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The inheritance of colonial penological practices in the post-colonial and apartheid periods: A histography of South Africa

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Abstract. Colonialism has had an influence on many sectors across the board in South Africa, including the prison system. Its impact could be seen in the way prisoners were treated during the post-colonial and apartheid eras. This paper seeks to demonstrate the relationship between colonial, post-colonial, and apartheid penological practices by examining the treatment of prisoners during these periods. The examination of this relationship may be useful to understand what really informed the promulgation of racist policies during the post-colonial and apartheid periods. This paper contends that the legislation that was promulgated during the post-colonial and apartheid periods, which comprised legislative instruments on how prisoners were treated, was in fact a formalisation and continuation of what had already been practised during the colonial era. The following themes are central to this discourse: the colonial period between the 1840s and 1909, the post-colonial period between 1910 and 1948, and the National Party (apartheid) era between 1948 and 1993.

Keywords hard labour, convict labour, racism, colony, colonial, penal system.

1. Introduction

South African history is characterised by several phases, namely the colonial phase (1652 – 1910), the post-colonial phase (1910 – 1948), the apartheid phase (1948 – 1994), and the democratic phase (1994 to date). Any debate at any given point about the penal history of South Africa should include a narrative of these phases. This paper focuses on the colonial, post-colonial, and apartheid phases. South Africa's transition through these phases is significant due to its associated political changes, among others. A significant political change was the rise of Afrikaner nationalism, which was the dominant political and social force in South Africa between 1910 and the late 1980s, and the evolution of the country's segregationist race policies between 1924 and 1948. This paper demonstrates the relationship between the colonial, post-colonial, and apartheid penological practices by examining the treatment of prisoners during these periods. It contends that legislation that was promulgated during the post-colonial and apartheid periods, which comprised legislative instruments on how prisoners were treated, was in fact a formalisation and continuation of what had already been practised during the colonial era. Prisoners in South Africa were treated in line with the provisions of the law, formal or informal, during the colonial, post-colonial, and apartheid periods. This included the use of hard

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labour as punishment, treatment of prisoners along racial lines, and solitary confinement with or without spare diet, among others.

2. The colonial period between the 1840s and 1909

It was during the 1840s when significant reforms were observed; not only in respect of the use of convict labour, but also in respect of the promulgation of related legislation. A legislative framework in the form of the Ordinance for the Discipline and Safe Custody of the Convicts Employed on the Public Roads was enacted in 1844 in the Cape Colony (Van Zyl Smit, 1999:213). The Constitution of the Orange River Colony also made provision for hard labour in public such as building roads in the 1840s (Singh, 2005:20). This means that convict labour was indeed already used in the first half of the 19th century during the colonial period. It must be noted that, prior to the 1860s, none of the colonies had an extensive history of large-scale imprisonment or of hiring out prison labour to private contractors (Worger, 2004:68) but it had taken place on an ad hoc basis in some of the colonies (Van Zyl Smit, 1999:217). In the early 1840s, John Montagu was appointed as the colonial Cape Secretary responsible for the control of the penal system. It was he who introduced the ideal of reformation of prisoners through training and education in the Cape Colony for all races (Van Zyl Smit, 1984:152). After Montagu's departure from the Cape Colony in 1852, prisoners sentenced to hard labour continued to be employed in public works. According to Singh (2014:256), the establishment of the Breakwater Prison in the Cape Colony was the first to initiate racial segregation in 1859. White inmates were separated from black inmates based on their jobs. Only white prisoners could be employed as overseers or skilled workers (Worger, 2004).

The Natal Colony used convict labour from the 1860s onwards in Durban's harbour works as a result of a persistent shortage of labour in the Natal Colony, as well as constant complaints by white farmers about the shortage of labour (Swanepoel & Peté, 2019:173). Another reason for the use of convict labour was lack of space and inadequate accommodation in the two central gaols located in Pietermaritzburg and Durban, which made it imperative that prisoners be employed outside the prisons during the day (Peté, 2008:68). According to Swanepoel and Peté (2019:175), the nature of labour performed by convicts at the Durban harbour involved working with stones in order to fulfil the requirements of prison sentences, including hard labour.

In 1868, the Natal prison system appointed a commission of inquiry to investigate the reform of Natal's penal system with the aim of creating a separate prison system. To the colonial mind, the separate system only made sense if it meant reserving separate cells for white prisoners. In other words, in the overcrowded conditions of a colonial prison, a single cell was something of a "luxury" for selected (white) prisoners, rather than a necessity for all prisoners. The commission confirmed that it was impossible to implement the separate system in either the Durban or Pietermaritzburg prisons, because of lack of accommodation (Peté, 2015). Lack of accommodation in the Natal Colony's prisons was exacerbated by the incarceration of men believed to be involved in the Langalibalele Rebellion of 1873 and the Anglo-Zulu war of 1879. This was a result of an influx of prisoners into already overcrowded prisons in the Natal Colony (Peté, 2015:109). Seventeen years after the appointment of the commission of inquiry to investigate the reform of Natal's penal system, the system of racial classification was instituted in 1885 under the guise of dietary arrangements (Peté, 1986). In order to address the problem of overcrowding, the Gaol Law of 1887 was amended to enable the hiring out of convicts, not as criminals in the normal sense of the word but rather as political offenders who needed to be taught that their proper role in colonial society was to perform hard labour in the service of

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white colonists in return for menial wages (Peté, 2015). It was during this time that unskilled manual labour was carried out by black convicts, whereas skilled labour was reserved for white convicts (Peté, 2017:9).

In the Cape Colony, the government issued a proclamation in 1882 that enabled the Kimberley Camp (Prison) to legally segregate prisoners along racial lines (Van Zyl Smit, 1999:216). The deployment of a racially segregated labour force in the Cape Colony's town of Kimberley in the mid-1880s was not only an abandonment of formal equal treatment that had already been introduced by Montagu in the early 1940s (Van Zyl Smit, 1999) but also the implementation of the government proclamation. It was during this time that a committee of inquiry was established in the Cape Colony and in its report it recommended the complete segregation of Europeans from natives in gaols and convict stations (Van Zyl Smit, 1984:157). In 1886, the De Beers mining company contracted with the Cape colonial government for the supply of 300 native male convicts after constructing a private prison large enough to house 300 inmates. In 1888, the number of inmates increased to 400, following the signing of a new two-year contract. Periodic renewals of the contract led to increases in inmates under the maintenance and surveillance of the De Beers mining company, with a daily average reaching 1 000 in the late 1890s (Worger, 2004).

