

**EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES
IN CURBING OVERCROWDING IN THE DEPARTMENT OF
CORRECTIONAL SERVICES**

by

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DECLARATION

I, Vuyelwa Christa Mlomo-Ndlovu with the student number: 0710-187-2, declare that the study on the **EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I submitted the thesis/dissertation to originality checking software and that it falls within the accepted requirements for originality.

I further declare that I have not previously submitted this work, or part of it, for examination at UNISA for another qualification or at any other higher education institution.

VC Mlomo-Ndlovu

Date

DEDICATION

I would like to dedicate the study to the Department of Correctional Services as I often referred to it as “my department”, the criminal justice system role players and my family. The Department of Correctional Services created an opportunity for me to grow and contribute mainly to the area of remand detention management through participating and leading in the development of policies and certain protocols including the White Paper on Management of Remand Detainees in South Africa (2014).

Working in the criminal justice system with various role players from the South African Police Services to National Prosecuting Authority, the Department of Justice and Constitutional Development (mainly court administration dimension) and the judicial led structures allowed me to understand the complexities of managing the remand detainees.

My family allowed me to prioritize the work of the department at their own expense and I will forever be grateful for their sacrifice and tolerance of my absence in participating in some family activities. My husband Stephen Khehla Ndlovu ‘SK’ has always been supportive and encouraged me to do this research especially when I shared with him that I would like to contribute to the criminal justice system by conducting research as an insider with all the experience I gained.

It is my hope and wish that the findings will be utilised to effect improvements within the limits of “what is possible” since managing overcrowding in correctional centres is complex and requires cooperation from various angles by several role players who are also managing another complex issue “crime”.

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ABSTRACT

The study was conducted to determine the effectiveness of certain criminal justice system strategies in curbing overcrowding of remand detainees with focus on bedspace management, the implementation of bail protocol and the protocol on referral of remand detainees to court for consideration of their length of detention and police bail. The objectives of the study were extended to include the profiling of correctional centres and remand detainees. The profiling of correctional centres includes the determination of occupancy and the categorisation of correctional centres and inmates. The profiling of remand detainees includes the three year population trend, the length of period spent by remand detention based on the one-day snapshot analysis and the cost of detaining remand detainees with bail.

A mixed method design was utilised and the concurrent triangulation strategy with multistage purposeful random scheme was employed. Participants were from the Department of Correctional Services and South African Police Service. Data collection methods were interviews, records analysis including policy and historical data, participant observation and focus group. Parallel mixed analysis was conducted with qualitative and quantitative data analysed separately. The integration of qualitative and quantitative data was applied during the interpretation and discussion of results.

The study could not determine the effectiveness of such strategies as bedspace management, bail review, referral of remand detainees to court for consideration of their length of detention and police bail in reducing the overcrowding of inmates in the Department of Correctional Services with focus on reducing the population of remand detainees. Though the three-year trend analysis reflects an erratic pattern of increase and reduction in the population of remand detainees, the observed reduction could not be equated to the effectiveness of the strategies under study.

The study contributes in the field of criminal justice system by elevating factors that contribute to the availability of bedspaces in corrections environment, sharing of the three-year analysis on the implementation of the bail protocol and the protocol on referral of remand detainees to court for consideration of their length of detention.

While the representative sample could not be obtained for police bail, the study elevates the understanding of police bail including its boundaries in relation to court appearance. The study further revealed the importance of developing an electronic system which is aligned with legislative and policy requirements. It is envisaged that the recommendations aligned with the findings in each delineated area will be utilised to effect improvements in policy implementation.

Key terms: overcrowding, bed space management, police bail, bail review, bail protocol, 49G, phenomenology, mixed methods, concurrent triangulation strategy, remand detainee, remand detention facility, feeder courts.

