

Review paper  
Received: 07 April 2025  
Accepted: 30 October 2025  
UDC: 331.104:343.8-058.57  
339.924:343.8-058.57  
DOI: <https://doi.org/10.31299/ksi.33.2.5>

# FINDING STABLE EMPLOYMENT – IS THERE HOPE FOR INDIVIDUALS WITH CRIMINAL RECORDS IN SOUTH AFRICA?

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## ABSTRACT

This paper examines the impact of criminal record expungement on employment opportunities and explores strategies to improve the employability of formerly incarcerated individuals. A comprehensive literature review approach was adopted to synthesise existing research, policies, and theoretical perspectives on the topic. This approach was suitable given the limited empirical research and fragmented understanding of criminal record expungement and offender reintegration in the South African context. Findings indicate that securing sustainable employment remains one of the greatest challenges faced by ex-offenders, primarily due to structural barriers within communities, employer bias, societal stigma, and personal limitations such as inadequate education and job skills. To address these challenges, the paper recommends expanding expungement eligibility criteria, reducing waiting periods, and introducing automatic record-sealing for minor offences. Additionally, it proposes policy interventions such as employer tax incentives, financial protections, and facilitating access to employment opportunities within the Department of Correctional Services.

**Keywords:** employment, expungement, reintegration, second chance, stigma

## INTRODUCTION

This paper focuses on the impact of criminal record expungement on employment opportunities and explores strategies to improve the employability of formerly incarcerated individuals. The issue of criminal record expungement for formerly incarcerated individuals has gained increasing attention both internationally and nationally, particularly in relation to their ability to secure stable employment. In South Africa, where unemployment rates exceed 34%, the barriers and challenges faced by individuals with criminal records are even more devastating and appalling. The stigma associated with a criminal record often leads to significant obstacles in obtaining and securing employment, which in turn exacerbates and promotes issues such as recidivism, poverty, and social exclusion (Agan & Starr, 2018; Ahmed & Lång, 2017). To address these challenges, the South

African government must become intentional in removing and/or sealing certain offences from an individual's criminal record by implementing criminal expungement. Criminal expungement is a process by which the criminal record of a convicted offender is expunged from the criminal record database archived in the Criminal Record Centre of the South African Police Service (SAPS; Department of Justice and Constitutional Development, 2024). This could serve as a pivotal intervention in reducing the barriers to employment faced by formerly incarcerated individuals. By erasing or concealing their criminal history, expungement could offer individuals with criminal records a second chance to rebuild their lives without the perpetual shadow of their past offences. This expungement could also potentially mitigate the negative perceptions held by employers and open doors to new job opportunities for formerly incarcerated individuals (Atkin & Armstrong, 2013).

Various scholars in the Global North have conducted extensive research on this topic (Agan & Starr, 2018; Ahmed & Lång, 2017; Apel & Horney, 2017; Atkin & Armstrong, 2013; Avery & Lu, 2020; Cafferty, 2021), but in the Global South, particularly in Africa, this topic is under-researched. Mahlasela (2024) further highlights this gap, noting that limited attention has been given by African scholars to this area of research, especially within the South African context. Therefore, this paper seeks to investigate and report on the impact of criminal record expungement on employment opportunities for formerly incarcerated individuals in South Africa. This will shed light on the unique benefits and challenges that these individuals encounter as they attempt to re-enter the workforce. By addressing this phenomenon, this study contributes to and builds on the ongoing discourse and discussions on the role that expungement can play in fostering a more inclusive and equitable society, thereby creating opportunities for formerly incarcerated individuals to be employed and supporting them in their fight against possible recidivism. The study not only evaluates the potential of criminal record expungement as a viable solution to enhance the employability of ex-offenders, but it also explores the employment challenges faced by individuals with criminal records, societal stigma, and the effectiveness of national and international legal frameworks for criminal record expungement.

## **SOCIETAL STIGMA AND REINTEGRATION**

Social reintegration is an important component of the South African Department of Correctional Services (DCS) as it is considered a window through which society can judge the success of rehabilitation programmes. Reintegration is a key component of the rehabilitation process, and it is essential for reducing crime rates. Effective reintegration requires a comprehensive understanding of the complex factors that influence an offender's ability to successfully transition back into society. This includes addressing the socio-economic challenges that offenders often face, such as unemployment, lack of housing, and social stigma (Nkosi & Maweni, 2020). According to Jacobs (2024), South Africa's approach to rehabilitating and reintegrating offenders is a total failure. He further states that most studies show that 86 - 94% of convicted offenders are likely to reoffend after leaving prison, meaning the prevalent pattern of criminal behaviour continues. The failure of reintegration programmes is often linked to the persistent stigmatisation of offenders, which affects their acceptance and participation in normal community life (Adams et al., 2017: 9). Such stigma hinders rehabilitation efforts, placing both the offender and society at a disadvantage.