Among other prison system developments, a major reorganisation of the penal system of the Transvaal and Orange River colonies occurred following the British occupation in 1900. During the early 1900s, the prison system experienced overcrowding due to transgressions of the pass laws in the Transvaal and Orange River colonies (Department of Correctional Services [DCS], 2005). In the Natal Colony, a push for a formal racially divided penal system, which implied a move away from informal separation, which was in place, to formal separation was a result of economic and political developments towards the end of the 19th century and the beginning of the 20th century. In 1904, a campaign for complete separation, with the establishment of a new type of prison designed specifically for the confinement of European prisoners, was launched, which aimed to ensure that the treatment of non-European prisoners differed from that of European prisoners.

For European prisoners, treatment would be focused on their reform through training and education, and for non-Europeans the focus would be harsh punishment by means of hard manual labour. Training and education of European prisoners were seen as "prison reform" and "treatment of criminal diseases" and was not applicable to non-European prisoners (Swanepoel & Peté, 2019). This complete separation enabled differential treatment as European prisoners in the Natal Colony received gratuities for work performed, better accommodation and diet, and generally better treatment than other groups (Peté & Crocker, 2010:93). According to Van Zyl Smit (1999:218), white prisoners were allocated work within prisons and black prisoners worked outside prisons. This happened for various reasons, such as to reduce overcrowding in prisons by banishing back prisoners to *kraals*, punishing them by means of corporal punishment, and sentencing them to work on the roads or other public works in the Natal Colony (Peté, 1984:179). Despite this, white colonialists who employed black labour felt that the penal system was too lenient towards black prisoners (Swanepoel & Peté, 2019).

To address this concern, the government proposed to build completely separate prisons for black and white prisoners, but white employers were still not satisfied with the government's proposal (Swanepoel & Peté, 2019). Although this proposal was not implemented, it indicates the different standards that were applied to white and black prisoners. The proposed industrial prison would be geared towards the reform of its inmates through training and education. The proposed new prison in Durban for black people would be aimed at effective punishment and

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the provision of forced labour for the harbour works. The control of an unwilling and repressed black labour force depended on a system of harsh punishment, which would act as an effective deterrent (Peté, 1984:168).

Subsequently, the Prison Reform Commission was appointed in 1905, with the mandate to enquire into and report on the question of prison reform and penology in the Natal Colony. The issue of race occupied this commission because it had an impact on the problem of overcrowding (Swanepoel & Peté, 2019). The commission recommended, among others, banishing certain offenders to their *kraals*, corporal punishment rather than short sentences of imprisonment, and sentencing petty offenders to work on the roads or other public works. Education, reform, and scientific treatment were not priorities in the case of black prisoners (Peté, 1984:170). The recommendations of this commission marked an expression of the official policies of racial segregation and separation within the penal system (Swanepoel & Peté, 2019). The implementation of these policies in the Natal Colony would not only serve as an example for other countries, but would also show the way for the rest of South Africa (Peté, 1984:163).

In the Cape Colony, it was during the same year, 1905, that the De Beers mining company had 1 200 black male convicts at work who were subjected to continued harsh punishment, including continued differential treatment on the basis of race, 13-hour shifts six days a week throughout the year, and their work included loading and drawing trucks and carrying stones, among others. Employers and the state developed a discourse that defined black convicts as dangerous men who were a threat to society, even when they were believed to be reformed through labour (Worger, 2004).

In February 1906, there was an outbreak of violence between black and white people in the Natal Colony known as the Bambatha Rebellion. The violence, which ended in July, was as a result of the imposition of a poll tax on all unmarried males. Most men who were accused of rebellion were tried under martial law, convicted, and sentenced to two or three years of hard labour and flogging (Swanepoel & Peté, 2019). This obviously saw an increased incarceration rate that led to overcrowding of an already overcrowded prison system in the Natal Colony. During 1906, one of the recommendations made by the Prison Reform Commission, namely punishing black prisoners by sending them out to work on public roads, was implemented. It was a recommendation that saw the establishment of movable or portable prisons (Swanepoel & Peté, 2019) for the purpose of relieving the serious and persistent problem of prison overcrowding in the Natal Colony (Peté, 1984:179).

The penal ideology that determined and used movable prisons was equally applicable to the establishment and use of the Point Convict Station, which was also only meant for black convicts. The timing of the establishment of the Point Convict Station could not be more relevant because it was going to accommodate a huge influx of rebel prisoners. However, it was not long before its capacity became lower than the number of native prisoners as the rebel prisoners captured during and after the rebellion created a major problem of overcrowding (Swanepoel & Peté, 2019). Among other products that emanated from the Prison Reform Commission recommendations, three pieces of policy legislation were promulgated. In 1908, the Probation of First Offenders Act was adopted to permit the conditional release of offenders in certain cases. In 1909, a Bill was introduced, and favourably received, which stipulated that corporal punishment should be inflicted with a cane, instead of with the cat-o-nine-tails. During the same year, the Juveniles Act, 23 of 1909, was also promulgated, which made provision for the birching of juvenile offenders, instead of committing such offenders to prison (Peté, 1984:185).

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Another significant development as a result of the commission's recommendations was an announcement in parliament by the Attorney General in November 1909 that an industrial establishment for boys was to be situated at the old Police Quarters at Estcourt, which was to be the first in a series of similar institutions. This announcement was clearly not going to be implemented before the establishment of the Union of South Africa in 1910 (Peté, 1984:185). However, the promulgation of certain legislative frameworks and announcements during parliamentary sessions was a representation of what the Natal Colony stood for, particularly in terms of prisoners' treatment. The mere fact that the Colonial Secretary of the Cape Colony asked the Natal government to what extent the commission's recommendations had been adopted in January 1907 (Peté, 1984:184) was evidence enough that many of the commission's recommendations were going to be adopted and implemented by the government of the Union of South Africa.