LIST OF ABBREVIATIONS

| | |
|--------|--|
| ACHPR | African Charter on Human and Peoples' Rights |
| ADS | Accommodation Determination System |
| BDS | Bedspace Determination System |
| CAS | Case Administration System |
| CESCA | Central, Eastern and Southern Africa |
| CISP | Court Integrated Services Programme |
| CPT | Committee for Prevention of Torture and inhumane or degrading treatment and punishment |
| CREDIT | Court Referral and Evaluation for Drug Intervention and Treatment |
| DBSA | Development Bank of Southern Africa |
| DCS | Department of Correctional Services |
| DNA | Deoxyribonucleic Acid |
| DoJ&CD | Department of Justice and Constitutional Development |
| DPWI | Department of Public Works and Infrastructure |
| DSD | Department of Social Development |
| DUI | Driving Under Influence |
| EC | Eastern Cape |
| EM | Electronic Monitoring |
| FSNC | Free State and Northern Cape |
| FTA | Failure To Appear |
| GP | Gauteng |
| IDT | Independent Development Trust |
| IIMS | Inmate Integrated Management System |
| IPA | Interpretive Phenomenological Analysis |
| JAD | Joint Application Development |
| JICS | Judicial Inspectorate of Correctional Services |
| JUSSIM | Justice System Interactive Model |
| KZN | KwaZulu-Natal |
| LMN | Limpopo, Mpumalanga and North West |

| | |
|---------|---|
| MERIT | Magistrates' Early Referral into Treatment |
| NBC | National Building Committee |
| NDPW | National Department of Public Works |
| NICCBMP | National Integrated Criminal Case Backlog Management Plan |
| NPA | National Prosecuting Authority |
| RBCs | Regional Building Committees |
| RCT | Rational Choice Theory |
| RDs | Remand Detainees |
| ROR | Release on Own Recognisance |
| PEEC | Provincial Efficiency Enhancement Committee |
| PIVA | Person Identification Verification System |
| PPP | Public-Private Partnership |
| PROMIS | Prosecutor's Management Information System |
| RD | Remand Detainee |
| RDF | Remand Detention Facility |
| RSA | Republic of South Africa |
| SAPS | South African Police Service |
| SBR | Slobogin and Brinkley-Rubinstein |
| USA | United States of America |
| UNODC | United Nations Office of Drugs and Crime |
| WC | Western Cape |

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CHAPTER ONE

OVERVIEW OF THE STUDY

1.1 INTRODUCTION

1.2 BACKGROUND TO THE STUDY

While the problem of overcrowding in corrections environment is a worldwide phenomenon, its management is dependent on the legislative and policy framework adopted by each country in implementing its criminal justice laws. The policy and the legislative framework are further unpacked into strategies and operational policies which are implemented by various role players in the criminal justice system.

Overcrowding in the criminal justice system in general and corrections in particular is not inevitable; it generates humanitarian concerns due to inhumane conditions that it creates. It further puts a strain on the delivery of basic services to inmates and creates tensions and conflicts among inmates and between inmates and staff. Furthermore, it stretches resources, obstructs rehabilitation efforts and contributes to increase in security breaches (United Nations Office of Drugs and Crime (UNODC), 2013:12). A coordinated approach is critical in tackling the phenomenon of systemic overcrowding in corrections. The impact is felt by the institutions responsible for incarceration of inmates, while the decisions relating to incarceration are made by the courts.

The burden of overcrowding in South Africa is felt by the Department of Correctional Services (DCS) and remains a serious recurring and persistent challenge for many years. The phenomenon and its related challenges are well documented in several reports produced by the oversight bodies such as Judicial Inspectorate of Correctional Services (JICS), the judges who visit correctional centres, researchers and non-governmental organisations such as the Civil Society of Prison Reform Initiative and Just Detention International (African Criminal Justice Reform, 2016:27–28,30; Cameron, 2020:4; DCS, 2022:9–10; DCS, 2021:19; Human Rights Watch, 1994; JICS, 2019:25; JICS, 2018:1).