Upon release, many ex-offenders struggle to readjust to their communities, often facing isolation from their families and rejection from society. This lack of acceptance creates difficulties in finding employment, securing stable housing, and rebuilding social networks (Department of Correctional Services, 2022). Rejection from families and communities significantly contributes to recidivism, thereby undermining efforts toward rehabilitation and reintegration. When alienated, many ex-offenders seek acceptance from former criminal associates, whose influence and pressure often increase the likelihood of reoffending. Strengthening family and community support is therefore essential to breaking this cycle and promoting successful reintegration into society. In the absence of such support, meeting basic needs such as clothing, shelter, and food becomes a challenge, making it difficult for ex-offenders to sustain a crime-free lifestyle (Chikadzi, 2017: 293). Furthermore, those who have spent lengthy periods in custody often find that the communities they return to have changed dramatically, presenting yet another barrier to successful reintegration (Nkosi & Maweni, 2020).

Effective reintegration is therefore essential for sustainable crime reduction. A better understanding of the reintegration process allows professionals, families, and communities to support the transition of offenders back into society and reduce the likelihood of recidivism. By addressing the challenges that ex-offenders face during reintegration – such as stigma, lack of employment opportunities, and social exclusion – communities can play a crucial role in supporting the rehabilitation process and preventing recidivism (Dzingwe, 2025). The reintegration of offenders back into society has often been met with various challenges of discomfort and resistance from individuals and communities, which presents a significant obstacle to the success of rehabilitation programmes.

## **EMPLOYMENT CHALLENGES FOR INDIVIDUALS WITH CRIMINAL RECORDS**

Securing legitimate employment remains one of the most significant challenges faced by ex-offenders, yet it is also one of the most critical factors in achieving successful reintegration and sustaining community well-being. The difficulties in finding employment stem from structural barriers within communities, the attitudes of potential employers, as well as individual challenges such as limited job skills or low motivation levels (Atkin & Armstrong, 2013: 72). Holzer et al. (2004) supported this claim, arguing that ex-offenders often struggle to secure employment and achieve financial independence due to educational and skill-related deficiencies. Many jobs require at least a high school diploma, specific vocational skills, or prior experience, and even low-wage positions demand basic literacy and numeracy competencies (Holzer et al., 2004). Research conducted by Chikadzi (2017) in Gauteng, South Africa, reinforces these findings, revealing that a criminal record and prior incarceration significantly reduce employment prospects. Even those who obtained educational qualifications while incarcerated or those who possessed skills before imprisonment continue to face severe challenges in securing employment (Chikadzi, 2017: 294). The community environment into which ex-offenders return after release further exacerbates these challenges. Many return to the same neighbourhoods where they previously committed offences – areas often characterised by limited economic opportunities, scarce resources, and high unemployment rates. These socio-economic conditions create a cycle in which reintegration becomes increasingly difficult. Despite the high concentration of ex-offenders in particular communities, limited re-

search has examined the combined effects of unemployment and re-entry clustering on their ability to obtain and maintain employment (Atkin & Armstrong, 2013: 72).

According to the Department of Justice and Constitutional Development (DoJCD; 2024), ex-offenders can apply for record expungement ten years after conviction, provided they have not re-offended within that period. However, this waiting period is arguably excessive and may impede the reintegration of ex-offenders into society. Facilitating access to meaningful employment opportunities is therefore critical to supporting successful reintegration and reducing the likelihood of recidivism (Adams et al., 2017: 1-3). Evidence from Canada reinforces this view – Ruddell and Winfree (2006: 465) found that 97% of pardoned offenders remained crime-free for more than thirty years, suggesting that record expungement, particularly for minor offences, can serve as an effective reintegration strategy. Moreover, unemployment not only hinders reintegration, but also affects mental health and personal wellbeing. As Small (2005: 38–39, cited in Chikadzi, 2017: 293) noted, unemployment can lead to stress, low self-esteem, depression, and self-doubt.

A major obstacle to employment is the persistent stigma attached to a criminal record (Baillache-Bowes, 2025). Many employers are hesitant to hire individuals with such records, viewing them as potential risks. This reluctance reflects society's unwillingness to offer second chances, even though denying stable employment opportunities to ex-offenders can hinder successful reintegration (Chikadzi, 2017: 294). A criminal record therefore significantly reduces employability, as most employers conduct background checks on prospective employees (Brown, 2011: 335-336; Pager, 2003; Schmitt & Warner, 2011: 87).

