# FACING PRISON

## A HANDBOOK FOR CONSCIENTIOUS OBJECTORS

# Facing Prison

# a handbook for COs

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## 1. INTRODUCTION

A growing body of conscripts believe for reasons of conscience that they should not serve in the SADF.

Such people have a variety of options open to them: They can go into exile, they can try evading the call-up, they can apply to be classified as religious objectors, or they can choose to serve a prison sentence. It has already become a truism to say that these are difficult choices. But it is not enough merely to point out the unenviable nature of the objector's position. A great deal still remains to be said about the exact nature of the different options.

This booklet focuses on the prison option, generally regarded as the harshest of the alternatives open to objectors.

Objectors who choose this option today would find themselves in a completely different position to that of their fellow objectors who took the prison option before the Defence Act amendments came into force in 1984.

Before 1984 only a small category of people were exempted from combatant status. Only objectors who were members of one of the peace churches, such as the Jehovah's Witnesses and the Christadelphians, were exempted. Even they were not exempted from service in the SADF, but had to render service in a non-combatant capacity.

Objectors who did not fit into this category and who refused to serve in the SADF in any capacity, were guilty of an offence. Fines of up to R2 000 and jail sentences of up to two years could be imposed - and unless the objector belonged to one of the recognised peace churches, he could theoretically be called up again after completion of his sentence! The writers are not aware, though, of anybody who was in fact called up again in this way.

In the late 70's and early 80's, with political conflict in South Africa escalating, the numbers of objectors who refused to serve in the SADF started increasing. More and more people were imprisoned for refusing to serve in

the SADF. The imprisonment of objectors like Charles Yeats, Billy Paddock and Peter Hathorn received much publicity.

In 1980 the SADF appointed the Naude commission. Its task was to review the existing legislation on conscientious objection, and its recommendations led to the Defence Amendment Act (34 of 1983), which came into force in July 1984.

This piece of legislation changed the position of objectors considerably. It was an effort by the state to accommodate the increasing criticism that was emanating from some of the established churches, at the same time as intensifying the punitive measures applicable to those objecting to conscription on political grounds.

On the one hand it did accommodate a few more religious objectors. Today it is no longer the objector's church affiliation that matters. Universal conscientious objectors of any church affiliation can now apply to the Board for Religious Objection for classification as religious objectors. They simply have to prove that their objection is based on their individual religious views. Furthermore, alternative service is no longer restricted to non-combatancy within the SADF: it can now be performed outside the SADF as well. (More details about this option for those considering applying to the Board are contained in the SACC's Resource Manual, listed in the bibliography at the end of this booklet.)

On the other hand, the position of the objector who was not a religious pacifist was made much more difficult. They do not qualify for this alternative service and now face going to prison for one and a half times the period of the service they still owe. This means that objectors who have not yet done their two years' military service could conceivably find themselves facing jail sentences of up to six years.

This is a very harsh punishment for a "crime" of conscience. As prisoners, objectors will find themselves in a brutal and alienating environment. They will have few rights and they will have to fight for their privileges. And as conscientious objectors, they might even find themselves worse off than many of their fellow-prisoners.

It looks, for example, as if their chances of receiving remission or parole - not to mention amnesty - are quite slim.

Objectors today have, however, an advantage vis-a-vis those who served jail sentences before the new legislation came into force. Before 1983, conscientious objectors who were imprisoned faced being called up again once they left jail. Serving the full term of imprisonment under the present legislation absolves one of any further obligations to the SADF.

It should be stressed that this publication is not intended in any way to encourage or assist people to refuse to render military service or to fail to report for service. It was compiled in the belief that factual information is vital in order to enable individuals to make informed decisions in this crucial issue of conscience.

Chapter 2 explains the legal position of objectors, the nature of the various offences they could be found guilty of and the different sentences that could be imposed for these offences. The area of the rights and privileges of a convicted prisoner and of a person in detention barracks is then discussed.

Chapter 3 looks at the practical effects of a decision to go to jail. It discusses the objector's rights after arrest and when awaiting trial. Preparation for trial, with reference to civilian courts as well as courts martial, is also discussed. The chapter concludes with some notes on preparing for life in prison.

This is followed by two annexures. In the first, a glimpse into individual prison experiences is offered. The second annexure contains further technical information regarding court procedure, appeal and review.

It would perhaps be useful at this stage to summarise our findings. Someone who has decided to refuse to serve would probably do best to report at the camp to which he has been called up, and make his refusal known after registering. Then it would be more likely that he will be charged with refusal to serve and not some other offence. Once he has refused, he could be arrested by the military police and kept in detention barracks. He will most

likely be tried in a civil court, with the full sentence of one-and-a-half times his outstanding service being imposed. Furthermore, the chances are that he will be sent to a civilian jail and not to detention barracks.

