THE GENEROSITY OF OBTAINING PAROLE AMONG OFFENDERS IN SOUTH AFRICA

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Abstract - Parole is an integral part of the penal system and where an offender has demonstrated by his conduct that he has been rehabilitated and is not a danger to society there is no reason why he should not benefit from the system. However, not much is known about the perception of the general populace on the parole system Therefore, this study explores the belief of the community on the parole system of South Africa.This secondary data analysis involved the 2014/2015 South African Victims of Crime Survey from Statistics South Africa. Sample size was 24,701 HHs (n=24,024 individuals). Using interviewer-administered questionnaire, information obtained included socio-demographic data, experience of household crime, perception about the prison system, satisfaction with police services and trust in the SAPS. Data analysis included descriptive statistics. Of the households surveyed, 56.7% (n=12,964) agreed that prisoners get parole too easily while 70.1% (n = 17,124) did not agree that it is easy to escape from prisons. A higher population of those who agreed that prisons were just colleges for crooks agreed that prisoners get parole too easily than those who did not agree (73.3% vs. 37.1%; $p<0.001$). The percentage of those who agreed that prisoners get parole too easily was lower among those willing to welcome a former prisoner back into their community than those who were not willing to welcome them (51.6% vs. 65.5%; $p<0.001$).In areas where violent crimes such as murder and sexual assault occurring mostly, people agreed that parole were given too easily. However, violent crimes such as street robbery and mob justice occurring in such areas did not have any effect on people agreeing or disagreeing that prisoners get parole too easily. The findings show that most South Africans believe that prisoners get parole easily.

Keywords - Crime, Parole, Prison. Prisoners, South Africa,

I. INTRODUCTION

The purpose of correctional system in many countries across the world is inter alia rehabilitation and successful re-integration of prisoners back into the society where they originate. The successful reintegration of prisoners back into the society means that prisoners would have one way, or the other been released from prison. This usually happens after the parole process has unfolded. This process would ordinarily take pertinent parole law into consideration and sometimes after extensive litigations. So, ultimately, parole as an integral part of the penal system is just as important and must be undertaken with much caution and diligence despite different views by members of the community. In this paper, we present the theoretical background on the parole practice in South Africa, followed by the parole legislative framework and ends with the presentation of methodology and results representing the belief of the community on the parole system of South Africa.

II. THEORETICAL BACKGROUND: PAROLE PRACTICE IN SOUTH AFRICA

Many scholars have over the years attached a meaning to the concept of parole without any substantial change. In other words, the definition to this concept remain the same with some minimal expansions. For instance, Gibbons and Rosecrance (2005:47) define parole as the conditional release of inmates from prison after they have served a portion of their imposed sentence. Taxman in Gideon and Sung (2011: 307) defines it as people who are released from prison and jail and is also called supervised release. Bayens and Smykla (2013:219) refers to it as a period of conditional supervised release to the community following a prison term and may be either discretionary or mandatory. It is important to note that reference is made to 'after serving part of an imposed sentence' in all these definitions. This draws a clear distinction between parole and correctional supervision with the latter meaning a sentencing option exercised by the court and served within the community. In South Africa, these two concepts are alternatives to imprisonment and classified as Community Corrections (Department of Correctional Services, 2018).

A continuous revision of the parole system is important and highly welcome particularly if it serves the interest of the society at large. The revision of the parole system would not make sense if the reasons to do so are far from serving the purpose or functions of a parole system. It is therefore important that such revision is informed by the organisational environment including changes in the environment within which the correctional system functions as compared to political influence only. Factually, parole is implemented in many countries around the world for various reasons. For instance, in the United States of America, it is implemented for reasons including support from key criminal justice actors; release procedures which makes parole more accessible; release practices mandate its use and it

necessitate the mitigation of sentence severity particularly for unpopular offenses (Gibbons and Rosecrance, 2005:70).

