

PORTFOLIO COMMITTEE ON CORRECTIONAL SERVICES

REPORT

SOLUTIONS AND RECOMMENDATIONS TO PRISON OVERCROWDING

7 October 2004

1. Introduction

The problem of overcrowding within the South African prison system has been identified as a key challenge, which negatively affects the ability of the Department of Correctional Service (DCS) to rehabilitate offenders. The first objective of this report is to describe the nature, the main causes and the consequences of overcrowding. The second objective is to highlight some of the current initiatives to address the problem of overcrowding in prisons. The third objective of this report is to identify specific recommendations by the Portfolio Committee on Correctional Services to alleviate prison overcrowding.

2. The Nature of the Problem

As of June 2004 there were 187 065 offenders in South African prisons. The 233 active prisons only have the capacity to accommodate 113 551 offenders.

Of the total prisoner population, 132 315 were sentenced offenders and the remainder (54 750) were unsentenced offenders awaiting trial in the various prisons around the country.

Within the sentenced prisoner population there were 1 926 young offenders under the age of 18 years. Within the unsentenced prisoner population there were 2 232 unsentenced offenders under the age of 18 years.

Overcrowding varies from region to region and between prisons. Only 28 prisons out of the 233 active prisons hold the numbers they were designed for, and the vast majority have many more prisoners than they are able to cope with. The worst prison in terms of overcrowding is Thohoyandou Female, with a capacity for 134 prisoners, but which holds 517 prisoners and is thus at 386% occupation.

The 10 most overcrowded prisons as at 31 March 2004 were:

Prison	Built to accommodate	Actual number of prisoners	% Overcrowded
Lusikisiki	148	422	285%
Modimolle	341	988	290%
Mount Ayliff	85	250	294%
Middledrift	411	1 325	322%
Johannesburg Med. B	1 300	4 256	327%
Mount Frere	42	142	338%
Uniondale	24	82	342%

Umtata Med.	580	2 108	363%
Durban Med. C	671	2 480	370%
Thohoyandou Female	134	517	386%

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According to a recent report by the Inspecting Judge, the number of awaiting trial detainees is dropping steadily. In contrast, however, the number of sentenced prisoners is increasing.

3. The Cause of the Problem

The problem of overcrowding in prisons is due to a number of complex factors, which include:

- **Detection and conviction:** One of the reasons given for the increase in sentenced prisoners is the increased crime combating initiatives of the South African Police Service (SAPS). Since 1994, the Department of Safety and Security has put in place numerous measures to improve crime investigations. These include: the establishment of a detective training academy and a focus on improving the investigative skills of detectives; the consolidation of specialised crime units in order to ensure a coordinated approach to the investigation of crimes and the increased use of technology (such as the automated fingerprint identification system- AFIS) to assist in investigations. The SAPS has benchmarked detection rates (their ability to solve cases) for the first time in 2003/04. The target for 2004/05 is 31%. Detection rates fluctuate according to the different categories of crimes. In addition, conviction rates for serious crimes has improved over the last few years. In the High Courts, the conviction rate improved from 85% in 2002/03 to 87% in 2003/04, which is much improved from the 77% in 2000/01 and 2001/02. The conviction rate in all the Lower Courts (Regional and District) has also improved from 77% in 1999 to 85% in 2004.
- **Awaiting trial detainees and bail:** One of the reasons for the large number of awaiting trial detainees is that they cannot afford to pay the bail amounts set by the court. Sometimes these amounts are quite small (e.g. R500 or less), but are not affordable to many of the awaiting trial population who therefore, in effect, remain in custody because they are poor.
- **Minimum sentences:** The Criminal Law Amendment Act No. 105 of 1997 prescribes minimum sentences for certain serious offences. This Act was originally intended as an interim measure to be reconsidered after the expiry of 2 years. It was extended after this 2-year period and thus remains in effect. The Act establishes minimum sentences for a number of offences, including categories of theft, drug dealing, assault, rape and murder. It obliges a magistrate and judge to impose not less than the prescribed minimum sentence unless substantial and compelling circumstances justify a lesser sentence. The effects of this legislation is marked by the data furnished to the National Council on Correctional Services which showed that the population of prisoners serving 10-15 years increased by 204% since 1995 and the population of prisoners serving 20 years to life increased by 325.90%.
- **Changes to the parole and credit system:** The 'old' Correctional Services Act (Correctional Services Act, No. 8 of 1958) provided that a prisoner could be placed on parole after serving half of the sentence less any credits earned by the prisoner. The general rule was that prisoners could be released after serving 1/3 of their sentences. In addition, life prisoners could be considered for parole after serving 10 years. This policy was later amended to 20 years. The parole board would make a recommendation to the National Advisory Council who would then make a recommendation to the Minister of Correctional Service.