It should be remembered that the pages that follow explore territory that is in many ways new and unknown. Much of the information contained in it is uncertain. There are various reasons for this. There have been numerous amendments to the law over the last ten years and much of the wording in the relevant legislation is vague. Supreme Court decisions in this area have often conflicted. Besides this there is the fact that so few people have been imprisoned for refusing to serve in recent years.

This creates a difficult situation: the first people to be charged for refusing to serve will have to accept that their cases will be "test cases" and that they will be venturing into uncharted waters.

We hope that the information contained herein will be useful to such people. We hope that, even though it is incomplete, this publication will contribute in some way towards demystifying the prison option and that it can give objectors an idea of their position once they have refused to serve. Further work on the prison option -- and the other options open to objectors -- is essential. This booklet should be regarded as an attempt to start addressing these problems.

## 2. WHAT OFFENCE WILL I BE COMMITTING?

### 2.1. General comments

Paradoxically, an objector who refuses to serve will not necessarily be charged with refusing to serve. In fact he could be found guilty of one or more of a number of offences.

The most obvious offences which may be committed by an objector who refuses to serve are those referred to in Sec. 126A of the Defence Act, i.e.

* failing to report when called up; and
* refusing to serve when liable to render such service.

However, the Military Disciplinary Code also applies to someone who refuses to serve, and an objector would also be contravening certain of its sections, such as

* disobeying a lawful command;
* failing to appear at a place of duty;
* being absent without leave.

All these offences are punishable by heavy sentences. Someone charged with any of them should contact a lawyer immediately and find out about them. On the whole though, prosecution under sect. 126A seems more likely.

### 2.2. Failing to report

(i) The offence

**Failing to report** for duty in terms of the Defence Act is the lesser of the offences related to objection.

Technically, the offence of **failing to report** would still be committed in most cases, even if the reason for the failure was that an objector refused to serve.

During 1987 some objectors were charged with failing to report rather than refusing to serve. This was possibly because the Government wanted to avoid adverse publicity

or because it was awaiting the final acceptance of the recent amendment to the Defence Act. This amendment sets the prison sentence for refusing to serve clearly at one-and-a-half times the total period which the accused may still be called up for in terms of the Act.

(ii) The sentence

The possible sentences are as follows, irrespective of which type of service in the SADF you are called up for:

* up to 18 months imprisonment; or
* up to 18 months in detention barracks; or
* a fine, the maximum depending on your rank in the army (R600,00 for privates). , seem

Part or all of the sentence may be suspended. Suspended prison sentences have been imposed in a number of cases, sometimes with, and sometimes without the option of a fine. Failure to report for a subsequent call-up may lead to the court putting the suspended sentence into effect.

## 2.3. Refusing to serve

(i) The offence

An objector who fails to report for a call-up may be charged with **refusing to serve**, a separate offence provided for in sect. 126A of the Defence Act. This offence carries heavy penalties.

If the accused is charged with this offence, proof of failure to report will automatically lead the court to presume that he is guilty of refusal as well, unless he refutes this presumption. If he wants to refute this presumption, he must prove that he did not refuse to serve but only failed to report.

A objector who reports for his call-up at the time and place required, but refuses to render any service, seems to commit the offence of refusing to serve rather than the offence of failing to report. This procedure, in fact, would seem the preferable approach for an objector who has decided that his only choice is to go to jail. This is

because an objector who serves the full term of imprisonment imposed for this offence **is not liable for further military service.** This is not the case for a objector sentenced for failing to report - he may be called up again as soon as he leaves the prison.

If an objector reports but refuses to serve, it would be very difficult for the State to argue that he should be convicted of failure to report. If he hands himself over to the ordinary police, however, there is a greater chance of being prosecuted for failing to report.

Any objector contemplating this particular course of action is advised to do the following beforehand:

* contact the law officer at his unit and advise him of his intentions;
* ask what action will be taken against him;
* take family and supporters with him as it is psychologically reassuring and they may be able to pick up information immediately on what will happen to him, which they can disseminate;
* get his lawyer to accompany him;
* be prepared to be arrested and kept in a cell at the unit.

(ii) The sentence

Naturally it is crucial for anyone contemplating refusal to serve to know what the sentence is likely to be. Unfortunately, as we have explained in the introduction, this question is very difficult to answer, particularly in cases where people have already done their two years' national service.

The sentences for refusal to serve are based on a objector's outstanding service liability. Multiply the outstanding service liability by one-and-a-half and you have the sentence. There is, however, a minimum sentence for this offence, namely 18 months. The opinion of some lawyers is that the sentence of one-and-a-half times the outstanding liability is **the maximum sentence.** It is possible that the Courts would have the same interpretation. There is as yet no consensus on this question.