According to section 165(5) of the Constitution of the Republic of South Africa (1996:82) on judicial authority, ‘an order or decision issued by a court binds all persons to whom and the organs of the state to which it applies’. This implies that the DCS does not have authority to refuse admission of any inmate on condition of overcrowding in correctional facilities.

In the DCS, the challenges of service delivery, which are compounded by overcrowding, are experienced in almost all the key pillars. These pillars include the provision of such basic services as nutrition and health, rehabilitation programmes, security, and facilities. This is equated to the violation of constitutional standards (Steinberg, 2005:20), regardless of how low the existing standards are.

Factors that contribute to overcrowding in corrections environment include the following:

- inadequate infrastructure and capacity;
- inadequate use of alternatives to imprisonment;
- inefficient measures to provide social reintegration;
- punitive criminal justice system policies;
- excessive use of pre-trial detention;
- crime trends and socio-economic factors; and
- ineffective and inefficient criminal justice administration (Albrecht, 2011:25, 29 & 30; Griffiths & Murdoch, 2009:43–44; Peté, 2006:438–443; UNODC, 2013:19–35).

The latter presents itself in the form of difficulties in the implementation and sustenance of initiatives created to reduce overcrowding due to several factors including poor planning, institutional resistance to reforms which is reflected in poor policy implementation, counter reforms and reforms undertaken on an ad hoc basis with reliance on upon one champion in government (Albrecht, 2011:25,29&30; Griffiths & Murdoch, 2009:43–44; Peté, 2006:438–443; UNODC, 2013:19–35).

The eight-pronged strategy implemented by the DCS to reduce overcrowding of inmates since 2006, has been replaced with the revised overcrowding reduction

strategy. The latter is aligned with the United Nations strategies for reducing overcrowding in corrections environment and its elements are explained further in Chapter 3 (DCS, 2021; DCS, 2014:54; UNODC, 2013:39–179).

There are also criminal justice system strategies that were developed by the National Prosecuting Authority (NPA) for reducing the number of people awaiting trial (NPA, 2005). The criminal justice system strategies include measures prior to first court appearance, methods at first court appearance, and methods to fast-track certain cases of remand detainees and management of juveniles (NPA, 2005:7–40).

Measures prior to first court appearance include arrest, securing attendance of the accused in the magistrate's court, and release in terms of sections 56, 59, 59A and 72 of the Criminal Procedure Act 51 of 1977 (Republic of South Africa (RSA), 1977:34, 37–38 & 49–50). While section 56 of the Criminal Procedure Act 51 of 1977 (RSA, 1977:37) provides for the method of securing court attendance, section 59 refers to bail which is awarded by the police, commonly known as police bail. Section 59A alludes to the bail authorisation by the attorney-general or a prosecutor. Section 72 provides for the release of the accused on warning instead of bail (RSA, 1977:38 & 49–50).

Methods of reducing bail at first court appearance include giving of bail with or without conditions, placement on a diversion programme and the application of restorative justice. Methods of fast-tracking certain remand detainee cases include the use of plea bargain, securing criminal records within a period of 10 days, fast-tracking of the analysis of the Deoxyribonucleic Acid (DNA), forensic assessment and probationer assessment (NPA, 2005:19–30).

Regarding the population of remand detainees which are the focus of this study, the DCS utilises such strategies as the protocol on maximum incarceration periods of remand detainees and the bail protocol. The categories of remand detainees referred to are those on pre-trial phase, trial phase and those that are convicted and waiting for sentencing. The bail protocol authorises the head of the correctional centre to apply for bail review if he/she is satisfied that the inmate population of a particular centre has reached proportions that it constitutes a material and imminent threat to

the human dignity, physical health or safety of the remand detainees (DoJ&CD, 2012:5–6). The protocol on maximum incarceration period of remand detainees (DCS, 2012:5), obliges the head of the correctional centre to refer remand detainees to court for consideration of their length of detention before completing two years in detention. If the court decides that the remand detainee should continue with detention, subsequent court referrals are submitted annually.

