opting for alternative sentences to direct imprisonment, we will not be able to solve the problem of overcrowding in our prisons” (Sonke Gender Justice, n.d.: online). Sonke Gender Justice then reminds that ten years later the judicial officers have not yet answered this call and imprisonment remains the sentence of choice (cf. Sonke Gender Justice, n.d.: online). Why is there a disjuncture within the DOJ & CD leadership? The implication is that this can only happen if leaders have not embraced the transformational agenda which could be effective in transforming public services.



This study argues that had the court embraced the principles of non-custodial sentencing, which calls for imprisonment as a last resort, there would not be a need for the appellate court to overturn the sentence. This also brings into sharp focus the transactional and transformational approaches which embody visionary and innovative qualities where the vision of the organisation and communication thereof is key to creating a corporate culture in line with the vision of the organisation. Based on the examples discussed above, this does not seem to be the case in the DOJ & CD. This study, consequently, looks at the management of the courts and the challenges they face in terms of applying the non-custodial sentencing.

3.5.2. Factors impeding the DCS’s implementation of non-custodial sentencing

In the preceding section it was indicated that the National Commissioner of Correctional Services has a responsibility to implement non-custodial sentencing through the functionaries delegated to do so in terms of the relevant policies and legislation. This, therefore, makes the DCS equally responsible for the implementation of non-custodial sentencing post-trial. However, several factors and challenges impede the successful implementation of non-

custodial sentencing by the DCS. Furthermore, the Minister of DCS, Minister Masutha (cited in DCS, 2018:9) has agreed that,

“[T]he DCS will focus [in 2017/2018] on protecting society by detaining inmates in safe, secure and humane centres and remand detention facilities, correcting offending behaviour by providing sentenced offenders with needs-based rehabilitation programmes and interventions and reintegrating offenders into community as law-abiding citizens and effectively managing non-custodial sentences and parole”.

This is in line with Outcome 3 of the Government Priorities 2014-2019 (all people in South Africa are and feel safe) Medium Term Strategic Framework. This is also informed by Chapter 12 of the National Development Plan (NDP): Vision 2030 – building safer communities (DCS, 2018). Looking at the current totals of the offender population as well as the circumstances in the South African correctional facilities, one begins to question the leadership’s commitment in terms of the implementation and the reinforcement of the above statements. One further question the level of transformation of the organisation, particularly because many respondents mentioned that they are not involved in important decision-making. For example, the strategy for the department is finalised at the national office and the managers are expected to align their performance plan and implement the deliverables for each financial year (cf. chapters 5 and 6). During court proceedings it is clear that the improvement of conditions in, for example Pollsmoor’s RDF, necessitates and involves meaningful engagement with other role-players within the criminal justice system. However, the Minister of DOJ & CD and the DCS has not indicated how he or his department will initiate this process which includes critical role-players like the DCS, the DOJ & CD and the NPA (Saldanha, 2017).

Northouse (2007, cited in Mashologu, 2015) alludes to the use of transformational leadership to create something new from something old by challenging and transforming an individual’s emotions, values, ethics, standards, and long-term goals through the process of charismatic and visionary leadership. This again becomes a concern when one realises that overcrowding in correctional facilities is a challenge that has been continuing for over a decade. Leaders who are transformed believe in delegating responsibilities and getting the employees to be involved in the important decisions, also showing confidence in their ability to make the right decisions (Popa, 2012). To achieve the above, leaders are expected to continually remind their

subordinates of the mission and vision of their organisation so that they can internalise it. However, this does not seem to be the case in the DCS.

3.5.3. The role of the community in the implementation of non-custodial sentencing

Section 75(4) of the Correctional Service Act (RSA, 1998) as well as Section 299 of the Criminal Procedure Act (RSA, 1977) make provision for the victims of crime, the offended as well as the society to have a say in the consideration of the placement on parole of the incarcerated offender (non-custodial sentencing by the DCS). The policy gives an opportunity to the community members as well as the victims of crime to take part in the decisions made by both the courts and the DCS when non-custodial sentencing is implemented. It also makes provision for them to have opportunities to appeal the decisions made by these bodies through the Parole Review Boards as well as the courts of law when it comes to the implementation of non-custodial sentencing. This implies that that non-custodial sentencing is therefore not supposed to be implemented without considering the opinions of the affected parties. A major contradiction, which has been noted by scholars, the requirement for an offender to have an offer of employment before being afforded parole status, while at the same time the very requirement of possible employers, including government departments, tend to be reluctant to employ people who have criminal records. Many employers demand a declaration of previous convictions even on their job application forms, including the Z83 public service employment form (DPSA, 2007).

There is agreement in the literature that the cardinal principle of good parole work, or of any effective care of prisoners after release, is the preparation of the environment into which they will go. This involves their relations with their family, with prospective employers as well as with their former associates (Louw, 2008). The literature has also shown that positive support from communities and families towards ex-offenders is critical for the successful re-integration of offenders. In the context of sentenced offenders, the policy of the DCS requires that before an offender is released on parole, a verifiable address and consent from the occupants of the address that the offender will reside at that address, is obtained. If a family member is not comfortable housing an ex-offender due to either stigma, or broken relationship through length of stay in the correctional system, an offender's release may be delayed. In addition, the general communities are not always very trusting and at times may be hostile to returning offenders. This therefore places a responsibility on the managers of the DCS to create platforms with

community forums where the issues and benefits of non-custodial sentencing are discussed (NICRO, 2018).

The readiness of the community to receive and accept the offender back can be determined by considering factors such as family attitude or support system, employment opportunities, type of environment and community bias or stigmatisation. These can be a hindrance to the successful implementation of non-custodial sentencing by the DCS as some community members are opposed to offenders being released before their sentences expire, as well as some who are of the view that the offender's place is behind bars. It has also been argued that preparation of both the community to accept the offender and the offender to be prepared for re-integration need to begin immediately after the offender is admitted to the correctional facility. However, this has been a challenge as communities are usually informed of the imminent release of an offender when his/her time is due, thus springing a surprise on the community or victim who thought that the maximum sentence handed down in court would be served (NICRO, 2018). The implication is that the Parole Board and correctional officers do not prepare the community (adequately), nor do they educate the community about processes of incarceration.

3.6. Chapter Summary

This chapter discussed the implementation, or lack thereof, of non-custodial sentencing in South Africa. The chapter also outlined the relevant policies and legislative framework governing non-custodial measures, which at the core, advocate the protection of human rights of both the offender and the community.

CHAPTER 4: METHODOLOGY

4.1. Introduction

This chapter describes the methodology used to conduct the research. This includes the research design, sampling strategy, population, and data analysis. The chapter also discusses the reliability and validity of data collection techniques, as well as the ethical considerations of the study.

4.2. Research Design

Punch (2005:63) argues that research design situates the researcher in the empirical world, and connect the research questions to data, in this interpretation research design is the basic plan for a piece of research and include four main ideas which are the strategy, the conceptual framework, who what to be studied and procedures to be used for collecting and analysing information. Babbie and Mouton (2009) argue that research design tries to answer the question: what kind of data is required to address the research question adequately? To answer the main research question, qualitative data is needed. Therefore, this research is qualitative in nature and adopts a descriptive and interpretative approach. Qualitative research is based on distinct methodological traditions of inquiry that explore a social or human problem (Creswell, 1998). Qualitative research provides a means of understanding the ways in which people interpret events. Stringer (2004) identifies interpretation and understanding as the major contributory factor in everyday social life. This study, due to its qualitative nature, explores and examines how participants perceive the role of leadership and managers in the implementation of non-custodial sentencing. The study also describes how participants view the impact of effective leadership in the implementation of non-custodial sentencing and what benefits or challenges are derived from the (slow) implementation of non-custodial sentencing.

4.3. Sampling

Sampling is defined as “a technical accounting devise to rationalise the collection of information, to choose in an appropriate way the restricted set of objects, person events and so forth” (Bless and Smith, 2000:83). This study has a sample size of 15 participants. The

participants hold various positions in the Goodwood Management Area, Allandale Management Area, Pollsmoor Management Area, the DCS as well as the NPA. As these individuals are members of the security cluster, the researcher had to submit an application to the DOJ & CD and the DCS to conduct the research study. This application was approved with the advice that, since this is a security cluster, the department had to notify the regional (Western Cape) DOJ & CD and the DCS contact person. That person was the researcher's contact and has helped to gain access to the identified participants. The researcher had a permission letter and approval documents which the researcher had to have always whilst conducting interviews (cf. Appendix B).

Research participants were selected through purposive (deliberate) sampling, which entails the researcher using his/her knowledge of the sample population to identify research participants who meet the selective criteria (Bryman, 2012). The main selection criteria for this study were:

- i. participants must work for the DOJ & CD and the DCS;
- ii. participants must be members of the identified selected area of study;
- iii. participants must be decision-makers in their field;
- iv. participants must be responsible for the day-to-day running of the organisation;
and
- v. participants must be responsible for policy making.

Using these criteria, the participants selected and interviewed included Magistrates, Deputy Directors-General, Directors, Assistant Directors and Managers of Parole and Correctional Centres who are responsible for policy articulation and implementation. Deputy Directors-General and Directors are tasked with articulating the departmental policies, strategies and visions. They form part of the administrative leadership and thus are accountable to both the political leadership and operational management below them. Because of their proximity to the political leadership, they are tasked with providing insight into the strategic intent of the government. In the context of this study, they also tasked to communicate the organisational goals, develop implementable strategies and monitor the implementation of those strategies. Operational leaders on the other hand are Managers who are tasked with the implementation of policies.. It is therefore imperative that the operational managers know what the executive's leadership expect of them, and they should be able to internalise the policies they are expected to implement. In the context of the study, the impact of implementing non-custodial sentencing

and the aggravating factors that result in slow implementation of the policy should be communicated at all times to the followers.

4.3.1. Sample demographic

The sample consists of 11 male and 4 female participants. The participants' ages range from 32 to 61 years. The amount of time they have worked within the institution ranged from 10-25 years. Table 4.1 below denotes the sample's biographical information. The table offers a summary of the participants' personal characteristics. It is important to note that pseudonyms are used in this study to protect the identities of the participants. Post/grade levels or official titles are not used as the use of these makes individuals more easily identifiable. It is also important to note that the gender, sex and age of the participants remain unchanged.

Table 4.1: Participants' biographical information

<i>Pseudonym</i>	Management area	Sex	Age	Portfolio	Highest qualification	Years of service
<i>Hendrina</i>	Allandale	Female	48	Senior Manager	Degree	30years
<i>Erica</i>	Allandale	Male	52	Senior Manager	Grade 12	10years
<i>Tabita</i>	Allandale	Male	58	Senior Manager	Degree	25years
<i>Yvonne</i>	Allandale	Female	43	Senior Manager	Diploma	15years
<i>Della</i>	Allandale	Male	50	Senior Manager	Diploma	12years
<i>Khunjo</i>	Tokai	Male	43	Senior Manager	Degree	15years
<i>Ntate</i>	Tokai	Male	47	Senior manger	Public Admin	18years
<i>Bosman</i>	Tokai	Male	58	Senior Manager	Public Admin	25years
<i>Lunga</i>	Tokai	Female	43	Senior Manager	BTech	12 years
<i>Mavis</i>	Goodwood	female	61	Senior Manager	BEd	25years
<i>Siyo</i>	Paarl	Male	47	Senior Manager	Public Admin	15years
<i>Lena</i>	Paarl	Female	41	Senior Manager	Diploma	12years
<i>Temba</i>	Paarl	Male	47	Senior Manager	Diploma	16years
<i>Karl</i>	Goodwood	Male	55	Senior Manager	Degree	15years
<i>Sethu</i>	Goodwood	Female	45	Senior Manager	LLB	22years

4.4. Data Collection Techniques

Data collection is the precise, systematic gathering of information, which is necessary for answering the research question (Johnson and Christensen, 2004; Bryman, 2012). Creswell (2009:179) states that data in qualitative research tends to be collected in the field at the site

where participants go through the event under study. Information is gathered by directly engaging the people on the ground, experiencing their daily activities (Creswell, 2009). According to Punch (2005:168) several types of research techniques can be used in a qualitative project. These include interviews, observations, participant observation and documents. The research technique used in this study is the individual, face-to-face interview.