The problem is compounded because no-one (including the Supreme Court, the SADF itself or lawyers working in this

area of the law) is certain about how to calculate outstanding service liability. According to sect. 22(3) of the Defence Act, a objector who has completed his initial two year period of service shall be liable to render a further 720 days' service during six cycles of two years each. There is a proviso that a objector who does not render service for which he is liable in terms of sect. 22 due to "an act or omission on his part" remains liable for such service.

There are a number of tenable views as to how this should be interpreted. These include the following:-

- that a two year service cycle runs even if the calling-up authority withdraws a call-up or grants deferment. If this view is correct, a person who has completed national service and whose camps are then deferred for 12 years because of study or other purposes is no longer liable for any camps.

- that a two year service cycle runs if the calling-up authority does not issue or withdraws a call-up during a particular cycle. However it does not run where the objector has had a period of service deferred, i.e. the objector remains liable for any period of service which he has had deferred.

- that the period of service envisaged in sect. 22 involves an actual period of service and not a deferred or withdrawn period of non-service, i.e. a service cycle will not run if the call-up is not issued, or is withdrawn or deferred.

The author has researched the matter extensively and has arrived at the periods indicated below, which has been calculated according according to the most lenient of the views. The reader will have to bear in mind the possibility that the courts may eventually disagree with

this opinion. In the opinion of the author, the legal position can be explained as follows:

| If an objector | According to the most lenient approach, his maximum sentence will be |
|---|---|
| (a) is liable for national service and has done no service in the citizen force; | (a) 6 years; |
| (b) completed his national service six years ago or less and is still part of the citizen force, | (b) * during the first two year period after the two years national service, 1080 days (i.e. approximately 3 years);<br>* during the second two year period after the two years national service, 900 days (i.e. approximately 2½ years);<br>* during the third two year period after the two years national service, 720 days (i.e. approximately 2 years); |
| (c) completed his national service more than six years ago and is still part of the citizen force; | (c) 18 months; |
| (d) is no longer part of the citizen force, but is part of the commandos (which incorporates "Dads' Army" call-ups); or | (d) 18 months or more, depending on how he came to be part of the commandos (some objectors may be liable for as much as 1500 days. Objectors affected should consult a lawyer for advice); |
| (e) is in the Reserve or some other part of the SADF. | (e) 18 months. |

It should be noted that:

* an officer sentenced to imprisonment or detention for failing to report or refusing to serve, loses his rank;

* sentences for both failing to report and refusing to serve may, in theory, be served either in detention barracks or in a civilian prison. It seems that the latter is more likely (see par. 3.3).

There is uncertainty as to whether the sentences for refusing to serve are compulsory or merely maximum sentences. In other words, it is not clear whether a lighter sentence can be imposed. In all cases of prosecution under the pre-1983 legislation, people convicted were sentenced to less than the maximum period of imprisonment (which was 2 years).

The present legislation could be interpreted as meaning that the sentence set out in the table above is compulsory and that a lighter sentence cannot be imposed. However, it is arguable that the words "liable on conviction" in the Act should not be interpreted as a compulsory sentence. This argument would be supported by the fact that, where compulsory sentences were intended, this was usually expressly stated (eg the old Terrorism Act of 1967). However, it would perhaps be wise for potential objectors to prepare on the assumption that the stipulated penalty might be compulsory.

In theory it seems that all or part of a sentence for refusing to serve may be suspended. In terms of sect. 297 of the Criminal Procedure Act, a sentencing officer is entitled to suspend part of a sentence even where a minimum sentence has been prescribed, except where suspension is expressly prohibited by the relevant legislation. There is no indication in the Defence Act to suggest that part of the sentence in terms of sect. 126(1)(a) cannot be suspended.

There is no guarantee that suspension will be granted. This is because suspension is usually made subject to certain conditions - the most common being that the offender does not commit the same offence again. Since

the "offence" that the objector will be committing is refusal to serve, such a condition will be seen by him as being in conflict with his moral stand. Furthermore, the situation is made even more complex by the fact that the objector could not possibly be called up in any case. This would possibly render meaningless a condition that the objector does not "commit" the same offense.

(iii) Changing your mind

A objector convicted of either failing to report or refusing to serve can change his mind about serving in the SADF before the expiry of his term of imprisonment. The Defence Act states that he can send a signed notice to this effect to the Adjutant-General [sect. 126A(7)]. He will then immediately be released. The period of imprisonment which he has already served will not necessarily be subtracted from his period of military service which is due. The Minister of Defence may, however, determine that any part of the prison sentence which he has served be regarded as military service.

