

CHAPTER 16

NON-ADHERENCE TO OVERTIME POLICY

CHAPTER 16

NON-ADHERENCE TO OVERTIME POLICY

CONTENTS

	<i>Page</i>
1. Introduction	782
2. Expenditure on Overtime	783
2.1 Ms S.M. Swarathe	783
2.2 Expenditure Analysis	783
2.3 Remuneration for Overtime	788
2.4 Public Service Commission	789
3. Department Policy on Overtime	790
3.1 Ms M.P. Moela	790
3.2 Purpose and Implementation of Overtime	790
3.3 Limitation on Overtime	791
4. Union Complaints	794
5. Department's Response	795
5.1 Departmental Directives	795
5.2 Mr S. Gambu	797
6. Contravention of Policy	799
6.1 Commission's Investigations	799
6.2 Alleged Abuses	799

7.	Evaluation	804
7.1	Financial Issues	804
7.2	Remuneration Irregularities	806
7.3	Non-implementation of PSA Recommendations	808
8.	Concluding Remarks	811
9.	Recommendations	812

CHAPTER 16

NON-ADHERENCE TO OVERTIME POLICY

1. INTRODUCTION

This Chapter focuses on the non-adherence to the policy of the Department in respect of overtime worked by members on weekends and public holidays.

As the evidence of this Chapter will reveal, payments made to members of the Department in respect of overtime is a very serious drain on the Department of Correctional Services' financial resources.

The problem of overtime payments made to members of the Department was highlighted as early as September 2002 when the Public Service Commission finalised its report on the management of overtime in the Department and made recommendations to improve the management of overtime in the Department. Amongst its recommendations, the Public Service Commission recommended the phasing out of weekend overtime and the phasing in of the seven (7) day work week.

However, despite the substantial financial savings that would have resulted, the Department had not yet, for some inexplicable reason, implemented the Public Service Commission's recommendations in this regard by the time of the Commission's hearings.¹

The evidence presented to the Commission established that the Department has a well established policy on weekend and public holidays' overtime. A Procedure Manual of the Department specifically deals with the

¹ See the Chapter on Previous Investigations for more details on the implementation of the Public Service Commission recommendations.

implementation of the system of weekend overtime remuneration.² Despite the existence of this policy, there is clear evidence that weekend overtime is not properly managed in that management areas are not complying with the weekend overtime policy.

The unions have also complained that their members were being prejudiced because the overtime policy was not being implemented properly. They particularly raised concerns that high ranking officials were working in lower ranking jobs during weekends.

The non-adherence to this policy on overtime has led to the Department to overspend on the overtime budget and thus exceed the budget allocations for each financial year. Senior officials of the Department who gave evidence during the Commission's hearings clearly articulated such non-adherence to Departmental policy relating to overtime.

2. EXPENDITURE ON OVERTIME

2.1 Ms S. M. Swarathe

The vast amounts spent by the Department on overtime can be seen from the evidence of Ms Sebatseng Miriam Swarathe, who is employed by the Department as an Assistant Director: Budget and is stationed at Pretoria Head Office. She advised the Commission that she has worked in the budget office for seven (7) years and that her duties, amongst other things, entail the preparation and allocation of the weekend overtime budget.

She testified that in determining the allocation of the weekend overtime budget, the Department takes into consideration:

² Amongst the issues dealt with in this Procedure Manual are payment; policy framework; the purpose of overtime remuneration; delegations; payment of weekend duty according to weekend establishment; grounds for the payment of weekend duty; application of principles; payment of shifts over weekends and payment/ recording of public holidays. (See Pretoria hearings Exhibit 'PPP')

- (a) the number of personnel needed to man the approved posts;
- (b) the rank of personnel, and
- (c) applicable tariffs.

To assist the Commission to understand the cost of overtime to the Department, Ms Swarathe prepared the following four (4) documents:³

SMS 1: 2002/2003 FINANCIAL YEAR

This reflects the total budget allocated for overtime to all Management Areas in South Africa for the year 2002/2003 as well as the amounts allocated for Gauteng and Pretoria.

Overtime Allocation	Approved	Financed	Budget Allocation
Total RSA	15,745	15,745	639.927,000
Total Gauteng	3,896	3,896	157,834,000
Total Pretoria Central	216	216	9,973,800
Pretoria C-Max	141	141	6,542,900

³ See Exhibit 'OOO' Pretoria hearings

SMS 2: 2003/2004 FINANCIAL YEAR

This reflects the budget allocation for the year 2003/2004.

Overtime Allocation	Approved	Financed	Budget Allocation
RSA Total	15,780	15,780	749,930,000
Total Gauteng	3,892	3,892	184,061,000
Total Pretoria Central	216	216	10,865,200
Total Pretoria C-Max	141	141	7,102,600

SMS 3:2002/2003 FINANCIAL YEAR

This reflects the annual surplus/ deficit for the financial year 2002/2003.

Overtime Allocation	Approved	Financed	Budget Allocation	Expenditure	Surplus/ Deficit
RSA Total	15,745	15,745	639,927,000	733,627,835	-93,700,835
Total Gauteng	3,896	3,896	157,834,000	172,133,649	-14,299,649
Total Pretoria Central	216	216	9,973,800	9,973,771	29
Personnel Budget			39,612,200	39,635,583	-23,383
Total Pretoria C-Max	141	141	6,542,900	6,542,928	-28

Overtime Allocation	Budget Allocation	Expenditure	Surplus/Deficit
Personnel Budget	21,632,600	21,638,201	-5,601

The Personnel Budget refers to the weekly spending

SMS 4: 2003/2004 Financial Year

This reflects the annual surplus/deficit for the financial year 2003/2004.