Prior to the interview, each of the participants was given a consent letter requesting his/her participation in the study. Included in the consent letter was the purpose of the research, the confidentiality and anonymity clause, and the right to withdraw at any given stage of the interview. The date of each interview was negotiated directly with the participants. As the study was qualitative in nature, the participants could share their views relatively unconstrained by the researcher's perspectives (Creswell, 2003:197). The interviews were semi-structured, that is, the researcher prepared and posed a set of questions during the interviews. Responses were then followed up through the use of probing questions, some of which were not prepared before the interview. It must be noted that individual participants were asked which language they preferred the interview be conducted in. That was done to guard against compromising the data, assuming that participants understood the language, yet they were not comfortable with it. Having confirmed the preferred language with the participants, the interviews were conducted in English as all the participants chose English as their preferred language.

4.5. Data Analysis

The process of data analysis takes many different forms depending upon the nature of the research in question (Bless et al., 1998:163). Creswell (1994) describes the process of data analysis as eclectic, meaning that there is no 'right way' to analyse data. It is a systematic process that can be managed in various ways. Qualitative data analysis varies widely because of research purposes, data collection strategies and modes of qualitative inquiry (Punch, 2005). While acknowledging the variety and different ways of analysing data this study has adopted Miles and Huberman's (1994) interactive model to reduce, organise and represent the interview data (Punch, 2005). Furthermore, Miles and Huberman (1994 cited in Punch, 2005:198) posit that data analysis is "directed at tracing out lawful and stable relationship among social phenomena" and labels these sequences according to data reduction, data display and drawing and verifying conclusions as noted above. Figure 4.1 represents Miles and Huberman's (1994) model.

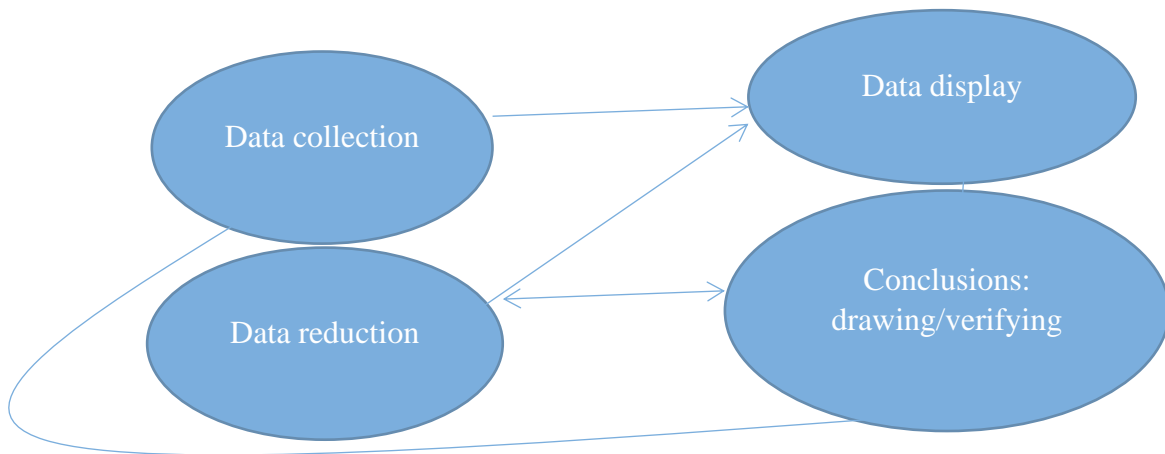


Figure 4.1: Components of data analysis: interactive model (Source: Miles and Huberman, 1994 in Punch 2005:198)

4.5.1. Data reduction

This is a continual process of selecting, focusing, simplifying and transforming the data. In the early stages, it involves editing, segmenting and summarising the data. During the middle stages it deals with coding and memoing and associated activities and grouping them into themes, clusters and patterns (Punch, 2005). Coding is the process of putting tags, names or labels against pieces of the data. According to Punch (2005:199), “[t]hese are especially valuable in getting the analysis started and enabling the researcher to get a feel for the data”. Memoing is the process of writing up ideas, about codes and their relationship as they evolve while coding. During the development of propositions, integration is engineered into a meaningful and coherent picture of the data. By adopting Miles and Huberman’s (1994) model, the process of the qualitative research is abstracting in that the researcher abstracts concepts, integrates and summarises them into more levels of concrete data (Punch, 2005). The steps are summarised as follows:

- The researcher listens carefully to all the recordings and reads through all the transactions to obtain a holistic view of the data, while noting down some pertinent data as they come to mind.
- Certain raw material is selected to identify the underlying meaning in the information and jots down thoughts in the page margin.

- The researcher lists all the similar themes by clustering them together and then arranges them into columns.
- The researcher then goes back to the data as a way of organising the information by abbreviating the themes into codes. These codes are then written next to the appropriate segments in the text to identify new themes.
- The researcher selects descriptive wording for the themes and turns this into categories.
- These categories are then abbreviated and placed into an alphabetical order.
- Related data is assembled, and the preliminary analysis is performed.
- Should it be necessary, the data may be re-coded.

4.5.2. Data display

This is the stage in which the reduced data is displayed in an organised, compressed way, so that conclusions can be drawn.

4.5.3. Drawing and verifying conclusions

This process involves drawing propositions and verifying the conclusions that have been drawn. Put differently, this is the process of assigning meaning to the data. As argued by Braun and Clarke (2006), meaning is established when themes become categories for analysis. This enables the researcher to identify, analyse and report the emerging themes and patterns in the study. In terms of generating meaning, the researcher immerses him- or herself in the data at the beginning of the process of identifying themes and the relationship between themes to be able to identify sub-themes.

In this study, coding analysis was used to allow the researcher to identify, analyse and report the emerging themes and patterns in the study. Subsequently the emerging themes were grouped into the following sub-themes: (a) communication strategy; (b) social context theme; and (c) the cultural context and the study research questions.

The first five research questions were: (i) What is the mission statement of the DOJ & CD and the DCS? (ii) What are the values of the DOJ & CD and the DCS? (iii) Do you understand the mission of the organisation? (iv) In your own view, do you think the mission of the organisation is understood by the fellow colleagues at all levels? and (v) Are there any programmes or forums created by management to communicate the mission of the organisation? The focus of these questions was mainly to establish why people do what they do and how leaders

communicate the vision and the goals of the organisation. The questions were asked with the hope of gaining insight into the work conducted by the DOJ & CD and the DCS officials about the application of non-custodial sentencing.

The three processes outlined in this section are interactive and interwoven and occur throughout the data analysis process.

4.6. Trustworthiness of the Research Findings

Punch (2005) argues that any measuring instrument in the literature must be assessed for quality purposes. Furthermore, Punch (2005:95) asks:

“[I]f we find a measuring instrument in the literature, how do we assess its quality for use in the research? Similarly, if we are developing our own measuring instrument what quality should we try to build into it? For both questions reliability and validity emerges as two main criteria of measurement”.

Punch (2005) further states that all measures have some unreliability and if the same object is measured at different times, it will not produce the same result. Despite these on-going debates, several frameworks have been developed to ensure rigour in qualitative work (Shenton, 2004). There are several possible strategies and criteria that can be used to enhance the trustworthiness of quality research. Lincoln and Guba (1985) advances four criteria, which are parallel to those put forward for proponents of positivism. These are: (a) credibility, which parallels internal validity; (b) transferability, which parallels external validity; (c) dependability, which parallels reliability; and (d) conformability, which parallels objectivity (Bryman, 2012; Shenton, 2004). The primary impact of these on the methodological and analytical approaches adopted in this research is wide ranging. The observations made above impacted the choice of research methods, sampling methods and data collections used in this research. They impacted the overall design of the research, particularly in the form of triangulation and the use of follow-up interviews. These are done to ensure that the findings accurately reflect the reality on the ground and to ensure that the findings have not been tainted by the researcher's bias. This in turn helps to ensure that the findings are more credible.

4.6.1. Credibility

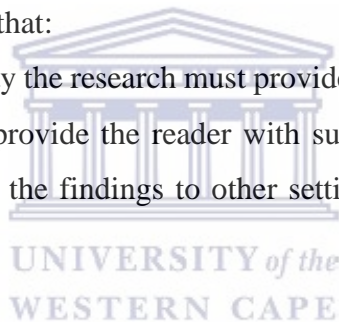
Credibility is defined as the extent to which the data and data analysis are believable and trustworthy (Lincoln and Guba, 1985). Since the meaning that people attach to social content

is relative, it is critical for researchers to check their findings with research participants to ensure the credibility of the study. Constant feedback from the participation and interpretation of the result becomes a key component to ensure the trustworthiness of the result.

4.6.2. Transferability

Transferability refers to the extent to which research findings are generalisable and can be transferred or applied to other situations (Punch, 2005:255). Furthermore, Punch states that the concept of transferability is the one often preferred to generalisability when dealing with qualitative research. Three principles are then considered, which are (a) sampling – is it theoretically diverse enough to warrant transfer to other findings; (b) context – does the thickness of the context pass the test of being transferred to other situation; and (c) abstraction – is the concept in the data analysis sufficient to permit application to other situations (Punch, 2005:156). A thorough and conceptual understanding was sought to ensure that any future replication of the research and application (generalisability) of the research findings was possible. Seale (1999:45) argues that:

“[T]o ensure transferability the research must provide a detailed, rich description of the setting studied, so as to provide the reader with sufficient information to be able to judge the applicability of the findings to other settings that they know” (see chapter three).



4.6.3. Dependability

Dependability is comparable to reliability. Reliability is the probability that similar results could be produced or attained if the enquiries were to be replicated (Punch, 2005). Reliability is also defined as:

“[T]he extent to which results are consistent over time and an accurate representation of the total populations under study is referred to as reliable if the result of a study can be re-produced under a similar methodology, then the research instrument is considered to be reliable” (Joppe, 2000:1).

Additionally, Punch (2005:95) contends that reliability is a central concept in measurement and basically means consistency. This means that, the instrument consistently measures what it is intended to measure, because it is important that any research tool provides the same

information if used by different people. However, to achieve reliability in qualitative research is practically impossible, as human behaviour is not static and the study is constructed through the eyes of the researcher and participants. Punch (2005:252) furthermore noted that the relevance of qualitative data should be ensured, suggesting ways of ensuring that the data collected over time is stable. Firstly, if multiple sources are used, they need to be internally consistent, implying that the researcher must explain the assumptions of the theory behind the study (see chapter 2). Secondly, the researcher should use multiple methods of data collection analysis (triangulation), and explain in detail how data was collected to allow for an audit trail if necessary. In this study, interview transcripts were read multiple times to ensure that all data had been coded. These codes were then grouped under categories which informed the themes. Furthermore, the tentative interpretation was taken back to the participants to check if they were plausible. Finally, the researcher's biases and worldview were clarified from the outset of the study (cf. chapters 1 and 2).

4.6.4. Confirmability

Confirmability is defined as the qualitative researcher's concern of objectivity (Shenton, 2004). This researcher has explained in detail how the process and procedures of the interviews unfolded (see above). Furthermore, regular interaction with the research supervisor served as a check and balance against the researcher's own biases. As alluded to above, the researcher's interpretation of the tentative findings was shared with the participants to determine the objectivity.

4.7. Ethical Considerations

Research ethics is paramount in any research study and should be considered by all researchers. Punch (2005:276) defines ethics as "codes of ethical and professional conduct for research put out by various social sciences organisations". Punch (2005) further argues that while ethical issues occur in both quantitative and qualitative approaches, they are more likely to occur in qualitative approaches, implying that these broadly accepted rules of conduct should be adhered to at all times by the researches. According to Bless et al. (1998:141) "the most basic principle of research is that participants should not be harmed by participating in the research". This means that the researcher must guard against any risk or harm to the participants. This study adhered to the following ethical measures as illustrated by Bless et al (1998:142-143):

application to an institution to conduct research, informed consent, recording, anonymity and confidentiality.