If a objector who was released in the circumstances described above, refuses to do any service which he is liable to do at any time thereafter, he will be prosecuted again. The court will then have to deduct the period of military service that he has done subsequent to his release, and sentence him to a new term of imprisonment.

## 2.4. Desertion

An objector who, while busy doing military service, decides that his conscience prevents him from doing further service and deserts, could be convicted of this serious offence. The maximum sentence which may be handed down by a court martial is imprisonment for up to 10 years. It is thus advisable for objectors to make up their minds beforehand.

If a decision is taken during military service, it would be better to refuse to serve, but remain at the place where service is being rendered.

## 3. YOUR RIGHTS AS A CONVICTED PRISONER

### 3.1. CIVILIAN PRISON

#### 3.1.1. What rights would I have in prison?

(i) The basic rights of convicts in South African prisons

The Prison Service distinguishes between the rights and privileges of prisoners. While rights can be enforced if infringed upon, the enjoyment of privileges is totally at the discretion of the Commissioner of Prisons.

In South Africa, prisoners are recognised as having the following rights:

(a) Basic necessities such as access to food, clothing, accommodation and medical care. (Examples of these were given during judgement in the case **Goldberg v Minister of Prisons** 1979 1 SA 14 (A).)

(b) The Prison Regulations (reg 113) clearly specify that prisoners have a right to exercise: All prisoners must undertake suitable physical exercise according to physical condition and age. This right may not be removed as a means of punishment. A prisoner who does not perform outdoor work must, weather conditions permitting, take daily exercise for one hour in the open air. In special cases the Commissioner may approve that such exercise be taken for only half an hour daily.

(c) The Prisons Act[1] specifies clearly that prisoners have a right to see both the provisions of the Prisons Act and the regulations promulgated under it, which relate to the treatment and conduct of prisoners.

(d) Less definitely, a right to religious observance appears to exist. The courts regard it as a basic common law right.

(e) Access to one's legal representative: Even though access to one's legal representative is also a basic, common-law right, this has gradually been curbed, becoming to some extent subject to the discretion of the Commissioner. It is provided that any prisoner

who is a party to civil proceedings or intends to institute such proceedings, or is accused in a criminal action, may consult his legal representative in connection with such proceedings or action. Such consultation is, however, subject to the permission of the Commissioner and any condition which he may determine (Prison Regulations reg 123 (1)). Reg 123(2) specifies that Commissioner may determine that:

- The legal representative shall at the request of whoever is in charge of the prison lodge proof of his or her identity and status;
- Visits to or interviews with a prisoner may only take place during normal office hours, except in exceptionally meritorious cases;
- The interview be restricted to the civil proceedings or criminal action to which the prisoner is a party;
- If an interpreter or a shorthand writer is used, the person involved must be approved by the Commissioner;
- The interview takes place within sight of a member of the Prisons Service or a temporary warder;
- No prisoner may, during a visit, hand any writing, document or any other article to his legal representative, interpreter or shorthand writer without the approval of the Commissioner;
- No sound-recording apparatus will be allowed;
- The interview be subject to such conditions as may be considered necessary by the Commissioner for the general control and management of a prison and the maintenance of good order and discipline therein.

One leading case has stressed that prisoners have a right of access to lawyers and the courts. Having recognised this broad right, the Court then found that the prisoner was not entitled to hand over to his counsel a document that he had drawn up. According to the court, this did not fall within the scope of the right. It therefore looks as if this right of access to lawyers was just a broad statement of policy, and as if the actual practice is much narrower (**Mandela v Minister of Prisons** 1983 1 SA 938 (A)).

(ii) Appealing against infringements of established rights

Once a right has been established, the chances of enforcing it are quite good. Unfortunately, however, one is only able to enforce a new right (i.e. a right not mentioned above) if it is granted through legislation or if it is confirmed by the court (see below). In cases where the courts have already decided that it is only a privilege, the chances of arguing that it is a right are very slim.

Rights could be enforced in the following ways:

- By way of a letter of demand on the prisoner's behalf;
- If this is unsuccessful, by way of an application for a court order to force the Prison authorities to allow the enjoyment of the right.

(iii) The possible expansion of rights

In the case **Goldberg v Minister of Prisons** (mentioned above), the majority of the court did not find it necessary to distinguish between rights and privileges, except for the most basic necessities. But, importantly, Corbett JA argued (although only in a minority judgement) that --

> "fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties ... of an ordinary citizen except those taken away from him by law, expressly or by implication, or those necessarily inconsistent with the circumstances in which he, as a prisoner, is placed."