Chapter VII of the new Act (Correctional Services Act, No. 111 of 1998) deals with release from prison and placement on parole. These sections came into

operation on 1 October 2004. The new Act increases the minimum period of imprisonment to be served before parole to half of the sentence. In addition, a life prisoner will have to serve 25 years or completion of $\frac{2}{3}$ of the sentence, whichever is shorter. Thus, no prisoner serving a sentence of life imprisonment will be eligible for parole until a substantial portion of the sentence is completed. Prisoners sentenced in terms of the minimum sentencing legislation will only be eligible for parole after completing $\frac{4}{5}$ or 25 years of their sentence. The effects of this Act will be to increase the length of time that sentenced prisoners will spend in prisons.

- Recidivism (repeat offending) and its causes: There are no official statistics regarding the recidivism rate in South Africa. However this figure is estimated to be between 55% and 95%. High recidivism rates contribute to high crime statistics as well as overcrowding within prisons. Key causes of repeat offending may include:
 - Lack of employment opportunities after release from prisons.
 - Lack of skills which could be used to gain employment or self-employment opportunities.
 - Negative perceptions and attitudes of the community which reduces social re-integration.

4. The Consequences of the Problem

Overcrowding has important consequences both for the larger community, the prisoners and correctional staff. These include:

- Human rights issues: Section 35(2)(e) of the Bill of Rights encapsulated in the Constitution of the Republic of South Africa, Act No108 of 1996, states that prisoners have the right 'to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment'. Overcrowding within prisons means that it is impossible for the DCS to guarantee these rights.
- Health issues: Overcrowding and unsanitary conditions leads to the spread of diseases, including serious transferable diseases such as tuberculosis and HIV/AIDS. According to the Inspecting Judge, the second highest cause of complaints by prisoners related to complaints regarding the inadequate provision of health care. The shortage of trained professionals such as nurses and doctors to deal with the large numbers of prisoners within the prison system means that the quality of care given to ill prisoners is inadequate. Within the prison system, nurses are employed by the DCS and are responsible for the provision of primary health care. Doctors are employed by the Department of Health.
- Effects on education, training, rehabilitation: The high number of offenders within the prison system and overcrowded conditions mitigates against the ability of the DCS to provide adequate educational programmes, training programmes and personal well-being programmes to prisoners. This problem is particularly acute within the awaiting trial detainee population, who generally are not offered any education or training programmes as they are seen as a transient group who will not spend enough time in prisons to benefit from these services. The fact is, however, that many awaiting trial detainees spend years in prison and thus the absence of programmes for this group is extremely problematic. Overcrowded conditions and the shortage of sufficient professional staff means that very few sentenced prisoners have access to education and training programmes which would assist in ensuring that they become productive citizens after release from prison. The shortage of professional staff in the area of care and the high turnover of professional staff, especially psychologists and social workers, means that access to care programmes is also insufficient. The goals of the DCS to rehabilitate prisoners and ensure that they do not reenter the prison system after release is thus impossible to attain due to overcrowding.
- Consequences for security, discipline and staff morale: Overcrowding within prisons results in the inability of DCS to provide effective security to prisoners within overcrowded prisons. Overcrowding exacerbates the spread of gangsterism within prisons. Lock up hours are particularly problematic, when all prisoners are confined in