3. The post-colonial period between 1910 and 1948

A few months after the general elections in September 1910, in which the overwhelming majority of black people or non-Europeans were not allowed to exercise their franchise right within the white political spectrum, political change saw the promulgation of several laws, including the Prisons and Reformatories Act of 1911, among others. The 1911 Act was authored by Jacob de Villiers Roos, who served as the Secretary of the Law Department and Director of Prisons, first for the Transvaal Het Volk government, and later for the Union government between 1908 and 1918. He was also the founder of the South African Prisoners' Aid Association, which was the forerunner of what is today called the National Institute for Crime and Rehabilitation of Offenders (Chisholm, 1987:58). Twelve years after Roos entered the civil services in 1918, he began to "remake" the South African prison system. This was consistent with the transitionary phase of South African society that saw some efforts of reconstruction before the Union came to fruition. The reconstitution of a united Afrikanerdom allied to British imperialism had also been accomplished successfully. This reform through the 1911 Act was based on native policies grounded in segregation and discrimination. These policies included the Mines and Work Act of 1911, which imposed job reservation by restricting skilled work to white people, and the Native Labour Regulation Act of 1911, which stipulated that black people involved in industrial accidents would receive less compensation than white people. While there are claims that Roos took a great interest in the careers of individual prisoners, such as Nongoloza Mathebula (native), the leader of the Ninevite's gang, who was believed to have changed his gangster life as a result of rehabilitative interventions, the "remaking" of the prison system was mainly a reflection of differential treatment of prisoners along racial lines, as well as hard labour as punishment imposed on non-European prisoners, which can be traced back to the colonial period.

It would not be surprising that Roos took pride in the work of the 1911 Act (Chisholm, 1987) because several positive developments emerged from the promulgation of this Act. First was the successful merging of the different penal systems of the four former British colonies (Cape Colony, Natal Colony, Transvaal Colony, and Orange River Colony), which had become provinces of the new Union of South Africa and were brought under the central authority of the Department of Prisons (Corry, 1977:127). Secondly, sections 3(1) and (3) of the 1911 Act made provision for the establishment of the Department of Prisons, which was responsible for the performance of all work necessary for the administration of government convict prisons, among others. This meant that the establishment of the Department of Prisons was officially legislated with certain entrusted powers. Thirdly, through this Act, Roos abolished the treadmill, the

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stocks, and the breaking of stones for native women as a punishment in gaols and generally also humanised prison treatment by introducing prison boards to visit and report on the history and conduct of convicts (South Africa, 1911:563). The latter is in reference to sections 48(1) and (2), which state the following:

48(1) … the Governor General shall appoint boards of visitors to consist of officials and non-officials as he may think fit and shall prescribe their duties and period of office …
48(2) Each board of visitors shall, at least once in every year, furnish to the minister a report in writing containing detailed particulars relative to the history, conduct and industry of every convict or prisoner detained in any prison or gaol on whom a sentence of over two years was imposed and whom a special report is required (South Africa, 1911:563).

Furthermore, it is evident from section 48(4) of the 1911 Act that Roos was a proponent of the rehabilitation theory as he also advocated for and introduced two systems for the release of inmates from prisons. The one system allowed for the remission of part of a sentence subject to good behaviour by inmates, and the other was a system of probation that allowed for the early release of inmates, either directly into the community or through an interim period in a work colony or similar institution. On the contrary, Roos was also a staunch believer in racial segregation in prisons or gaols, reformatories, and industrial schools as he had no doubt that strict racial segregation represented a positive development and was closely linked to the powerful Afrikaner political elite, namely the Afrikaner Bond. The treatment of convicts and prisoners was based on sections 52(2), 75(3), 83(2), and 91(1)(b) of the 1911 Act, which state:

52(2) In every reformatory, as far as practicable … white persons shall be kept separate from coloured persons (South Africa, 1911:564).
75(3) In every industrial school males shall, as far as practicable, be kept separate and apart from females and white persons shall be kept separate from coloured persons (South Africa, 1911:568).
83(2) In every inebriate reformatory males shall, as far as practicable, be kept separate and apart from females and white persons shall be kept separate from coloured persons (South Africa, 1911:571).
91(1)(b) In any convict prison or gaol as far as possible, white and coloured convicts and prisoners shall be confined in separate parts thereof and in such a manner as to prevent white convicts or prisoners from being within view of coloured convicts or prisoners. Wherever possible coloured convicts or prisoners of different races shall be separated (South Africa, 1911:574).

It must be noted that the term “coloured” was used as a general term to refer to all categories of races except Europeans because it was thought that this would avoid anomalies in classification since if a prisoner did not clearly fall under one of the three principal categories, they would automatically fall under the “coloured” category (Swanepoel & Peté, 2019:183; Peté & Devenish, 2005:16). As Chisholm (1987:94) correctly puts it, this Act not only provided for racial and sexual separation, but also for the establishment of juvenile and juvenile adult reformatories divided by race and sex, as well as industrial schools for white youths. This unfortunate treatment was generally considered to be humane and “enlightened” (Chisholm, 1987:94).

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The treatment of prisoners on the basis of race was already a feature of various colonies during the colonial era across the country. For instance, in the Cape Colony, the government issued a proclamation in 1882 to legally segregate prisoners along racial lines. In the Natal Colony, a campaign for a complete separation of prisoners along racial lines was launched in 1904. This was one of the recommendations of the Prison Reform Commission in 1906. Prior to the appointment of the Prison Reform Commission in the Natal Colony, a commission of inquiry was appointed in 1868 to investigate the reform of the penal system with the aim of creating a separate prison system. It would thus not be farfetched to argue that the practice of treating prisoners along racial lines during the immediate post-colonial period was inherited from the colonial period. At face value, it would appear that the different treatment of prisoners along racial lines and the imposition of corporal punishment were acceptable and justified in terms of sections 36(b), 52(1), 75(3), 83(2), and 91(1)(b) of the 1911 Act respectively, but from a moral perspective, as we have come to know it today, such practice was unacceptable and inhumane.

Another contention of this paper is centred around the use of convict labour during the immediate post-colonial period as inherited from the colonial era. Section 12 of the 1911 Act made provision for the administration of convict prisons, including convict labour, which states that every convict detained in a convict prison shall be kept in safe custody until lawfully discharged or removed therefrom, and shall, subject to the provision of this Act and any regulation, at all times perform such labour, tasks, and other duties as may be assigned to him by the superintendent or assistant superintendent or by the officer in whose charge he may be (South Africa, 1911:554). Although this section of the Act did not specifically outline the reasons for the use of convict labour, it must be noted that prison labour could be used for whatever reason deemed fit, including as punishment, reduction of prison overcrowding, shortage of labour in industries, and for skills development during the colonial period. What is significant and relevant to the contention of this paper is the fact that there is a likelihood that prison labour was used for more or less the same reasons during the immediate post-colonial period.