Since then the position has grown more complex -- and potentially more favourable for prisoners. In the **Mandela** case mentioned above, a stronger statement of the general principle was made by Jansen JA, who gave the unanimous judgement of the court. He considered the concept of "a basic or common law right":

> "On principle a basic right must survive incarceration except in so far as it is

attenuated by legislation, either expressly or by necessary implication, and the necessary consequences of incarceration."

While this indicates a concession in principle, its practical content depends upon future court decisions. Prisoners' conditions could be changed if the courts agree that the loss of a specific right or group of rights does not necessarily result from imprisonment. But there is no consensus on what the chances of success of such an approach would be.

There is, for example, a very general provision in the Prison Regulations (reg 110 (1)), according to which special attention must be given to "the preservation of the good relationship between the prisoner and members of his family," but there has been no example, in our law, where somebody has managed to deduce a right from this provision. So, although the **Mandela** case has opened up avenues, its concrete implications are by no means clear. There is therefore a grey area where precedents have not yet been set. Here representations could play a very important role.

In this regard it must be remembered that, regardless of whether or not these issues are taken further in the courts, the approach and policies of the Prisons Service are crucial in the conditions of imprisonment. On this level there have been visible changes in the past five years. Experts have noted a growing professionalism in some areas of the Service, especially with regard to "security prisoners" (see paragraph 3.1.4). This has to some extent increased the room for negotiation on behalf of prisoners. It seems, also, to account for the relative increase of the privileges which can be earned in terms of the privilege grading system. (This grading system is described in paragraph 3.1.2 (iii) below.)

### 3.1.2. What privileges would I be allowed to enjoy?

#### (i) The privileges of prisoners in South African prisons

The main function of privileges in South African prisons is to assist in the maintenance of control. Because their enjoyment is dependent on the discretion of the Commissioner, they have the effect of giving the prison

authorities an additional hold on the behaviour of the prisoner besides that afforded by the disciplinary regulations (see below).

In South African prisons the following are seen as privileges, not rights:

(a) Access to music, recreational facilities and entertainment.

(b) Access to publications and current literature.

(c) Reduction of sentence (discussed in par 3.1.3).

(d) Writing and receiving letters and visits:

As stated above, the question of letters and visits may be placed in the "grey area" of potential rights, as it could be argued that a right to contact with family can be deduced from the provision that the Prisons Services should encourage the preservation of good family relationships. But as yet no such rights have been recognised, and at the moment these are allowed only as privileges. The number of letters which may be written and received, and visits allowed, depends on the grade of the prisoner.

The Commissioner has in the past limited this privilege even further, placing restrictions not only on the volume but also on the content and destination of correspondence. He has, for example, ruled that letters containing discussions of politics, films, books, poems, radio and TV reports or quotes therefrom, information on the administration of prisons services, or particulars of the location or measurements of any prison buildings would not be forwarded or handed over. He could also forbid a prisoner to correspond with a specific person, institution or organisation.

Visits also fall under the discretion of the Commissioner. Someone who has been granted a permit to visit has a right to go to court if the permit is withdrawn without good reason -- but this right is the right of the visitor, not the prisoner. Cases exist where visits have been refused to whole groups of people as punishment for misbehaviour. There

have, however, been some reforms. The rules concerned with security clearance for visitors were recently changed, and it is no longer necessary to be screened before being allowed onto a prisoner's list of visitors.

(e) Studying: The Prison Regulations (reg 109(6)) clearly define studying as a privilege and not a right:

> "Permission to study or the utilisation of any library in terms of this regulation is subject to the discretion of the Commissioner and the provisions of the said regulation may in no way be so construed as implying such permission and/or utilisation of any library allows any prisoner a right which he can legally claim."

This regulation may in some cases be challenged as being **ultra vires**. Judge Corbett argued in his minority judgement in the **Goldberg** case that prisoners had a right to "mental and psychological well-being" and that an educated prisoner should therefore - at least theoretically not be denied access to reading material. From such a position, permission to study might be construed as a right. It should be remembered, though, that Corbett's was a minority judgement and would not necessarily be followed by the Courts.

The Prison Regulations also specify that the Commissioner can use his discretion to determine what the prisoner may study. In practice, however, prisoners are allowed some leeway at the moment. Until very recently prisoners were only allowed to study undergraduate courses, but now they are allowed to do honours degrees, as well as MA degrees consisting of course work. Apparently, the main objection of the Prisons Department against the doing of thesis work is that theses might be published. If one was doing an MA thesis one might be able to negotiate with the university in question, so as to prevent publication prior to release.