Overtime Allocation	Approved	Financed	Budget Allocation	Expenditure	Surplus/Deficit
RSA Total	15,780	15,780	749,930,000	810,559,511	-60,629,511
Total Gauteng	3,892	3,892	184,061,000	187,154,216	- 3,093,216
Total Pretoria Central	216	216	10,865,200	11,077,046	- 211,846
Total Pretoria C-Max	141	141	7,102,600	7,131,049	- 28,449

2.2 Expenditure Analysis

The above figures reflect that in respect of overtime:

- (i) the national budget allocated for the weekend overtime for the financial year 2002/2003 was six hundred and thirty nine million nine hundred and twenty seven thousand rand (R639 927 000,00)('SMS1');
- (ii) the national Budget allocation for the weekend overtime for the year 2003/2004 is Seven hundred and forty nine million nine hundred and thirty thousand rand (R749 930 000,00)('SMS2')
- (iii) there has been an increase of one hundred million rand (R100 000 000,00) in the budget allocation for the year 2003/2004 in respect of both Pretoria Central Prison and Pretoria C-Max, compared to the financial year 2002/2003("SMS1' and SMS2').
- (iv) there had been a deficit of over ninety three million rand for the 2002/2003 financial year.
- (v) there had been a further deficit of over sixty three million rand for the 2002/2003 financial year.

The increase in respect of the Pretoria Prisons, according to Ms Swarathe, has been caused by an increase in members' salaries as they received a nine to ten percent (9-10%) increase in their salaries during the 2002/2003 financial year. There was also an increase in the number of people working overtime during this period.

In respect of the budget deficit appearing on annexures 'SMS3' and 'SMS4', the Department has asked the regions to explain the causes of the deficit in the budget allocation.

2.3 Remuneration for Overtime

Ms Swarathe also touched on issues relating to the Department's policy in respect of the remuneration of members for overtime. Paragraph 5.6 of the procedure manual of the Department provides that overtime payments for weekend duties shall be limited to the level of Deputy Director. This implies that an official on the level of a Director and higher may not perform overtime duties regardless of whether such duties are performed on a lower level.

She was also aware that in terms of clause 5.11 of the same procedure manual, if a member is utilised and placed on duty in a post with a rank lower than the one held, he or she shall receive overtime pay of the post in which he or she was being utilised on that specific weekend and not of the rank held.

For example, a Deputy Director working overtime would be remunerated according to the maximum scale of a Senior Correctional Officer. If the Deputy Director who works weekend overtime is paid on the scale of a Deputy Director, the budget would be exceeded.

She confirmed that she herself had worked overtime at Pretoria Central Prison as a Senior Correctional Officer Grade 1, which is not her rank. She was paid at the scale of a Senior Correctional Officer until July 2003.

She said that these measures were put in place to curb overspending on overtime. The role of an Area Commissioner is, amongst other things, to see to it that there is no overspending on overtime.

She denied, however, that there was no budget allocation for weekend overtime as alleged by some officials. She pointed out that if a Deputy Director does monitoring duties during his overtime session, he/she would be remunerated as a Deputy Director if the post establishment allows that. The posts establishment received from corporate planning does not designate duties. She agreed that in terms of clause 5.11 of the procedure manual, the

determination of remuneration depends on what work a person does and not on his/her rank. An increase in prisoners will however require more warders.

2.4 Public Service Commission

Ms Swarathe pointed out that she is aware of the recommendations made by the Public Service Commission in September 2000 recommending a (7) seven week establishment but as far as she knew at the time of testifying, those recommendations had not yet been implemented.

Ms Swarathe also highlighted the cost incurred by the Department at that time in respect of overtime as opposed to the costs of changing to a seven-day week system. According to her:

- (i) new members' starting basic salary, at the lowest level of Correctional Officer Grade 1 – Grade 3 is about fifty eight thousand rand (R58 000,00).
- (ii) the basic salary plus benefits costs the Department ninety six thousand rand (R96 0000,00) each year per member.
- (iii) The Department spends a total of six hundred and forty million rand (R640 000 000,00) per annum on overtime nationally.

She was of the opinion that if the Department phased in a seven (7) day work week, as recommended by the Public Service Commission, the Department could employ a number of new members. There will be no need for overtime if the amount paid out presently for overtime is utilised to pay the salaries of the additional new members who would be employed on a full time basis by the Department.

3. DEPARTMENT'S OVERTIME POLICY

3.1 Ms M.P. Moela

The Department's overtime policy was fully dealt with by Ms Mamshita Pauline Moela who testified that she is a Senior Correctional Officer: Remunerative Allowances stationed at the Pretoria Head Office,⁴ whose duties entail policy formulation and administration of weekend and normal overtime, standby allowances, standard and special danger allowances, night shift allowances and also clothing for Community Correction personnel.

Ms Moela advised that she is aware of the Department's overtime working policy⁵ and pointed out that the policy was formulated by the Department and negotiated with the unions. The Department consulted extensively with the unions, which are aware of the weekend overtime policy.

Like Ms Swarathe, Ms Moela is aware that the Public Service Commission recommended the abolition of a five (5) day work week and in its place recommended a seven (7) day work week. This recommendation had not yet been implemented as it was still being negotiated at the time she testified.