The case of *S v Mutobvu* illustrates the profound and long-term employment consequences of a criminal record, particularly when individuals are unaware of its implications (*S v Mutobvu*, 2013). In this case, the accused paid an admission of guilt fine under Section 57 of the Criminal Procedure Act 51 of 1977 (CPA), unaware that this would automatically result in a criminal record. When he later applied for employment, he was informed that he was ineligible for the position due to this record. His inability to secure work, compounded by the rigid ten-year waiting period for expungement, highlighted how limited public awareness of expungement procedures can result in severe and unjust prejudice (Mahlasela, 2024: 8). The case underscores the need for greater public education regarding the legal implications of admissions of guilt and the expungement process, as ignorance in this regard continues to undermine rehabilitation and reintegration efforts. The negative social and economic implications of criminal records extend beyond lack of awareness – they persist even after formal expungement. The case of *O'Connor v LexisNexis* provides a compelling example (*O'Connor v LexisNexis (Pty) Ltd*, 2024). In this matter, the applicant disclosed theft and fraud convictions that had been expunged more than twenty years earlier. Despite the expungement, the employer withdrew their job offer after a background check revealed the expunged offences. The court held that, while expungement under the CPA does not erase the historical fact of conviction, rejecting an applicant solely on this basis amounted to unfair discrimination, as the offences were irrelevant to the inherent requirements of the position (Baillache-Bowes, 2025). These cases demonstrate that, although South Africa's expungement framework is intended to promote reintegration, its effectiveness is constrained by widespread public misunderstanding, employer bias, and entrenched social prejudice.

## **INTERNATIONAL APPROACHES TO LEGISLATION AND EMPLOYMENT INITIATIVES FOR INDIVIDUALS WITH CRIMINAL RECORDS**

Individuals with criminal records frequently encounter major obstacles in finding employment that can hinder their effective reintegration into society (Braatvedt et al., 2024; Chikadzi, 2017). According to Wang and Bertram (2022), employment is a critical aspect of successful reintegration; however, they found that it took formerly incarcerated individuals an average of more than six months to obtain their first job post-release. In addition, many were unable to sustain employment throughout the four-year study period. A brief discussion follows on key legislative frameworks and employment initiatives in the **United States of America** and the **United Kingdom**, aimed at improving the employability of individuals with criminal records.

### **Legislative and employment initiatives in the United States (New York State)**

#### **Clean Slate legislation**

A criminal record can often become a lifelong barrier, limiting access to employment, housing, and education, thus making social reintegration difficult. The Clean Slate initiative addresses this challenge by establishing an automated process for sealing eligible criminal records, thereby improving employment prospects for individuals with prior convictions (Pye, 2025).

Across the United States, several states have adopted Clean Slate laws, which allow for the automatic sealing of certain criminal records after a specified period, making them inaccessible to the public, including potential employers (Kimmons, 2024). New York (NY) State is among the jurisdictions that have enacted such legislation. The NY Clean Slate Act, signed into law by Governor Kathy Hochul in 2023, introduces an automated system for expunging or sealing eligible criminal records. Under this law, most misdemeanour convictions will be automatically sealed three years after the completion of a sentence or parole, while felony convictions will be sealed after eight years. However, certain crimes, including sex offences and most Class A felonies such as murder, are excluded from eligibility (Khan, 2023). Although NY employers are permitted to inquire about an applicant's criminal history at any stage of the hiring process, state law mandates that they assess various factors before making a hiring decision. These factors include whether the conviction has any relevance to the applicant's ability to perform the job (Khan, 2023).

The Clean Slate initiative in NY aims to reduce recidivism, promote economic development, and enhance public safety by facilitating employment opportunities for individuals with criminal records (New York State Department of Labor, 2021). Employment provides stability, financial security, and social reintegration, which are crucial for reducing the likelihood of reoffending (Shrove, 2024). Furthermore, Clean Slate policies benefit employers by expanding the available labour pool. With many industries experiencing labour shortages, businesses are increasingly recognising the value of hiring formerly incarcerated individuals, who often prove to be dedicated and hardworking employees. Removing barriers to employment benefits both businesses and job seekers, fostering economic growth and community safety. Ultimately, Clean Slate laws acknowledge that past mistakes should have consequences, but should not permanently hinder an individual's ability to build a better future (Pye, 2025).

### **Fair Chance Act (FCA)**

The FCA, also known as “ban-the-box” legislation, aims to prevent discrimination against individuals with criminal records during the hiring process. It prohibits employers from asking about an applicant’s criminal history until after a conditional job offer has been made (Lawyers Alliance for New York, 2022; Rodgers, 2024; Wexler et al., 2021). First enacted in 2015 as an amendment to the NY City Human Rights Law, the FCA was further strengthened in July 2021 (Avery & Lu, 2020: 50). The amendments expanded protections to current employees with pending criminal charges, arrests, or convictions. Additionally, employers must now allow at least five business days – an increase from the original three days – for applicants or employees to respond to adverse hiring decisions, giving them time to present evidence of rehabilitation or good conduct (Lawyers Alliance for New York, 2022; Legal Action Centre, 2022; Rodgers, 2024; Wexler et al., 2021).