On the whole the current approach is relatively lenient, although one may have problems in specific instances. There have been instances of refusal of permission to study African languages. A while ago the prison authorities also refused to allow anybody to study law. This was taken on review to the Supreme Court. The court questioned the wisdom of this stand but, since it was at the discretion of the Commissioner to decide, declined to intervene.

(ii) How are privileges granted or withdrawn?

According to sect. 22 (2) of the Prisons Act,

> "The Commissioner may in his discretion
>
> (a) grant such privileges and indulgences as he may think fit to any prisoner
>
> (b) notwithstanding anything to the contrary contained in any law, withdraw any privilege or indulgence granted in terms of paragraph (a) to any prisoner without furnishing any reason and without hearing such prisoner or any other person."

In addition, sect. 77 of the same Act states that

> "Every prisoner sentenced to imprisonment and detained in a prison shall ... be employed, trained and treated ... as the Commissioner may determine...

In theory, the Commissioner has to make his decisions in terms of the broad policy of the Prisons Service. Although concrete information on this policy is lacking, it seems that the Commissioner may use his discretion only in order to achieve one of the legitimate functions of the service, namely to maintain good order and discipline, and to apply such treatment to prisoners as may lead to their reformation and rehabilitation.

In practical terms, however, the Commissioner has a very wide discretion. This is because in order to challenge it one would have to prove that he had acted in bad faith. Nevertheless, if it can be shown that a decision cannot be construed as intended to achieve a legitimate function of the service, that decision can be challenged in court as evidence of bad faith.

There is, therefore, some scope for appeal to higher authority. This would have to be done by applying to the Supreme Court for review of the Commissioner's decision. The court may then only look at the following aspects of the decision:

- whether the correct procedure has been followed by the Commissioner;
- whether it has been taken in good faith and for a legitimate reason.

The court will not take into account the merits of the decision itself -- as is illustrated by the Court's decision, discussed above, not to overturn the Commissioner's refusal to let prisoners study law.

(iii) Privilege grades in South African prisons

In general, the Commissioner grants privileges according to a system of grades (grade = "kerf" in Afrikaans). According to this system of classification, there are four different grades, numbered from grade 1 (previously grade D), up to grade 4 (previously grade A). These grades determine which privileges the prisoner gets.

The contents of these different privilege grades is subject to a process of change, as specified in the Prisons Service standing orders, which are promulgated by the Commissioner by virtue of the power given him by the Prison Regulations. Because these Orders are not publicly available, it is impossible to draw up a complete, definitive list. Nevertheless the following fairly recent information may be taken as a general and tentative guideline:

GRADE 4 PRISONERS: (Previously, Grade A).

Access to television and videos as often as prisoner wants. May possess own wristwatch, radio, electric shaver and even pets. Permitted 30 contact visits per annum of 40 minutes each with two people at a time. Permitted to write and receive 40 letters per year of 500 words each. May purchase extra food and toiletries at R50-00 per month.

GRADE 3 PRISONERS: (Previously, Grade B).

Permitted 25 non-contact visits of 30 minutes each per year, with two people at a time. Permitted to write and receive 32 letters of 500 words each per year. Permitted to attend two film sessions per month, but may not have newspapers, magazines, radio, watch, electric shaver or television.

GRADE 2 PRISONERS: (Previously, Grade C).

Permitted 20 non-contact visits per year of 30 minutes each, one person at a time. Permitted to write and receive 20 letters per year of 500 words each. One film per month. No other privileges are allowed.

GRADE 1 PRISONERS: (Previously, Grade D.)

This grade designates an observation period. The privileges associated with this level are not known.

The exact status of these Standing Orders is a matter of legal debate today, and it is not clear whether they can be enforced in the courts at all. All that can be said at the moment is that movement along the scale of privilege grades depends very much on the individual case and that there is no uniform, automatic, or enforceable system by which progress is made.

(iv) Security rating

Besides the different privilege grades, prisoners are, upon admission, classified according to standardised security classification norms into either maximum or medium security categories, and are assigned to a suitable

prison or section accordingly.

The Prison Regulations (reg 116) specify that in this classification, factors such as the prisoner's "previous record, aptitude, qualification, previous training, ability and other personal factors" should be taken into account.

Recently, also, the Minister of Justice has indicated that this classification will depend on the crime for which the prisoner is convicted, the length of his sentence, the number of his previous convictions, previous convictions for crimes of violence, escapes on record and the use of dangerous weapons during the commission of his most recent crime. (House of Assembly Debates, 23 April 1986, col 4044)

The security rating and the privilege grade are largely independent of each other - to be rated a maximum security prisoner, in other words, does not exclude one from the highest privilege grade. Security rating may, however, affect the grade at which one begins to serve one's sentence, and may also affect one's rate of progress on the scale of privilege grades. A high security prisoner, in other words, could begin his sentence on a lower notch of the scale than the ordinary prisoner.