4.7.1. Informed consent

The researcher is obliged to inform the participants about the purpose of the research, and that they have a right to decline to participate should they so wish. Once the participants are clear about the purpose of the study and how the information they provide will be stored and used, participants will be asked to sign an informed consent form (Bless et al., 1998). Prior to the interviews conducted in this research, participants were given a brief explanation of the procedures to be followed during the interview process.

4.7.2. Anonymity and confidentiality

The principle of anonymity is linked with that of confidentiality. With respect to this research, this meant the safeguarding of the participants' identities and information obtained from the participants (Bless et al., 1998:143). The use of an audio recording device was discussed with the participants, as well as the issues of anonymity and confidentiality. Participants were assured that the information they shared during the interview would be kept confidential. Participants were informed that information received from the interview would be accessed by the researcher and the research supervisor as well as the relevant persons in their institution. They were also informed that in order to protect their names, pseudonyms would be used. Participants were informed that there would be no direct benefit to participation in this study, although their participation may contribute positively in the present study and further enquiry by other researchers. They were re-assured that the information would be kept under lock and key for the next five years, at which point all audio recordings and transcripts would be destroyed.

4.7.3 Voluntary participation and privacy

No one should be coerced to participate in a research study; participation should, at all-times, be on a voluntary basis (Robin and Babbie, 2005 cited in De Vos et al., 2011). In the case of this study, written consent was obtained from all participants. They were advised that in the event of them not being comfortable with any question, they were at liberty not to answer such a question. Participants were also informed that they could withdraw from their participation in the research at any point, should they wish to do so. To ensure privacy, interviews were

conducted on an individual basis, in a private office where no one could listen in on what was being said. This is in line with the following definition of privacy: “that which is not normally intended for others to see and analyse” (De Vos, 2011). In addition to the above, and to ensure no harm to participants, the researcher wrote to the DCS to obtain permission to conduct research in selected correctional facilities, as well as to interview selected participants.

4.8. Chapter Summary

This chapter outlined the process followed to fulfil the aims of this qualitative research project. Individual face-to-face interviews were conducted with 15 participants – 11 males and 4 females. The interviews were semi-structured. The sample was selected through purposive sampling. To analyse the interviews, Miles and Huberman’s (1994) model was adopted. The chapter concluded with a discussion of several methodological considerations, namely the use of triangulation and member checking to improve the credibility and transferability of the research findings. Member checking is necessary because, as Punch (2005) posits, there are different questions to be addressed and different versions of social reality that need to be elaborated on. The next chapter examines the research findings.



CHAPTER 5: RESEARCH FINDINGS

5.1. Introduction

This chapter presents the findings of the interviews conducted with the selected group. The discussions in this chapter are presented against the backdrop of the components of integrated transactional-transformational leadership approaches. Coding, as outlined in Miles and Huberman's (1994) model, was used to identify themes contained in research participants' responses to interview questions. The findings are discussed in a narrative descriptive format and are supported by appropriate quotations derived from the verbatim responses of the participants. This chapter is divided into two sections. The first section presents the responses from the middle level management and are based on the use of face-to-face scheduled interviews. The middle management are at the coal face of the implementation of non-custodial sentencing. They are the ones who represent the DOJ & CD and the DCS in case flow forums, where issues of overcrowding are discussed. They are also the ones who interact with the courts and magistrates in determining the appropriate sentences to be given to offenders.

The second section of this chapter presents the responses from the leadership across the departments responsible for the implementation of non-custodial sentencing. This group consists of senior members like Directors General and Deputy Directors General, who advise the political leadership. These leaders assist in drafting the policies and as such can ascertain whether as leaders, they have been able to influence the attitudes of the managers who are tasked with overseeing the smooth implementation of the policies governing non-custodial sentencing. A predetermined set of questions was used to probe their insights and experiences with respect to the implementation of non-custodial sentencing.

5.2. Presentation of Data

The data presented in this chapter is derived from the two individual semi-structured interviews conducted with both the senior leaders and the managers within the DJ & CD & DCS. It is important to note that a key distinction is made in this research between management and leadership. Management refers to operational leaders who are tasked with policy implementation, while Executive leadership refers to individuals who are employed by the organisation to oversee the business of fulfilling the organisational goals, provide strategic and

operational direction to the organisation, set goals, develop strategies and monitor the execution of such strategies. These executives' leaders are responsible for articulating the vision and mission of the department as well as being responsible for communicating the vision to the operational management. They are the ones who assisted with the formulation of the policies related to non-custodial sentencing as well as the crafting of the organisational annual performance plans where overcrowding is one of the key performance indicators.

Table 5.1: Identified themes guided by the research questions

Interview Questions	Theme 1: Communication: leadership style, and leadership culture
1. What is the mission statement of the DOJ & CD and the DCS?	
2. What are the values of DOJ & CD and the DCS?	
3. Do you understand the mission of the organisation?	
4. In your own view, do you think the mission is understood by your fellow colleagues?	
5. Are there any programmes or forums created by management to communicate the mission of the organisation?	
6. What is your understanding of the overcrowding in the DCS?	Contextualisation / Create a powerful coalition
7. What do you think are the causes of overcrowding in the DCS?	
8. Are you aware of any complications that occur in the DCS as a result of overcrowding?	
9. What is your role or contribution in managing overcrowding?	Competency issues/ Support theme
10. What are the tools at your disposal for managing overcrowding?	
11. Are you aware of any strategies that exist for managing overcrowding in the DCS?	
12. What do you think needs to be done to manage overcrowding in the DCS?	
13. Do you think that there are any persons or organisations who could play a role in reducing overcrowding in the DCS?	
14. Is there anything you think that could be done to improve the management of overcrowding in the DCS?	

5.3. Overarching Themes

This section provides an overview of the responses from the participants with reference to all the key issues.

5.3.1. Theme 1: Communication

This theme was generated from questions 1 to 5, which probed the communication strategies of the DOJ & CD and the DCS. The emphasis was on downwards and upwards (vertical) communication. The questions were: Is there a clear communication strategy for the department? How was it developed? Was the strategy implemented? Did the staff understand the strategy? Did the staff buy into the strategy? Did the staff believe in the values communicated? Did the staff believe in the values espoused by the management of the department? These questions were probing responses to gauge the degree to which the organisational leadership had or lacked the qualities envisaged in the transformational paradigm. Below are the verbatim interview responses from the participants.

Table 5.2: Extract of individual interview responses to question 1

Research question 1: What is the mission statement of the DOJ & CD and the DCS?

Participant	Verbatim extract
Hendrina	“That is the question that I had a long time ago – can I pass that one?” When the same participant was asked about the vision of the organisation the reply was, “Can I come back to the question of value? It is on my wall.”
Erica	Laughing ... “Ensure that the people are safe.” On the second question of value, the answer was a long sigh. “Mm—rehabilitation—this stuff we overlooked. I will come back to you on this one.”
Tabita	“Mmm ... I am blank, but I think Ubuntu, development and respect.” When asked further if she understands the mission of her organisation, “Yes I understand the mission of the organisation, but will come back on this one.”
Yvonne	Long pause ... “Let me check, my documents, but it is about creating a safer society in line with the Constitution by implementing the decisions of the courts, etc.”
Della	“Mmm ... to make sure that people are kept until they are released.”
Khunjo	“To be the best in the world in rendering service ... please pass this one.”
Ntate	“Improve service delivery.”
Bosman	“... can I come back to you?”
Lunga	“To be the best in the world in rendering corrections.”
Mavis	“I am blank ...I think Ubuntu, development, respect.”
Siyo	“Thriving to offer the best service in the world, that is what I remember.”
Karl	Long pause ... “It changes so many times.”

Sethu Pause ... “Let me check my documents. It is about creating a safer society in line with the Constitution, by implementing the decision of the courts in incarcerating those sentenced by court, etc.”

Summary

The responses from the participants showed a lack of understanding of the Mission statement of their organisation DOJ & CD & DCS despite the Mission statement being visible in their corridors.

Table 5.3: Extract of individual interview responses to question 2

Research question 2: What are the values of the DOJ & CD and the DCS?

Participant	Verbatim extract
Hendrina	“Ubuntu, that I am sure, commitment to excellence, integrity.”
Erica	“Safe custody of the offenders,” long pause ... “I will come back to this.”
Tabita	“It is development; I have it on my documents but have forgotten it.”
Yvonne	“Can I come back on this one?”
Della	Long pause ... “This stuff ... mmm, we overlook. Can I come back?”
Khunjo	“South Africa is safe.”
Ntate	“I will come back to the values, because it is on my walls.”
Bosman	“Let me come back to that one.”
Lunga	“Safe custody of offenders.”
Gail	“To keep South Africa safe from criminals.”
Sino	“Eish, I know the values, but they slipped my mind.”
Yaya	“To make South Africa a safe country.”
Karl	“Lol, give me time please. I know, it just slipped my mind.”
Summary the overall responses from the participant’ indicated a disconnect between what is written there as their mission and actual internalization	

Research question 3: Do you understand the mission of the organisation?

A few of the participants answered that they do indeed understand the mission statement of the organisation, with one participant saying, “Yes I do, but it is vague”. This uncertainty was echoed by most of the participants.

Research question 4: Do you understand the values of the organisation?

All participants claimed to understand the values but stated that they had not memorised them. That is, they were not able to recount them word-for-word, but they understood them and were aware of the impact of these values on the way they conduct their activities.

Research question 5: In your own view, do you think the fellow colleagues at all levels understand the mission of the organisation?

In general, most participants felt that not all members understand the mission of the organisation, with one participant remarking that,

“In my view, most of us knew it in the past, but we have forgotten about it, because we are [not] putting much emphasis on it”.

Research question 6: Are there any programmes or forums created by management to communicate the mission of the organisation?

The response to this question was an emphatic ‘no’. Tabita stated that, “There are no such forums”, whilst Ntate equally remarked that, “No, there are not, our division focuses more on other programmes”. A participant from Goodwood Managerial Centre put it this way:

“[W]e only concentrates on reading and knowing these things when we prepare for the interviews, after that we do not care.”

5.3.2. Theme 2: Create a powerful coalition

Each of the participants in the study was asked, “What is your understanding of the overcrowding in DCS?” “What do you think are the causes of overcrowding?” These questions tried to ascertain the understanding of the participants on what caused overcrowding and how they analysed the issues of overcrowding. Below are the extracts of the verbatim responses from the participants.

Table 5.4: Extract of individual interview responses to question 8

Research question 8: What is your understanding of overcrowding?

Participant	Verbatim extract
Hendrina	Hendrina: “It is a big challenge. DCS is at the receiving end of Justice system, also the Saldanha Judgement had impact on crowding.” Mzi: “What is the Saldanha judgement?” Hendrina: “... that prisons must reduce their overcrowding to not more than 150%, which led to Pollsmoor distributing their surplus to other centres.”
Erica	“SAPS not finalising investigation in time ... courts and delivering and finalisation of sentences for example, 10 to 15 days in jail.”
Tabita	“My understanding we took the burden of SAPS in housing un-sentenced prisoners.”
Yvonne	“More offenders are inside because they do not have verified address. Also, you get people sentenced to between 5 to 10 days for petty crimes.”

Della	“Court sending people to jail??? Jail??? For petty crime, like stealing of chocolate! Poverty, gangsters, drug trafficking.”
Khunjo	Khunjo: “It is still a political matter, whether RDs belong to the SAPS or DCS.” Mzi: “What is RD?” Khunjo: “Remand detainees, those prisoners who are still awaiting trial and not sentenced.”
Ntate	“Un-sentenced prisoners sent to DCS while they belong to the police.”