a limited space and it thus becomes difficult in overcrowded conditions (i.e. 40 people in a cell designed for 15) for correctional officials to monitor and control the situation within the cells. Escapes are also less easy to prevent in overcrowded conditions. The effect of overcrowding on staff morale is as important. Correctional officials are powerless with regard to the number of offenders that are sent to each prison and overcrowding results in the inability of correctional staff to control the environment within which they work. This results in low staff morale, stress and high levels of absenteeism.

5. Initiatives to relieve overcrowding

The following are some of the initiatives which have been taken to address the problem of overcrowding in prisons. It is widely recognised that the solution to overcrowding does not reside solely with the DCS. A Justice Crime Prevention and Security (JCPS) Cluster Overcrowding Task Team was established to identify blockages that result in overcrowding. Role-players in this task team included the DCS, the Department of Safety and Security, the Department of Justice and Constitutional Development, the Department of Social Development and the National Prosecuting Authority. The work of this team has been taken over by the Integrated Justice System Development Committee, its substructure the Case Management Task Team and the Inter-sectoral Committee on Child Justice.

5.1. Prison Construction

Prison construction to deal with overcrowding encompasses a variety of alternatives. Thus:

- The Government may retain responsibility for the construction of the prison.
- Prisons may be privatised to a larger or lesser extent. In other words, the private company may be responsible for construction, design, building, management and operation of the prison or some alternative mixture of these responsibilities.

One of the steps that has been taken by the DCS to alleviate the initial start up costs of building prisons is to enter into agreements with private companies. Two Public Private Partnership prisons (PPPs) have been completed and are in operation: the Mangaung Maximum Security Prison (Bloemfontein) and the Kutama-Senthumule Maximum Prison (Louis Trichardt/Makhado). In both these cases, the private operator is responsible for the design, construction and operation of the prison and the DCS pays a fee to the private operator for each offender.

Some concern has been raised that the PPPs are not as cost effective a solution to prison construction as initially envisaged. The DCS is cautious about entering into further partnerships. Other problems which have been raised by the Portfolio Committee on Correctional Services include:

- The high budgetary allocation for PPPs mean that there is less money available for the DCS to spend on other programmes, including improving the standard of care and development in public prisons and expanding community corrections.
- The DCS is losing trained and skilled personnel to the public-private prisons as they are offering more competitive salaries.

Notwithstanding the above, studies have shown that the two public-private prisons in operation are offering a better service than public prisons both in terms of efficiency and humane conditions.

In 2002, a task team consisting of National Treasury, DCS and the Department of Public Works reviewed public-private partnership prisons. Key findings were that:

- There is a need for the DCS to develop output specifications for design and operation rather than input specifications.
- It is necessary to ensure that public-private prisons are developed in line with what the DCS can afford rather than an ideal model. Budget constraints must be established at the outset.
- Comparable accounting standards must be developed for DCS of Correctional Services' prisons and public-private partnership prisons.

- Comprehensive feasibility studies must be completed.
- Clear rules should be adopted for movement of staff from the DCS to public-private prisons.

According to the DCS, four new prisons will be built in 2005/06 using either PPP or conventional public works procurement. This will provide an additional 12 000 bed spaces.

5.2. Release on bail in terms of Section 62(f) of the Criminal Procedure Act

The JCPS Team on Overcrowding has tried to ensure more effective use of Section 62(f) of the Criminal Procedure Act, No. 51 of 1977 which allows for a sentencing officer to release an accused on bail with the provision that the accused is supervised by a probation officer or a correctional official (via the community correction offices). It is hoped that more awareness of this section will succeed in alleviating the fears of sentencing officers regarding the granting of bail and thus ensure that more accused are granted supervised bail instead of awaiting trial in prisons.