### 3.1.3. Will I have to serve the full term of imprisonment?

There are three ways in which the convicted objector could, in theory, get part of his sentence off. These are remission, parole and general amnesties. All of these are, however, privileges and cannot be guaranteed.

(i) Remission of sentence

Most categories of prisoner are granted remission of sentence very soon after starting their prison sentence. This means that, at the outset, the sentence is effectively shortened. Remission is as a rule granted subject to conditions, with the conditions usually relating to the behaviour of the prisoner while he is inside. If a prisoner does not "behave", the Commissioner may order that the remission be forfeited. Ideally

remission serves a rehabilitative function. It is also a mechanism of control over prisoners' behaviour. The message to the prisoner is: "If you behave yourself and stick to the rules during the first part of your sentence, you will get a specified period off".

In terms of the Prison Regulations[2] and the Prisons Act[3] a prisoner may be granted remission not exceeding one-third of his sentence of imprisonment. Formally, if the prisoner is serving a sentence of more than two years, such remission may only be granted by the Commissioner on receipt of a report from a release board containing a recommendation for remission of sentence. It may be granted at any time during the prisoner's prison term.

Some categories of prisoner, according to the Prison Regulations, have no chance at all of getting remission of sentence. It is not granted, for example, in respect of a sentence imposed for a contravention of the Regulations, or an offence under the Prisons Act. Furthermore, reg 119(4)(iv) determines that

> "[r]emission shall not be granted in respect of a sentence of imprisonment imposed for a conviction on ... any ... offence or contravention specifically determined by the Minister."

This implies that the Minister could decide that conscientious objectors should not be granted remission. It would therefore be a mistake for objectors to bargain on the possibility of receiving remission.

(ii) Parole

Through the system of parole, the prison authorities release prisoners before their full prison term has been served, subject to certain conditions. This system is supposed to aid the prisoner in the process of rehabilitation and reintegration into society. Through these conditions the prison authorities maintain a hold on a person outside prison until the end of the sentence. If he should be caught infringing a condition of his parole, he would be re-imprisoned for the rest of his sentence.

All sorts of parole conditions can be set. One could, for example, be paroled on condition that one does not speak on a public platform.

A prisoner would have to serve a major part of his sentence before parole would be considered. In most cases, the granting of parole after serving about half of the sentence left after the period of remission has been subtracted, is routine, unless the prisoner has been in some kind of trouble with the authorities while in prison.

Until recently the Minister specified categories of prisoners who would under no circumstances be granted parole. Political prisoners were included in this group. Since the mid-eighties, however, a more flexible attitude has been adopted. An Advisory Release Board has been created, which exists to make recommendations on parole policy. After this, the position was that political prisoners were released on parole if they agreed to renounce violence.

There are, however, indications that this might change. According to recent reports the Advisory Release Board has recommended that the criteria applying to ordinary prisoners be applied to security prisoners as well.

It should also be remembered that there are still groups which the Minister has determined would not be eligible for parole at all (e.g. public violence cases). Conscientious objectors could well be included in these groups. According to recent reports a Jehovah's Witness jailed for conscientious objection was released on parole before serving his full sentence. It is, however, not clear whether this is a special case or whether it could be taken as a guideline to the Prison Department's approach. Even if it could, it is unlikely that the same approach would be used with regard to political objection.

(iii) General amnesties

The President has the power in terms of the Constitution to grant general amnesties. On the 31st of May 1986, for example, about 2000 prisoners were released in the Cape. The Minister said in parliament that everybody's sentence, except those of public violence cases and robbers sentenced for longer than five years, would be reduced by three months. This kind of move is usually motivated by

considerations such as the overpopulation of prisons. Again certain categories of prisoner may be excluded, and once again conscientious objectors could fall in such a category.

### 3.1.4. How will classification as a "security prisoner" affect my imprisonment?

The prison authorities distinguish, in practice, between "maximum security prisoners" and "security prisoners". The latter are in effect political prisoners. There is a chance that the convicted CO will be treated as a "security prisoner", especially if his sentence is a long one. It is therefore important to understand the implications of this classification.

It should be remembered that the category of "political prisoner" is not one that is officially or formally recognised. There is no legal or explicit recognition of political prisoners as such in either the Prisons Act or the Prison Regulations. All that the Act says is that the Commissioner may determine how any prisoner or group of prisoners is to be treated.

In the past the Prisons Service has denied that a category of political prisoners existed. It was held that prisoners, as far as the Service was concerned, were people who had been convicted by criminal courts and that they would therefore be treated according to uniform criteria. This was to some extent substantiated by the older accounts of prison life (see bibliography at end of booklet) where it is clear that political prisoners mixed a great deal with other prisoners.