The implementation of parole is necessary because it is a tool used to manage correctional institutions; it has the potential to ease offenders through a difficult transition and can assist in establishing ties to a law-abiding lifestyle to prevent recidivism, rearrests and re-incarceration (Bayens and Smykla; 2013:247). In the South African context, the following reasons for the implementation of parole are cited:

- It is an alternative to imprisonment (Bruyns and Cilliers, 2009:88);
- It is rewarding for offenders who comply with their sentence plan and participation in rehabilitation programmes; and
- It combats recidivism by ensuring the gradual reintegration of offenders back into the society (Cilliers, 2006:ii).

The legislative framework

Parole is naturally an administrative function of correctional authorities and must be done according to the provisions of the law. Currently, the South African correctional system is strategically guided by the Correctional Services Act 111 of 1998 as amended and pertinent policies. In terms of section 51(1)(d) of the Correctional Services Act 111 of 1998 as amended, persons subject to community corrections are those placed on parole in terms of section 73 of the same Act.

The practice of parole is often criticised due to the public belief that it is a lenient approach to incarceration and lets dangerous criminals out of prison early (Seiter, 2011:196). This phenomenon proves to be true in South Africa particularly in respect of parole consideration of those offenders who are either rich or have a proximate relationship with political leadership of the country. It must be noted that parole decisions are guided by section 73 of Correctional Services Act 111 of 1998 as amended as alluded to earlier.

On a contrary, sections 73 (5) (a)(i) appears to be imposing some form of an obligation that offenders must be placed under correctional supervision or on day parole or on parole.

The foregoing provisions of the Correctional Services Act 111 of 1998 as amended raises interesting questions as to whether offenders have a right to parole or whether parole is a privilege. There has been debate in the academic circles with some scholars arguing that parole is a right and not a privilege. Moses' (2012:155) argument that parole is a right is based on the provisions of section 33 of the Constitution of the Republic of South Africa of 1996 and section 6 of the Promotion of Administrative Justice Act 3, 2000. It is premised on a submission that Correctional Services Act 111 of 1998 as amended read with the Constitution of the Republic of South Africa of 1996 and the Promotion of Administrative Justice Act 3 of 2000 create both a substantive and procedural legitimate expectation in the context of parole to be assessed and considered for release on parole fairly, reasonably and lawfully. This legitimate expectation is also based on a long-standing practice of early release of offenders from the correctional system (Moses, 2012:3) as alluded to in the opening remarks of this section.

This argument stands to reason as also attested by the court in the case of Combrink v Minister of Correctional Services [2001] in which the court concluded that the applicants' right to fair procedurally fairness and reasonable administration was violated. This is in relation to section 33 of the Constitution of the Republic of South Africa of 1996. However, the same court was quick to point out that a prisoner has no right to be paroled and that parole is a privilege(Combrink v Minister of Correctional Services [2001]:342). Mujuzi's (2011:221) interpretation of the court assertion is that it did not mean that prisoners were entitled to be placed on parole and that placing a prisoner on parole is an administrative decision that lies within the powers and discretion of the parole board. Curlewis (2016:36) also acknowledges the foregoing contestation that offenders have no right to be paroled but can be considered on conditions that there is evidence that the offender has been rehabilitated and unlikely to be a danger to the society.

The guiding statutory tools and court precedents to the practice of parole in South Africa would appear to be vexing due to the foregoing submissions. This creates a situation which makes it easy for the public to criticise this practice particularly in the cases of those who have political backgrounds. A point in case are two prominent cases of the release of Mr Jackie Selebi and Mr Shabir Shaik on parole. Both cases were handled in terms of section 79 of Correctional Matters Amendment Act 5 of 2011 subsequent to the substitution of section 79 of the Correctional Services Act 111 of 1998. This substitution has improved the latter Act in respect of medical parole. What is immediately distinctive in the amended section 79 are three conditions which an offender must meet to be considered for medical parole. Firstly, an offender must be suffering from a terminal disease or condition or if such offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care; secondly, if the risk of re-offending is low; and lastly if there are appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released. Another important improvement is that it makes provision for the establishment of the medical advisory board to make available an independent medical report to the National Commissioner, Correctional Supervision and Parole Board or the Minister (Department of Correctional Services, 2011:22).