5.3. Release in terms of Section 63A of the Criminal Procedure Act

According to Section 63A of the Criminal Procedure Act, No. 51 of 1977, a Head of Prison may apply to a court to release certain unsentenced prisoners if:

- The prison conditions will result in a material threat to the human dignity, physical health or safety of the accused.
- The accused is charged with an offence in which a police official may grant bail.
- The accused was granted bail by the court but could not afford to pay the bail amount.

5.4. Pre-trial Diversion programmes

Diversion refers to the provisional withdrawal of a case against an accused so that lengthy and costly criminal procedures are prevented. Instead, accused are required to attend programmes and/or perform some form of community service. Although pre-trial diversion programmes are used primarily for young offenders, there are also other diversion programmes in operation. These include victim-offender mediation and the performance of community service as an alternative to prosecution. Some of the criteria for diversion included in Part 7 of the Public Prosecutors Policy Document are:

- First offenders in the majority of cases.
- Admits guilt.
- Takes responsibility.
- Willingness to repair damage caused by the crime.
- Fixed address.
- Presence of a parent or guardian.
- Armed robbery, murder and rape accused are excluded.
- Voluntary.
- Between the age of 12-18 if a juvenile.

A prosecutor identifies a candidate for diversion who is then screened by the probation officer. The prosecutor makes the final decision on diversion. The establishment of diversion programmes is primarily the responsibility of the Department of Social Development. However, Non-Governmental Organisations (NGOs) such as NICRO also play an important role in this regard. Diversion can also be applied at the sentencing stage.

Approximately 1 500 people were diverted each month on average by the lower courts in 2004/05 in comparison to 1 250 in 2002/03.

5.5. Saturday Courts and Additional Courts Project

Saturday and Additional Courts Project was established as an interim and emergency measure to keep the outstanding court rolls under control and greatly assisted in ensuring that cases were more speedily heard thus reducing the amount of time that prisoners spent in prison before sentencing.

Before the end of September 2004, the project had 109 courts in session on Saturdays plus 68 Additional courts. A total of 75 214 cases have been finalised on this project since its

implementation in 2001. These courts have, however, finalised less cases during 2003/04 (23 649 cases) than in the previous year (29 969). The reasons for this include:

- Scaling down of some offices as court rolls come under control and there is less need for additional courts.
- Scaling down of Saturday courts due to shortage of funds from the Department of Justice and Constitutional Development and uncertainty as to whether funds would be available for the continuation of this project.
- In some offices the project was used for bail applications and as Child Abuse Courts rather than for trial matters.

The Saturday and Additional Courts project has been terminated and the courts which were in operation ceased to operate from 30 September 2004. This is due to lack of further funding from the Department of Justice and Constitutional Development for the project. Reasons for the termination of the project given by the Department of Justice and Constitutional Development included:

- Too costly to sustain.
- Abuse of the project with regard to overtime payments for staff.
- Viewed as an interim measure.

However, according to the NPA, the costs to the Department are favourable in comparison to the number of cases that could be finalised. In addition, control measures have been put in place to reduce abuse of overtime. While the NPA agrees that this project was seen as an interim emergency measure, in their opinion, the existing high court rolls in specific areas necessitate the continuation of the project, albeit on a smaller scale.

5.6. Plea bargaining initiatives

The Criminal Procedure Second Amendment Act, No. 62 of 2001 regulates sentence bargaining. The aim of the Act is to allow a prosecutor and an accused person to negotiate and enter into an agreement. In terms of the agreement, the accused will plead guilty to a specified charge. It also empowers the prosecutor and an accused to negotiate a sentence to be imposed by the court if the accused is convicted of the offence to which he or she intends to plead guilty.