Summary

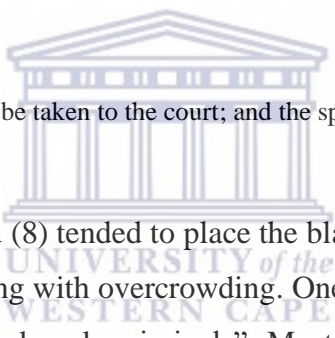
The responses from the participants indicated a department that works in silos, thereby increasing the number of inefficiencies within the DOJ&CD &DCS. The responses also showed a lack of communication between departments. For example one participant blamed SAPS for not properly investigating their cases, and for not having capacity to house those they arrest thus burdening the Correctional services. Another alluded to Courts of law sending people who commit petty crime like stealing chocolate to gaol thus burdening the system. ion: “What do you think are the causes of overcrowding?” Some of those interviewed expressed the opinion that poverty and social issues are the driving factors that influence overcrowding. Poverty and social issues, being problems of crime, are compounded by a justice system that has not adequately implemented non-custodial sentence. As a result, individuals convicted of petty theft, for example, stealing food to feed their families, are sent to prison, contributing to increases in the prison population numbers and consequently, overcrowding. From the response of the participants one could assume that SAPS as part of the security cluster needs to work closely with the DOJ & CD and the DCS in clarifying their role with regard to reducing overcrowding in correctional facilities.

Table 5.5: Extract from individual interviews in response to research question 9

Research question 9: What do you think are the causes of overcrowding in the DCS?

Participant	Verbatim extract
Erica	Erica: “You stole bread and end up in prison—because you cannot afford bail. When you come out you are a hardened criminal [...] Microcosms of society is poverty, broken families, yet these people are sent to prisons, our laws need to be examined.”
Khunjo	“Most people are put in prison because of pending cases, since they do not have a permanent address.”
Ntate	Ntate: “Old facilities built as pillars of apartheid.” Mzi: “What has facility to do with overcrowding?” Ntate: “The way they were built, for example Pollsmoor is limited in terms of rooms, so it can only cater for a limited number of people.”

- Lunga** Lunga: "SAPS arrest to investigate."
 Mzi: "Can you please explain that statement?"
 Lunga: "Most people inside prison are cases pending investigation, and when they go to courts, the detectives just say, for further investigation."
- Mavis** Mavis: "Too many petty crimes in prison, for example a guy found with a 'stompie' is sent to prison because he cannot pay fine."
 Mzi: "What is a 'stompie'?"
 Mavis: "It is a small zol of dagga."
- Siyo** Siyo: "Our prisons are too small; we should build other prisons."
- Karl** Karl: "The democratic dispensation, and our Constitution breeds criminals."
 Mzi: "Please explain that?"
 Karl: "More people are poor, and they tend to steal because there is no job and in prison, we feed them."
 Karl: "Economy in our country ... the manner in which cases are being handled by Justice is very slow."
- Yaya** Yaya: "Laws of the country, as implementers, are to be blamed; they are still emphasizing retribution."
 Mzi: "Can you please clarify your response?"
 Yaya: "Prisons are full of poor people, yet the rich who can afford bail are always sentenced to bail or an alternative sentence. And also, most of our people do not have permanent residency; it is difficult to get bail."
- Sino** Petty case crime should not be taken to the court; and the speeding up of investigation of cases?"



The majority of those interviewed (8) tended to place the blame on factors outside their scope of responsibility in terms of dealing with overcrowding. One participant said, "the democratic dispensation and our Constitution breeds criminals". Most responses refer to poverty, petty crime and the fact that people do not have fixed places of abode, and these issues force people to commit crime and they end up being incarcerated. The implication may be that there are other factors that relate to macro-level structural factors, such as socio-economic and political issues that may relate to specific circumstances, like what they seek to achieve and how they seek to achieve that in the new democratic order. This view may be linked to one participant who referred to a "B order" that was conducted prior to 1994 and lamented that the new managers do not even know what a "B order" is. It is also in line with the perception noted by du Plessis and Louw (2005:438) that there is a view that the Constitution affords more protection to criminals than to a law-abiding citizen.

Table 5.6: Extracts of individual interview responses to question 10

Research question 10: Are you aware of the complication that occurs in the DCS because of overcrowding?

Individual interview responses are listed below:

Participant	Interview Responses
Hendrina	“Inhuman detention of offenders, no beds, health issues, spread of diseases, gangsters escalate, rape, assault because people are fighting for space.”
Yvonne	“People are sodomised and get infected, litigation against the state, overcrowding leads to lice, structure not conducive towards rehabilitation.”
Siyo	“Health issues, frustration occurs, no rehabilitation takes place properly, no proper training, DCS struggles to keep the ratio between officials and offenders.”
Akhona	“Health risks – no space for humane development, hygiene issues.”
Lunga	“Offenders sleep on floors, rape happens, toilets are broken.”
Bosman	“Prisoners are raped, assault cases become common, life of officials at risk due to stabbing by inmates.”
Tabita	“Health issues, managing offenders becomes impossible, not enough budget.”
Sethu	“Litigation against the department with offenders who are raped – overcrowding leads to confusion, security risks – officials being stabbed, the ratio becomes 4:100; four officials to 100 offenders.”
Tabita	“Offenders are treated as objects; the human being is only on white paper. The mindset of the officials is still stuck in the old system of retribution, and they contribute to the attitudes of offenders.”
Della	“Rape cases increased, and the department is sued, health condition deteriorates, no proper rehabilitation of offenders.”

Most respondents (6) referred to rape in correctional facilities as a cause for concern. Others referred to health issues of offenders being compromised as well as the safety aspects of correctional officials who are at the risk of being attacked.

5.3.3. Theme 3: Support a strong leader

The questions were geared to probe the experience of the officials who were responsible for the implementation of non-custodial sentencing and the management of overcrowding in the correctional facilities, to ascertain whether there had been a qualitative change during their time working in correctional facilities, as opposed to working in prisons. Did the staff feel there was enough support to enable them to carry out their functions? Some participants believed that the families should play a larger part in collaborating with the department to ease overcrowding (see table 5.7). The picture presented so far is that families abdicate their responsibility of

parenting and want DCS to parent their children who have erred. The response is captured in the following comment by Karl: “Families also contribute by not wanting members out on bail, they rather want offenders to stay put in prison”. This response shows that the role played by family members including the community, is important in the realisation of the effective non-custodial sentencing.

Table 5.7: Extracts from individual interview responses to question 11

Research question 11: What is your role or contribution in managing overcrowding?

Participant	Verbatim extract
Erica	“I am involved between centres, transferring certain categories of offenders, shifting our problems to other centres? We also encourage the families to pay fines for the offenders.”
Tabita	Tabita: “We have monthly MOTTs where we discuss overcrowding with other stakeholders.” Mzi: “Please explain the word MOTT?” Tabita: “It is a monthly task team with SAPS, Magistrates, Social Department, where we discuss common issues of interest.” Mzi: “Do these meeting yield any positive result in reducing overcrowding?” Tabita: “No, they do not yield much results, as the magistrates feel we are infringing on their turf.”
Karl	Karl: “I request the unit managers to phone the families of those inmates who have fines.” Mzi: “On the scale of 1 to 5, five being the most success, how would you rate your success in encouraging family members to pay fines?” Karl: “Yho, it is difficult. I will give it 2; family members rather want members to stay put in prison so as to learn a lesson.”
Bosman	“My role is to see that prisoners are rehabilitated and after that they are paroled.”
Sethu	“As my position indicates, I make it my habit that those who qualify to be outside are outside.”
Siyo	“We have officials who work in courts and assist the magistrates to sentence offenders outside prison.”
Hendrina	“I conduct facilitating meetings with the families so that they can pay fines, I also confirm the addresses of the offenders so that they can get parole.”

Table 5.8: Extract of individual interview responses to question 12

Research question 12: What are the tools at your disposal for managing overcrowding?

Participant	Verbatim extract
Nico	<p>Nico: “Eight prolonged strategies applicable to courts, with regard to 62f, conversion of sentence, the ROTT, the NOTT 62.1a.”</p> <p>Mzi: “Kindly explain to me these terms?”</p> <p>Nico: “It is a section that provides that an accused shall be placed under the supervision of a probation officer as part of the bail condition. The ROTT is the Regional Overcrowding Task Team, and NOTT is the National Overcrowding Task Team.”</p>
Sethu	<p>Sethu: “Section 2761a at the Court, EM; but the EM has been suspended.”</p> <p>Mzi: “Kindly explain Section 2761a and EM.”</p> <p>Sethu: “EM is an electronic monitoring tool which is attached as conditions to parolees, section 2761a refers to ...”</p>
Hendrina	<p>Hendrina: “As I said before, the transfer is one of the strategies, including Section 62f and 63a which say, “if a head of a prison contemplated in Correctional Service Act, 1998 (Act 111 of 1998) is satisfied that the prison population of a particular prison is reaching such proportion that it constitutes a material or imminent threat to the human dignity, physical health or safety of the accused, the official may write to the court for the release of such prison.”</p> <p>Mzi: “What is your success rate with the court?”</p> <p>Hendrina: “I think the court does not have much confidence in the officials’; the success rate is too little.”</p>
Ntate	<p>“ROTT and MOTT.”</p>
Bosman	<p>Bosman: “Eight-pronged strategy.”</p> <p>Mzi: “Please explain that to me?”</p> <p>Bosman: “It is a policy document for managing overcrowding in the DCS and is taken from the Criminal Procedure Act.”</p>
Karl	<p>Karl: “Section 62f.”</p>
Della	<p>“The ROTT, the MOTT.”</p>

All participants indicated that there are available tools at their disposal for managing overcrowding. However, they also cited their concern about a lack of collaboration amongst the departments and organisations that are supposed to play a role in managing overcrowding in correctional facilities. One participant voiced her frustration by saying, “On a monthly basis we have case flow with stakeholders where we discuss the management of overcrowding, but nothing seems to come of it”. One could see the frustration of the respondent when answering

these questions. Erica's expression sums it all up: "I think the magistrates do not have the confidence in us and they do not trust the particular methods".

5.3.4. Theme 4: Develop an enabling structure

The next set of questions related to the opinions of the participants. This was designed to probe members' thinking abilities, their independence and how they contextualise their current situation.

Table 5.9: Extracts from individual interview responses to question

Research question 13: What do think needs to be done to manage overcrowding in the DCS?

Participant	Verbatim Extract
Erica	"Non-custodial sentencing must be utilised effectively--- how do you keep a boy who stole bread in prison? A mother who stole shoes for her daughter for school, why keep her in prison?"
Tabita	"We need to place the offenders that commit petty crimes outside and allow them to be monitored, we have shared this with top management, but the process is not being speeded up because this is a societal matter that needs collaboration."
Ntate	"The need for diversion programmes, the courts must employ these with NICRO, Social Development."
Khunjo	"Those who qualify to be outside should be outside."
Delia	"The need to have collaboration amongst stakeholders, for an example, churches, the society must be brought in, as mentors to the offenders; this can serve as deterrent."
Bosman	"We need to improve our infrastructure ---integrated team like SAPS, Justice and Social Development must show synergy; at the moment there is no synergy."
Karl	"DCS alone cannot manage overcrowding ---Social Development, SAPS, and opportunity for employment can contribute to stem overcrowding."
Thami	"We need more centres; and we need more resources."
Sethu	"Social Development, or SASSA; maybe they can have a responsibility."

Most respondents (7) cited collaboration with other stakeholders as factors that can contribute to lessening overcrowding. Other participants cited the need for the criminal justice system to make use of available statutory legislation rather than sentencing petty crimes to correctional centres. The issue of communication and the training of members was a concern for some participants, with one participant commenting that,

“I am a worried man, during apartheid we were trained, now there is no formal training, people do not know the ‘B order’ anymore, even the shooting practice we use to undergo has ceased. There is no longer succession planning; even now there is a new Commissioner being appointed. In 1996 we were just told to remove the insignia (ranks); no preparation, nothing.”

When asked to explain the ‘B order’, the reply was that the ‘B order’ is “the policy of the department that regulates all procedures, within the departments, for example behaviour, vigilance, approaches to lock and unlock inmates, etc.”