Section 27(1) of this Act makes provision for hard labour for a period not exceeding two years, which was an additional sentence imposed on convicts or prisoners who assisted, conspired, incited, attempted, intended, or were even found to be in possession of any instrument that could be used to escape (South Africa, 1911:557). Section 47(1) makes provision for habitual criminals to be detained with hard labour until a board of visitors reported that there was a reasonable probability that the habitual criminal would in the future abstain from crime (South Africa, 1911:563). As alluded to in the foregoing section of this paper, the Constitution of the Orange River Colony made provision for hard labour; in the Cape Colony, prisoners were sentenced to hard labour after the departure of Montagu in 1852; and in the Natal Colony, prisoners were taught their proper role of hard labour in the service of white colonialists. The colonial era treatment of prisoners therefore had an influence on the immediate post-colonial penal system of the Union of South Africa. Chapter 7 of this Act makes provision for the establishment of reformatories and how juvenile and juvenile adult offenders must be treated (South Africa, 1911:564). This is consistent with the Attorney General's announcement in the Natal Colony parliament in 1909 that there was to be an industrial establishment for boys situated at the old Police Quarters at Estcourt, which was to be the first in a series of similar institutions. Indeed, the Natal Colony served as an example to the rest of South Africa.

Hard labour was not the only method of punishment that could be imposed on convicts or prisoners for offences relating to attempted escapes and escapes in particular. For instance,

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in terms of section 27(1) of the 1911 Act, corporal punishment could also be imposed on convicts and prisoners for offences relating to escape. Furthermore, section 27(2) makes provision for convicts and prisoners to be prosecuted or punished for any other offence under common law, or the provisions of the 1911 Act, or any other law or regulation. This is a reflection of a continued colonial era practice because whipping played a prominent role in the punishment of black offenders in the Natal Colony.

Among other punishments, section 35(1) of the 1911 Act makes provision for the following punishments for any contraventions by convicts or prisoners that can be imposed by the superintendent or assistant superintendent:

Solitary confinement in an isolation cell with or without spare diet for a period not exceeding six days in all; provided that if spare diet be ordered for more than three days there shall be an intermission of one day upon full diet after the third day of spare diet. Solitary confinement in an isolation cell with or without light labour for a period not exceeding fifteen days, ten days of which may be ordered to be passed on reduced diet (South Africa, 1911).

Section 63 of the 1911 Act makes provision for other forms of punishment that could be imposed on juveniles as it states that if any juvenile detained in any juvenile reformatory absconded therefrom or wilfully damaged or destroyed any property in or belonging thereto, the juvenile, if a male, shall be liable upon conviction by a magistrate to a penalty of whipping in the manner provided, or whether a male or female to a reduction of diet and solitary confinement in accordance with regulations.

It is worth noting that the administration of prisons was removed from under the Department of Justice in 1911 following the 1909 decision that it should function as a sub-department of the Department of Justice. The two departments were again merged in 1930 and demerged again in 1937 (Neser, 1993:8). In 1934, the 6d-a-day scheme was introduced. Through this scheme, black prisoners were hired out to outsiders such as farmers. This meant that they would serve parts of their sentences under the direct control of those who hired them (Van Zyl Smit, 1999:219). The administration of the two departments was once more merged in 1940 (Neser, 1993:8). It was during the latter period that the question of general prison reform begun to re-emerge as a public issue. Much of the pressure for reform during this era came from welfare organisations such as the South African Prisoners' Aid Association and the Social Services Association.

In 1943, reformists such as Mrs V.M.L. Ballinger and Dr H.M. Simons, with the support of prominent figures such as judges F.E.T. Krause, A. Paton, and J. Lewin and Reverend H.P. Junod, wrote a memorandum in which they highlighted the need for prison reform in the Union of South Africa. To substantiate this, they identified two major reasons why the South African prison system had not undergone radical change since the advent of the Union of South Africa 32 years prior. Firstly, the greater portion of approximately 85% of the prison population was non-European, who ought not to have been there at all because they were sent to gaol for offences under laws such as the Native Taxation and Development Act, the Masters and Servants Act, the pass laws, and the Native Urban Areas Act, and, secondly, there was an official attempt to keep independent observers out of the prisons so that they could not be subjected to scrutiny (Van Zyl Smit, 1992:26).

Ballinger and Simons made the following propositions in light of why the prison system of South Africa had to undergo radical change: prison housing should be drastically improved; communal cells in which all black prisoners were held should be abolished and replaced with

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single cells; a programme of housing reform had to be built on the decriminalisation of the laws controlling Africans; the pass laws had to go and imprisonment for municipal by-law offences had to cease; the hiring of convicts to private employers should be abolished, which should be coupled with the abolition of the statutory offences aimed at non-Europeans, which were the primary cause of overcrowding; and there was a need for intelligent rehabilitative work among all convicts, which could only be possible if the militaristic character of prison management was abolished and prisoners' aid and aftercare were instituted for all prisoners and not only for Europeans (Van Zyl Smit, 1992:27).

With these proposals, it became clear that Ballinger and Simons were against most of the provisions of the 1911 Act, which were inherited from colonial-era practices. The immediate push for the appointment of the Penal and Prison Reform Judicial Commission came from the Penal Reform Committee (which was later reconstituted and became the Penal Reform League) of the South African Institute of Race Relations (Van Zyl Smit, 1992:26). This was the same committee that requested Ballinger and Simons to compile a memorandum on the need for penal reform in South Africa. In 1945, the Penal and Prison Reform Commission was appointed under the chairmanship of Judge Charles William Henry Lansdown. This commission was tasked to investigate and report on, *inter alia*, the following: the classification and proper control of prisons and other penal institutions and of the persons confined therein; the means available and used within prisons and other penal institutions for the maintenance of discipline – in particular corporal punishment, physical restraint, spare diet, and solitary confinement; the development of suitable forms of education for all prisoners and their training in handicrafts and in agricultural and other pursuits with a view to their better adaptation to social life and how far and by what means such training may be given outside prison; the remuneration of prisoners by means of gratuities or otherwise; and the use of convict labour by private persons and authorities other than the government (Lansdown, 1947:viii).