3.2 Purpose and Implementation of Overtime

Ms Moela enlightened the Commission to the fact that, in terms of:

- (a) the purpose of overtime remuneration is to compensate personnel for additional services rendered due to an inadequate establishment and/or insufficient personnel for the rendering of essential services within the Department on Saturdays, Sundays and public holidays.⁶

⁴ Ms Moela joined the Department in 1999 at the Pietersburg Management Area.

⁵ See Exhibit "PPP" Pretoria hearings where the policy is Annexure 'A' to her affidavit.

⁶ Ms Moela referred to clause 2.1 of the Departmental overtime policy.

- (b) the implementation of a system of working overtime was introduced as an interim measure by the Department on the recommendation of the Public Service Commission, subject to the treasury approval, with effect from 1 February 1978 on the condition that the system would phase out when the Department had sufficient manpower to implement the seven (7) day service rendering establishment.⁷

Ms Moela pointed out further that the Department has a dual establishment system:

- (a) the weekly establishment (Monday to Friday) and
- (b) the weekend establishment (Saturday to Sunday).

The weekend establishment is based on rendering essential services in the Department on a twenty-four (24) hour basis, which resulted in the Department having three (3) shifts of eight (8) hours each to ensure maintenance of safety and security in prisons.

3.3 Limitations on Overtime

As working overtime was established to cater for essential services without which, Ms Moela pointed out, a prison may not operate, the weekend duties are limited to custodian, health and support personnel. Custodian and support personnel refer to full time prison warders and escape monitors, which are a Grade 3, 2 and 1 post. Health and support personnel refer to closed occupational classes, such as nurses.

The closed occupational classes may work weekend overtime but their utilisation is subject to certain conditions and procedures. However, some closed occupational classes, such as certain specialist personnel (e.g. social

⁷ Clause 2.2 of the policy.

workers and educationists), render services that are not essential. The prison can function without the services of this group at weekends.

Members from specialised/closed occupational classes, e.g. logistics, finance, social work and educationists may, if necessary, be utilised to work over weekends.⁸ The utilisation of these personnel (closed/specialised occupational classes) over weekends is subject to the following conditions:

- (i) Overtime duties shall be performed in the custodian occupation class;
- (ii) These personnel must be well versed with the nature of the duties of the post in which they may be utilised;
- (iii) Officials from the closed occupational classes may not demand to be placed on duty over weekends.
- (iii) Their utilisation is strictly subject to the provisions of paragraph 5.2.2. of the policy. This clause provides that only if the utilisation of these personnel is unavoidable and no functional custodian members, whether from Management Area, head office or prison are available and only if such practice can be motivated.

She also testified that only personnel with the corresponding post levels as provided for in accordance with the weekend establishment shall be placed on duty over weekends/public holidays except in highly exceptional circumstances, such a critical shortage of personnel with the corresponding rank levels.⁹

Furthermore, the policy manual provides that all attempts must be made to avoid the utilisation of personnel with higher post levels working at lower levels,¹⁰ for example, a Senior Correctional Officer being utilised in a Correctional Officer post.

Ms Moela made the following important points in her evidence:

⁸ This was in terms of clauses 5.3, 5.2.1 and 5.2.2 of the policy.

⁹ This was in terms of clauses 4.6 and 4.7 of the policy manual.

¹⁰ Clause 4.7.

- (a) Working overtime should not be utilised by personnel to enrich themselves and Area Managers, who are responsible for ensuring this doesn't happen, should guard against it.
- (b) In terms of clause 4.9 of the overtime policy, no official is allowed to work more than forty-eight (48) hours of weekend overtime in one (1) month. Under normal circumstances, an official is expected to work thirty-two (32) hours of weekend overtime in one (1) month. It is only in the months where there are five (5) weekends that officials of one (1) division will work forty-eight (48) hours, which is the limit in one (1) month.
- (c) The number and rank of personnel who perform weekend duties is limited to the approved finance weekend establishment according to post levels.

As indicated above, the placement of personnel should be from the same occupational class with the same corresponding rank and post. However, if it happens under highly exceptional circumstances that members of a higher rank are utilised in posts of lower rank levels, those members should be compensated on the top notch of that particular post and rank. The policy stipulates that if an official with a rank higher than that of a correctional officer in the same occupational class is utilised in a correctional officer's post during weekends, he or she will be remunerated according to the maximum salary notch of a senior correctional officer.¹¹ If, for example, a Deputy Director is utilised as a monitor, policy dictates that he should not be paid as a Deputy Director but according to the post class in which the official is utilised.

The community corrections Soshanguve weekend duty list on page 63 and 64 of Bundle A indicates that on 28 and 29 February 2004, a Deputy Director, Mrs Lesolang performed monitoring duties. She was, however, paid on the

¹¹ Clause 6.6.1. of the policy.

scale of a Deputy Director, which was one hundred and thirty five rand and fifty two cents (R135,52) for Saturday and two hundred and three rand and twenty eight cents (R203,28) for Sunday, when other officials, Mr Nedzamba Correctional Officer Grade 2 and Mr Ganyane Correctional Officer Grade 1, were paid forty nine rand and thirty nine Cents (R49,39) and fifty four rand and fifty cents (R54,50) respectively. All of these officials performed monitoring functions.

Ms Moela conceded that there was a breach of Departmental policy in this regard as all officials on the duty list for the two (2) days referred to above performed monitoring functions.