Table 5.10: Extracts of the interview responses in response to question 14

Research question 14: Do you think there is any person or organisation that can play a role in reducing overcrowding in DCS?

Participant	Verbatim Extract
Hendrina	“Courts should be made to include other structures, for example, street committees, traditional leaders, to explore African ways of dealing with sentencing.”
Erica	“Reporting should be streamlined, while we report on stats, Magistrates and SAPS report differently.”
Tabita	“We are managing, but the poverty of apartheid will linger forever, we are just managing it. I do not think it is permanent solution.”
Erica	“Half-way houses in the communities should be established.”
Yvonne	“DCS alone cannot manage overcrowding, Social Development SAPS need to contribute.”
Bosman	“We need to change our way of thinking and do a bold way of placing offenders out with communities.”
Lunga	“We need to rope in Social Development.”

The participants expressed a desire to broaden the scope of engagement including Social Development, traditional leaders, to mention a few. The argument given was that crime is a societal issue and the offenders are first community members before they are offenders, and in any case, they need to be rehabilitated and taken back to their communities. One participant also mentioned that social beliefs and traditional ways of curbing crime should be re-visited, as,

“[T]he majority of offenders believe in umuthi and they commit crime and go to Sangomas so that they can be protected – I do think if we can get a buy-in from Sangomas to educate the offenders, there will be less crime”.

From the responses one could deduce that there is some agreement that non-custodial sentencing can be a positive approach to address the problem of overcrowding, and the involvement of influential community members could play a positive role in enlightening the communities about the programmes of rehabilitation and hope for those who are afforded a second chance.

The last research question (question 15) covering organisational information, was: “Is there anything you think can be done to improve the management of overcrowding in DCS? Please explain.” Most of the participants repeated what they had said in response to the previous question, pointing to collaboration amongst stakeholders and changing of the mind-set of correctional officials through effective training. Interestingly, one participant – Erica – had this to say: “Correctional officials need to stay on top of their game, for their own safety and for that of the prison population”. This was elaborated on during the interchange captured below.



Table 5.11: Extract of Interchange with Erica

Participant	Verbatim Extract
Erica	Mzi: "What do you mean by that statement?"
	Erica: "Well, offenders have no discipline, but you asked yourself why they are not disciplined – just because some of them control the warders".
	Mzi: "Why do they control the warders?"
	Erica: "Well, some offenders have more money than the warders and also more rights than anyone else."
	Mzi: "What do you think could be done to improve the management of overcrowding?"
	Erica: "I believe going back to the basics, with training of the warders, enough allocation of resources, and effective communication between the leadership and officials."
	Mzi: "On another note, why do you keep on referring to warders, instead of correctional officials?"
	Erica: (laughing out loudly) "Well, we are warders; that is how we refer to ourselves."

Research question 16: is there anything you think can be done to improve the management of overcrowding in the DCS?

The overwhelming response was that collaboration with all stakeholders would lead to improved conditions of overcrowding. SAPS, South African Social Security Agency (SASSA), and the community were mentioned as important role players.

5.4. Responses to Follow-up Interviews

The follow-up interviews were conducted with four of the fifteen initial respondents. These individuals comprise the select leadership of the DOJ & CD and the DCS. The rationale behind the follow up interview was to focus on the leaders as policy developers and as such to ascertain and determine whether as leaders they have been able to influence the attitudes of the managers, who are supposed to implement the decisions and policies of the department. Below is the verbatim summary of the interviews.

Question A: What is your understanding of the non-custodial sentencing?

"Non-custodial sentencing is a principle that must be applied by both the courts of law and DCS to allow the offender to serve their sentence anywhere other than the correctional facilities. It's a principle that placed a responsibility on both the Department of Justice and Correctional Services as well as the community-based organisations to ensure that the people who get incarcerated in South Africa are people

who have committed serious crimes and have nowhere to be placed in communities [...] Yes it is followed, but not to the full extent that it is supposed to, hence you will see the Department of Correctional Services sitting with overcrowding, because we have failed as functionaries or managers to make sure that the principle is followed, for example, the courts issues 63A and 62A according to the Criminal Procedure Act. The head of centre is supposed to write a motivation to convert those sentencing but for one reason or another failed to do so.”

Question B: Who you think is responsible for its implementation?

The participant pointed out that there is several role players who have got an equal responsibility. Firstly, she stated it was the “ Department of Justice whose prerogative is to sentence offenders, the Correctional Services, who are supposed to monitor the types of sentences that have been imposed by the courts and implements the provision of the Criminal Procedure Act, to change those custodial sentences to non-custodial sentencing. Like I said, which is inclusive of 2761s in terms of the Criminal Procedure Act, which allows the head of centre to place non-custodial offenders who have got an option of a fine and to make a submission for the conversion of a sentencing. The parole boards have a responsibility to consider the sentenced offenders for placement in the community in terms of the non-custodial sentence. Also you have the community, which we also tend to underestimate its responsibility in terms of the non-custodial sentencing, I have always said if families refuse to accept the offenders it becomes difficult for the Department of Correctional Services to place such offenders in non-custodial sentencing in the community because we cannot place an offender in the community without a support system.”

Question C: As a Correctional Officer (or as official of justice) do you think you have any role to play about non-custodial sentencing?

“Yes, I have. I have a responsibility to ensure that offenders in my care are all accounted for. Secondly, I have court officials placed in courts for the purposes of ensuring that all offenders deserving to be placed on non-custodial sentencing are placed as such”.

Question D: Do you think there is any relationship between non-custodial sentencing and overcrowding in DCS?

The responses to this question highlight that in general, all participants believe there is a relationship between the slow implementation of non-custodial sentencing and overcrowding in correctional facilities. Hence the frustrations (when submissions are made to the courts in line with the statutory prescriptions for conversions of sentences of offenders to non-custodial sentencing (Sections 62 and 63 of the CPA) when feedback is not received from the courts as well as the perceived notion that magistrates look down upon DCS officials. DCS managers raised further concerns during the interviews that the case flow forums (which are the forums specifically designed by leadership to engage and resolve the overcrowding issues with the relevant stakeholders including DCS, DOJ and DC, SAPS, Community Policing Forums) do not necessarily yield any results as the magistrates do not seem to have confidence in DCS managers and do not trust non-custodial sentencing methods.

Whilst the view from representing the court is that, the DCS does not avail court officials as prescribed by policy to be able to provide sustainability reports, some court officials are said not to be reliable as they have failed to provide reports on time to the courts as committed by themselves. In some instances, the reports are said not to be provided on time as requested and as prescribed resulting in courts being postponed and the court officials still failing to provide the reports despite the postponements. One respondent commented that “some of the reports we received from the managers of DCS are the same as other cases”, indicating that there is no monitoring effort to check whether the information provided is case specific.

Questions E and F: Do you think non-custodial sentencing is implemented appropriately?

The answers to this question were a resounding ‘no’. As one of the participants added:

“Levels of awaiting trials should be managed appropriately using IJS Case Management Task Team and Inter Sectorial Committee on Child Justice. The sentenced offenders should be managed effectively using conversion of sentence to community correctional centres. Lastly, DCS should invest in new correctional facilities that are built for effective rehabilitation”.

Another participant was of the view that “debates that talk about reasons for incarceration in South Africa should be encouraged as this will result in facilitating rehabilitation of offenders”.

Yet another participant summarised the situation as follows:

"There should be first and second levels of correction in family and social institutions and social and economic sector government departments that talk on decreasing rates of entry into the criminal justice system".

Question G: What is your understanding of the role of leadership in non-custodial sentencing?

A participant said:

"Leaders need to spend more time on monitoring and evaluating the principles as enshrined in the non-custodial chapter; also, they need to ensure that, the staff and officials occupying correctional offices are properly qualified. The third point is that the staffing of correctional services in courts should be re-visited so that, officials placed in such positions are qualified to make research and proper presentation to assist magistrates in arriving at a correct sentencing".

Question H: Can you share with me the policies that talk to non-custodial sentencing?

This question sought to determine the extent of the familiarity with the relevant policies and Acts. The responses noted that this element was covered by the Criminal Procedure Act (RSA, 1977), particularly sections 49, 62, 63 and 276, and the Parole Board Acts.

Question I: In your own opinion, what is the view of the community towards the implementation of non-custodial sentencing?

All the participants were of the view that, the community does not regard non-custodial sentencing favourably, and this view affects the placing of offenders on non-custodial measures negatively, as they can endanger the communities as well as the offenders. One participant had this to say:

"Recently a released offender whose minimum sentence was completed, as soon as he was out, he was murdered by the community – the communities are of the opinion that we are failing them, when we release the offenders."

Question J: Do you think that this view has any relationship to the implementation or lack of implementation of non-custodial sentencing?

The view was that the lack of, or slow implementation of non-custodial sentencing is due to several factors. Several reasons emerged that gave the researcher insight into the reasons for the slow implementation of non-custodial sentencing. One of those reasons centred on the lack

of community education on the advantages of non-custodial sentencing. Another referred to the failure by the correctional officers to provide good, motivated reports to the magistrates when considering sentencing, as well as the lack of monitoring and evaluating reports submitted by officials to parole boards that consider placing of offenders on parole. This view was highlighted by the magistrate who complained about the workmanship reports received from the official of the DCS.

Question K: Do you know of /or are you aware of any programmes done by the DOJ & CD and the DCS to market/educate the communities with regard non-custodial sentencing?

All the participants agreed that they were aware of the programmes as these programmes are part of the strategic plan of the DOJ & CD and the DCS. However, the view was that these programmes are not structured, and nobody is bothering themselves about them. When probed further about the nature of these programmes, the participants referred to them as *imbizos* (Coal Face) which were often called by the Minister to address the community. The view was that the present political leadership does not show much interest in conducting *imbizos*. One participant said:

“Ever since the previous administration was replaced, we in the DCS hardly see our leadership ... we used to have coal face with the Ministers and partake in social projects but now, things are different ... I guess the leadership is more concentrated on the arm of justice than correction ... just saying”.

When asked why they must wait for the Minister to have an *imbizo*, the response was that as they are part of the strategic plan, *imbizos* are supposed to be conducted by staff members. However, due to budgetary constraints they are no longer in a position to have them. The participants acknowledged the existing policy that addresses the non-custodial sentencing. They however, are unanimous in saying the reduction in overcrowding cannot be addressed by simply placing people in correctional supervision. Sethu sums it up thus:

“There needs to be a debate in South Africa about reasons for incarceration as a sentence and encourage an approach to appropriate sentencing that is focused on facilitating rehabilitation”.

Yaya was more forthright:

“Leaders are embroiled in procurement scandals, and have no time communicating with us. We are still occupying the old prisons built in apartheid and there is no one ensuring that capital works programme is adhered to for upgrading or building new correctional facilities. We do not even see our leader, except on television.”

5.5. Chapter Summary

This chapter presented the findings, as contained in the responses, to interview questions. The findings show that the leaders were able to articulate the department’s overall objectives more especially in relation to non-custodial and overcrowding. Some managers on the other hand were not able to articulate the department’s overall objectives. However, they seem to be aware of their own responsibility in terms of the implementation of the non-custodial sentencing and what they are expected to do. They had highlighted several activities that they perform including the implementation of the Criminal Procedure Act to achieve non-custodial sentencing. The findings also illustrate a clear knowledge by all participants of the policies and legislation pertaining to non-custodial sentencing. The participants noted that the poor implementation of non-custodial sentencing is due, in part to the poor coordination between the COJ & CD and the DCS, amongst other factors. The findings do illustrate though, that from the participants’ point of view, the implementation of non-custodial sentencing alone will not necessarily result in the reduction of overcrowding. Some of the participants alluded to the important role played by influential community members as well as the realisation that poverty, and wider societal issues, are linked to the overcrowded conditions in prisons. These issues are discussed further in the next chapter.