The 2021 amendments also introduced the following “Fair Chance Factors” that employers must consider before taking adverse action based on an applicant’s or employee’s criminal history:

1. The law’s goal of reducing stigma and preventing unfair exclusion.
2. The relevance of the conviction to the duties of the job in question.
3. The impact of the offence on job performance.
4. The individual’s age at the time of the offence (offences committed at 25 years or younger are mitigating factors).
5. The severity of the offence and potential risks to workplace safety.
6. The employer’s legitimate interest in protecting property, employees, or the public.
7. Evidence of rehabilitation, such as job performance, community involvement, or other positive factors (Rodgers, 2024; Wexler et al., 2021).

By delaying criminal background checks until after a job offer, the FCA ensures that applicants are evaluated according to their qualifications, rather than being automatically disqualified due to past convictions (Avery & Lu, 2020: 2). Studies show that steady employment reduces recidivism and supports successful reintegration into society (Burt, 2024; Council of State Governments Justice Center, 2013; Latessa, 2012; Visher et al., 2008).

### **Work Opportunity Tax Credit (WOTC)**

The WOTC is a federal tax incentive programme designed to encourage businesses to hire individuals from targeted groups, including formerly incarcerated individuals (Shrove, 2024; United States Department of Labor, 2024). Under the WOTC, employers can receive tax credits ranging from US\$1,200 to US\$9,600 by hiring individuals who have been convicted of a felony, provided that the person is employed within one year of their conviction or release from incarceration. In general, the WOTC is equal to 40% of up to US\$6,000 of wages paid to a qualifying employee during their first year, meaning a maximum of US\$2,400 in tax credit. To qualify for partial credit amounting to US\$1,500, the employee must work at least 120 hours, while full credit (US\$2,400) can be received if the employee works over 400 hours (New York City Economic Development Corporation, 2024; New York State Department of Labor, 2023).

The implementation of the WOTC is jointly managed by the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) under the U.S. Department of the Treasury. The DOL, through its Employment and Training Administration, provides grant funding and policy guidance to State Workforce Development Agencies to administer the WOTC certification process. The IRS oversees all tax-related provisions and requirements of the programme (United States Department of Labor, 2024).

The purpose of the WOTC programme is to assist individuals who face significant challenges in securing employment, with the aim of minimising stigma and bias (Volpe Consulting, 2024). By hiring eligible formerly incarcerated individuals and offering them a second chance, businesses not only benefit from tax incentives, but also contribute to safer communities (Peyton, 2020).

### **Work for Success (WFS) programme**

The WFS programme is an NY State employment initiative launched through a partnership between the NY State Department of Labor (NYSDOL) and the Department of Corrections and Community Supervision (DOCCS). It aims to connect formerly incarcerated individuals with stable employment opportunities. Under WFS, DOCCS staff assess and provide referrals for eligible job seekers, while NYSDOL facilitates job placements across various industries. The programme provides employers with (a) federal tax credits of up to US\$2,400 per eligible hire (WOTC programme), (b) fidelity bonding coverage of up to US\$25,000 for any loss of money or property due to employee dishonesty, and (3) workforce training, including apprenticeships and on-the-job training (New York City Economic Development Corporation, 2024: 25; New York State Department of Labor, 2021).

WFS also reduces hiring costs by pre-screening candidates, making it easier for businesses to adopt fair hiring practices (New York State Department of Labor, 2023; South African Government, 2013).

## **Legislative and employment initiatives in the United Kingdom (England and Wales)**

### **Rehabilitation of Offenders Act 1974 (ROA)**

The ROA was introduced to help individuals move beyond their past criminal behaviour by allowing them to withhold information about 'spent' convictions and cautions when applying for certain jobs, as well as in other situations such as housing applications and insurance purchases (Easton, 2024; Working Chance, 2023: 24).

Under the ROA, after a legally defined period known as the 'rehabilitation period', which varies based on the type of sentence imposed, most convictions and cautions (except those resulting in imprisonment for more than 30 months) are considered 'spent' (Swirak & Forde, 2020: 8). The length of the rehabilitation period depends on the nature of the court's judgement or the duration of the sentence (Ministry of Justice, 2023: 23).

A conviction is considered 'spent' only after the rehabilitation period has been completed. The individual is then no longer legally required to disclose the criminal record, unless they are applying for a role that is exempt from the Act (Public Service Commission, 2009: 22). These exempt occu-

pations, listed under the Rehabilitation of Offenders (Exceptions) Orders, generally involve work in sensitive areas such as child protection, healthcare, law enforcement, the legal profession, and high-level financial positions (Ministry of Justice, 2023: 20). Certain sentences are permanently exempt from the ROA and can never be considered 'spent', including the following:

1. Life imprisonment.
2. Sentences exceeding four years for serious violent, sexual, or terrorist offences.
3. Preventive detention.
4. Detention during His Majesty's pleasure or for life.
5. Custody for life.
6. Public protection sentences, including imprisonment for public protection, detention for public protection, extended sentences for dangerous offenders, and extended determinate sentences (Ministry of Justice, 2023: 15; Swirak & Forde, 2020: 12).