The D224 register is a register that records the details of persons who performed overtime in each Management Area. This document neither records what functions an official performed nor when he/she did the overtime. The Head of Prison has no way of knowing what function an official performed before approving each claim. If for example, an Assistant Director performed a lower rank function like monitoring, in terms of this document no-one would know that an official performed a function lower than his rank. This results in an official being paid at a higher rank contrary to the policy.

4. UNION COMPLAINTS

The lack of proper implementation of the overtime policy was also highlighted by the unions who complained that mismanagement of the overtime and the failure of the Department to adhere to overtime policy was affecting their members.

Mr Tsandzeka Kenneth Mthombeni, a Director: Employee Relations in the Department stationed at Pretoria Head Office whose duties include liaising with the unions and acting as a representative of the Department's negotiating forums, advised the Commission that he had gathered information from the

Bargaining Council that there were problems with regard to the management of weekend overtime.

Mr Mthombeni stated that the union's major concern was that officials of a higher rank level were allowed to work in posts lower than their actual post levels. Members were also allowed to work more than thirty-two (32) hours in a month of four (4) weeks and that members who were working outside the establishment were given first preference to work weekend overtime. He thereafter issued a directive to remind Regional Commissioners of the need to manage weekend overtime properly.

5. DEPARTMENT'S RESPONSE

5.1 Departmental Directives

Mr Mthombeni, who testified that part of his duties included ensuring stability in the Department, confirmed that he was responsible for issuing a number of directives to Regional Commissioners regarding the issue of overtime.

In writing these directives he was prompted by two (2) reasons, namely:

- (a) the Department's financial constraints, and
- (b) information received that weekend overtime was not properly managed in that Management Areas were not complying with the weekend overtime policy.

In advising the Regional Commissioners about proper management of overtime, reference was made by Mr Mtombeni to certain areas of the weekend overtime policy, for example in clause 5.1 of the directive where he mentioned that no officials should be allowed to work in a higher or lower post than his/her actual post level. He also referred to clauses 4.6. and 4.7 of the weekend overtime manual, which provides as follows:

“4.6 Only personnel with the corresponding post level in accordance with the weekend establishment shall be placed on duty over weekends/public holidays, except in highly exceptional circumstances such as a critical shortage of enough personnel with the corresponding rank levels.”

“4.7 All attempts must be made to avoid utilisation of personnel with higher posts levels in lower working levels (e.g. that senior correctional officers are utilised in a correctional officers’ post).”

In clause 5.2 of the directive, he mentioned that no officials should be allowed to work more than two (2) weekends in a month. Where, in exceptional circumstances, it is not possible to comply with this, prior approval must be obtained from the manager in consultation with the Regional Commissioner in terms of clause 4.14 of the Departmental policy. He also warned that in respect of the current financial year, the indication is that the Department is heading towards overspending on the overtime budget and his intervention was necessary to try to prevent this.

Mr Mthombeni advised the Commission that he is serving in a task team working together with the DPSA regarding the implementation of the recommendations of the Public Service Commission. The task team was appointed in November 2003¹² consisting of members of the Department including the Deputy Commissioner. There are also two (2) officials from DPSA on the task team. The task team started in January 2004, with the view of investigating the possibility of changing the week to a seven (7) day working week. They have finalised the investigation and the report was given to the National Commissioner for his approval. The Commission has not had sight of this report.

¹² This was established approximately three (3) years after the PSA recommendations.

He is aware that the Public Service Commission is recommending a seven (7) day working week. These recommendations were once brought to the chamber but they were stalled by the Department's top management. There was no resistance from the unions or the Bargaining Council with regard to these recommendations but no definite option was chosen at the Bargaining Council. The non-implementation of these recommendations is not due to the resistance by the union but because management stalled the recommendations.¹³

They did not deal with the Public Service Commission's report in the task team. He was not aware that this report dealt with the topic of overtime and other related issues. He has, in fact, not seen this report. The report of the Public Service Commission was not placed before the task team when they conducted their investigations.

5.2 Mr S. Gambu

Mr Sidwell Gambu is employed by the Department as an Assistant Director: Remunerative Allowances. He confirmed that the Department is experiencing problems with regard to the management of weekend overtime. During the year 2002, he saw an audit query from the Auditor General querying certain officials who worked more than forty-eight (48) hours overtime per month.

Subsequent to a number of queries that were received in respect of weekend duties, it became clear to the Department that weekend overtime was not properly managed and as a result thereof, several letters were sent to different Management Areas advising that they should properly manage weekend overtime. These letters were sent to Provincial Commissioners and Area Managers. The following are some of the problems identified by all Provincial Commissioners. The letter is annexed to his affidavit dated 11 June 2002.

¹³ On the role of management in crucial issues see Chapters one to three of this report.

- “1. *Heads of Prison as a punitive measure summarily disqualify officials from performing weekend duties when such officials are sick during the week. If Heads of Prison are however sick, they still perform weekend duties and they do not allow other officials to work in their places;*
2. *Certain officials are booked only to perform night duties;*
3. *Area Managers/Heads of Prisons refuse to pay officials who worked on a Saturday and who were sick on a Sunday. It is made clear that officials should be remunerated for all the hours they actually performed duty during a weekend;*
4. *Certain officials are allowed to perform duties during four (4) weekends whilst others are granted the opportunity only once or not at all during a month;*
5. *Discretion is not used when officials arrive late for duty and these officials are summarily disqualified from working a specific weekend;*
6. *Officials with the rank of Senior Correctional Officer and higher, perform duties in a correctional official post and are incorrectly remunerated in accordance with their own salaries. This practice is unacceptable;*
7. *Closed occupational groups are posted in strategic positions during weekends causing a security risk as they are not always equipped.”*

A paper trail should indicate if a person who is a Director performed duties of the lower rank when he worked overtime. If the computer is not properly fed with the correct information, the person would then be paid according to a wrong scale. A document Z168, is a document which is generated when a member has worked weekend overtime, however, this document does not state what the person did when he/she performed overtime. The Z168 simply indicates whether a member was present or not and does not indicate the exact time of arrival and departure. The information on this document Z168 is then transferred to another document, G224. The Head of a Department then approves and refers the G224 to the Area Manager for payment of the claims.