The mandate of the newly appointed commission instilled hope for a legitimate prison system in South Africa. The commission agreed with the reformers that prisoners should not be hired out, which effectively scrapped the 6d-a-day scheme that had already been introduced in 1934. The commission also saw the importance of rehabilitation, and thus extended both literacy and aftercare to all black prisoners. However, this was short-lived because the government of the United Party reinstated farm labour in 1947, before the commission could officially present its report. This was done through a 9d-a-day scheme that replaced the 6d-a-day scheme. This was as a result of farmers around the country petitioning the state to allow them to build farm prisons with increasing urgency. These farm prisons benefitted farmers not only because of the access to cheap labour but also because they did not have to take responsibility for running the hyper-secure barracks of their workers. The positioning of these prisons made it easier to hide infringements of the penal code and especially the rights of prisoners. Soon after the release of the commission's final report, incidents of infringements of prisoners' rights, particularly those who were sent to farm prisons under the 9d-a-day scheme, were widely published in *Drum* magazine and the daily press in South Africa and abroad. These incidents were in the form of, for example, photographs of a mounted farmer with a whip, while in the Johannesburg Central Gaol, prisoners were forced to dance naked in front of others in the course of being searched.

In its final report, the commission was highly critical of the new scheme and reiterated its earlier findings on the importance of not hiring out prison labour, but it was to no avail. The recommendations of this commission were published in 1947. Among others, the commission recommended the following:

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Paragraph 529(2) - In sentences of imprisonment reference to labour should in general be excluded, though in suitable cases a sentence might be stipulated to be without labour.

Paragraph 529(26) - Flogging with a cat o 'nine tails should be abolished.

Paragraph 529(32) - Spare diet and solitary confinement should have no space in the scheme

of penalties which may be imposed by the courts.

Paragraph 856(4) - Non-European first offenders should have the same privileges as Europeans for cell occupations wherever facilities permit;

Paragraph 918(6) - The system under which prisoners serving sentences of under three months are handed over to the control of farmers on payment by them to the Prisons Department of 6d per day in respect of each day of the sentence still to be served should be terminated (Lansdown, 1947).

The foregoing recommendations marked the possible introduction of a new era of the penal system of the country. Such could mean a significant paradigm shift from the colonialist penological practices that were characterised by hard labour punishment and racial discrimination. Other developments in respect of the Lansdown Commission included consensus that housing conditions were unsatisfactory and that a single-cell system would therefore be introduced gradually. The commission agreed that short sentences of imprisonment as a result of the contravention of statutory laws caused overcrowding, but warned that any argument or activity that tended to encourage disobedience of these laws was to be condemned. There is no apparent recommendation to this effect because the commission contended that it was not its function to inquire into or to comment on the necessity or desirability of any of the laws.

By virtue of the treatment of black prisoners during the colonial period and pre-apartheid era – which included 13-hour shifts six days a week throughout the year and loading and drawing trucks and carrying stones, among others – it was better to be locked inside the prison and be subjected to what was referred to as "economically useless labour" in the Natal Colony in the late 1860s than being outsourced to racist famers with little concern for the wellbeing of non-European prisoners, which is a practice that was in existence during the colonial period and, by implication, during the immediate post-colonial period. However, one of the five proposals by the commission, namely the abolishment of statutory laws perpetuating overcrowding exacerbated by the abolishment of the hiring of convicts, was not taken into consideration. It is rather bizarre that the commission took the position not to entertain this proposal because all other proposals depended on the achievement of this proposal. For instance, prison housing could not be improved if the country's penal institutions were overcrowded.

Another example of the disregard of the Lansdown Commission's recommendations is the militarisation of the department. This militarisation was seen as bolstering apartheid separatism in the department, which became the official policy position of the government following the National Party's election victory in 1948. This was consistent with the belief that any concession to the black majority would trigger escalating African demands for meaningful sharing of power. Through the department's military structure, an association with the South African Defence Force was formed, which played a role in maintaining the repression of anti-apartheid activists and civilians. Prisons played a more direct role in enforcing apartheid legislation through the incarceration of many of the regime's opponents. This turn of events

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was the beginning of the repression and oppression of anti-apartheid activists and civilians for more than four decades to come.

4. The National Party era (apartheid era): 1948 – 1993

As the National Party ascended to power in 1948, it would ordinarily be expected that many pieces of legislation would be introduced, amended, and repealed to ensure that the party's manifesto was prioritised. Among others was the Prisons Act of 1959, which was enacted in March 1959 in order to consolidate, amend, and repeal the laws relating to prisons as listed in the schedule of this Act. This Act made provision for, *inter alia*, penalties for certain offences and rewards for the recapture of escaped prisoners; trial of offences under this Act; functions and duties of prison boards and release of prisoners; removal, training, and treatment of prisoners; detention and treatment of civil debtors and certain other classes of prisoners; and general provisions (South Africa, 1959).

There is no doubt that this Act reflected little or no transformation of the South African prison system, particularly in respect of the treatment of prisoners. This Act made provisions for the continued treatment of prisoners on the basis of race. Section 23(b)(c) of this Act states:

> In every prison as far as possible, white and non-white prisoners shall be detained in separate parts thereof and in such a manner as to prevent white and non-white prisoners from being within view of each other. Wherever practicable, non-white prisoners of different races shall be separated (South Africa, 1959:14).

The foregoing provisions are consistent with sections 52(2), 75(3), 83(2), and 91(1)(b) of the 1911 Act, which aimed to ensure differential treatment on the basis of race. In terms of section 78(2)(a), this segregation was imposed in pursuance of any scheme of classification or treatment or otherwise (South Africa, 1911:48). On the one hand, this meant that the implementation of this provision could see white prisoners participating in programmes that would equip them with useful skills and enable them to be economically active upon release and, on the other hand, the focus would be on the punishment of black prisoners.

The 1959 Act further made provision for the continued use of convict labour in public works and hiring them out to any person, including farmers. In line with section 93(1) of the 1911 Act, section 75(1) gave prison authorities powers to enter into agreements for prisoner labour consistent with certain recommendations of the Lansdown Commission,[1] as it states:

> Subject to the employment of prisoners upon public works as far as possible, the Commissioner may contract with any authority or divisional council or municipal council or other public body or with any person or body of persons for the employment of prisoners who are under sentence of imprisonment, upon such terms and conditions as may be agreed between such parties (South Africa, 1959:46).

Significant changes to the 1911 Act by the 1959 Act relate to the penalty imposed on any convict who escaped or conspired to escape, made any attempt to escape, or was in possession of any instrument or other object with intent to procure his own escape or that of

[1] The Lansdown Commission made several recommendations that were in favour of the continued use of prison labour, including entering into contracts with the South African Railways and Harbours and by provincial and local government authorities, gold mining employment, employment by private business concerns, and employment by farmers.