5.7 DCS initiatives

Both the Minister and the Deputy Minister of Correctional Services have prioritised overcrowding in prisons. A national overcrowding task team has been constituted. This team is responsible for developing a Risk Management Plan on overcrowding dealing with the two separate issues of sentenced offenders and awaiting trial detainees.

6. Conclusions and Recommendations

Construction of additional prisons can only offer a partial solution to the problem of overcrowding. Building additional prisons is a costly exercise and must be supplemented by alternative, more creative solutions. The Portfolio Committee on Correctional Services supports the use of the above mentioned measures to address the problem of overcrowding in prisons. However, these measures should be accompanied by continuous evaluation of their effectiveness in alleviating prison overcrowding. The results of these evaluations should be submitted on a regular basis to the Portfolio Committee on Correctional Services.

The following conclusions and recommendations are made with regard to resolving the problem of overcrowding in prisons:

6.1 Policy on awaiting trial detainees

Recommendation: The long-term policy on awaiting trial detainees should be prioritised and requires urgent attention by Government.

Cabinet has identified the policy gap that exists in relation to responsibility for the incarceration of awaiting trial persons.

6.2 Intersectoral cooperation

Recommendation: Measures should be taken to ensure that the disbanding of the JCPS Cluster Overcrowding Task Team does not result in a loss of intersectoral focus on the problem of overcrowding. There should be proper transference of the work of this disbanded

team to the relevant intersectoral task team and a commitment to retain the focus on prison overcrowding. In addition the focus of the current team should be extended to 20 courts. The current team is focusing primarily on awaiting trial detainees. Studies have shown that 20 of the 427 courts around the country deal with 25% of all cases. A decision has been made to pilot the project in 6-8 of these courts around the country. Head of prisons, magistrates, the police, social workers and prosecutors are working jointly to address this problem.

6.3 Rehabilitation to reduce recidivism

Recommendation: The Portfolio Committee on Correctional Services supports the focus of the DCS on the rehabilitation of offenders and the correction of offending behaviour as the most important long-term solution to the problem of overcrowding. Reducing the chance of re-offending will ensure that fewer offenders re-enter the prison system after release from prison.

6.4 Non-custodial sentences

Recommendation: The Department of Justice and Constitutional Development, the National Prosecuting Authority and other relevant departments must market the concept of non-custodial sentencing for appropriate offender types to all sentencing officials. Sentencing officials should be made aware of the variety of available options and be encouraged to use the sentencing options creatively.

In South Africa, the different types of sentences that may be imposed by the courts are set out in the Criminal Procedure Act, Act 51 of 1977. These sentencing options include a number of non-custodial options, i.e., which do not involve imprisonment of the offender.

These include:

Fines: The court may sentence a person to pay a fine. Fines may be imposed on their own, but are usually given as an alternative to imprisonment, i.e. if offenders do not pay the fine, they go to prison. The court has discretion to decide on the amount of the fine and the date on which it should be paid. The court also has discretion to suspend the fine for a fixed period on condition that the offender is not convicted of the same offence during that time.

Community service orders: A community service order entails the offender rendering free service to the community in his or her leisure time. The aim of community service is to ensure that the offender repays his or her debt to society while maintaining a stable lifestyle.

Correctional supervision: Correctional supervision entails sentencing an offender to undertake certain activities in the community. The Act does not specify these activities, but leaves it to the Department of Correctional Services to develop. The court also has discretion to attach various conditions to correctional supervision, including that the offender must remain indoors (at home) during certain times, work a certain number of hours in a community in his or her free time, pay compensation to the victim or participate in a programme such as a training programme.

According to Sloth Nielson, the vast majority of correctional supervision sentences are conversions of direct imprisonment by the Department of Correctional Services and are not sentences meted out directly by the courts.