It is not the aim of this paper to determine why certain parole application are granted with or without litigations and neither is its aim to determine the length of sentence to be served before being considered and placed on parole. What is within the frame of our knowledge is that, parole forms an integral part of the criminal justice system, correctional system. It has a historical connotation and its importance cannot be overemphasised as it facilitates the achievement of the objective of inter alia the rehabilitation of offenders. Furthermore, we note that parole for all offenders will eventually be considered be it through litigation or otherwise. What is observable, worrisome and a cause for concern is that the parole system appears to be ineffective and inefficient to the detriment of those who qualifies to be placed on parole on time and an embarrassment on the part of the Department of Correctional Services whereby people who ought not to get parole are getting it, due to political affiliations.

Sentenced offender population v parole rate

Although there are no official statistics on successful parole placement, Muntingh as cited by Qukula (2015) speculates that out of an average of between 1 000 and 1 200 parole applications, roughly 10% are successfully granted.

The South African Department of Correctional Services has a strategic performance plan which is measured by five programmes including Administration; Incarceration; Rehabilitation; Care; and Social Reintegration. Parole Administration, as per the focus of this study, is a sub-programme to Social Reintegration programme.

The purpose of the parole administration sub-programme is to provide services related to the consideration of placement of offenders into community corrections by Correctional Supervision and Parole Boards and Heads of Correctional Centres (Department of Correctional Services, 2015:57). It must be noted that the purpose of this sub-programme is not to place but to consider for placement. The table 1 below is a demonstration of sentenced offender population vis-à-vis the rate of parole consideration during period between 2014/2015 and 2015/2016 financial years.

Table 1: Sentenced offender population v parole considerations.

Financial year	Sentenced offender population	Parole applications	Parole considerations	%
2014/2015	115.064	44.367	41.519	94%
2015/2016	117.455	43.454	41.942	96.52%

Source: Department of Correctional Services Annual Reports(2017:26; 2016:70; 2015:58)

In terms of the table above, there were 2 848 parole applications under consideration by the Correctional Supervision and Parole Board during the 2014/2015 financial year and during the 2015/2016 financial year, there were 1 512 parole considerations. This is a representation of a decreased applications for parole considerations against an increasing offender population.

This is certainly not in the interest of an effective parole system and this could mean a deficiency in the administration of parole in South Africa but nevertheless, parole is still being administered and offenders are released on parole notwithstanding the lower rate. According to the Department of Correctional Services (2017:27) there were 51 963 parolees in 2015 and 52 453 in 2016 (please see table 2 below).

Table 2: Offenders released on parole

Financial year	Sentenced offender population	Parolees
2015	115.064	51. 963
2016	117.455	52. 453

Source: Department of Correctional Services, 2017

This means that in 2016, only 490 offenders were successfully placed on parole. Therefore, it can be concluded from the foregoing statistical considerations that the Department of Correctional Services successful parole placement rate is at approximately 32.40%.

III. METHODS

For the 2014/2015 South African Victims of Crime Survey, the multi-stage stratified samples were drawn from the Statistics South Africa's master samples from the enumeration areas established during the 2001 census. The target population of the survey consists of all private households in all nine provinces of South Africa and residents in workers' hostels. Altogether approximately 3 080 Population Size Units (PSUs) were selected. In each selected PSU a systematic sample of ten dwelling units was drawn, thus, resulting in approximately sample size of 30 000 dwelling units with a response rate of 94.9%.

3.1 Measures

The Victim of Crime (VOC) survey used an interviewer-administered questionnaire to obtain the demographic characteristics of the population. Respondents were asked if they agreed that prisoners got parole too easily. Socio-demographic data such as race and gender were obtained. Also, questions on if prison are colleges for crooks, perception of change in the level of corruption, welcoming a former prisoner into the community and types of crime that occurred mostly in the respondents' area were asked.