The DCS has 243 facilities for the detention of unsentenced inmates including remand detainees and sentenced offenders. Each facility has approved bed spaces referred to as accommodation or capacity which is utilised to measure occupancy against the number of inmates detained in each facility per day (DCS, 2018:29). The measurement differs from country to country and is in accordance with the space allocated for each inmate in the national legislation and rules or operational policies (UNODC, 2013:8–9). In the DCS, the minimum permissible floor space cell per inmate is 3.344 square metre and 5.5 square metre for communal and single cells respectively. The specified measurement excludes areas taken by ablution facilities, walls, pillars and lockers (DCS, 2010:47). The prescribed measurements include the accommodation provided in hospital sections in the form of single and communal cells (DCS, 2020:6; DCS, 2021:10).

The creation and maintenance of the bed spaces are managed by the facilities portfolio of the DCS in consultation with the National Department of Public Works under such pillars as building of new facilities, repair and innovation including upgrading of the new facilities, and maintenance of the existing facilities (DCS, 2021:8; DCS, undated: 37).

This study is conducted to establish the effectiveness of the system for measuring overcrowding in DCS since it is utilised as a determinant of bed spaces at the facility level. The study further focuses on the determination of the effectiveness of certain criminal justice system strategies in curbing overcrowding of remand detainees. Furthermore, the study analyses the use of police bail as one of the strategies for managing the overcrowding of remand detainees. Although these different aspects are mentioned here, the aim of the study is discussed in more detail later. The study identifies gaps and challenges that might assist the policy makers to implement

improvements in the management of the overcrowding phenomenon, particularly with reference to awaiting trial inmates.

The study identifies gaps and challenges that might assist the policy makers to implement improvements in the management of the overcrowding phenomenon.

1.3 PROBLEM STATEMENT

Overcrowding is one of the challenges faced by the DCS in discharging its mandate as reflected in different legislative and policy frameworks which are the Constitution, the Correctional Services Act 111 of 1998, the White Paper on Corrections (2005) and White Paper on Remand Detention (2014). The phenomenon can be traced back as early as 1900 when the inflation was due to transgressions of the pass laws and use of prison labour by mining companies even during the apartheid period the prison conditions were described as despicable due to gross overcrowding and poor living conditions (DCS, 2005:25; Peté, 2015:358; Ross, 1999:5).

The historical analysis from the 1965/66 to the 2017/18 financial years reveals that the population in the DCS grew up from the annual average of 74 435 to 160 583, while the bed space increased from 53 074 to 118 723 (DCS, 2018:41–43). This translates to the growth in bed space by 65 649, while the inmate population grew by 86 148. The highest peak in the inmate population was observed from 2002/2003 (181 553) to 2004/2005 (185 501) and the average occupancy for the three-year period was above 160% (DCS, 2018:43).

During the five-year period from the 2013/14 to the 2017/18 financial year the inmate population reflects a steady growth of more than 5% i.e., from an average of 152 554 to 160 583 as per the daily unlock analysis (DCS, 2018:43). The month-to-month analysis for the period ranging from March 2017 to March 2018 and from March 2017 to January 2019 reflects a growth of more than 3%. Of the entire inmate population, the unsentenced population increased by 15.32%, while remand detainees increased by 15.26%. The sentenced inmate population reflects an increase of 2.4% from March 2017 to March 2018. However, a drop of 2.5% is observed from March 2018 to January 2019 (DCS, 2018:44).

While the approved bed space referred to as design capacity for the 243 correctional facilities that detain inmates is 119 134 as at 30 September 2017, the available bed space, or operational capacity, constitutes 116 864 beds. The occupancy rate is 133.94% when this measurement was calculated against the design capacity. However, when the calculation is made against the operational capacity, the occupancy rate is 133.97%. While the percentage difference appears to be insignificant the actual number of bed spaces that are not usable (inactive) would accommodate 2 270 inmates.