Some of the problems that magistrates have cited for not using alternative sentencing options, more specifically correctional supervision, include:

- High caseloads of community corrections staff and thus fear of abscondment.
- Shortage of probation officers and the delays that courts experience in receiving pre-sentence reports, which means that sentencing officers have little information on which to base their sentencing decisions.
- Inadequate management of the alternative sentencing system.
- Lack of resources for community corrections, including shortage of vehicles.

Compensatory orders: When a court imposes a sentence, it may direct that an offender pay money to the victim of the crime for any damage caused to the property of the victim. A sentence of imprisonment or a fine may be suspended on condition that an offender pays compensation to the victim. However, the South African courts do not often use this sentencing option. A compensation order will usually only be given for loss of property and not for other losses such as loss of income, pain and suffering.

Suspended sentences: Upon conviction of an offender, a court may impose a sentence and suspend the operation of that sentence for a certain period on condition that the offender does not commit further offences of a particular kind within the specified time-frames. The suspension of sentences apply to prison sentences as well as fines. This means that if the court imposes a prison sentence or fine, and then decides to suspend that sentence, the

offender will not be liable to serve the period of imprisonment or pay the fine, unless he or she violates the conditions of the suspension.

Sentencing officials thus make insufficient use of alternative sentencing options to incarceration. The Criminal Procedure Act, No. 51 of 1977, gives sentencing officers wide discretion to suspend and postpone sentences and to use innovative options as alternatives to imprisonment. There is no need to change the laws with regard to sentencing. Instead, the focus should be on ensuring that sentencing officers use the wide variety of options available to them. One way to increase the use of alternative sentencing options is to increase awareness of these options. More importantly, attempts must be made to change the mindset of sentencing officials who often regard imprisonment as the safe and only sentencing option.

6.5 Community Corrections

Recommendation: It is imperative that DCS reprioritise its budget to ensure that more money can be provided to community corrections. The DCS should also market community corrections as an alternative non-custodial sentencing option. This can only effectively occur once the community corrections offices are capacitated to function better, which will require additional resources, including personnel. Conversions of direct imprisonment to correctional supervision by the Department of Correctional Services is encouraged in appropriate cases. As of June 2004, there were 53 566 offenders under correctional supervision of which 20 673 were probationers (who are serving a sentence of correctional supervision) and 32 883 were parolees. There is a total of 21 community corrections offices countrywide and 189 satellite offices. There are a variety of ways that a person can serve a sentence of correctional supervision, including:

- As a sentence handed down by the court.
- A person may have his or her sentence of imprisonment converted to correctional supervision by the Commissioner of Correctional Services or the Parole Board, or by the courts if applied for by the Parole Boards or the Correctional Services Commissioner.

Budget constraints have meant that community corrections has been short staffed, with limited facilities to ensure the adequate supervision of probationers and parolees. This results in abscondments from the community correction programmes.

6.6 Diversion

Recommendation: The use of diversion away from the criminal justice system should be encouraged for adult as well as juvenile offenders in appropriate cases.

Diversion away from the criminal justice system can be used effectively for certain categories of adult offenders. The use of diversion by prosecutors should be encouraged as the statistics described illustrate that the use of diversion has not increased substantially since 2002/03.

6.7 Education on diversion, bail and plea bargaining

Recommendation: All relevant role-players must receive training on the full range of diversion, bail and plea-bargaining initiatives available.

The police, magistrates, prosecutors and judges should all be educated on the various legal and procedural options that they have at their disposal to ensure that accused do not have to spend lengthy periods in overcrowded prisons. In addition to some of the measures detailed above (i.e. diversion, plea bargaining and use of the bail provision of section 62(f) of the Criminal Procedure Act), Section 59 of the Criminal Procedure Act, for example, allows a police official (in consultation with the investigating officer in charge of the case) to grant bail to an accused who is charged with a less serious crime. In addition, the R1 000 bail project is ongoing in that accused persons who are not able to pay bail set under R1000 are bought back to court and the determination of a bail amount is revisited by the court. The full range of options should be identified and all role-players trained on the use of these options.

