

CHAPTER 13

OVERCROWDING

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CHAPTER 13

OVERCROWDING

1. INTRODUCTION

Overcrowding is a major challenge for the Department, which needs to be dealt with effectively. The issue of overcrowding has its own champion in the Inspecting Judge of Prisons, who has dealt with it in detail in various publications and at various fora.¹ Given this, this Commission need not spend much time on the issue, except to note that overcrowding and especially gross overcrowding exacerbates the problem of corruption and maladministration in our prisons.

It is the Commission's view that overcrowding impacts on the Department's resources, which are stretched to the limit, and it affects and impacts on the rehabilitation of the prisoners, the health system and the education system within the prison. Overcrowding also encourages the sexual abuse of inmates by other inmates, which the Department has acknowledged.² At the outset, then, it has to be acknowledged that gross overcrowding leads to the most appalling prison conditions with the loss of basic human rights.

Overcrowding has a ripple effect on a number of levels and the Department needs to address it before it becomes uncontrollable.

¹ The Commission is of the opinion that the Inspecting Judge's Office has done good work in this regard. The Commission is also indebted to his office for providing the Commission with the statistical information.

² Mr Johnson, the Western Cape Correctional Services spokesperson, was quoted as saying that:

"While prison authorities were aware that sexual abuse was taking place in jails, the biggest problem they faced was overcrowding. Our first priority is to reduce prisons numbers so that we can deal effectively with other challenges." (See the Cape Argus, 19 June 2004).

In order to understand the extent of the problem and to put overcrowding in context, the Commission will look at the general statistics in prisons, which begin to indicate the effect of overcrowding on the treatment and dignity of prisoners, as well as the impact on the service delivery in the various Management Areas investigated.

There is no international norm stating what an overcrowded prison is. The Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment gives some form of a guideline as to what an overcrowded prison is.

The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment has set seven (7) square metres per prisoner as an approximate, desirable guideline for a detention cell.³

In the South African equation, the guidelines that are used are those that, amongst others, consider the square meterage of the cell per prisoner.⁴ Accordingly, when reports are given regarding overcrowding these are the criteria utilised.

2. PRISON POPULATION

In analysing the prison population it is useful to consider the overall South African population for the purposes of comparison.

The total population of South Africa is 44.8 million,⁵ which is made up as follows:

³ See case of *Kalashnikov v Russia* (Application No. 47095/99). Judgment – Strasbourg – 15 July 2002.

⁴ See also the United Nations Standard Minimum Rules for the Treatment of Prisoners.

⁵ See SA 2004-2005: “South Africa at a Glance” (Tenth Anniversary Edition)-Editors Inc. P.

African	35 400 000 (79%)
Whites	4 300 000 (9.6%)
Coloureds	4 000 000 (8.9%)
Asians	1 100 000 (2.5%)

According to the official record for the period February 2002 to August 2004, which is the period during which the Commission was undertaking its investigations, the prison population in South African Prisons was follows⁶:

RSA	UNSENTENCED	SENTENCED	TOTAL
Jan 2002	57 066	120 635	177 701
Feb 2002	56 582	122 523	179 105
Mar 2002	55 481	122 793	178 274
Apr 2002	55 053	124 339	179 392
May 2002	54 347	125 705	180 052
Jun 2002	51 377	126 063	177 440
Jul 2002	50 758	126 862	177 620
Aug 2002	51 667	127 735	179 402
Sep 2002	52 965	128 325	181 290
Oct 2002	53 116	129 377	182 493
Nov 2002	53 105	130 084	183 189
Dec 2002	56 459	128 655	185 114
Jan 2003	57 786	128 894	186 680
Feb 2003	57 858	130 449	188 307
Mar 2003	58 144	131 604	189 748
Apr 2003	58 528	131 652	190 180
May 2003	53 939	132 675	186 614
Jun 2003	52 466	133 282	185 748
Jul 2003	51 177	134 040	185 217
Aug 2003	50 454	135 142	185 596
Sep 2003	51 297	129 655	180 952

⁶ See Inspecting Judge's report on prison statistics presented at the Criminal Justice Conference in December 2004 at Gordons Bay, Cape Town.