The persal section has no way of knowing how the official was utilised. There is no verification in these documents of what the rank of a person is and what he actually did. Departmental policy is lacking in this regard.

He, himself has worked overtime at Pretoria Maximum Prison. He was utilised as a correctional officer Grade 1.

6. CONTRAVENTIONS OF POLICY

6.1 Commission's Investigation

Advocate Shabalala, the Commission's investigator, investigated allegations of contraventions and abuses of the weekend overtime policy. During the course of his investigations, he collected various documents from the Departmental official records and some of the documents were given to him by a member, Mr Winson Naidoo, and he thereafter compiled a bundle of documents which was handed in.¹⁴

6.2 Alleged Abuse of Overtime

After perusing and analysing the documents, he made the following observations relating mainly to the alleged abuses of overtime duties by certain officials in the employ of the Department:

- (a) From the 1 to the 28 February 2003, Mrs Lesolang, a Deputy Director performed overtime duties as a monitoring official (Grade 1 post) but was paid in accordance with her salary notch of Deputy Director Level 12. She also approved her G224 for the month of February 2003.
- (b) There was no duty list available for the month of February 2003. However, a copy of the Z168, which is the official duty register,

¹⁴ See annexure 'BSI' to his affidavit marked Exhibit "TT".

suggests that Mrs Lesolang worked first watch night duty on the 15 and 16 February, 2003, and day duties on the 1 February 2003. It could not be verified where she worked because the duty sheet was missing.

- (c) On the weekend of the 3 and 4 January 2004, Deputy Director Mrs Lesolang worked day duties at Community Corrections Soshanguve. She worked on the weekend of the 31 January and 1 February 2004. She also worked on the weekend of the 28 and 29 February 2004 at Shoshanguve. On all the dates mentioned herein, she performed duties of monitoring official, which is the interchangeable post of Grade 1 – Grade 3. For the duties performed on the 3, 4, 10 and 11 January 2004, as a monitoring official, Mrs Lesolang was remunerated according to her salary notch of a Deputy Director. For the duties performed on the 31 January 2004, 1, 28 and 29 February 2004, as a monitoring official, Mrs Lesolang was also remunerated on a salary notch of a Deputy Director.¹⁵
- (d) Assistant Director H.H. Coetzee performed the functions of a monitoring official on the weekend of the 16 and 17 November 2002, at Community Corrections, Pretoria. He also performed functions of a monitoring official on the 2 and 3 November 2002 at Pretoria Community Corrections. According to the payment advice for the work performed, Mr Coetzee was paid on a salary notch of an Assistant Director for the weekend overtime work during the month of November 2002.¹⁶
- (e) Assistant Director Coetzee on the 14 and 15 December 2002, performed weekend duties in the post of monitoring official at Community Corrections, Pretoria. He also performed weekend

¹⁵ These allegations are supported by Annexures 'N1 – N6' of Annexures 'BS1' of Exhibit 'TT'.

¹⁶ These allegations are supported by Annexures 'OP' dated the 1 November 2002, and 13th November 2002, read together with Annexure 'K'.

overtime on the 1 – 28 February 2003. He was remunerated in accordance with the rank of Assistant Director on the 8, 9, 22 and 23 February 2003 although he performed first watch duty. According to the G224 form for the month of February 2003, Mr Coetzee was remunerated in accordance with his rank of an Assistant Director. The payment for extra remuneration was approved by Deputy Director, Mrs Lesolang.¹⁷

- (f) On the 10 and 11 January 2004 and again on 24 and 25 January, Assistant Director Coetzee performed the function of a monitoring official at Community Corrections, Pretoria. For duties performed on the 10, 11, 24 and 25 January 2004, Mr Coetzee was remunerated according to the salary level of an Assistant Director. This remuneration claim does not appear to have been properly approved but a person known as Mr A. Makgamatha performed certain verifications in this regard.¹⁸
- (h) Mr Coetzee again performed monitoring duties on the 7, 8, 21 and 22 February, 2004, working day duties.¹⁹ Mr Coetzee was remunerated according to his salary notch of an Assistant Director for these duties. The payment claim in this regard was approved by Mrs Lesolang.²⁰
- (i) Deputy Director P.J.P. Killian, who is stationed at the Area Commissioner's office of Acting Director Area Co-Ordinator of the Pretoria Management Area, performed weekend duties on the 16 and 17 November 2002, at the Community Corrections, Pretoria, in the post of monitoring officer. For the month of November 2002, Mr Killian performed overtime duties in the post of monitoring official. In terms of the remuneration advice for additional duties (G224) no payment is

¹⁷ These allegations are supported by Annexure 'Q'(a), and 'N'(b) and Annexure 'M'.

¹⁸ These allegations are supported by Annexure 'M5' page 54 of the bundle.

¹⁹ These allegations are supported by Annexures 'M1', 'M2', 'M3' and 'M4' of the bundle.

