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OPINION PIECE

UP criminology experts question the efficacy of granting special parole to ‘low-risk’ offenders in the time of COVID-19

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The initial response of the Department of Correctional Services (DCS) to the COVID-19 pandemic was to suspend all visits to correctional centres for 30 days and to maintain social distancing. However, with the rapid spread of the virus in these overcrowded centres – there are said to be about 43 000 more inmates than beds available in correctional facilities – a more drastic measure was needed to flatten the curve. On 8 May, the Presidency announced the special placement on parole of about 19 000 low-risk sentenced offenders across the country, which would decrease the prison population by about 12%.

The release of offenders during the COVID-19 crisis is not unique to South Africa – many countries have pardoned thousands of prisoners in order to convert prisons into medical facilities or to create social distancing. The global trend is to pardon low-risk offenders and those whose end of term is in sight, and to process the bail applications of remand detainees. This is partly because many offenders wait for very long periods in the awaiting-trial section and some will finish their terms on parole as they do not present a threat to society.

Recently the DCS reported that of the 243 correctional facilities in South Africa, 157 are technically underpopulated, while 77 are more than 150% full. The question therefore is: why release offenders on special parole if there are facilities that have capacity? After screening the selected categories of sentenced offenders for COVID-19 symptoms, they could be moved to underpopulated centres to create space in the overpopulated ones. These low-risk individuals, who test negative for COVID-19, can be kept separate from offenders already housed in the centre, including violent offenders.

Another concern is whether low-risk offenders will return to crime. Many are from impoverished communities and have committed economic crimes (shoplifting and crimes of need) to provide for their families. With unemployment on the rise and restricted economic activity as a result of COVID-19 coupled with a criminal record, these offenders may find it difficult, if not impossible, to find a job – which may lead to them committing the very crime for which they were initially incarcerated. Recidivism (falling back into crime) in South Africa is very high; in fact, in some categories, the recidivism rate is 94% (Jules-Macquet, 2014).

South Africa’s under-resourced police service and its prosecutors worked tirelessly under severe constraints to secure convictions to begin with. The release of thousands of prisoners is an affront to justice officials and their efforts to arrest and prosecute these offenders, and adds insult to injury for the victims if they have no say in the early release and special parole proceedings.

Restorative justice during COVID-19

Most developed and many developing countries have moved from being punitive to trying to integrate incarcerated offenders into society as soon as possible and to “correct” their behaviour by means of rehabilitation efforts while they are in correctional facilities.

For a long time in South Africa, prisons were used to lock away offenders and isolate them from society. Restorative justice, the latest punishment philosophy in the South African criminal justice system, takes a different approach. It “aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families concerned and community members) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation”, as defined by the Department of Justice and Constitutional Development (2016).

Restorative justice entails victims and offenders making amends and restoring the balance, which is disrupted by criminal behaviour, in society. Before an offender is considered for special parole, the Correctional Supervision and Parole Boards (CS&PBs) have to finalise all the processes, and the offender must have completed all rehabilitation and pre-release programmes. So will CS&PBs be able to adequately process this many offenders over a short period? The new parole release policy allows the victim to have a say in the parole conditions and attend parole hearings – this is the fundamental principle in restorative justice. This means the victims of 19 000 offenders must be contacted and informed about the early release of the offender. For a victim of crime, this may come as a shock, as they rely on the CJS to ensure that offenders serve their time as determined by the courts.

An offender will be considered for special parole only after a victim-offender dialogue has taken place, which is also in line with the current restorative justice philosophy. The victim and the offender must be counselled before and after such dialogues. The questions here are: who will be responsible for counselling the victims of 19 000 offenders, and does the DCS have the capacity to prepare offenders for participating in these dialogues?

The early release of offenders will also affect the already overburdened Community Corrections Section, which supervised 54 935 parolees in 2018. Although there are stringent parole conditions once an offender is released, will the offender self-isolate or celebrate their freedom? If an offender transgresses any of the parole conditions, they can be arrested again – so how will these offenders be placed back in correctional facilities without putting offenders and correctional officials at risk of COVID-19?

Pardoning thousands of inmates during the COVID-19 crisis and the reasons it was decided upon clash with restorative justice principles. In restorative justice, apart from the victim-offender dialogue, a conference may be called. This is a structured meeting between victims, offenders, and family and friends of both parties. This conference must be facilitated by the DCS. Government has to skip this part of the restorative process (which is important for reintegration) to enable them to pardon 19 000 inmates in a short period, as calling a conference for each of the pardoned inmates conflicts with governmental protocols and policy regarding gatherings and social distancing.

South Africa was economically downgraded when the lockdown period commenced, which implies economic hardship and more job losses. Releasing 19 000 inmates into society with almost no hope of getting a job does not make sense. The social grant system is already under strain and these inmates will become dependent on this system or many will fall back into crime. Perhaps it would be better to create safe spaces in government buildings that are not in use or send low-risk offenders to the underpopulated correctional centres to complete their sentence.

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SOURCES:

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ABOUT THE UNIVERSITY OF PRETORIA

The University of Pretoria (UP) is one of the largest contact and residential universities in South Africa, with its administration offices located on the Hatfield Campus, Pretoria. This 112-year-old institution is also the largest producer of research in South Africa.

Spread over seven campuses, it has nine faculties and a business school, the Gordon Institute of Business Science (GIBS). It is the only university in the country that has a Faculty of Veterinary Science which is ranked top in Africa, and overall has 120 academic departments, as well as 92 centres and institutes, accommodating more than 55 000 students and offering about 1 100 study programmes.

UP is one of the top five universities in South Africa, according to the 2019-2020 rankings by the Center for World University Rankings. It is also ranked among the top 100 universities worldwide in three fields of study (veterinary science, theology and law), and among the top 1% in eight fields of study (agricultural sciences, clinical medicine, engineering, environment/ecology, immunology, microbiology, plant and animal sciences and social sciences).

In June 2019, the annual UK Financial Times Executive Education Rankings once again ranked GIBS as the top South African and African business school. The University also has an extensive community engagement programme with approximately 33 000 students involved in community upliftment. Furthermore, UP is building considerable capacities and strengths for the Fourth Industrial Revolution by preparing students for the world beyond university and offering work-readiness and entrepreneurship training to its students.

As one of South Africa's research-intensive universities, UP launched the *Future Africa Campus* in March 2019 as a hub for inter- and transdisciplinary research networks within UP and the global research community to maximise 4IR innovation and address the challenges and stresses our continent and world is facing. In addition, UP also launched the Javett Art Centre in September 2019 as a driver of transdisciplinary research development between the Humanities and other faculties. In 2020 UP will launch Engineering 4.0. as a hub not only for Smart Cities and Transport, but also to link the vast resources in technology and data sciences to other faculties via Future Africa. These initiatives are stimulating new thinking at the frontier of 'science for transformation'.

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