In 2023, amendments to the ROA reduced the disclosure period for some custodial and community sentences. Additionally, some sentences exceeding four years can now be considered as 'spent', with the exception of serious violent, sexual, or terrorist offences (Care England and Working Chance, 2025: 5; Ministry of Justice, 2023: 5). The ROA aims to support the reintegration of reformed offenders into the workforce, facilitating their rehabilitation by preventing unnecessary barriers to employment (Ministry of Justice, 2023: 5; Swirak & Forde, 2020: 8; Unlock, 2024).

### **New Futures Network (NFN)**

The NFN is a specialised division within His Majesty's Prison and Probation Service (HMPPS) that establishes partnerships between prisons and employers in England and Wales. These collaborations create training and employment opportunities for prisoners nearing the end of their sentences through a day release scheme called Release on Temporary Licence (ROTL; New Futures Network, 2023: 3). ROTL enables eligible prisoners to participate in paid or unpaid work placements, volunteering, or training programmes with local employers. Typically, prisoners leave the facility each morning for their placement and return at the end of the workday (Working Chance, 2023: 16).

NFN has developed and implemented various employment initiatives as part of the Employment, Skills and Work Improvement Framework for prisons (Ministry of Justice, 2024: 5), including the following:

*Employment hubs:* Employment hubs are dedicated spaces in prisons where HMPPS staff, external partners, and prisoners collaborate to focus on employment opportunities. There are currently over 90 hubs across England and Wales (New Futures Network, 2024b). These hubs assist prisoners by providing (1) CV writing support, (2) career guidance and job application assistance, (3) access to job vacancies, (4) help with opening bank accounts and obtaining identification documents, and (5) guidance on applying for Universal Credit and other financial support upon release (New Futures Network, 2024b).

Each hub is managed by a *Prison Employment Lead (PEL)*, who oversees employment-related activities, works with key stakeholders (including probation, education and guidance providers) and

ensures that prisoners are matched with suitable employment and training opportunities. PELs also coordinate recruitment initiatives across various industries to help employers engage with prison leavers (New Futures Network, 2024b).

*Employment Advisory Boards (EABs):* EABs were established to advise, support, and challenge prisons on their employment strategies for prisoners and those released from custody. Their primary goal is to increase the number of individuals leaving prison with sustainable employment (New Futures Network, 2024a).

EABs collaborate with prison governors and staff across education, employment, and resettlement functions to (1) encourage businesses to engage with prisons and provide employment-related support, (2) connect prisons with business leaders who can offer expertise on the skills, training, and qualifications needed in the job market, and (3) promote a culture of employment in prisons to improve long-term job retention for formerly incarcerated individuals (New Futures Network, 2024a).

## **LEGAL FRAMEWORK FOR CRIMINAL RECORD EXPUNGEMENT IN SOUTH AFRICA**

Criminal records in South Africa represent the formal documentation of an individual's past convictions as determined by a court of law. These records do not include instances where a person was arrested or charged, but later acquitted or found not guilty (Wasserman, 2021: 2). Expungement, on the other hand, refers to the legal process by which a convicted offender's criminal record is removed or expunged from the Criminal Record Centre database of the SAPS. This process allows individuals to move forward in life without a criminal record hindering employment opportunity or exposing them to discrimination (Africa Criminal Justice Reform, 2018: 1; Department of Justice and Constitutional Development, 2024).

### **Statutory provisions**

The South African legal system provides for the expungement of criminal records – a process through which certain criminal convictions are removed from official records – enabling individuals to reintegrate into society without facing the lifelong consequences of a criminal record. Chapter 27 of the CPA outlines provisions regarding previous convictions (Republic of South Africa, 1977). Prior to 2009, individuals seeking to have their criminal records removed had to apply directly to the President for a pardon (Muntingh, 2011: 4). However, a major amendment to the CPA was introduced through Sections 2 and 3 of the Criminal Procedure Amendment Act 65 of 2008. This included the replacement of Section 271A and the addition of Sections 271B, 271C, and 271D, which created a statutory framework for the expungement of certain criminal convictions, including those arising from apartheid-era laws – a significant step in South Africa's post-apartheid societal transformation (Muntingh, 2011: 4; Republic of South Africa, 2008).

Section 271A stipulates that, under specific conditions, a criminal record 'falls away' after a period of ten years. However, this does not mean the criminal record is automatically expunged. Instead, 'falling away' implies that the conviction cannot be considered in sentencing decisions (Sloane &

Van Der Heever, 2020). Section 271A generally applies to minor offences not resulting in imprisonment, whereas Section 271B accommodates both imprisoned and non-imprisoned offenders (Mujuzi, 2014: 290, 292).