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another prisoner. In terms of section 48(1) of the 1959 Act, if any prisoner was convicted of any of the foregoing contraventions, they would be imprisoned for a period not exceeding five years and, in addition, where escape or attempt to escape was accompanied by any act of violence, such a prisoner may be sentenced to undergo corporal punishment not exceeding 10 strokes (South Africa, 1959:32). This differed from the provision of section 27(1) of the 1911 Act that stated that if any prisoner was convicted for any of the abovementioned contraventions, they would be imprisoned with hard labour for a period not exceeding two years and, in addition, where escape or attempt to escape was accompanied by any act of violence, such prisoner may be sentenced to undergo corporal punishment not exceeding 24 strokes (South Africa, 1911:557).

Section 54(2)(d) of the 1959 Act further made provision for a reduced number of strokes from not more than 12 on male prisoners under the age of 60 years (South Africa, 1911:560) to not more than six on male prisoners under the age of 50 years for contravention of prison regulations (South Africa, 1959:34). This was in line with the Lansdown Commission recommending the amendment of the provision for punishment of inmates of prisons and gaols by reducing the number of strokes that may be imposed (Lansdown, 1947:par. 999(9)). Another notable change in the provisions of the 1959 Act was the absence of punishment by hard labour, which could be attributed to the Lansdown Commission's recommendation that in a sentence of imprisonment, reference to labour should in general be excluded, although in suitable cases a sentence might be stipulated to be without labour (Lansdown, 1947:par. 529(12). Although this Act did not make provision for hard labour as punishment, according to Alexander (1994:34), many political prisoners were sentenced to hard labour in Robben Island Prison.

Notwithstanding the changes in the provisions of the 1959 Act, whipping and other forms of inflicting pain could only mean the degradation and inhumane treatment of prisoners. According to the DCS (2005), this Act continued and even extended racial segregation within prisons in line with the national policy of differential development signalled in by apartheid and closed the prison system off from inspection by outsiders by prohibiting reporting and publishing of photographs. This meant that in the absence of any inspection, the prison system could trample on prisoners' rights without being reported and without corrective measures being taken.

The foregoing provisions of the law promulgated by the apartheid regime are a representation of a sustained continuation of the penological practices during the post-colonial period as inherited from the colonial period. In other words, this Act sustained and formalised what was already practised in different colonies prior to the Union of South Africa and the position of Roos' philosophy, and subsequently by the National Party government, by way of introducing apartheid policies and effectively ignoring the United Nations' (UN) Standard Minimum Rules for the Treatment of Prisoners of 1955. Apartheid policies perpetuated the treatment of prisoners based on separatist ideology. Separatist ideology was not only based on race but also the ethnic separation of black prisoners. The 1959 Act not only implemented a two-stream correctional policy for non-white and European (white) convicts, but also, to a lesser extent, special arrangements for members of different African groups in one institution. Placing black convicts in a correctional institution with people of their own group and race not only recognised ethnological differences but was also in accordance with the national policy of separate development (South African History Online, 2015). This was informed by section 23(1)(c) of the 1959 Act, which states that wherever practicable, non-white prisoners of different races shall be separated. Section 23(2) further states that any prison or any portion

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thereof may be restricted to the detention, training, or treatment therein of a specified race or class of prisoners (South Africa, 1959:14).

It was during this time that the National Party government ignored the UN's non-treaty standards regarding prisoners' treatment; South Africa was not only a member of the UN, but also a founding member before being suspended in 1974. The South African government even released a statement that it was not accountable to the UN or any of its commissions or committees for the conduct of its prison administration or treatment of prisoners convicted by the courts (Department of Foreign Affairs, 1969:23). This means that the 1959 Act was promulgated while South Africa was a member state to the UN. Instead, the government reacted by using propaganda tactics through a booklet produced by Mr Victor Verster, the then Director of Prisons, in 1958, in which he claimed that the prison system of the Union of South Africa was conducted in conformity with the basic principle of non-discrimination on grounds of race, colour, sex, language, religion, political outlook, national or social religion, birth, or other status. All laws and regulations pertaining to penal institutions and the manner in which prisoners confined therein are to be treated, refer specifically to prisoners in the widest sense of the word, without any discrimination whatsoever (Van Zyl Smit, 1992:32).

With this publication, Mr Verster's intention was to analyse the prison system in relation to the UN's Minimum Standard Rules of 1955. His analysis was a deliberate act of misleading the global community about the status quo in the Union of South Africa because there were continued manifestations and persistent discriminatory practices in the South African prison system. In 1953, the South African government enacted stringent laws that provided for the proclamation of a State of Emergency and imposing heavy penalties mainly on black offenders, including whipping, for the contravention of laws during the protest campaign. Three years later, 156 leaders representing a complete cross-section of South African society were arrested and charged with treason – an offence that carried the death penalty (UN, 1994:13). Nelson Mandela was one of these leaders, and was acquitted later in 1961 (Maharaj, 2001:1; Dick, 2011:193).

The international community started paying more attention to South Africa's apartheid policies, which in 1960 saw the UN Security Council condemning these policies and calling upon South Africa to initiate measures aimed at bringing about racial harmony based on equality and to abandon its policies of apartheid and racial discrimination (UN, 1994:14). This paper argues that features of such policies have long been in existence and were simply inherited from the colonial and post-colonial era governments.

Spare diet and solitary confinement were abolished as a sentence of the court for any criminal offence and not offences committed within prisons after 1977 (Peté & Crocker, 2010:113; Lansdown, 1947:para. 32). However, it remained a legally permissible form of punishment in the prison system throughout the apartheid period as initially recommended by the Lansdown Commission.[2] Practically, different food rations were served to different races except when on death row (Luyt, 2008:176). It was discriminatory as coloured and Indian prisoners had one diet scale and Africans another. Africans were not entitled to bread, while coloureds and Indians were entitled to a "katkop" (cat's head), which is about one quarter of a standard loaf for supper. The preparation of food for "kaffer bandiete", "hotnots", and "koelies" was perfunctory and left much to be desired (Dingake, 1987:204). As if withholding food from

[2] The Lansdown Commission recommended that the imposition of spare diet with or without solitary confinement should be limited to a period not exceeding three days, with not shorter intervals than 14 days between the termination of one such punishment and the commencement of another. See also paragraph 34 of the report of the Penal and Prison Reform Judicial Commission (Lansdown, 1947).