Oct 2003	52 151	132 010	184 161
Nov 2003	50 801	131 736	182 537
Dec 2003	55 232	130 400	185 632
Jan 2004	55 877	130 729	186 606
Feb 2004	54 750	132 315	187 065
Mar 2004	53 876	133 764	187 640
Apr 2004	53 880	134 023	187 903
May 2004	51 734	134 799	186 533
Jun 2004	49 373	136 436	185 809
Jul 2004	48 306	136 500	184 806
Aug 2004	49 798	136 941	186 739

According to the official records as of October 2004,⁷ the racial profile of the above prisoners was as follows:

African	146 962 (79.49%)
Coloured	33 457 (19.09%)
White	3 690 (2.00%)
Asian	762 (0.412%)
Total	184 871

The gender profile was 180 813 male prisoners and 4 058 female prisoners.

The total capacity of the aforementioned prisons in the Republic of South Africa is 114 000 prisoners.⁸

According to the figures above and the various reports that have been submitted by the Office of the Inspecting Judge, the overcrowding is predominantly in the awaiting trial section of the various prisons. Furthermore, it is clear that approximately 67% of the awaiting trial prisoners are kept in fifteen (15) prisons

⁷ See Head Office Exhibit 'J'.

⁸ See Inspecting Judge's Annual Report 2004-2005 at page 17.

out of the possible one hundred and fifty three (153) prisons that are designated for unsentenced prisoners. The various statistics also indicate that there are approximately 52 000 awaiting trial prisoners per month in the various facilities within the Department. The overcrowding figures alone, however, do not give a complete picture of the stark horror that unsentenced prisoners must experience. They are confronted on a daily basis with cells that are filthy and unhygienic and with toilets and showers that are not in proper working order because of the extreme pressure placed on sanitation systems by the overcrowded state of the prisons.

The question is then whether there isn't a need to move the awaiting trial prisoners around for purposes of easing the overcrowding within the prisons.

It is also clear from the figures above that South African prisons are overcrowded. However, corrupt members of the Department should not use overcrowding as an excuse for engaging in corrupt activities. The members of the Department who are corrupt would be corrupt whether overcrowding was or was not present within the prisons. Overcrowding merely exacerbates corruption because it is difficult to detect corrupt activities in the prevailing conditions.

A lot has been said about the various factors that have had an impact on overcrowding in our country, including, amongst others, the tougher bail conditions, minimum sentences and the upsurge of crime. However, there is no evidence to support that there is in fact an upsurge of crime.

Furthermore, the Department cannot simply build more prisons to solve the problem of overcrowding, a fact that has been accepted by most criminology scholars. The issue of overcrowding therefore has to be dealt with in a creative manner.

The Department has succeeded in bringing to everyone's attention the fact that the issue of overcrowding is a problem for the entire criminal justice system. In other words, the entire Justice Crime Prevention and Security Cluster has to take responsibility for overcrowding. In the various submissions, which the Department has made, it is clear that the problem of overcrowding is placed mainly at the doors of the prosecution, the courts and the South African Police Service.⁹ However, the Department does not say what its contribution has been to the issue of overcrowding. In one way or another, it has also contributed to the problem, which will be dealt with hereinafter.

In the Commission's view, there are a number of factors that contribute to overcrowding. Some of the factors will be dealt with in this report.

Whilst the new sentencing laws, the new bail laws and other factors have been highlighted as factors contributing to overcrowding, the maladministration¹⁰ within the Department has not been highlighted nor considered as a major contributing factor to overcrowding.

3. OVERCROWDING – MISMANAGEMENT

The issue of overcrowding is, amongst others, also a product of mismanagement according to this Commission. Clearly, had the Department:

- a) applied the Parole provisions correctly and consistently;

⁹ This issue will be dealt with in more detail in the section dealing with Awaiting Trial Prisoners later in this Chapter.