Others includethe government services the officials thought were likely to be involved in the act of corruption.

IV. RESULTS

Of the households surveyed, 56.7% (n=12,964) agreed that prisoners got parole too easily while 70.1% (n = 17,124) did not agree that it was easy to escape from prisons. Among the different racial groups, white South Africans had the highest percentage of people who agreed that prisoners got parole too easily, this is followed by the coloured South Africans. A higher percentage of those who said they would not welcome former prisoners back into the community agreed that prisoners got parole too easily than those who said they would welcome them back in the community (Table 3).

Table 3: Percentage of respondents who agreed that prisoners got parole too easily

Characteristics	Prevalence %(n)	p-value
Gender		0.137
Male	56.9 (5814)	
Female	57.4 (6848)	
Race/Ethnicity		<0.001
Black African	52.5 (9335)	
Coloured	74.6 (1784)	
Indian/Asian	61.8 (308)	
White	75.5 (1537)	
Prison are just colleges for crooks		<0.001
No	37.1 (3644)	
Yes	73.3 (8810)	
Change in level of corruption		<0.001
Increased	58.2 (10231)	
Decreased	48.3 (1197)	
Stayed the same	55.4 (1458)	
Welcome a former prisoner into the community		<0.001
No	65.5 (5585)	
Yes	51.6 (7306)	
Murder is the violent crime that occur mostly in respondent's area		<0.001
No	55.2 (10315)	
Yes	63.5 (2634)	

V. DISCUSSION

One cannot be totally dissented with public perceptions that granting parole is too lenient in South Africa in view of the cases of Mr Selebi and Mr Shaik. Mr Jackie Selebi, a former national police commissioner was convicted of corruption in 2010 and handed a 15-year prison sentence. He was subsequently placed on medical parole after serving a mere two months of the imposed sentence. Another similar case is that of Mr Shabir Shaik. He was the former President, Jacob Zuma's financial advisor and was convicted of corruption and fraud in 2005. He was also imposed of a 15-year prison sentence but served only two years and four months following his placement on medical parole. These two cases have caused a fair stir of media hype and public outcry which is basically a stern criticism of the parole system of the country.

The other interesting case is that of Mr. Clive Derby-Lewis and Mr. JanuszWalus. The parole process to this case can simply be described as political. The difference with the other cases as mentioned in the foregoing paragraph is that parole was granted after litigation after litigation. Mr. Derby-Lewis and Mr. Walus were convicted of the assassination of the South African Communist Party leader, Mr Chris Hani in 1993. They were both sentenced to death, but their sentence was commuted to life imprisonment following the abolishment of a death sentence in South Africa in terms of the Constitution of Republic of South Africa of 1996. Mr. Derby-Lewis was subsequently released on medical parole but not without the frustration of parole denial in 2011, 2013 and early-2015. The year 2018 marks 25th anniversary since the incarceration of Mr. Walus. He was also denied parole in 2011, 2013 and 2015. According to the Minister of correctional services, Mr Walus' parole application was denied because Mr Walus was not remorseful. This argument could be a political issue and not necessarily in the interest of a clean parole administration. Mr Walus continued with his bid to get parole and approached the court toforce the department to put him on parole. In March 2016, the court arrived at a decision to grant him parole (Walus v Minister of Correctional Services [2016]:17) but the Minister took the matter to the Supreme Court of Appeal which referred the matter back to the Minister for reconsideration (Minister of Justice and Correctional Services v Walus [2017]: 16). A demonstration of the fact that the Walus parole case is political, the North Gauteng High Court has recently set aside the Minister's decision to deny Mr Walus parole because the parole board failed to include relevant information in its recommendations to the minister.