It is imperative to note that the national occupancy rate is not a true reflection of the level of overcrowding for certain detention facilities or correctional centres in the DCS. As per the daily unlock of 30 September 2017 there were 176 detention facilities with the occupancy of more than 100%. Of these facilities, 90 had overcrowding levels that ranged from 50% to 179% while 22 facilities had the occupancy of more than 180%. Of the 22 most overcrowded facilities the unsentenced inmates were detained in seventeen facilities and the average occupancy in these facilities was 218.27%. Of the 15 978 inmates detained in the 17 most overcrowded facilities, the unsentenced constituted 50.53%.

The position taken in the criminal justice system is that overcrowding in the DCS is due to remand detainees and not the sentenced inmate population (RSA, 1998:12). This notion is based on the fact that the cases of those serving sentences have been concluded by the courts. Furthermore, the DCS exists to contribute to maintaining and protecting a just, peaceful and safe society by enforcing sentences of the courts, detaining all inmates in the manner prescribed by the Correctional Services Act 111 of 1998 and promoting the social responsibility and human development of all sentenced offenders (RSA, 1998:12).

The DCS through the White Paper on Corrections (2005:46) states the following:

‘The Department of Correctional Services has been saddled with the responsibility of keeping a range of detainees within its facilities, as a legacy from the time when the Department of Prisons was administered under the Ministry of Justice and was perceived to have a single “custodial mandate”.

Following the legislative and policy developments over the last ten years it has since become apparent that this perception cannot be sustained’.

The DCS through the White Paper (2005:48) concedes that ‘the policy gap regarding the responsibility for the incarceration of awaiting-trial detainees must be addressed’. The DCS was assigned by the Cabinet in 2006 through the Justice Crime Prevention and Security cluster to lead the process of reengineering of the system for management of awaiting trial detainees. The improvements that were introduced include the amendment of the Correctional Service Act 111, 1998 through the Correctional Matters Amendment Act 5 of 2011. The amendments include the extension of section 3 on establishment, functions and control of the department by incorporating the responsibility for the management of remand detainees under subsection 2 (DCS, 2014:16–17; RSA, 2011:3).

The management of remand detainees is further explained in the White Paper on Remand Detention Management in South Africa (2014) which consists of ten (10) chapters (DCS, 2014). While Chapter 4 on governance discusses the responsibilities of different criminal justice system role players and the development of cluster policies for management of service delivery areas that require cooperation; Chapter 9 focuses on strategies for management of overcrowding of remand detainees. The White Paper should be regarded as the Justice Crime Prevention and Security cluster policy, because its development was driven as a cluster project led by the DCS with active participation by all relevant criminal justice system departments and institutions, such as SAPS, Legal Aid South Africa, the NPA, the Department of Justice and Constitutional Development (DoJ&CD), and the Department of Social Development (DCS, 2014:32–37). The latter was included for its shared responsibility with the DCS of detaining children in conflict with the law.

The DCS on a monthly basis conducts the analysis of inmates including the remand detainees using the daily unlock which is the head count performed every morning. The analysis of the remand detainees was extended to include a one-day snapshot analysis for determination of period spent in detention and monitoring of those detained for longer than two years, as well as children remand detainees. The reports

were shared with relevant criminal justice system partners for more than five years. The reports are further discussed at different sub-structures of the Justice Crime Prevention and Security cluster which are led by administration and judiciary.

While the five-year analysis of inmates reflects an increase of 5.26% from 2013/14 to 2017/18 financial year, there has been a concern regarding the reduction of bed spaces and the increase in the remand detainee population. The increase in the average population of remand detainees by an average of more than 8% was observed from 2017 to 2018 over a period of four months i.e., from November to February (DCS, 2018:41–43).