²⁰ These allegations are supported by Annexures 'M6' and 'M6(a)' of the bundle.

reflected. However, a manual calculation has been done on the Z168 (official duty register) reflecting the payments that were due to Mr Killian. In this regard, annexure 'T1' and 'T2', an extract from the Z168, which corresponds with the tariffs applicable to the weekend overtime, reflects the amount.²¹

- (j) He also performed weekend duties on the 14 and 15 December 2003, working as a monitoring official performing first watch night duties.²² For the month of December 2002 to the 30 and 31, Mr Killian was paid in accordance with his salary notch.
- (k) For the month of December 2002, Mr Killian received payment for overtime performed as a monitoring official at Community Corrections, Pretoria, in his salary notch as a Deputy Director. All the G224 documents pertaining to the payment of Mr Killian were approved by the Assistant director H.H. Coetzee.²³
- l) Assistant Director Mr E. Khoza worked at the Access Control Station performing certain functions on the 9 and 11 August 2002, on a six (6) to fourteen (14) hour shift, which is a Grade 1 post.
- m) Assistant Director M P Masango worked at Tower 5 first watch night duty on the 9 and 11 August 2002. This is a Grade 1 – 3 post.
- (n) Senior Correctional Officer J.J. Muller worked a shift at Tower 5 on the 24 and 25 August 2002. This is a Grade 1 – 3 post.
- (o) Assistant Director van Achtenberg worked at Tower 1 on second watch on the 3 and 4 August 2002, between 14H00 and 22H00.

²¹ These allegations are supported by Annexures 'S1' and 'S2' in the bundle.

²² These allegations are supported by Annexure 'Q' the duty list dated the 16 and 17 November 2002 and annexure 'Q'.

²³ This allegation is supported by Annexures 'S1' and 'S2'.

- (p) For the month of February 2004, Assistant Director R.R. Maake performed duties on the 14, 15, 21 and 22, at C-Max Prison. On the 14 and 15 February 2004, Mr Maake worked at C5 section on a fourteen (14) to twenty-two (22) hour shift on a post of Correctional officer 1. He worked again during day duties as a Custodial Officer on the 21 and 22 February 2004, at C section.
- (q) Assistant Director Maake's rank level at PS is Grade 1 on the duty list, however, it has been established that he is in fact an Assistant Director.²⁴
- (r) On the duty list the rank of members working at C-Max Prison have been recorded incorrectly. They appear as Grade 1 when in fact they are Senior correctional Officers and the Z168 (official duty register) gives a true reflection of their ranks, which corresponds with the G224 (payment for extra remuneration for extra duties performed).²⁵
- (s) In the month of July 2003, which had four (4) weekends, Mr Marimi worked forty-eight (48) hours overtime.²⁶
- (t) Mr M.J. Selepe, in the month of July 2003, which had four (4) weekends, he performed forty-eight (48) hours overtime.²⁷
- (u) Mrs Dusse, is a Chief Social Worker who is stationed at Pretoria Central Prison. She performed day duties on the 21 and 22 June 2002, at Medium C, the Visitors' section. The duty list was approved by Mr M. Bakoma.²⁸

²⁴ The allegations herein are supported by Annexures 'V5', 'V6' and 'V7'.

²⁵ This allegation is supported by Annexures 'W', 'X1' and 'X2' of the bundle.

²⁶ In this regard, the allegation is supported by annexure 'Y1'.

²⁷ This allegation is supported by Annexure 'Y2'

²⁸ This allegation is supported by Annexure 'Z2' of the bundle.

- (v) Mrs M.C. Johnson is a professional Educationist stationed at Pretoria Central Prison. Mrs Johnson also worked overtime on the 14 and 15 June 2003, at the Visitors' section, Medium C. She was the member in charge of the visitors' section. The duty list was approved by Mr P.F. Hlalethoa. Mrs Johnson performed weekend duties on the 10 and 11 January 2004, at Medium C, A group visits. She also performed duties on the 24 and 25 January 2004, and she worked as a member in charge of Pretoria Central Prison. The duty list for the 10 and 11 January 2004, was approved by Mr Rakoma and the list of the 24 and 25 January 2004, was approved by Mr Hlalethoa. Mrs Johnson also worked on the 8 February 2004 at Medium C, visitors' section. The duty list was approved by Mr Hlalethoa. She also worked on the 21 and 22 February 2004, at Medium C visitors' section. The duty list was approved by Mr Mashabathaka.²⁹

7. EVALUATION

7.1 Financial issues

The evidence of Miriam Swarathe has established that the initial budget allocated for weekend overtime for 2002/2003 financial year was six hundred and thirty nine million nine hundred and twenty seven thousand rand (R639 927 000,00). For the financial year 2003/2004, it was increased by approximately one hundred million rand (R100 000 000,00) to seven hundred and thirty nine million nine hundred and thirty thousand rand (R739 930 000,00).

The budget allocated for Pretoria Central Prison for the 2003/2004 financial year was nine million nine hundred and seventy three thousand eight hundred rand (R9 973 800,00) and for the next financial year it was ten million eight hundred and sixty five thousand two hundred rand (R10 865 200,00). For C-

²⁹ The allegations herein are supported by Annexures 'Z3', 'Z4', 'Z5', 'Z6' and 'Z7'.

Max Prison it was six million five hundred and forty two thousand nine hundred rand (R6 542 900,00) and seven million one hundred and two thousand six hundred rand (R7 102 600,00) for the following financial year.