CHAPTER 6: CONCLUSION

6.1. Introduction

This chapter is organised into four main parts. Firstly, the chapter reminds the reader of the main and secondary aims of the study, research questions and guiding assumptions. Secondly, the main findings of the study are presented and discussed within the theoretical context of the transformational and transactional leadership paradigm. Thirdly, the chapter presents recommendations to the problem of the slow pace of implementation of non-custodial sentencing using Kotter's steps for change. Finally, the chapter concludes with possible future areas of research. The primary aim of this research is to explore the role of leadership within the Department of Justice and Constitutional Development (DOJ & CD) and the Department of Correctional Services (DCS) in the implementation of non-custodial sentencing. The secondary aims of the study include:

- To review and critically analyse the theoretical debates about the benefit of non-custodial sentencing.
To critically examines the regulatory framework that governs the non-custodial sentencing in South Africa;
- To gain insight into the understanding of non-custodial sentencing by the DOJ & CD and the DCS officials;
- To critically analyse and interpret the participants' responses making use of thematic analysis;
- To identify the impediments to the implementation of non-custodial sentencing; and
- To finalise and propose recommendations that will overcome the impediment.

Also, worth restating at this juncture are the guiding assumptions:

1. the lack of implementation of non-custodial sentencing contributes to overcrowding.
2. the inability of the DCS leadership to utilise the tools available at their disposal to implement non-custodial sentencing results in overcrowding.
3. Leaders and managers of the DOJ & CD and the DCS do not believe in non-custodial sentencing and therefore will not drive or champion the implementation.
4. Failure of leadership to communicate its vision and mission to the subordinates, namely managers and administrators, has led to the slow implementation of non-custodial sentencing.

To achieve the stated aims of the research, and based on the above-mentioned assumptions, the main research question asks:

What role do leadership and managers within the DOJ & CD and the DCS play in implementing non-custodial sentencing so that there is a reduction in overcrowding?

The subsidiary research questions are:

1. Is the vision and mission statement of the Department clearly articulated, understood and communicated to all those who are supposed to implement, particularly about the implementation of non-custodial sentencing and social reintegration?
2. Are the necessary leadership skills, abilities and competencies to drive change management present in the departments under investigation?
3. What perceptions, experiences and insights on non-custodial sentencing do those hold that are instrumental in the implementation of the regulatory framework?
4. What are the impediments to implementing non-custodial sentencing?

6.2 Discussion of the main Findings

In chapter 2 the study presented and discussed a theoretical framework on leadership. Based on the responses elicited from participants it is my view that both Transactional and Transformational are relevant and needed in facilitating change and specifically to drive non-custodial agenda. In chapter 2 four components of the transformational model were identified, being idealised influence, where the leader influences people to behave or resonate with him or her. Inspirational motivation where leaders inspire the organisation by creating a vision that will drive the organisation. Intellectual stimulation where leaders encourage individuals to think outside of the box and empower them to be part of the team. Individual consideration where leaders take into consideration individual interests in the context of the development of those individuals. The study has argued that this is a continuum process, going back and forth and in the case of DOJ & CD & DCS both approaches are necessary. In the findings based on the responses of the participants and the historical development of the DOJ & CD & DCS from repressive correctional services to a caring Rehabilitative oriented services Kotter's model of change strategic steps are relevant for instituting change within DOJ & CD & DCS. The following themes were generated upon reflecting on the respondents of participants. The researcher attempted to integrate these into the discussion based on Kotter's principles.

6.2.1. Communication

In chapter 3, the need for open communication between the leadership, employees and other stakeholders was highlighted. Kotter's model is probably the best-known model of how leadership should prepare a structured approach when dealing with followers within an organisational setting (Kotter, 1996). Moreover, it allowed the researcher to probe stakeholders' insights according to a clear set of principles, namely the eight steps of change (see chapter 3). This framework as a conceptual model, emphasises that effective communication amongst stakeholders plays a major role in ensuring that, the vision, mission, and values of the organisation are understood. In large organisations, such as the DOJ & CD and the DCS, executive leaders need to inspire their workforce in order to realize the organisational objectivity. The power of communicating through multiple media platforms and using multiple methods to help spread the vision of the organisation need to be followed. From the interview responses there is a gap between the executive leadership and operational managers, with managers showing an inability of linking the vision, mission and values of the organisation to their actual day-to-day operations and tasks. Some participants, namely the operational managers, stated that there was a lack of communication between them and executive leaders. Some of the comments from the managers included:

“We only concentrate on reading and knowing these things when we prepare for the interviews, after that we do not care.”

The executive leadership on the other hand showed insight into their work, articulating and linking their strategic objectives with the expected outcomes, while noting the gaps that still exist amongst them. The following comment from one leader illustrates the frustration that both leaders and managers are going through:

“Yes, it is followed, but not to the full extent that it is supposed to, hence you will see the Department of Correctional Services sitting with overcrowding, because we have failed as leaders or functionaries to make sure that the principle is followed, for example, the courts issues 63A and 62A according to the Criminal Procedure Act. The head of centre is supposed to write a motivation to convert that sentencing but for one reason or another failed to do so”.

The discussion thus far illustrates that clarity on the part of leadership, in terms of an understanding of the vision and mission as it relates to day-to-day activities, does not necessarily extend to clarity on the part of the followers. This also reveals that the leadership has, in some respects, failed to fulfil their communication roles. Communication is the responsibility of the leadership. Communication becomes a key factor for successful management. Leaders who want change must be able to create communication channels, providing a clear vision for the achievement of organisational goals. From the above responses it can be inferred that communication within the DOJ & CD and the DCS is inadequate to address the expectations of the employees.

The participants are of the view that there are no forums created by the leadership where they could communicate their frustration, and where the mission of the organisation is re-communicated. Subordinates expressed that leaders spent more time on staff meetings and managers were left in the cold. There was a view that the leadership was more concerned with issues of justice than they were with the DCS. When probed further it was mentioned that although the DOJ & CD and the DCS are under one Ministry, the three units are acting in silos. This was further noted by the court of law in the case brought by Saldanha that the political leadership does not have a plan to create a forum for the departments to engage with relevant stakeholders (Saal, 2018). The implication is that since the Minister of DOJ & CD and DCS is an advocate by profession, he therefore focusses more concentration on justice other than on the DCS. One could also infer that the merger of the two entities, the DOJ & CD and the DCS was not properly managed. This could be resolved if leaders could adopt Kotter's (1996) model for change that addresses the successful organisational change that will see improvement in the organisation's goals.

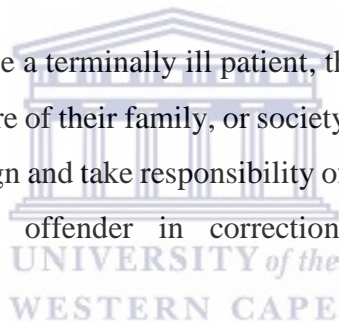
6.2.2. Theme 1: Powerful coalition

The findings from the participants indicate that the department did not do enough to get key opinions from other stakeholders, especially the communities, the Department of Social Development and SAPS. The participants' continuous reference to the role of the community in non-custodial sentencing, indicates that the participants acknowledge the importance of engagement with the community to resolve the issue of non-custodial sentencing. Other role players mentioned, including the health department and SAPS could play a positive role if they were engaged and formed a cluster to investigate the issues affecting the department. The study highlights that it is the role of leadership to get key opinion-shaping people from within the

organisation who will support the vision of the organisation. It is also the responsibility of the leader to champion the organisation's objectives and gain support and buy-in from all stakeholders. Forming a powerful coalition within and outside the organisation will enable more agents of change to support and spread the vision, mission and objectives of the organisation. The increasing challenges surrounding public services in South Africa require a leader who is innovative and transformational and be able to bring on board key stakeholders to champion the shared goal for the benefit of the organisation.

The participants' responses to how the community views the non-custodial sentencing indicate a dilemma, where the community is not informed properly about the benefit of the non-custodial sentencing to both community and the state. As indicated by the participants, the department does not do enough to address the social issues. This then has a negative effect on the social integration of offenders, and is illustrated by the following comments from one participant:

“[F]or example, if we have a terminally ill patient, the Acts stipulate that, the offender must be released in the care of their family, or society. However, if no one in the family or community wants to sign and take responsibility of the offender, then the department is forced to keep the offender in correctional facilities, thus exacerbating overcrowding.”



6.2.3. Theme 2: Support a strong leader

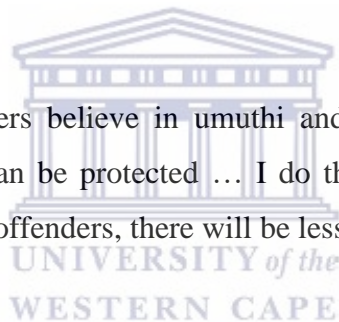
The research findings indicate that some managers believe that the leadership has not provided enough support. When probed further on the available tools, members were able to mention all relevant sections covered in the Criminal Procedure Act as Amended (RSA, 1977) which addresses non-custodial sentencing. In addition, the management were able to articulate the tools available to them to enable non-custodial sentencing but lamented that the lack or poor training their staff received to execute their duties. Based on this observation, the researcher has concluded that having tools does not necessarily translate into effective management. Leadership scholars such as Rost (1993) argued that leaders need to be able to guide, give direction and inspire their staff to achieve their goals. Therefore, leadership should be able to inspire the followers in using the existing policies and legislation pertaining to non-custodial sentencing more effectively, thereby contributing to the reduction of overcrowding. Respondents felt that overcrowding is a societal issue and that families should be urged to play

a larger role in collaborating with the department to ease overcrowding. The picture presented so far is that families abdicate their responsibility of parenting and want Correctional Services to parent their children who have erred. This is captured in Karl's response, "Families also contribute by not wanting members out on bail, they rather want offenders to stay put in prison".

6.2.4. Theme 3: Developing an enabling structure

The participants expressed a desire for the inclusion of relevant stakeholders including the Department of Social Development and traditional leaders. Their argument was that crime is a societal issue and the offenders are primarily community members before they are offenders. The participants asserted that since the offenders are supposed to be rehabilitated and taken back to their communities, there should be structures that are prepared to receive them when they are released. The enabling structures, according to the participants, should include other non-conventional stakeholders who can reach emotionally where others have failed. As one participant noted,

"The majority of offenders believe in umuthi and they commit crimes and go to Sangomas so that they can be protected ... I do think if we can get a buy-in from Sangomas to educate the offenders, there will be less crime."



The department needs to engage other structures that have for some time advocated for the safe custody of offenders, including the implementation of non-custodial sentencing. These structures include civil society, NGOs and other organisations that monitor the accountability of public service organisations. The department also needs to create a conducive environment where the department is complimented with proper staffing of correctional officials as well as the continuous training of officials. That would go a long way towards the understanding of the legislative framework and principles governing the DOJ & CD and the DCS. One participant felt that,

"Leaders need to spend more time on monitoring and evaluating the principles as enshrined in the non-custodial chapter; also, they need to ensure that, the staff and officials occupying correctional offices are properly qualified. The third point is that the staffing of correctional services in courts should be re-visited so that, officials

placed in such positions are qualified to do research and proper presentations to assist magistrates in arriving at a correct sentencing.”

In essence, what one could deduce is that the majority of the participants want a transformational leader who can motivate and inspire them to high levels of achievement and create a conducive environment where the followers can buy-in and be part of change.

6.2.5. Theme 4: Collaboration

The evidence gathered through the interviews was that, awaiting trial people are not managed. It was felt that, there should be better collaboration amongst different stakeholders. The dominant view was that,

“The sentenced offenders should be managed effectively using conversion of sentence to community correctional centres. Lastly, DCS should invest in new correctional facilities that are built for effective rehabilitation”.

6.2.6. Theme 5: Leadership

The challenges of leadership were expressed in relation to communication issues. They were also highlighted by one leader when he expressed the view that leaders should spend more time on monitoring and evaluation so that the challenges that occur between the Justice and the DCS cluster are sorted out in time. The following quotation from one leader is indicative of the inability of leaders to champion the strategic objectives of the department:

“Yes, it is followed, but not to the full extent that it is supposed to, hence you will see the Department of Correctional Services sitting with overcrowding, because we have failed as leaders or functionaries to make sure that the principle is followed. For example, the courts issue 63A and 62A according to the Criminal Procedure Act. The head of centre is supposed to write a motivation to convert that sentencing but for one reason or another failed to do so.”