¹⁰ See Chapters dealing with Parole and Treatment of Prisoners in this report

- b) applied the provisions of the Criminal Procedure Act, in terms of which prisoners can be released on Correctional Supervision in terms of section 276 A(3) effectively;¹¹
- c) appointed people who could effectively do a proper scientific and statistical analysis, with projections for the future of the prison population, to assess the impact of increases on existing accommodation and requirements for increased accommodation;
- d) considered the bail and minimum sentence legislation and the impact of that on the prison population;¹²
- e) Implemented the recommendations of some of the agencies that investigated the Department previously;¹³

Then the Department may not have been in this position with regard to the effect that overcrowding has on its functioning. Put differently, if the Department was pro-active in this approach, the problem would not be so severe.

The Department mismanaged the situation in that it failed to foresee that by changing the parole regulations or guidelines¹⁴ there would be an upsurge in the

¹¹ The evidence before the Commission points to the fact that very few prisoners were released by the Commissioner in terms of this section, namely, two hundred and forty one (241) in 2000, one hundred and thirty one (131) in 2001, and one hundred and twenty eight (128) in 2002 in the whole country.

¹² A study by Mr Lukas Muntingh indicates that the length of prison sentences is increasing. While large numbers of prisoners are given short sentences of up to six (6) months (49% in 1999), this figure has reduced over the last decade and a half and more prisoners are now receiving sentences of more than two (2) years (10% of prisoners in 1984, compared with 31% in 1999). (See *Reform and Stasis: Transformation in South African Prisons* by Amanda Dissel and Stephen Ellis. Obtained from www.csvr.org.za/papers/papdse.htm).

¹³ In particular the Management Audit of 2000.

¹⁴ The Policy Directive No. 1/8/B, "Penalisation Factors:Applicable on Parole Boards and delegated officials" of 23 April 1998, required that a prisoner had to serve three quarters of the sentence imposed upon him before being considered for parole. This was contrary to the provisions of section 65 (4) of the Correctional Services Act No. 8 of 1959. The 1959 Act stated that the person would have to serve at least half of the term of imprisonment before being considered for parole. In other words, the Department increased the period that was applicable before prisoners could be considered for parole, contrary to what had been provided for the Legislature in the Act. The Department,

number of prisoners in the system, particularly if one takes into account the imposition of the minimum sentences by the courts and the stringent bail laws.

Projections and forecasts of what is likely to happen in the future forms an integral part of the Department's responsibility. It is the duty of every Senior Manager or Chief Executive Officer of an organisation to ensure that there is a proper plan for the future of his organisation or department, as the case might be. In the case of the Department, it might even be necessary, because of its core business,¹⁵ to have a proper planning section, which has employees who are suitably qualified and who can project and plan for what is likely to happen in the future. For the purposes of doing that one might need to employ professionals, such as statisticians, either in the Department or, if the Department does not have the resources to do so, to appoint an outside organisation to give the Department the aforesaid advice and information or use the services of the Department of Statistics.

Once the minimum sentences legislation was passed, the bail conditions became stringent and the Department changed its parole guidelines. The Department should have foreseen that there was going to be an increase in the number of prisoners in both the awaiting trial section and the sentenced section. Failure to anticipate or foresee the future direction or upsurge of prisoner population cannot be an excuse under these circumstances.¹⁶

through regulations, was also violating the rights of prisoners to be considered for parole at an earlier stage. (For more details see the Parole Chapter).

¹⁵ The Department's core business is the safe custody of prisoners. Thus, whatever plan the Department had, strategic or otherwise, should have taken all the issues surrounding the admission and accommodation of prisoners, including the applicable statutes and guidelines, into consideration.

¹⁶ This is the same for a Chief Executive Officer of an airline or any of the major transport companies who cannot use the excuse that he had not foreseen that there would be a sudden increase in the number of passengers who would like to use their services. As a result, he seeks to be excused for leaving passengers at airports or on the streets (for a period of five (5) to seven (7) years) because of his lack of foresight or planning when it was clear to everyone that there would be an upsurge of passengers because of changed circumstances.

The problem with the Department is that they have failed to recruit suitably qualified people. As a result, the professional and effective management capacity is poor.¹⁷ The Department has lacked insight into the problem and so has failed to appoint people who are properly qualified to do these jobs. Many positions that should be occupied by professionals are reserved for members who sometimes do not have the relevant qualifications but end up being part of senior management. In these circumstances, some of the officials lack the capacity to understand simple management concepts and the consequences of failing to implement them, which one needs to understand for future planning and execution for the Department.