Evidence also established that for the financial year 2002/2003 the Department had a deficit of ninety three million seven hundred thousand eight hundred and thirty five rand (R93 700 835,00). For the financial year 2003/2004, the Department had a deficit of sixty million two hundred and nine thousand five hundred and eleven rand (R60 290 511,00). For both Pretoria and C-Max Prisons, the deficit was two hundred and eleven million eight hundred and forty six thousand rand (R211 846 000,00) and twenty eight million four hundred and forty nine thousand rand (R28 449 000,00) for C-Max.

It is clear from the analysis of the above figures that the budget allocated for weekend overtime increases each financial year. The figures are also a clear indication that there has been a total loss of control on the weekend overtime budget by the Department officials. The officials of the Department in charge of the budget section have conceded in their evidence that there are serious problems with regard to the management of the weekend overtime budget. Various directives and letters have been issued to all Provincial Managers and Provincial Commissioners advising them that they should comply with the Departmental policy relating to weekend overtime remuneration.

As evidence has shown, there was no attempt by the Department to curtail overspending on weekend overtime remuneration nor was there any attempt by the Department to adopt a seven (7) day week establishment as recommended by the Public Service Commission. Instead as evidence has shown, there was large overspending and deficits in the weekend overtime budget.

Evidence has shown that the Department spends approximately six hundred and forty million rand (R640 000 000,00) on weekend overtime remuneration alone.

The high spending on weekend overtime remuneration and the deficit in the budget, as evidence has shown, is largely due to the Department's non-adherence to the policy governing the whole system of weekend overtime.

7.2 Remuneration Irregularities

In terms of the procedure manual for the implementation of the system of weekend overtime, remuneration is to compensate personnel for additional services rendered due to the inadequate establishment and/or insufficient personnel for the rendering of essential services in the Department on Saturdays, Sundays and public holidays. It is therefore clear from the procedure manual that the system of weekend overtime is for the benefit of the Department and not for the benefit of staff members.

Evidence, however, has established that very senior officials are allowed to perform monitoring duties in prisons and over weekends and are remunerated at their higher level salary scales. Sometimes these officials are drawn from other Management Areas.

Senior officials, including Mr Mthombeni, Mrs Moela, Mrs Lesolang and other senior officials in the Department have worked overtime carrying out monitoring duties in prisons. They have been remunerated according to their ranks. This is contrary to the policy of the Department, which requires that when these senior officials are utilised, they should be paid according to the scale of Correctional Officer Grade 1-3. Mr Shabalala has also referred to a number of officials in his evidence, who also performed monitoring duties and were paid according to their own ranks and scales. Their payment for overtime worked was also contrary to the Departmental policy. Some of these officials have worked more than the required numbers of hours per month.

Mr Shabalala however, conceded that in his investigations he did not liaise with senior officials of the Department to determine whether the utilisation of

the senior officials during weekends was authorised by the Heads of Department. Senior officials from Assistant Director and below can be utilised to perform such duties in exceptional circumstances in terms of the policy, but there can be no justification for these senior officials to be remunerated at their senior scale and rank. Both Mrs Moela and Mr Mthombeni testified that if senior officials in the rank of Deputy Directors or Assistant Directors perform such duties, then they should be remunerated in accordance with the rank and scale of the work required and not of the rank they hold. Mr Mthombeni in his evidence testified that officials get paid according to their rank. This appears to be a blatant misinterpretation of the policy by very senior officials of the Department.

The payment of Mrs Lesolang, a Deputy Director, in amounts of (one hundred and twenty two rand and sixty cents (R122,60) and one hundred and eighty two rand and ninety cents (R182,90) per hour for the weekend duty is not justified when other officials were paid between fifty four rand and thirty five cents (R54,35) and eighty two rand and twenty eight cents (R82,28) for Saturday and Sunday respectively for overtime work. Evidence has established that Mrs Lesolang together with other officials who worked overtime on the 1 November 2002 and 30 November 2002, was not justified.

Mr Shabalala, the Commission's investigator, conceded in his evidence that he did not consult or liaise with certain senior officials or heads of Departments when he conducted his investigation and found that certain senior officials who did overtime work were paid according to their scale.

It is clear from the reading of the policy that the policy itself deals with claiming for work actually done and not in terms of the rank of a person. There are, however, fundamental misinterpretations of the policy if one has regard to the evidence of Mrs Moela. According to her, if a Deputy Director is doing monitoring duties, he should be paid according to the salary scale of a Deputy Director. In terms of the policy, if officials regardless of their ranks do monitoring duties they should be paid according to the policy. There should be no differentiation in terms of their rank. Mr Mthombeni in his evidence stated

that officials working overtime are paid according to their rank and that this is a national problem.

The large spending on weekend overtime and the deficit in the weekend overtime budget is therefore also due to the misinterpretation of the Department's policy relating to weekend overtime remuneration.

The policy also prohibits the use of occupational class officials in performing monitoring duties. This class comprises of nurses, educators and other related officials. Evidence has however shown that these officials are utilised in performing monitoring duties in prisons. This compromises security of the prisons in the sense that these officials are not trained in monitoring functions. The policy only allows their utilisation only when custodial staff is not available to do such duties. There was no evidence to suggest that the occupational class officials utilised to work overtime was necessitated by the shortage of staff members as the policy allows their utilisation in the event of a shortage of other custodian staff members.

7.3 Non-implementation of Public Service Commission recommendations

It is clear from clause 2.2 of the procedure manual that the system of weekend overtime was introduced as an interim measure by the Department on the recommendations of the Public Service Commission subject to Treasury approval, with effect from 1 February 1978, on condition that the system would phase out when the Department had sufficient manpower to implement the seven (7) day service rendering establishment.