This is in line with one of Kotter’s (1996) steps for change whereby leaders ensure that change is anchored in the culture to enable actions to be aligned with the new change effort. The overall impression given by participants was that there are adequate policies and legislation in place that address the non-custodial sentencing. However, the different members are not

working together to forge a common purpose, and, in the end, this creates a disjuncture and impacts negatively on the achievement of the stated goal of non-custodial sentencing.

6.3. Recommendations

The recommendations are based on an integrated transactional/transformational approach. This framework caters for the diverse nature of the South African public service, especially the DOJ & CD and the DCS which had merged previously different groups into one. In this regard, appropriate attributes of the transactional model which entails a relationship between the leader and the subordinate in return for some form of reward, and the transformational model which entails qualities such as vision, trust, values as well as the ability to persuade followers to have a buy-in in the organisational culture, will be adopted. The study argues that there are many scholarly work conducted on how to implement changes in the organisation. However, it is recommended that Kotter's (1996) steps for change be used as they are structured and can be adapted to suit the situation. The steps advocated by Kotter (1996) are outlined below.

6.3.1. Create a sense of urgency

In a public service organisation like the DOJ & CD and the DCS tasked with the mandate of rehabilitation, training and development of offenders and social re-integration, there is a need to convince followers that there are problems or opportunities that need to be addressed. The problems have been identified as the state of overcrowding that characterise the correctional facilities in South Africa to the extent that they are contrary to the Constitution and are already tagged by the Constitutional Court as impeding the basic conditions of human rights of the offenders. The opportunities should be seen to be derived from embracing and implementing non-custodial sentencing as provided by the policies and legislation. Urgency can be created by openly addressing the challenges of overcrowding and its impacts on the community, members and the country. The more people talk about that, the sooner change will happen.

6.3.2. Leadership should form a powerful coalition

The leader cannot take charge of a major effort alone; leaders must convince the followers of the necessity to change. The findings show that there is a disconnect between the leadership of the DOJ & CD and the DCS and other key role-players (cf. chapter 5). Public service organisations will have key opinions, who do not necessarily follow the company hierarchy. If these people are listened to, they could champion change through their own circles. Leadership's involvement should be measured through monitoring and evaluation instruments.

There is a need to develop strong coalitions between leaders and followers but also between leaders and key stakeholders such as community members. Communities must be encouraged to take part in social reintegration at an early stage, and not be expected to be involved when offenders are about to be released. Community leaders should be trained and brought in as assessors to create a mutual relationship with the criminal justice reforms. By strengthening existing relationships, including that of inviting community leaders to be assessors in trials, the relationship would gain community backing. Both communities and the department would gain mileage from this venture.

6.3.3. Create a vision for change

The vision must be aligned to the issues that are affecting the organisation. Leaders must be able to articulate a clear vision so that the followers can see what it means to them, that is, how the vision relates to their daily lives and how the vision impacts on the implementation of non-custodial sentencing. Leaders do not have to do this alone; the involvement of key people in the organisation will speed up the process of ownership.

6.3.4. Communication strategy

In large organisations it is difficult to get a message across to everyone. Effective leaders are required to spend a lot of time communicating and addressing their members through different forums and creating platforms where their own members are championing the cause and helping to spread the word. In the context of the DOJ & CD and the DCS, the model which is popular in South Africa when addressing communities is *imbizo*. This involves interaction with the relevant community leaders, the organisation and all relevant stakeholders. The internal communication should be a standard one known by all members, such as a scheduled communication period once a month.

6.3.5. Remove obstacles

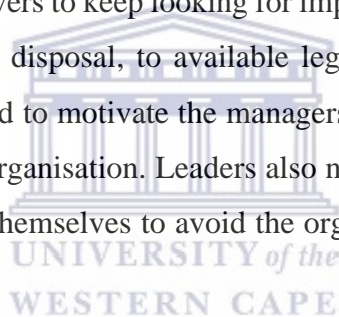
Leaders are urged to create structures for change. In the context of the DOJ & CD and the DCS, leaders must identify barriers to the implementation of non-custodial sentencing; once these are identified they must put in place measures to remove them. Since the overwhelming responses have confirmed the available legislation, the question should be, why not apply them? These are barriers that leaders need to confront and solve.

6.3.6. Leaders should create short-term wins

Rewarding people for the work done will provide tangible evidence that things are moving in the right direction. By using a transactional mode of operating and ensuring that followers who, through applying the available legislation, can show that offenders have benefitted from non-custodial sentencing, will go a long way in convincing managers that there are rewards in applying the policy. Leadership should then be able to set time-lines and targets and if those targets are met, the managers who implement them need to be rewarded. This can be in any form, e.g. in public sector organisations inventive moments like “the manager of the month”, or offering a gala dinner for the best performing manager are known to have galvanized people to have a buy-in. Large scale organisations need momentum as well as a sense of achievement and optimism.

6.3.7. Leaders must build on change

According to Kotter (1996) projects fail because victory is declared too early. Innovative leaders must motivate their followers to keep looking for improvement. The findings show that the managers have tools at their disposal, to available legislation and relevant policies (cf. chapter 5). Leaders therefore need to motivate the managers to act as change agents by using those tools to the benefit of the organisation. Leaders also need to take bold steps in fostering trust between the managers and themselves to avoid the organisation sliding back into its old ways.



6.3.8. Leadership must anchor the change in corporate culture

Leaders as champions of change must deal with complex issues that relate to the implementation of non-custodial sentencing. As such, they need to take bold initiatives and not wait for the court to compel them to address the deteriorating condition of facilities. They need to convince the managers that the change is for the benefit of the organisation and is there to stay. That means that the vision they articulate must be embedded into the corporate culture and the managers must have a buy-in in the process. Leaders must develop plans and put systems in place in ensuring that once the structured plans are in place they are communicated and engaged with managers of the specific organisations on the operational level. Continuous monitoring and evaluation to identify and address the gaps in the implementation of non-custodial sentencing, is of critical importance. Furthermore, it is also crucial that the affected interest groups, inclusive of civic organisations, NGOs and civil society be actively involved in terms of supporting, monitoring and evaluation of the implementation of non-custodial

sentencing in South Africa. It must be highlighted that communication by the leadership will enable a coherent understanding of the objectives of the department, thus creating an awareness of policies such as non-custodial sentencing and creating a better understanding of the roles that leadership and management should play in the effective implementation of non-custodial sentencing. Therefore, there is an urgent need for the development of an integrated framework to improve service delivery as well as to develop techniques based on communication, cooperation, developing partnerships, team work, and transparency with all the relevant stakeholders to ensure the successful implementation of non-custodial sentencing.

6.4. Implications for Theory

In responding to the call for greater effort to reduce overcrowding by creating more alternatives to incarceration in South African correctional facilities, this study sought to explore the role of leadership within the DOJ & CD and the DCS in the effective implementation of non-custodial sentencing. Noting that there are enough tools (legislation, policies and Acts) that are at the disposal of the DOJ & CD (the courts) and the DCS to deal with non-custodial sentencing, the study explored the slow implementation, or the impediment that prevents such implementation resulting in overcrowded facilities. One recommendation that the study proposes is that Kotter's (1996) model be adopted as it addresses change management. Furthermore, the study used the transactional/transformational approach to explore the role of leadership as champions of change and the role played by managers in the implementation of non-custodial sentencing. The findings of this research indicated that leaders of the DOJ & CD and the DCS are well-informed of the mission, vision and strategic objectives of the department whilst the managers on the other hand are struggling to grapple with the mission and vision of the organisation. It was also noted that although there are available tools to effect the implementation of non-custodial sentencing, there are still various challenges, notably the need for proper communication at all levels.

6.5. Limitations of the Study

Although every effort was taken to safeguard the validity of the study through the measures to ensure trustworthiness (cf. chapter 4), certain limitations are inevitable. This is in line with the argument that "even when the research is carefully planned, limitations will still exist, and they need to be stated clearly" (Punch, 2005:267). It is the purpose of this section, therefore to spell out the limitations of this study. Firstly, the study is limited in terms of its generalisability. As the focus of the research centred on three management areas, care had to be taken when the

findings were being generalised to the remaining management areas in the country. Secondly, the participants referred to the role of the community as an area that is lacking in terms of the implementation of non-custodial sentencing. They also mentioned the lack of collaboration amongst the responsible government departments, notably the South African Police Services (SAPS), the Department of Social Development (DSD), and the South African Social Security Agency (SASSA). However, the researcher has not been able to explore the roles of these departments nor the views of the communities, as it was not part of the study. The study has not addressed the rate of recidivism, nor has it addressed the socio-economic and socio-psychological impact on the communities as this is a Mini-thesis and deliberating on that would require a study on its own. There has also been an indication that the rate of re-offending amongst the offenders who have been serving their sentencing outside correctional facilities is also an area that has not really been explored by the researcher. Thirdly, the study has concentrated on the Western Cape, and specifically on the three identified management areas. Therefore, the findings cannot be generalised to include the whole department of DOJ & CD and the DCS.

6.6. Recommendations for Future Research

To build on the findings of this study, it is recommended that future research should include widening of the sample to incorporate other key role players such as the SAPS, SASSA, and civil society organisations, to mention a few. Secondly, research on the recidivism of offenders who were granted non-custodial sentencing before being incarcerated and those who spend time in a correctional facility need to be conducted to ascertain the benefits associated with non-custodial sentencing.

6.7. Conclusion

There is agreement in the literature that effective leadership contributes immensely to the overall organisational performance and change. Successful leaders are expected to exhibit qualities such as cognitive, functional as well as social competencies, which have a great influence on the ultimate organisational success and change.

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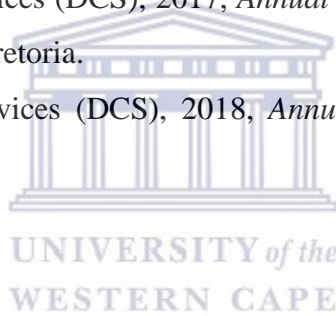
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LIST OF APPENDICES

APPENDIX A: University of the Western Cape Ethics Committee approval for the research and the research methodology

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10 May 2017

Mr M Mfeketo
School of Government
Faculty of Economic and Management Science

Ethics Reference Number: HS17/3/36

Project Title: Exploring the influence of leadership in the change management process: The case of the Department of Justice and Constitutional Development and the Department of Correctional Services.

Approval Period: 09 May 2017 – 09 May 2018

I hereby certify that the Humanities and Social Science Research Ethics Committee of the University of the Western Cape approved the methodology and ethics of the above mentioned research project.

Any amendments, extension or other modifications to the protocol must be submitted to the Ethics Committee for approval. Please remember to submit a progress report in good time for annual renewal.

The Committee must be informed of any serious adverse event and/or termination of the study.

A handwritten signature in black ink, appearing to read "Josias".