To sum up, the Commission's view is that incompetence on the part of the Managers in the Department has contributed a lot to the current state of affairs. Unless properly qualified people are appointed, this state of affairs will continue.¹⁸

Furthermore, the manner in which parole is dealt with by officials of the Department cannot be ignored. In the Commission's view, it is also a major factor that contributes to overcrowding. If one analyses the abovementioned statistics with regard to the prison population, it is clear that the unsentenced prisoners, who have been referred to as the major cause of overpopulation, have been fluctuating between 56 000 (in February 2002) and 49 000 (in August 2004). This means a fluctuation of approximately 7 000 prisoners during this period. However, on the other hand, if one looks at the sentenced prisoners they have changed from 122 000 to about 137 000. This means an increase of

¹⁷ The Department's lack of capacity was best demonstrated in the evidence of Mr Hardie Fourie, who testified about the fact that even in the case of the adoption of the Unit Management System, the adoption as a policy was done without a proper feasibility study. As it is, they are encountering problems of implementation because the South African prisons are not designed for unit management.

¹⁸ The problems of recruitment are dealt with by this Commission in the Chapter on Recruitment.

approximately 17 000 sentenced prisoners. Clearly, there has been an increase in the number of sentenced prisoners, which could be attributable to a number of factors, inter alia, the sentencing trends. However, the other contributing factor, which has already been referred to above, is the issue of parole. The Department's parole system has not been producing the desired results. This will be dealt with in more detail in this report.¹⁹

Maladministration also manifests itself in the manner in which prisoners are spread around the various prisons in the country. The Department officials seem to forget that "desperate times call for desperate measures", in any administrative environment.

Conditions are sometimes unsanitary and unbearable in that one toilet is shared by approximately sixty (60) prisoners. Prisoners also have to share beds, sometimes two (2) prisoners to one bed, whilst others sleep on the concrete floor and sometimes with only one blanket to share.²⁰ According to the evidence led before the Commission, in some of the prisons, like Bizana, prisoners had to sleep in shifts. Thus, the issue of overcrowding can clearly be regarded as a State violation of the basic human rights of prisoners, which is unconstitutional and cannot be condoned in our new democracy.

Whilst the Department has a prison in Bizana, which was 400% full,²¹ about eighty (80kms) kilometers away from there is the Kokstad Prison, which was about 7% full. Whatever the state of the Kokstad Prison is, surely for the sake of protecting the right of prisoners who have to sleep in shifts, one could consider

¹⁹ See the Chapter on Parole and the Department's failure to act on its own guidelines which were stringent.

²⁰ The Department's lack of capacity was best demonstrated in the evidence of Mr Hardie Fourie who testified about the fact that even in the case of the adoption of the Unit Management System, it was adopted as a policy without doing a proper case study or feasibility study. As it is, they are encountering problems of implementation because the South African prisons are not designed for unit management.

²¹ See Mr Morris' evidence – Cape Town Transcript, Volume 7.

moving some of the prisoners from Bizana to Kokstad Prison.²² The Commission does not foresee any complaints from these prisoners because Kokstad is supposed to be a Maximum Security Prison. The section accommodating those prisoners who have been moved there because of overcrowding could have less stringent rules. Accordingly, this is a failure on the part of the Department to implement innovative and strategic leadership.

The issue of the unequal distribution of prisoners amongst the various Management Areas and amongst the prisons within a Management Area, including the distribution of male prisoners against female prisoners, is one factor that seriously needs to be considered.

The Commission accepts that it is important for various prisoners to receive visits from their families and relatives. Accordingly, it is important that both sentenced and unsentenced prisoners be incarcerated near to their homes. The Commission is of the view that being nearer to their home and also being nearer to the court, in which their trial will be held, is very important for awaiting trial prisoners because not being so might interfere with the awaiting trial prisoner's right to a fair trial. However, with sentenced prisoners, the Department could give consideration to moving some of them to other Management Areas, which are within driving distance from their homes.