6.8 Saturday Courts and Additional Courts project

Recommendation: It is recommended that consideration be given to the reinstatement of the Saturday Courts project based on an evaluation of the efficacy of the project in terms of reducing overcrowding. The Department of Justice and Constitutional Development and the National Prosecuting Authority should report to the Portfolio Committee on this issue and if it is shown that the dissolution of the project will negatively affect overcrowding in prisons, the Department of Justice and Constitutional Development should make funds available for continuation of the project until the end of the 2004/05 financial year. In the interim, steps

should be taken to ensure a longer-term solution to the problem of high court rolls, including the establishment of additional permanent courts and more personnel.

6.9 Powers of release

Recommendation: While the use of legislative powers of release of prisoners is a short-term solution, the Portfolio Committee on Correctional Services supports use of this option by the Minister and the President for specific categories of offenders.

The periodic release of certain categories of offenders is an option that is currently used to alleviate prison overcrowding on a short-term basis. There are a number of available options in this regard, including:

- The Minister of Correctional Services is empowered by section 81 of the Correctional Services Act, No 111 of 1998, to release certain categories of prisoners if in the opinion of the Minister, overcrowding has become a crisis which negatively effects the prison population. The Minister must act in consultation with the National Council for Correctional Services. Prisoners who are released using section 81 of the Act may be released under community corrections. According to the White Paper of the DCS, this section of the Act may also be used under certain conditions to release awaiting trial detainees who have been granted bail but cannot afford to pay due to the prisoner's personal social conditions. In September 2003, 7 000 sentenced offenders had their parole dates advanced by 9 months.
- The President of South Africa has the power, according to Section 82 of the Correctional Services Act, No. 111 of 1998, to place sentenced prisoners on correctional supervision or parole or to remit any part of a prisoner's sentence. The President also has the power to pardon or relieve offenders. The power of the President of South Africa to pardon people convicted of crimes is outlined in Section 84(2)(j) of the Constitution of the Republic of South Africa (Act 108 of 1996).

6.10 Technology

Recommendation: Electronic monitoring is currently under consideration by DCS in the medium to long term for use by parolees. However, in terms of overcrowding, electronic monitoring can also be used for probationers and awaiting trial detainees. Other uses of technology to alleviate overcrowding should be considered, including linking prisons and magistrates courts by video screens to arrange the automatic remand of criminal cases instead of physically transporting awaiting trial detainees to and from court. The Portfolio Committee supports the stance of DCS in terms of its focus on long-term rehabilitation of offenders to reduce the chance of reoffending behaviour rather than on short-term solutions. The DCS initiative on the use of electronic monitoring for parolees has been put on hold for the medium to long term for the following reasons:

- The project needed to be redesigned in terms of the PPP regulations.
- A feasibility study on the available technology at the time showed that electronic monitoring was only effective in 26% of urban areas and 19% of rural areas in the country due to its reliance on electricity and telephone lines. These areas did not match up to the existing offender population and thus the needs of the DCS.
- The DCS does not believe that it should release people on parole with electronic monitoring without ensuring that their behaviour has been effectively corrected. The main focus of DCS is thus on its core business of rehabilitating offenders.

New technological developments (i.e. developments in satellite and wireless technology) have meant that the DCS can reconsider its position in this regard. It is currently considering the costs involved in utilising these new technologies. While consideration is thus been given to electronic monitoring, the DCS will implement this parallel with substantial efforts to improve the rehabilitation and correction of offenders and offending behaviour.

A project to video link courts to prisons is under consideration by the National Prosecuting Authority and other role-players.

6.11 Correctional Services Act, No. 111 of 1998.

Recommendation: Consideration should be given to the amendment of the section on parole which as it stands will increase the problem of overcrowding in prisons by ensuring that sentenced offenders spend longer periods in prison before becoming eligible for parole.