*Ms Patricia Josias
Research Ethics Committee Officer
University of the Western Cape*

PROVISIONAL REC NUMBER - 130416-049



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

Private Bag X136, PRETORIA, 0001 Poyntons Building, C/O WF Nkomo and Sophie De Bruyn Street, PRETORIA
Tel (012) 307 2770, Fax 086 539 2693

Mr MM Mfeketo
30 Alexander Street
Goodwood
7640

Dear Mr MM Mfeketo

RE: APPLICATION TO CONDUCT RESEARCH IN THE DEPARTMENT OF CORRECTIONAL SERVICES ON: "EXPLORING THE INFLUENCE OF LEADERSHIP IN THE CHANGE MANAGEMENT PROCESS: THE CASE OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND THE DEPARTMENT OF CORRECTIONAL SERVICES"

It is with pleasure to inform you that your request to conduct research in the Department of Correctional Services on the above topic has been approved. Your attention is drawn to the following:

- The relevant Regional and Area Commissioners where the research will be conducted will be informed of your proposed research project.
- Your internal guide will be **Mr LJ Venter: Regional Head Corrections, Western Cape Region.**
- You are requested to contact him at telephone number (021) 550 6004 before the commencement of your research.
- It is your responsibility to make arrangements for your interviewing times.
- Your identity document and this approval letter should be in your possession when visiting.
- You are required to use the terminology used in the White Paper on Corrections in South Africa (February 2005) e.g. "Offenders" not "Prisoners" and "Correctional Centres" not "Prisons".
- You are not allowed to use photographic or video equipment during your visits, however the audio recorder is allowed.
- You are required to submit your final report to the Department for approval by the Commissioner of Correctional Services before publication (including presentation at workshops, conferences, seminars, etc) of the report.
- Should you have any enquiries regarding this process, please contact the Directorate Research for assistance at telephone number (012) 307 2770 / (012) 305 8554.

Thank you for your application and interest to conduct research in the Department of Correctional Services.

Yours faithfully

ND SIHLEZANA
DC: POLICY COORDINATION & RESEARCH
DATE: 25/8/2017

APPENDIX C

PARTICIPATION INFORMATION SHEET

RESEARCH TITLE: Exploring the influence of leadership in the change management process: the case of the Department of Justice and Constitutional Development and The Department of Correctional Services

Dear Participant

You are invited to participate in a research study conducted by Mziwoxolo Morriat Mfeketo: **Student Number: 3570349**. It is in partial completion of the researcher's mini-thesis towards the MPA Degree at the School of Government, at the University of the Western Cape.

Before you decide to participate, it is important for you to understand the purpose of the research and what it would entail. Please take time to read the following information carefully and discuss it with others if you wish. If you are unclear of anything, I would be happy to answer any questions you may have.

PURPOSE OF THE STUDY

The purpose of the study is to explore the role of leadership in change management process with specific reference to the implementation of no-custodial sentencing by the Department of Justice and Constitutional Development and Correctional Services with the aim to reduced overcrowding in the correctional facilities.

DESCRIPTION OF STUDY AND YOUR INVOLVEMENT

The purpose of the study is to explore the role of leadership in change management process with specific reference to the implementation of no-custodial sentencing by

the Department of Justice and Constitutional Development and Correctional Services with the aim to reduce overcrowding in the correctional facilities.

As an MPA student at the University of the Western Cape I will be responsible for the full research project in the study.

CONFIDENTIALITY

Please be advised that the results of the study will neither divulge the organization's particulars nor the individual particulars, as to maintain confidentiality at all times. Any information that can connect the responses to an individual or organization will remain confidential and will be disclosed only with your permission. The researcher shall keep all records and tapes of your participation, including a signed consent form which is required from you should you agree to participate in this research study, and locked away at all times.

VOLUNTARY PARTICIPATION AND WITHDRAWAL

Your participation in this research is entirely voluntary, which means that you are free to decline from participation. It is your decision whether or not to take part. If you volunteer to be in this study, you may withdraw at any time without consequences of any kind. If you decide to participate in the study, you are free to withdraw at any time and without giving a reason. You may also choose not to answer particular questions that are asked in the study. If there is anything that you would prefer not to discuss, please feel free to say so.

PAYMENT FOR PARTICIPATION

There are no costs to the participant for partaking in the study.

INFORMED CONSENT

Your signed consent to participate in this research study is required before I proceed to interview you. I have included the consent form with this information sheet so that you

will be able to review the consent form and then decide whether you would like to participate in this study or not.

Risks of the Study

Ethical consideration is paramount when undertaking any research, it is therefore necessary for the researcher to take all the precaution measures in protecting the participants, organizations and the researcher against potential risks and discomfort that may result from the publication of the research (Babbie 2010)

Risks to the researcher

The researcher needs to be mindful and guard against the attitudes of the participants who may be reluctant to divulge some information. While the participants have a right not to participate it should be recognized that their lack of cooperation could be disastrous for the research project (Bless et al 1988). To mitigate against this the researcher will explain the anonymity and confidentiality clauses and uphold these principles when analysing, interpreting and presenting the data. In order to protect the identity of the participants, the researcher will provide each participant with a pseudonym name. Lastly, the consent form serves to ensure that confidential information is protected and that the identity of participants is concealed.

Financial Implications

The financial implications to the researcher will be minimal as the focus will be in the Western Cape Region to minimize costs.

Risks to the participants

Although there are no physical risks anticipated in this study, the researcher has to anticipate the potential of emotional and political intimidation that could happen if the research is published. Emotional and Political harm is often more difficult to predict and to gauge than physical harm although they have lasting impact on individual (De Vos et al, 2005).

The study will undergo and be bound by the full ethical approval process as applied by the University of the Western Cape. Also prior to recruiting the participants, clearance as well as endorsement of the study will be sought from the Department of Constitutional and Development. It should be noted that in this study participants will be assured that there will be no physical harm or intimidation or threats what so ever directed at them.

However should any unforeseen harm or threat be experienced, there are mechanisms in place to address such issue in the form of (IPD) Independence Police Investigative Directorate. The researcher as somebody who is a qualified security expert would be able to make referral to IPID for any complaints related to the participants. It should be noted that participants in this study will be given consent forms and information sheets containing information about the study prior to the interviews. Furthermore, it will be explained that participation is voluntary and that they have the right to withdraw at any point of the interview. The researcher will also explain the anonymity and confidentiality clauses and uphold these principles when analysing, interpreting and presenting the data. In order to protect the identity of the participants, the researcher will provide each participant with a pseudonym name. Lastly, the consent form serves to ensure that confidential information is protected and that the identity of participants is concealed.

Risks to the Organization

Risks to the organization may occur when there is a leakage of information or some confidential information is given to person or persons that are not supposed to be the recipients of such information. Risks to the organisation can also occur when confidentiality between the people tasked with limiting the information on the need to know bases break such agreement (De Vos et al, 2005). The participants will be informed that the information received from the research will be accessed only by the researcher and his supervisor. The use of anonymity as well as code names to protect the identity of the participants will be strictly adhered to.

QUESTIONS

Should you have further questions or wish to know more, I can be contact as follows:



Student Name : Mziwoxolo Morriat Mfeketo
Student Number : 3570349
Mobile Number : 0721248908
Work Number : 0215910986
Email : molliat_56@yahoo.com

I am accountable to my supervisor : Professor Michelle Esau
School of Government (SOG) : University of the Western Cape
Telephone : +27 21 959 38____
Fax : +27 21 959 3849
Email : esaumichelle951@icloud.com

APPENDIX D

CONSENT FORM

TITLE OF THE RESEARCH PROJECT:

Exploring the influence of leadership in the change management process: the case of the Department of Justice and Constitutional Development and the Department of Correctional Services.

1. RESEARCHER'S NAME(S):

Mziwoxolo Mfeketo

2. ADDRESS:

30 Alexander Road
Goodwood
7460

3. CONTACT NUMBER:

0721248908



4. What is this research project all about?

The aim of this questionnaire is to determine the reasons for the non-implementation of non-custodial sentencing. More particularly the study is aimed at examining the role and influence of leadership in the change management process with reference to department of justice and Constitutional Development and Correctional Services.

5. Why have I been invited to take part in this research project?

It is hoped that your participation will make a contribution in the body of knowledge of the South African Public Service.

Who is doing the research?

Mziwoxolo Mfeketo, an MPA student at the University of the Western Cape will be doing the research.

6. What will happen to me in this study?

If you choose to participate in this study, you will be invited for an individual interview. In the interviews the researcher will ask you to share your experiences of having worked in the Department of Correctional Services and how that experience has impacted on you. The researcher will also ask your opinion on how to remedy some of the challenges that confront the Department of Correctional Services. With your consent, the interviews will be audio recorded.

7. Can anything bad happen to me?

There is no risk associated with this study and nothing bad will happen to you.

8. Can anything good happen to me?

You can gain knowledge and awareness about how your department is functioning.

9. Will anyone know I am in the study?

All information related to this study will be confidential and anonymous. Only the primary researcher, Mziwoxolo Mfeketo will have access to this information and the supervisor Professor Michelle Esau from the University of the Western Cape.

10. Who can I talk to about the study?

If you have any questions regarding this study, please feel free to contact:

Mziwoxolo Mfeketo at 0721248908

Prof. Michelle Esau at 0824478731

11. What if I do not want to do this?

You have the right to withdraw your participation any time during the course of this study. If you do not want to participate, there will be no consequences and you will not be in trouble.

12. Do you understand this study and are you willing to take part in it?

YES

NO

13. Has the researcher answered all your questions?

YES

NO

14. Do you understand that you can STOP being in the study at any time?

YES

NO

15. Signature of Participant

Date

Signature of Researcher

Date





REQUEST FOR THE CHANGE OF THESIS TITLE

Request for the change of thesis title

1. **Name of Student:** Mziwoxolo Mfeketo

2. **Student number:**

3	5	7	0	3	4	9
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3. **Department:** Faculty of the Economic and Management Sciences.

4. **Course:** MPA

5. **Supervisor:** Prof. Michelle Esau

6. **Co-supervisor:**

7. **Original Thesis title:** Exploring the influence of leadership in the change management process: the case of the Department of Justice and Constitutional Development and The Department of Correctional Services

8. **Proposed new Thesis title:** A Study on Leadership in the implementation of Non-Custodial sentencing by the Department of Justice and Constitutional Development and the Department of Correctional Services.

SIGNED BY:

Student: Mziwoxolo Mfeketo.....

Supervisor.....

Departmental Chairperson:

Date: 18/10/2018.....



APPENDIX F

Questionnaire

SECTION A: PERSONAL INFORMATION

The aim of this questionnaire is to determine the reasons for the non-implementation of non-custodial sentencing. More particularly the study is aimed at examining the role and influence of leadership in the change management process with reference to Department of justice and Constitutional Development and Correctional Services.

Biographic Questionnaire

Male/Female	
Age	
Home Language	
Province	
Area	
Highest Qualification	
Other Information	

SECTION B: ORGANISATIONAL INFORMATION

- a. What is the Mission statement of the DCS /DOJ&CD?
- b. What are the values of the DCS /DOJ&CD?
- c. Do you understand the Mission of the organisation?
- d. Do you understand the values of the DCS /DOJ&CD?
- e. In your own view do you think the Mission of the DCS/DOJ&CD is understood by the fellow colleagues at all levels?
- f. If no, can you explain why?
- g. Are there any programmes or forums created by leadership and management to communicate the Mission of the organisation?
- h. The literature identifies three main leadership styles that can be applied in public sector organisations. These are transactional, transformational and transactional-transformational.

(“Transactional being a leader who approaches followers with an eye to exchange one thing for another, or pursues a cost benefit, economic exchange to meet subordinate current material and psychic needs in return for contracted services’).(“A transformational leader is the who recognizes and exploit an existing need or demand and looks for potential motives in followers , seeks to satisfy higher needs and engage the full person of the follower’) (lastly, a transactional-transformational is the leader who combines the two approaches.).

- i. Based on the above, how would you describe your leadership style?
- j. What is your understanding of the overcrowding in DCS?
- k. What do you think are the causes of overcrowding in DCS?
- l. Are you aware of any complications that occur in DCS as a result of overcrowding?
- m. If yes can you mention or explain what those complications are?
- n. What is your role or contribution in managing overcrowding?
- o. What are the tools at your disposal for managing overcrowding?
- p. Are you aware of any strategies that exist for managing overcrowding in DCS?
- q. What are the strategies?
- r. How did you find out about these strategies?
- s. What do you think needs to be done to manage overcrowding in DCS?
- t. Do you think that there is any other person/s or organisation/s that can play a role in reducing overcrowding in DCS?
- u. Lastly is there anything you think can be done to improve the management of overcrowding in DCS (Explain Briefly).

Thank you for taking the time to answer these questions. Your personal information will be treated with confidentiality.