The ambiguity surrounding Section 271A has led to uncertainty regarding whether previous convictions that have 'fallen away' may still be considered during sentencing, particularly in determining whether an individual should be regarded as a repeat or first-time offender. This issue was examined in the case of *S v Jacobs*, where the prosecution presented several prior convictions, including rape and attempted rape, as aggravating factors in terms of the Criminal Law Amendment Act 105 of 1997 (*S v Jacobs*, 2015). The court, however, ruled that some of these convictions had either 'fallen away' under Section 271A or were too dated to be relevant. Consequently, the appellant was treated as a first-time offender under the minimum sentencing legislation and received a more lenient sentence than would otherwise have been imposed on a repeat offender (De Villiers, 2017). Overall, the interaction between Sections 271A and 271B has created a complex and, at times, confusing set of criteria and procedures surrounding the expungement of criminal records in South Africa (Muntingh, 2011: 4).

### **Eligibility criteria for expungement**

Section 271B of the CPA provides a framework for the expungement of certain criminal convictions under South African law (Republic of South Africa, 1977). The following paragraphs outline the eligibility criteria and specific conditions for expungement, detailing the types of sentences and offences covered, as well as exclusions for certain categories of offenders (Africa Criminal Justice Reform, 2018: 1-2; Department of Justice and Constitutional Development, 2024).

**Eligibility criteria:** A person convicted of an offence may apply for the expungement of their criminal record, including the conviction and sentence, after a period of 10 years has elapsed from the date of conviction. This applies only if the person has not been convicted of another offence during this 10-year period that resulted in imprisonment without the option of a fine. The following sentences are eligible for expungement:

1. A sentence where the passing of sentence was postponed under Section 297(1)(a) and the individual was discharged without sentencing under Section 297(2), or was not required to appear in court under Section 297(3).
2. A discharge with a caution or reprimand under section 297(1)(c).
3. A fine not exceeding R20,000.
4. Corporal punishment (before it was declared unconstitutional).
5. A sentence of imprisonment with the option of a fine not exceeding R20,000.
6. A wholly suspended sentence of imprisonment.
7. Correctional supervision under section 276(1)(h) or (i).
8. Periodical imprisonment under section 276(1)(c).

**Exclusions:** A person is not eligible for expungement if (1) they were convicted of a serious crime, such as robbery, rape, or murder, without the option of a fine and served a period of imprison-

ment, or (2) if they were convicted of a sexual offence against a child or a mentally disabled person and their name is included in the National Register for Sex Offenders under the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, or (3) if their name is listed in the National Child Protection Register due to a conviction for an offence under the Children's Act 38 of 2005. However, if the individual's name is removed from either the National Register for Sex Offenders or the National Child Protection Register, they may become eligible for expungement under this section.

### **Expungement process**

The responsibility for initiating the expungement process lies with the individual holding the criminal record, because the record will otherwise persist indefinitely (Wasserman, 2021: 9). The procedure is set out in Section 271D of the CPA and the regulations thereto (Muntingh, 2011: 11; Republic of South Africa, 1977). It involves several steps:

1. **Obtain a police clearance certificate:** The applicant must first obtain a police clearance certificate from the SAPS's Criminal Record Centre. This certificate will confirm that at least 10 years have passed since the conviction and sentence (Department of Justice and Constitutional Development, 2013).
2. **Other relevant documents:** If applicable, the applicant must also obtain confirmation that their name has been removed from the National Register for Sex Offenders or the National Child Protection Register. This confirmation must be included in the expungement application (Africa Criminal Justice Reform, 2018: 3; Wasserman, 2021: 9).
3. **Application submission:** Once the necessary documents are gathered, the applicant submits the expungement application, either in person or by post, to the Director-General of the DoJCD (Africa Criminal Justice Reform, 2018: 1; Department of Justice and Constitutional Development, 2024).
4. **Review and decision:** Upon receiving the application, the Director-General will review the application. If the individual meets all eligibility requirements, a certificate of expungement will be issued within 75 days, directing the removal of the conviction from the criminal record (Department of Justice and Constitutional Development, 2024).
5. **Issuance of certificate:** If the expungement is granted, the Director-General submits the certificate to the head of the Criminal Record Centre, who then informs the applicant within 21 days that their record has been expunged (Africa Criminal Justice Reform, 2018: 3).