One of the recommendations of the Public Service Commission was the phasing out of weekend overtime. It recommended in its place that the Department adopt and implement the seven (7) day service rendering establishment.

There was no explanation why this recommendation of the Public Service Commission had not been implemented by the Department by the time of the hearings.

The evidence of Mr Tsandzeka Kenneth Mthombeni, who is a Director: Employee Relations in the Department has shown that the Department has been aware of the recommendations made by the Public Service Commission and that such recommendations have been tabled before the Bargaining Council and that there was no resistance from the members of the forum when the recommendations were tabled. His evidence has clearly shown that the implementation of the recommendations of the Public Service Commission was not due to resistance from the unions but that management stalled it.

Mr Mthombeni also served in a Task Team, which was appointed together with the DPSA members to consider the seven (7) day work week establishment. His evidence revealed that the Task Team has completed its investigations and submitted a report to the National Commissioner.

However, according to Mr Mthombeni, the report of the Public Service Commission was not placed before the Committee and they were not aware of the contents of the Public Service report and the recommendations therein. One wonders how the Task Team considered the implementation of the recommendations if they did not have the report of the Public Service Commission before them.

The Commission is aware that the Department has begun the process of phasing in the seven (7) day week establishment, as recommended in the Public Service Commission in their report of 2000. However, this attempt has been met with strong opposition by union members and in particular, Popcru. During the latter part of 2004, there were a number of illegal strikes nationally in protest against the phasing in of the seven (7) day week establishment. This has led to the dismissal of a number of employees in the Department.

In addressing the National Assembly on Popcru strikes,³⁰ the Minister stated:

“...we can never agree to the abuse of public funds as some have been doing with weekend work. We must use the resources of the State in such a manner that we address critical social issues such as unemployment by creating much needed job opportunities within Correctional Services.”

It also appears from the Minister’s statement that a joint Technical Committee was formed, which also involved Popcru members to negotiate the issue of weekend work.

The Public Service Commission in its report noted that the weekend duty list Z168 Attendance Register and Night Duty Journal are used to record overtime duty. None of these documents makes specific provision for the time when persons arrive and leave work. The Public Service Commission recommended the use of an attendance register, which should record the presence of custodians during the performance of their weekend overtime duty. This recommendation has also not been implemented by the Department. The verification documents G226 and Z168 do not specify the nature of the function performed by each official when they are working overtime. These documents also do not indicate the time when the member started and when he/she knocked off.

Evidence has also established that the verification procedures of the nature of the job performed by an official, the time he or she commenced and the time of departure are lacking in the documents used to determine the amount to be paid to each official who performed the weekend duty.

³⁰ See statement in the National Assembly by Minister of Correctional Services, B.M.N. Balfour, 17 March 2005.

8. CONCLUDING REMARKS

Evidence has established that there is a serious misinterpretation of the policy regarding weekend overtime. Even senior officials in the employ of the Department have different views as to how the policy should be interpreted.

Some of the views are that if a senior official like a Deputy Director performs monitoring duties during the weekend, he or she should be paid according to his or her rank but this however appears to be contrary to the policy, which shows that there is a clear misunderstanding or a misinterpretation of the policy itself by senior officials of the Department.

Evidence has shown that if the Department can adopt the seven (7) day work week establishment thousands of other new members could be employed and be paid with the money which is presently utilised to pay officials who work overtime. This could also alleviate the epidemic of unemployment in this country and the shortage of staff in the Department.

From the evidence presented before the Commission, there appears to be no reason why the recommendations of the Public Service Commission recommending the seven (7) day week establishment have not been implemented or has taken such a long time to be implemented.

The Task Team that looked into the matter and made recommendations regarding a seven (7) day week establishment did not even consider the recommendations of the Public Service Commission in this regard. In fact, evidence established that the members of the Task Team were not even aware of the recommendations dealing with overtime as contained in the report of the Public Service Commission. The Commission has not had sight of the report of the Task Team in this regard, which according to the evidence has been filed with the National Commissioner.

The policy of the Department regarding working weekend overtime is clear and straightforward. If it were properly implemented by the officials of the Department, there would be no need for the Department to spend so many millions of rands of the taxpayers' money nor would it struggle with huge deficits in the budget in order to cover the costs of remuneration for overtime work.

9. RECOMMENDATIONS

Accordingly the Commission recommends that:

- 10.1 the Department introduces a seven (7) day work week establishment within the Department, as it was recommended by the Public Service Commission during the year 2000.
- 10.2 the Department adopt proper verification procedures that clearly show the rank of the official, the nature of the work performed by the official, the time within which the official commences duties and departure time, prior to the authorisation of payment to the official who worked overtime. This is also one of the recommendations made by the Public Service Commission in its report of the year 2000.
- 10.3 Although a number of officials have been implicated as having been overpaid, in the light of the fact that there has been a serious misinterpretation of this policy as to how these officials should be remunerated, it is the view of the Commission that no recommendation should be made that these implicated officials be charged.
- 10.4 The Department should implement all the recommendations made by the Public Service Commission in September 2000.

- 10.5 The Department should embark upon an intensive training programme of all staff dealing with overtime. This training programme should emphasise the interpretation of the overtime policy.

- 10.6 The officials who failed to implement the Public Service Commission recommendations timeously should be charged with negligence as the delays have clearly caused wasteful expenditure.