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African prisoners was not enough punishment, the practice of feeding rice water instead of food to prisoners deemed guilty of breaching prison discipline was a harsh kind of spare diet used as punishment in apartheid prisons. Women were not spared the punishment of spare diet in apartheid prisons (Peté & Crocker, 2010:114).

The foregoing is not only a representation of inhumane and torturous treatment of non-white prisoners but also a demonstration of the National Party government's stance in respect of the implementation of its policies, which were based on differential treatment in many sectors of society, including the prison environment. The fierce and consistent implementation of the law by the apartheid regime would be commendable if such were acceptable in terms of humane treatment and consistent with the UN's Minimum Standard Rules of 1955. This is so because the government at that time was consistent in treating prisoners in line with the prescripts of the law, formal or informal, which was to a greater extent inherited from the colonial and immediate post-colonial periods.

In 1964, mass assault of both political and non-political prisoners was the order of the day in all South African prisons. Assaults were meted out to the former on accusations of refusing to work or that they were on a go-slow (Alexander, 1994:24). This led to an attack on the legitimacy of the prison system. The attack by detainees and prisoners made a considerable impact as they questioned the reasons for their incarceration. This kind of denunciation increased in 1964 when the African National Congress issued a pamphlet titled "Brute force: Treatment of prisoners in South African gaols". Central to this pamphlet was an attack on the prison authorities regarding the use of prisoners on white farms and the general conditions of imprisonment of not only political prisoners but non-political prisoners as well.[3] To substantiate this claim, this pamphlet included a note that was smuggled out by Nelson Mandela about the conditions at Pretoria Central Prison (Van Zyl Smit, 1992:33), as well as other written documentation (Singh, 2005:25).

The foregoing is a representation of the South African government's stance regarding the Lansdown Commission's recommendations and the UN's Standard Minimum Rules for the Treatment of Prisoners. Convict labour that was first introduced during the colonial period and then inherited by the immediate post-colonial regime ultimately continued during the apartheid regime. It was during this time that international organisations such as the International Committee of the Red Cross, the UN, and Amnesty International turned their attention to prisoners' plight in South Africa. Two visits by International Committee of the Red Cross delegates were already made prior to 1969 and these delegates were allowed to visit whichever prison they wished and they were free to talk to any inmate (Department of Foreign Affairs, 1969:23).

In the words of Neville Alexander, who was a political prisoner between 1964 and 1974, the general picture that emerged was one of extreme harshness and physical pressure on prisoners from 1962 until December 1966, with peaks of inhumanity and brutality between 1962 and 1963 and again from August 1966 onwards (Alexander, 1994:13). The conditions on Robben Island were brutal; prisoners were only allowed to stop doing hard labour 14 years later in 1978, and until then, their existence on the island was stark and cruel, lightened only by their own attitude, as well as visits and letters from family. Food was barely edible and allocated

[3] According to Buntman (2003), Dlamini noted that "[n]on-political prisoners were also used to brutalise and terrorise political prisoners. They were hardened criminals and members of the vicious and notorious gangs, who had been hand-picked by the enemy from the most notorious maximum security prisons of South Africa to come and demoralise and humiliate us with the assistance of uncouth, uncivilised, raw boer warders so that we could never again dare to challenge the system of apartheid colonialism".

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according to racist policies. While African prisoners were served 12 ounces of maize meal porridge and a cup of black coffee for breakfast, the Indian and so-called coloured prisoners received 14 ounces of maize meal porridge with bread and coffee (Brand, 2015:46). African prisoners had to wear short pants and sandals year-round, whereas Indian and coloured prisoners were issued with long pants and socks (Venter, 2018:21). This differential treatment is yet another case in point that the provisions of the 1959 Act were continuously, consistently, and practically implemented on the ground, in particular where it states that "wherever practicable, non-white prisoners of different races shall be separated" (South Africa, 1959:14).

The South African government continued to deny reports about the conditions in prisons and the prisoners' plight and viewed international groups' attention to its penal system as meddling in South Africa's internal affairs (Van Zyl Smit, 1992:34).

The government further reacted by amending section 44 of the Prisons Act of 1959 in 1965 to make it an offence not only to publish false information about prisons or prisoners, but also in terms of section 12 to place an onus of taking reasonable steps to verify such information upon the accused (Van Zyl Smit, 1998:405). Subsequent to the amendment of the Prisons Act, the government issued a report through the Department of Foreign Affairs in 1969, titled *Prison administration in South Africa*. In this report, the government purported to be championing good conditions in prisons consistent with the international standards adopted by the 1955 UN Congress on the Prevention of Crime and the Treatment of Offenders. This claim was based on inspections and visits by the judges of the Supreme Court and other observers such as the delegates of the International Committee of the Red Cross. Such visits produced a report by Mr Hoffman of the International Committee of the Red Cross, which was dubbed a white-wash as it was not a true reflection of the reality in South Africa's prisons.

At the beginning of 1965, Mandela and his colleagues were set to work digging in the lime quarry. Venter (2018:21) quoted Mandela as saying: "It was gruelling work and the glare of the sun on the white limestone seared their eyes." In September 1965, Mr Justice Ludorf of the Transvaal Division of the Supreme Court visited several prisons, including Robben Island, and found no evidence of prisoner torture and unhygienic prison conditions; however, he was quick to acknowledge that there probably were exceptions in places he did not visit and that warders were likely to violate regulations due to the size of the organisation (Department of Foreign Affairs, 1969:25). This is contrary to Mandela's description of torturous treatment experienced in early 1965. It is not clear if the situation on Robben Island improved in less than nine months, but what we now know is that convicts were forced to work under difficult circumstances in line with the provisions of law relating to convict labour that had already been in place during the colonial and immediate post-colonial periods. Such practices by the prison system of South Africa at that time were a mere continuation of how prisoners were treated during the colonial and immediate post-colonial period.

Although Helen Suzman[4] was reported to have found no evidence of prisoners' ill-treatment in the late 1970s during her visit to Robben Island by the Department of Foreign Affairs (1969:26), she denounced detention without trial and outlined numerous hardships that apartheid policies imposed on the black man, such as the effect that lengthy solitude had on Robert Sobukwe (Mandela, 2001:7). Suzman mentioned the case of one prisoner as an example of what could be happening with many other prisoners. Two years before the lifting of the State of Emergency in 1988, which was declared in 1985, important amendments were made to prison

[4] Helen Suzman was a member of the Progressive Party, which was an opposition party at the time, and a campaigner for better prison conditions.