While the expungement of criminal records is intended to offer ex-offenders a second chance, the process is often hampered by delays and administrative backlogs. Applications must be mailed or hand-delivered to the Director-General of DoJCD for review, which tends to slow down the processing. The DoJCD has acknowledged these bottlenecks, noting that enquiries made before the 75-day processing period "have a tremendous delaying effect on the completion of applications" (Department of Justice and Constitutional Development, 2024). In addition, the process is largely inaccessible to indigent or illiterate applicants, many of whom cannot afford legal assistance and consequently struggle to reintegrate into society (Mahlasela, 2024: 33). Moreover, the involvement of multiple government departments makes the process lengthy and complex, resulting in the ex-

clusion of some ex-offenders even after the 10-year period. Organisations representing ex-offenders have repeatedly called on the government to simplify the expungement system and make record removal more accessible. They argue that the existing complex and time-consuming application process can further subject ex-offenders to unnecessary stigma (Newzroom Afrika, 2024).

## **DISCUSSION**

Finding stable employment remains one of the most significant obstacles for individuals with criminal records in South Africa. While employment is a critical factor in preventing recidivism and fostering successful reintegration into society, many formerly incarcerated individuals struggle to find work due to societal stigma, employer discrimination, and legal constraints that continue to marginalise them. The impact of these barriers can extend beyond the individuals themselves, affecting families, communities, and the broader economy (Department of Correctional Services, 2024: 80, 101; Wasserman, 2021: 2). This raises an important question: Is there hope for individuals with criminal records in South Africa?

The answer lies in a multi-faceted approach that prioritises rehabilitation, economic inclusion, and legal reform to ensure that individuals with criminal records have a fair chance at rebuilding their lives. Drawing insights from international best practices, particularly from the United Kingdom and the United States, South Africa could implement meaningful reforms to improve employment opportunities for individuals with past convictions. To achieve this, three key interventions are necessary.

### **1. Expanding access to expungement through legislative reform**

One of the most effective ways to reduce the long-term consequences of a criminal record is to reform the expungement process under Chapter 27 of the CPA. Currently, the existing expungement system remains complicated and inaccessible, and it excludes many rehabilitated individuals from having their records cleared, thus limiting their ability to secure employment (Department of Correctional Services, 2023: 55). To address these challenges, the following reforms should be introduced:

- *Reducing the waiting period for expungement:* The current ten-year waiting period is excessive and prolongs the social and economic exclusion of rehabilitated individuals. Instead, a tiered expungement system should be introduced, allowing non-violent offenders to have their records expunged after five years and first-time offenders with minor infractions to have their records expunged after three years, provided they meet rehabilitation criteria.
- *Expanding the list of expungeable offences:* Many rehabilitated individuals remain ineligible for expungement due to the nature of their past convictions, even when these offences pose no direct risk to public safety (Mujuzi, 2014: 296). The eligibility criteria should be broadened to include certain economic crimes, non-violent drug offences, and minor public order violations (e.g., petty theft, vandalism, or disorderly conduct).
- *Implementing an automatic expungement process:* Many individuals who are eligible for expungement lack knowledge of either the process or the resources that they should uti-

lise (Wasserman, 2021: 10). Instead of requiring individuals to navigate complex legal procedures, a systematic approach should be introduced by which minor criminal records are automatically expunged after a specified period, provided no further offences have been committed (Legal Assistance Centre, 2024). However, the feasibility of such an approach depends on the existence of a fully digitised and interoperable justice system, which South Africa currently lacks. Therefore, the recommendation should be viewed as a long-term objective, requiring significant investment in digital integration and data management across justice sector departments.

- *Introducing a merit-based expungement system:* Expungement should not be determined by rigid timeframes alone. Individuals who have successfully completed rehabilitation or skills development programmes, maintained stable employment, or actively participated in community reintegration initiatives should be prioritised and granted consideration for expungement (Muntingh, 2011: 27; Wasserman, 2021: 13).
- *Restricting access to expunged records:* Despite the expungement of records, many employers and background check agencies continue to access them, undermining the purpose of the expungement process. Legislation should mandate that expunged records are completely sealed from all non-judicial entities to prevent discrimination and employment barriers.

South Africa could learn from international models, such as the United Kingdom's ROA, which allows certain convictions to become 'spent' after a specific period, eliminating the need for disclosure to employers. Similarly, Clean Slate laws in the United States facilitate the automatic sealing of eligible criminal records, ensuring they are inaccessible to potential employers (Kimmons, 2024; Pye, 2025). By adopting a similar approach, South Africa could create a justice system that prioritises rehabilitation and economic inclusion, while maintaining public safety.

## **2. Introducing tax incentives and financial protections for employers who hire individuals with criminal records**

One of the primary reasons individuals with criminal records struggle to find employment is employer reluctance. Many businesses fear potential risks, reputational damage, or workplace safety concerns when hiring former offenders. To address this, the South African government should introduce tax incentives and financial protections to encourage businesses to hire individuals with past convictions (Louw, 2013: 226; Wasserman, 2021: 13).