The minister now has 120 days to make a decision on Mr Walus' parole application which must take all relevant information into account (Nicolson, 2018). It is our view that, should all the relevant information be considered, and the parole law as discussed above be applied, then Mr Walus would stand a chance of obtaining parole at last. Could that be the generosity of obtaining parole in South Africa?

CONCLUSIONS

Therefore, it is important that the South African general population be educated on the reasons and the procedure of granting parole in South Africa.

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REFERENCES

[1] Bayens, G &Smykla, J.O. 2013. Probation, Parole, and Community-based Corrections: Supervision, treatment, and evidence-based practices. New York: McGraw-Hill.
[2] Bruyns, H.J. &Cilliers, C.H. 2009. A review of imprisonment and deterrence programme as a strategy to reduce prison populations. Southern African Journal of Criminology. 22(1): 81-101.
[3] Cilliers, C.H. 2006. New horizons for parole application in South Africa. Southern African Journal of Criminology. 19(3): i-iv.
[4] (accessed on: 25 August 2018).
[5] Curlewis, L.G. 2016. Understanding parole: an indepthdiscussion.Available at:http://www.derebus.org.za/understanding-parole-depth-discussion/
[6] De Villiers, J. 2017. South Africa's parole system to be revised. News24.Available at:https://www.news24.com/SouthAfrica/News/south-africas-parole-system-to-be-revised-20170410(accessed on 28 August 2018).
[7] Department of Correctional Services, South Africa. 2015. 2014/2015 Annual Report. Pretoria: Government Printers.
[8] Department of Correctional Services, South Africa. 2016. 2015/2016 Annual Report. Pretoria: Government Printers.
[9] Department of Correctional Services, South Africa. 2017. 2016/2017 Annual Report. Pretoria: Government Printers.
[10] Department of Correctional Services, South Africa. 2018. Community Corrections. Available at: http://www.dcs.gov.za/?page_id=317, (accessed on: 26 August 2018).
[11] Department of Correctional Services, South Africa. Correctional Matters Amendment Act 5, Government Gazette. 551(34315). Pretoria. Government Printers. 25 May.
[12] Gibbons, S.G. &Rosecrance, J.D. 2005. Probation, Parole and Community Corrections in the United States. Boston: Pearson Education.
[13] Gideon, L. & Sung, H. 2011. Rethinking Corrections: Rehabilitation, Re-entry and reintegration. California: Sage.
[14] Hopkins, R. 2012. Is Selebi's medical parole a promising precedent? BusinessDay, 1 August. Available at: https://witsjusticeproject.files.wordpress.com/2013/10/is-selebis-medical-parole-a-promising-precedent_ruthhopkins_businessday.pdf (accessed on: 20 August 2018).
[15] Moses, J. 2012. Parole in South Africa. (1st edition). Claremont: Juta.
[16] Mujuzi, J.D. 2011. Unpacking the law and practice relating to parole in South Africa. Available at: https://www.ajol.info/index.php/pelj/article/view/70038/58152 (accessed on: 23 August 2018).
[17] Nicolson, G. 2018. Court gives justice minister 120 days to decide JunuzWalus' fate, 6 September. Available at https://www.dailymaverick.co.za/article/2018-09-06-hani-killer-court-gives-justice-minister-120-days-to-decide-janusz-walus-fate/ (accessed on 08 October 2018)
[18] Qukula, Q. 2015. How medical parole works in South Africa. Radio 702, 5 February. Available at: http://www.702.co.za/articles/1594/how-medical-parole-works-in-south-africa (accessed on: 30 August 2018).
[19] Seiter, R.P. 2011. Corrections: An introduction. (3rd edition). New Jersey: Pearson Education.

[20] Case Law
[21] Combrink and Another v Minister of Correctional Services and Another 2001(3) SA 338(D)
[22] Derby-Lewis v Minister of Justice and Correctional Services 2015 (2) SACR 412 (GP)
[23] Walus v Minister of Correctional Services and Others 2016 ZAGPPHC 103
[24] Minister of Justice and Correctional Services v Walus 2017 ZASCA 99

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