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legislation. For instance, references to race were excluded and racial segregation of the prison population was almost totally abolished (DCS, 2005:par. 2.5.3). Although patterns of labour use inside prisons were persistent, two positive developments were also observed during 1988: firstly, that outstations were closed down, and secondly, the practice of hiring out short-term prisoners to farmers was discontinued (Van Zyl Smit, 1998:407). These were positive developments because outside labour was rather harsh and not necessarily education and training based.

The early 1990s saw a middle ground found between attackers of the government, human rights activists, and the government. The then president of South Africa, F.W. de Klerk, announced the unbanning of political parties on 2 February 1990. What is significant about this announcement was the release of political prisoners and the reconsideration of the death penalty. This meant the beginning of the recognition of prisoners' rights as this development had a direct impact on prison law and practice in South Africa, which included the amendment of the Criminal Procedure Act (51 of 1977) in 1990 to restrict the imposition of the death penalty (as amended by section 4 of the Criminal Law Amendment Act, 107 of 1990); the amendments made to the Prisons Act of 1959 in 1990 that effectively abolished apartheid in the prison system, particularly racial discrimination; and amendments to the prison regulations that effectively abolished the remaining overtly racially discriminatory measures (Van Zyl Smit, 1992:40).

In April 1990, the Minister of Justice and Prisons announced that the creation of alternative community-based sentence options should be researched and developed. In November 1990, the mission statement and strategies were approved by the government following a strategic planning session that produced such a mission statement. This mission statement was to promote community order and security by the control over, detention of, and dealing with prisoners and persons under correctional supervision in the most cost-effective and least restrictive manner (DCS, 1991). It was during this time that the Prison Services was separated from the Department of Justice and renamed the "Department of Correctional Services" in 1990 (Van Zyl Smit, 1992: 41), which gave effect to the new mission statement of the department. The inclusion of correctional supervision in the department's new mission statement meant that supervision of offenders within the community marked a historical and positive change in the department. This change marked the beginning of the prison transition period. It is during this period that the DCS officially committed to a policy that aimed to make prisons more humane places than they were under apartheid, with a view to rehabilitate offenders and reintegrate them into society as law-abiding citizens.

To give effect to the imposition and execution of correctional supervision, the Criminal Procedure Act of 1977 and the Prisons Act of 1959 were again amended in 1991 (Neser, 1993:74). Among other amendments, the Prisons Act of 1959 was changed to the Correctional Services Act. Further notable changes included the substitution of words such as "prisons" with "correctional centres". The Correctional Services Amendment Act of 2008 further saw words such as "prisoners" being replaced with "offenders" or "inmates". Although this could be in line with international standards or practice, section 35(2) the Constitution of the Republic of South Africa of 1996 has not been amended in line with such changes and refers to prisoners as "prisoners" and not as "inmates" or "offenders".

Prior to the promulgation of the Constitution of 1996, the Interim Constitution was promulgated in 1993, following the Convention for Democratic South Africa (CODESA I and II). The Interim Constitution made provision for civil and political rights that should be enjoyed by every citizen in South Africa. It is important to note that this Constitution was not selective

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in terms of who should enjoy fundamental rights, but very succinct in including all people, irrespective of their colour, race, social status, or origin. This means that all prisoners are also entitled to these rights. The 1993 Interim Constitution therefore brought the human rights culture into the correctional system of South Africa. This meant that the treatment of prisoners would be based on the promotion, protection, and respect for the human rights of prisoners.

5. Conclusion

The use of convict labour within the penal system of the Republic in the early 20th century was consistent with the colonial-era practices, which were to a certain extent informed by the legislative frameworks (in the form of ordinances in the Cape Colony, the Constitution of the Orange River Colony, and Gaol Regulations giving effect to the 1870 Gaol Law in the Natal Colony, for instance) of respective colonies such as the Cape, Orange River, and Natal colonies. This was necessitated by various reasons, including labour shortages and inadequate accommodation for prisoners, and was used as punishment, among others. Significant to the implementation of the legislative provisions relating to convict labour was the practice of racial segregation, which subjected non-European prisoners to hard labour and other forms of ill-treatment.

While European prisoners were employed as overseers and skilled workers, or supervisors as we know them today, non-European prisoners were subjected to continued harsh punishment. Racial segregation was the order of the day in the penal systems of the British colonies. For instance, in the Natal Colony, racial segregation was entrenched to the extent that there was a proposal to build a new prison for European prisoners with the aim of reforming them by means of training and education, while non-European prisoners were subjected to harsh punishment, including hard manual labour. This practice became formalised as a result of the inception of the Union of South Africa and with the promulgation of the Prisons and Reformatories Act 13 of 1911, which made provisions for racial segregation. The imposition of punishment in the form of corporal punishment, as well as solitary confinement and spare diet, was the order of the day in the penal system of the Union of South Africa in the post-colonial period.

The year 1948 saw a political change when the National Party ascended to power. This marked the beginning of the apartheid regime, with extensive racial discrimination laws. The penal system during this period was regulated according to the Prisons Act of 1959. This paper argues that this Act was in fact a continuation and extension of the 1911 Act as it made provision for continued treatment of prisoners on the basis of race, which was essentially the policy position of the government of the day. Although the government denied any form of racial discrimination and claimed that all prisoners were treated equally but separately, whipping, hard labour, solitary confinement, and spare diet were used as forms of punishment for native prisoners, which were consistent with the provisions of the 1959 Act. As was highlighted in this study, political prisoners bore testimony to all kinds of ill-treatment, torture, and hard labour during the apartheid period. It is therefore appropriate to assert and conclude that the treatment of prisoners during the post-colonial era was based on certain provisions of the legislative framework that was a “blueprint” of how prisoners were treated during the colonial era.

The announcement of the release of political prisoners and reconsideration of capital punishment by the then president of the Republic of South Africa marked the beginning of the end of the 1959 Act and the recognition of the rights of prisoners. This would be in line with the provisions of the 1993 Interim Constitution, which was subsequently declared the Constitution of the Republic of South Africa of 1996 following the first democratic general

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elections in 1994. This development brought hope to many South African citizens, in particular prisoners.

This paper demonstrated the relationship between penological practices during the colonial, post-colonial, and apartheid periods. Divided into three themes, it also examined how prisoners were treated during the said periods by discussing specific provisions of different pieces of penal legislation during these periods. On the basis of available evidence from the literature, this paper argued that the treatment of prisoners during the post-colonial and apartheid periods was inherited from the colonial regime.

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