In making the aforesaid suggestion regarding accommodation, the Commission is influenced by the fact that it is possible to provide transport for the friends, family and relatives of a sentenced prisoner, even if he is not within the magisterial district of his home. For example, a prisoner who resides in the Johannesburg area could be incarcerated in a prison, which is within a two (2) or

²² According to the 2004 Inspecting Judge's Report, the Lusikisiki Prison was 285% overcrowded. The latest reports from Parliament have indicated that as of September/October 2005, Durban/Westville Management Area was in the same unbearable state of overcrowding. The same principle would apply with regard to Lusikisiki and Durban/Westville, which are not far from Kokstad.

three (3) hour drive from Johannesburg, such as the Mafikeng Prison, if it is not full. For purposes of exercising the prisoner's visitation rights during the weekend, the Department could transport family, relatives and friends in its buses to wherever those incarcerated prisoners might be. The Department has a number of buses in various Management Areas, which are utilised for the transportation of, amongst others, members. In some Management Areas these buses are also used to transport members' children to and from their schools. This will obviously call for a well defined Logistical Plan. However, it is a practical solution and is not impossible.

In this regard, the Commission would like to bring to the Department's attention the fact that the National Institute for Crime Prevention and the Re-Integration of Offenders ("Nicro") also has a similar project in the country where prisoners who are from, for example, the Cape Town magisterial district, who are incarcerated in places like Brandvlei Prison and other outlying prisons, are not denied visitation rights because members of their families, relatives and friends are transported by Nicro to visit those prisoners.²³ Accordingly, the Department could apply the same principle.

4. AMNESTY

This Commission is of the view that the State President's granting of amnesty to sentenced prisoners can be utilised to reduce overcrowding in our prisons.

The Kriegler Commission of Inquiry into the unrest in prisons appointed by the President on 27 June 1994, felt that it was not advisable for a recommendation to be made that an "Amnesty Resolution Committee" be formed to look into the various prisoners who might be released on amnesty. In this regard, the suggestion was made in light of the concern about the fact that there might have

²³ See the Nicro Report, Head Office Exhibit "M".

been prisoners who should have been released but were not when the various amnesties were announced by the Department. The Kriegler Commission's motivation was that the prerogative to grant amnesties and to determine their term vests in the President.

The issue of amnesties has caused a lot of unhappiness within the prison population because there used to be an annual amnesty to celebrate Republic Day on 31 May in certain years before 1994. Similarly after 1994, there were Special Amnesties or pardons given by Presidential Decree after the inauguration of the new democratic government and to celebrate the former President, Nelson Mandela's eightieth (80th) birthday.

In the circumstances, it is the Commission's view that the Department's consideration of this particular practice could result in both goodwill and an alleviation of the problem of overcrowding.

For the amnesties to be effective with respect to overcrowding, they need to be regular. Some members of the public expressed some negative sentiments towards these amnesties. However, the rights of the prisoners to be incarcerated under conditions that are consistent with human dignity far outweigh their concerns.

In building further on this suggestion, this Commission would like to recommend that the Department seriously consider approaching the National Council of Correctional Services to develop some guidelines.

The above recommendation is based on the fact that it has always been one of the functions of the National Council of Correctional Services to consider prisoners who have been sentenced to life imprisonment and to recommend to the Minister which of those prisoners should be released on parole. Whilst those recommendations are not binding on the Minister, the Council has always, on a

regular basis, considered the applications and made recommendations to the Minister.

5. AWAITING TRIAL PRISONERS

5.1. Management Audit

The final report of the Management Audit of the Department of Correctional Services, dated 18 February 2000, was submitted to the Commission, wherein overcrowding was recognised as one of the key issues affecting the service delivery of the Department of Correctional Services.²⁴

In the management audit report, the question of awaiting trial prisoners was recognised as an area that needs urgent intervention by the Department. In this report it was recommended, amongst other things, that there is a need for “*a reduced awaiting trial population*”.

The audit team went on to recommend that there was a need for the Department to relieve the pressure on current prisons, amongst others, as follows:

- *“By a prison building programme that takes account of current sentencing trends.*
- *A framework for the management of awaiting trial prisoners building on current projects.”*

The Department has embarked on a building programme. However, this Commission does not know whether it takes into account these concerns as raised by the Management Audit. The Department had not produced any

²⁴ See Exh. B – Part 4B, Head Office hearings held in Pretoria.

framework for the management of the awaiting trial prisoners as at the time of writing of this chapter.