Recently, however, this has changed. People convicted on charges such as treason, sedition, furthering the aims of a banned organisation, or refusing to testify in political trials are definitely given different treatment. For example, all "white" convicts of this kind are held as "security prisoners" in Pretoria. They are a tiny, isolated group, made even smaller by the system of security classification discussed above, and are kept in an isolated area of the prison. The same applies to left wing "non-white" as well as right-wing "politicals" who are also held as separate groups.

Thus "white" political prisoners are treated differently from other prisoners. For example, whereas all sentenced prisoners have in theory a duty to work if required, in practice members from this group are not made to work, and spend much of their time relatively undisturbed, reading or studying.

There are other, less positive sides to this difference in treatment. There is for example the fact of the isolation of "white" politicals and the lack of facilities such as sports equipment. Although not officially maximum security prisoners, political prisoners must also start on the lowest privilege grade when commencing their sentence and it is likely that their progress up the scale will be slower than that of ordinary, medium security prisoners. In addition there could be the problems mentioned above with the obtaining of remission and parole, etc.

It is important to remember that political status is not a formal category. Political prisoners are a de facto grouping, and it is more accurate to think of the situation described above as one that has evolved over time, and may change in the future, subject to the discretionary power of the Commissioner.

In addition it should be realised that it is by no means clear that convicted objectors would find their way into this grouping.

### 3.1.5. Would I, if necessary, be able to protect myself from my fellow-prisoners?

Segregation and isolation are not only imposed for disciplinary reasons. It could occur for health purposes, for the prevention of gang or other violence and intimidation, etc. It could also be imposed upon the request of the prisoner. The Prisons Act specifies that

> "the Commissioner may order the complete segregation of a convicted prisoner at work as well as at rest for any period upon the written request of such prisoner."[4]

Thus one has the right to request to be moved to another (not necessarily single) cell, or perhaps even another prison, if one feels threatened. The decision remains,

however, at the discretion of the authorities, and it would therefore help to have good reasons for such a request

### 3.1.6. Which rules and regulations would apply to me?

(i) Prison Rules and regulations

The Prison Regulations define in great detail what forms of behaviour are to count as "Disciplinary Contraventions". According to reg 99(1), any prisoner is guilty of a disciplinary contravention if he:

- willfully gives false replies to questions put to him by a member of the prisons service or any other person employed in a prison;
- is "insolent or disrespectful" towards any person employed by a prison or towards an official or any other visitor to a prison;
- is "careless, idle or negligent" in his work or refuses to work;
- swears or makes use of "slanderous, insulting, obscene, threatening, or other improper language";
- conducts himself "indecently" by "word, act or gesture";
- converses or communicates with another prisoner or any other person at a time or place when he is not permitted to do so;
- sings, whistles, or causes "unnecessary noise" or "unnecessary trouble", or is "a nuisance";
- without permission leaves his cell or place of work or any other place to which he has been assigned;
- has in his cell or possession any "unauthorised article", or attempts to obtain one;
- without permission receives from or gives to any person any article or obtains possession of it in any other manner;
- causes "discontent, agitation or insubordination" among one's fellow-prisoners, or participates in any "conspiracy";
- lodges "false, frivolous or malicious complaints";
- in any manner shirks work;
- wilfully loses, destroys, alters, defaces or barters an identification card, document or other article issued to him;

- commits an act with the intention of endangering his own life, injuring his health or hampering his work or otherwise conducting himself to the prejudice of good order and discipline;

The Prisons Act itself also contains a number of rules. It is an offence, for example[5]:

- to escape or to aid any other prisoner in escaping;
- to receive, without lawful authority, directly or indirectly, any letter, document, intoxicating liquor, tobacco, opiate, money, clothing, provisions or any other article;
- to enter into any business transaction with any employee of the prisons service or to attempt to do so;
- to give or send or promise to give or send any money or other article as reward for any service rendered.

(ii) Punishment imposed for infringements

Fairly severe punishments can be imposed, depending on the offence, namely:

(a) a reprimand ;

(b) dietary punishment: the deprivation of one or more meals on any one day;

(c) corporal punishment: whipping not exceeding six strokes for male prisoners applicable to prisoners apparently up to the age of forty;

(d) solitary confinement in an isolation cell for a period not exceeding thirty days;

(e) prolongation of prison sentence. This can be done in two ways. The first way is to reduce his remission or to deprive him of it completely. Secondly, if the prisoner is tried and found guilty by a court, an additional period of imprisonment may be added on to the one he is currently serving.