While models such as the WOTC in the United States demonstrate the potential benefits of tax deductions for businesses that employ formerly incarcerated individuals, any implementation in South Africa must account for the administrative capacities of the South African Revenue Service and the fiscal pressures on the national budget. A feasible approach could include carefully designed measures such as (a) tax rebates or reduced payroll taxes for companies that hire individuals with criminal records, (b) employment risk insurance to mitigate potential liabilities, (c) government-supported wage subsidies for the initial period of employment, and (d) public recognition programmes, such as a "Second Chance Employer" certification, to reward businesses that actively support offender reintegration. Companies that receive this certification could benefit from government incentives, branding opportunities, and preferential consideration in public procurement processes.

These measures would not only encourage businesses to hire individuals with criminal records, but also help shift societal perceptions, reduce stigma, and fostering a culture of second chances.

### **3. Leveraging the Department of Correctional Services (DCS) to create employment pathways**

Section 61(2) of the Correctional Services Act 111 of 1998 mandates the National Commissioner to assist offenders in securing employment post-release, while the White Paper on Corrections (2005) underscores the need for formal partnerships to enhance employment opportunities for parolees and probationers (Department of Correctional Services, 2005; Republic of South Africa, 1998). Additionally, the DCS Performance Plan highlights the importance of strengthening collaboration with government departments and the private sector to create economic opportunities for reintegrating offenders (Department of Correctional Services, 2023: 55). Despite this clear legal and policy framework, many former offenders leave correctional facilities with skills, but no employment opportunities.

One of the most effective strategies to address this challenge is for the DCS itself to create employment opportunities. Many parolees and probationers receive vocational training while incarcerated in fields such as carpentry, plumbing, electrical work, and agriculture, but struggle to find stable jobs upon release. To close this gap, the DCS should actively recruit skilled former offenders for various roles within the correctional system and related industries. By doing so, the DCS could enhance rehabilitation efforts while setting a precedent for private-sector employers.

To support this initiative, vocational training centres within correctional facilities should be repurposed into employment hubs, facilitating the direct placement of trained individuals into meaningful work. Key employment opportunities within the DCS could include the following:

- *Facility maintenance:* Employing skilled former offenders in plumbing, electrical work, and carpentry within correctional institutions.
- *Agriculture:* Engaging rehabilitated individuals in correctional farming initiatives to improve food production and sustainability.
- *Vocational training:* Using experienced former offenders as peer instructors to teach trade skills to incarcerated individuals.
- *Community corrections support:* Providing reintegration services and mentorship for other former offenders and assisting them in their transition back into society.

South Africa could draw valuable lessons from the NFN, a United Kingdom-based employment agency within HMPPS that collaborates with businesses to create job opportunities for individuals leaving prison (New Futures Network, 2023). Key strategies from the NFN model that the DCS could implement include the following:

- *Industry partnerships:* NFN collaborates with various businesses willing to employ rehabilitated individuals. Similarly, the DCS could establish a national employment network that connects former offenders with potential employers in industries such as construction, manufacturing, and agriculture.

- *Work release and day parole placements:* NFN's ROTL allows incarcerated individuals to gain work experience, while serving their sentences. The DCS could implement a similar programme, enabling parolees and probationers to participate in work placements before full release, thereby improving employment readiness and increasing employer confidence.
- *Apprenticeships and structured employment pathways:* NFN supports long-term career development through structured employment programmes. The DCS could introduce apprenticeships and learnerships for skilled parolees and probationers, equipping them with formal qualifications and work experience.
- *Post-release support services:* NFN provides ongoing career support for individuals after release. The DCS could establish reintegration hubs at Community Corrections offices, where formerly incarcerated offenders could receive career counselling, financial literacy training, and assistance with job placements.

## **CONCLUSION**

As outlined in its mission statement, the DCS seeks to contribute "to a just, peaceful, and safer South Africa through effective and humane incarceration of inmates and the rehabilitation and social reintegration of offenders" as productive citizens (Department of Correctional Services, 2024:57). By adopting these strategic employment initiatives, the DCS could bridge the gap between skills training and meaningful employment, ensuring that former offenders become self-sufficient, law-abiding members of society, rather than reverting to criminal activities due to economic hardship.

South Africa's justice system must evolve beyond punishment to focus on rehabilitation and economic reintegration. If meaningful reforms are implemented, individuals with criminal records could have a real chance at a fresh start. Amending Chapter 27 of the Criminal Procedure Act to expand expungement, introducing tax incentives for employers, and leveraging the DCS as an employment hub could transform the prospects of formerly incarcerated individuals.

By breaking down legal barriers, changing employer attitudes, and actively investing in reintegration, South Africa could create a more just and inclusive society – one that recognises rehabilitation, promotes second chances, and ensures that past mistakes do not define an individual's future. With the right policies and societal mindset shifts, hope for individuals with criminal records in South Africa would be not only possible, but also well-founded.

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