A new sentencing framework was finalised by the South African Law Reform Commission on December 2000, so all the Department needed to do was to consider the proposals or, if it differed with the proposals, suggest a different sentencing framework and then align its building programmes with the accepted framework.²⁵

Once more the issue was dealt with by merely complaining about overcrowding and seeking to blame other institutions.

As recently as 26 September 2005, the Commissioner placed the blame for the Department's inadequacy to deal with the number of awaiting trial prisoners at the door of the Ministry of Safety and Security.²⁶ It appears that the argument is that awaiting trial prisoners should be accommodated at police stations. The Commission is seriously concerned about this attitude for a number of reasons. There are no adequate facilities to deal with prisoners at police stations and neither the 1998 Act nor the Constitution envisages that prisoners be dealt with other than at prisons. The legislation that guarantees and controls the treatment of prisoners is certainly aimed at Correctional Services. This view does not mean that the Commission is not aware of the multitude of problems that the Department has to face in dealing with the number of awaiting trial prisoners who are detained for long periods at the prisons.

All prisoners should, however, be in the care of our prison system. The responsibility of taking care of awaiting trial prisoners cannot be ignored and their rights have to be taken care of.

²⁵ See Report 82 of the Law Commission titled "Sentencing" (A new sentencing framework).

²⁶ See "Blame the cops, says embattled prison boss" *The Cape Argus* 27 September 2005 at page 11.

However, if the Police are arresting people and if they are detained without there being a proper basis for it, as suggested by the Commissioner, then there is a way of dealing with it. The Commissioner said:

“Police get bonuses for arresting more people, whereas this just gives me more stress, (but) I am not saying that police should not arrest people who commit crime.”²⁷

The cost of detaining awaiting trial prisoners should be part of the budget of the Department of Safety and Security. Such a provision would serve as an immediate incentive for the police not to arrest when they have not properly investigated a matter and not to unnecessarily request the detention of those who are suspected of crime and still cloaked in the presumption of innocence. The Commission is of the view that such a recommendation will alleviate the overcrowding of our prisons because it will impact on the awaiting trial prisoners.

The Commission is concerned that the current position regarding the shifting of responsibility for awaiting trial prisoners impacts negatively on the prison system as a whole because no one wants to accept that awaiting trial prisoners are also entitled to be detained in humane conditions.²⁸

5.2. Gaol Returns

The Department of Correctional Services used to file what was referred to as Gaol Returns with the Judge President of the High Court of each Division. In terms of this system, the Judges of the various divisions would receive a list of the prisoners who are incarcerated in the various prisons. This list would deal with the awaiting trial prisoners.

²⁷ See the above-mentioned *Cape Argus* Article – 27 September 2005.

²⁸ See Chapter on Sexual Violence in prison for a more detailed discussion of the lack of services rendered to awaiting trial prisoners.

The Judge President or his nominee would then check what the position was with regard to the awaiting trial prisoners. If there were awaiting trial prisoners who had been incarcerated for a long time, the Judge involved could call upon the Director of Public Prosecutions in Province²⁹ to explain to him why a prisoner's trial had not been finalised. After receiving an explanation, arrangements would be made to either set the trial down on an expedited basis or to consider bail for the prisoner.

The Department is no longer submitting the Gaol Returns to the members of the judiciary in the KwaZulu-Natal Provincial Division and the Durban and Coast Local Division of the High Court. In the Cape, the Department or certain Management Areas are submitting the returns but not as regularly as it ought to happen. Outlying prisons like Drakenstein sometimes submit the Gaol Returns. Pollsmoor has not submitted them to the Cape High Court for quite some time.

The Gaol Returns assisted the members of the judiciary to monitor what was happening with regard to awaiting trial prisoners. As it is, the absence of such information has led to a situation where no-one can call on the Director of Public Prosecutions to account for some of the delays in dealing with awaiting trial prisoners. Some prisoners have been awaiting trial for lengthy periods that are unreasonable.