6.12 Criminal Law Amendment Act No. 105 of 1997

Recommendation: Consideration should be given to not extending this legislation when it expires again in April 2005 on the grounds that it removes discretion from sentencing officials and increases the number of prisoners serving long and life sentences.

According to the Inspecting Judge, the problem of high numbers of sentenced prisoners is largely a result of this piece of legislation.

6.13 Children

Recommendation: All relevant stakeholders including the Department of Social Development and the Department of Education must ensure that they provide sufficient alternative residential facilities for both awaiting trial and sentenced children.

While the number of children awaiting trial in prisons around the country does not greatly add to the overcrowding of prisons generally, those prisons where awaiting trial children are kept, such as Pollsmoor, often suffer from overcrowding. More importantly, the principle remains that no children under the age of 18 years should be kept in DCS prisons while awaiting trial. The Child Justice Bill will assist in ensuring that no children are kept in prison while awaiting trial. However, implementation of the Bill once it is passed by Parliament will require that there are processes in place to achieve this objective as well as sufficient alternative facilities for children who may require residential placement.

The Department of Social Development has an important role to play in ensuring that no unsentenced children under the age of 18 years are kept in prison while awaiting trial. In this regard, the Department was tasked with the responsibility of establishing secure care facilities in each of the 9 province to house children under the age of 18 years who have been accused of crimes and are not immediately released into the care of their parents or have not received bail. Secure care facilities are targeted at children under the age of 18 years who may pose a danger to the public or to themselves. It is thus a facility with security features that also offers therapeutic services. These facilities cater only for awaiting trial children.

There are currently only 11 secure care facilities across the country. Each province has at least 1 secure care facility and Gauteng and the Northern Cape each have 2 facilities. An additional 4 facilities are to be built in the Eastern Cape, Free State, Kwa-Zulu Natal and Western Cape provinces. In 2003, there were approximately 1700 children awaiting trial in secure care facilities.

According to the Department of Social Development they aim to cater for 3 145 children who are awaiting trial in secure care facilities or places for safety by 2005 . It is the responsibility of the Department of Social Development to ensure that they have sufficient secure Care facilities around the country to ensure that no children need to stay in prison while awaiting trial.

In addition, a range of alternatives should be available to sentenced children, other than DCS correctional facilities. The absence of sufficient reform schools around the country is identified as a problem. Reform schools are schools maintained for the reception, care and training of children sent in terms of the Criminal Procedure Act, No. 51 of 1977 or transferred under the Child Care Act, No. 74 of 1983. There are residential institutions where children who have been sentenced by courts of law are placed.

Reform schools are managed by the Department of Education. There are only 4 reform schools in the country, 3 in the Western Cape (Faure Youth Centre, Ottery Youth Centre and Denovo) and 1 in Mpumalanga (Ethokomala Reform School). The Mpumalanga school has the capacity to cater for 160 children and the Western Cape schools have capacity for 360 children. The 7 remaining provinces have no capacity to cater for sentenced children in reform schools.

This results in numerous problems, including the fact that magistrates are sentencing children to reform schools in the absence of these facilities. This means that children spend time in prisons or secure care facilities while waiting for places in one of the four reform schools in the country. The other problem is that children from other provinces who do get placed in these schools are far away from their families and support systems. In addition, placement of out of province children in the Western Cape schools is hindered by the requirement of the Western Cape Department of Education that children are accompanied with a care budget from their respective province, which has not normally been budgeted for by the provinces.

6.14 Women

Recommendation: Priority should be given to ensuring that less women are incarcerated and that diversion and alternative sentencing measures are applied where possible.

While there are far fewer women in prison than men, the implications of imprisonment for women (many of whom have children outside and sometimes inside of prison) and their families are often disastrous. All attempts should be made to divert accused women from the criminal justice system or ensure that they have an opportunity to serve their sentences within the community under correctional supervision.

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