There is definitely a need for the re-introduction of this system and for it to be monitored so that there can be proper and regular checks and balances. This task should not be left solely with the Office of the Inspecting Judge.

²⁹ This definitely used to be the practice in the Cape Provincial Division and KwaZulu-Natal Provincial Division of the High Court. The Commission is not sure whether this practice applied in the other provinces or divisions.

6. CONCLUDING REMARKS

The issue of overcrowding is not an issue that can be placed at the door of one particular department. It is an issue that needs the involvement of the entire Justice, Crime Prevention and Security Cluster of the Government. Accordingly, the Department should not place the blame at the door of anyone. However, it is prudent for the Department to come up with a strategy or plan to deal with the issue of overcrowding. In other words, it must do its part and all the other Departments will also do their part. Shifting the responsibility and blaming other Departments will not assist or solve the problems in this regard.

In accordance with this Commission's Terms of Reference, the recommendations set out hereinafter will be directed at the Department of Correctional Services and not the other departments that are part of the Cluster. It does not mean, however, that the other departments do not have a responsibility to contribute to the solution of the issue of overcrowding in our prisons.

What is needed are policies that require the whole criminal justice sector to regard prison accommodation as a scarce resource and to use other forms of punishment where applicable and appropriate. These policies should also promote the utilisation of section 62(f) of the Criminal Procedure Act No. 51 of 1997, to divert awaiting trial prisoners.

7. RECOMMENDATIONS

SHORT-TERM

The Commission recommends that:

- 7.1. The Department should seriously consider moving sentenced prisoners to outlying less crowded Management Areas or empty prisons within

- Management Areas to create space for other prisoners from the overcrowded Management Areas or prisons.
- 7.2. For purposes of the visitations of sentenced prisoners and for those prisoners who have been moved, the Department should consider making a detailed logistical plan for transport arrangements for members of the families, relatives and friends to be transported on a Saturday and Sunday morning to the prison where these people are incarcerated and then return the relatives/visitors to the original point of collection. The point of collection could be a Management Area.
 - 7.3. Arrangements should be made for the Department of Safety and Security to bear the costs of awaiting trial prisoners.
 - 7.4. The above recommendations should be implemented after seeking the necessary approval.
 - 7.5. The Department should re-introduce the system of Gaol Returns and ensure that all Management Areas comply with it, to enable the members of the Judiciary to intervene with respect to awaiting trial prisoners.
 - 7.6. The Department should be directed to implement the recommendations emanating from previous investigations regarding overcrowding.

LONG-TERM

- 7.7. In the light of the function of the National Council Correctional Services, this Commission would like to recommend that a sub-committee of the Council be formed, which will, amongst others, consider setting up:

- (a) Parameters for release of prisoners on amnesty who may not necessarily qualify to be released on parole. For example, the aged, the infirm and the young prisoners;
- (b) Consider recommending to the President through the Minister, the need, or otherwise, of:
 - (i) regular amnesties being recommended to ease the overcrowding;
 - (ii) to make recommendations to the various Parole Boards to consider releasing various categories of prisoners when there is a need.

7.8 The Parole Boards be directed to consider the issue of overcrowding of prisons as one of the compelling factors that needs to be taken into consideration in any application for parole by sentenced prisoners.

7.9. The Correctional Services Board be directed to prepare a score card or a means test, which should be utilised by the Parole Boards, to take cognisance of the overcrowding situations within our prisons.

7.10. The Correctional Services Board and/or the Correctional Supervision and Parole Board prepare guidelines, which will be utilised by the Commissioner in releasing prisoners on correctional supervision in terms of section 276(1)(i), section 276 A(3)(a), section 287 (4)(a) and section 287 (4)(b) of the Criminal Procedure Act. These guidelines should be driven by, or be influenced by, the overcrowding situation in our prisons.

7.11. The Department seriously consider the appointment of a Special Task Team of experts or lawyers for a fixed period with instructions to assist with the applications to the various courts in terms of sections 276 (1)(i),

276 A(3)(a), 287 (4)(a) and 287 (4)(b) in respect of those prisoners who qualify.