These periodic patterns of increase undermine all the efforts that are put in place to reduce the population of remand detainees. Since the trend has been observed over a period of four years the researcher deemed it necessary to conduct a study with focus on the effectiveness of the strategies implemented to reduce overcrowding of remand detainees. In the annual report of the JICS (2018:24) one of the findings reported is the reluctance by the heads of correctional centres to implement the bail protocol which is one of the strategies for reducing overcrowding, and which is addressed in more detail during the study.

Since the researcher is an employee in the DCS and participates in several structures where the issues of remand detainees are discussed, including overcrowding, the researcher was able to access a wide variety of information which enriched the study and assisted in creating an in-depth analysis. The research report that would be the outcome of the study would be accessible to academics, researchers, policy makers and various role players in the criminal justice system.

1.4 LITERATURE REVIEW

Overcrowding is generally defined with reference to the occupancy rate and the official capacity of the prisons. The rate of overcrowding is calculated as excess percentage from 100% of the approved bed space. Prison capacity is measured differently in different countries based on the space allocated for each inmate in national legislation or policies and rules or other references (Coyle, Heard, & Fair, 2016:771; UNODC, 2013:8).

In terms of the 12th World Prison Population list (Walmsley, 2018:2) more than 10.5 million people were held in penal institutions throughout the world either as unsentenced or remand detainees at the end of September 2018. Of the countries with the highest prison population, the United States of America had more than 2 million inmates. China had more than 1.6 million prisoners while Brazil and Russian Federation had 690,000 and 583,000 respectively. Other countries with the highest number of prisoners were India (420,000), Thailand (364,000), Iran (230,000) and Mexico (204,000). The countries with the highest inmate population in Africa were South Africa (158,111), Ethiopia (113,727), Egypt (106,000), Morocco (82,512) and Nigeria (73,631) (Walmsley, 2018:3–5).

In terms of the 3rd edition of the World Pre-trial/Remand Imprisonment List compiled by Walmsley (2016:2), the countries with the highest number of remand detainees as a proportion of the total inmate population were Libya (90%), Monaco (80%), Andorra (79%) and Paraguay (79%). The remand detainee population in South Africa remained constant at below 30% of the inmate population from 2014/15 to 2018/19.

While the major causes of overcrowding are the use of pre-trial detention, prison sentences and the growth in prison population, several authors such as Ayade, (2010:76–81), Albrecht (2014:8–12 & 19–21), Morgan (undated:53–55), Peté (2006:437 & 439–440) and UNODC (2013:19–33) find that growth in prison numbers is strongly driven by:

- the total number of prisoners referred for detention;
- duration in pre-trial detention;
- the duration of the imposed sanctions; and
- inadequate use of non-custodial measures.

The latter includes the parole system or early release scheme such as conditional release, probation periods and partial or total alternatives to prison sentences. Gabriel (2018:5) cites relentless sentencing and punishment of any harmful behaviour and

traits exhibited by inmates as causes of overcrowding in the comparative study of Nigeria and United States prisons on mass overcrowding.

Since overcrowding is a complex and multifaceted issue, contributing factors vary from country to country, depending on the criminal justice system, and the legislative and policy frameworks. Griffiths and Murdoch (2009:15–22) cite prison infrastructure; legislation and government policies; community pressure on justice system; ineffective justice systems and processes; absent or underutilised early release programmes and absent or ineffective reintegration programmes for offenders released from prison. Ayade (2010:39) cites overreliance to pre-trial detention, and arrest before investigation as contributing factors to overcrowding in Nigeria. Penal Reform International (2018:11) and Agbesi (2016:9), find that inability to pay bail contribute to increased population in pre-trial detention.

Agbesi (2016:3–4) cites overcriminalisation, few resources to build, overuse of prison sentences by the judges, and delay in the administration of justice as reasons for overcrowding. The latter is associated with the following factors:

- inadequacy of courts due to laziness;
- lack of commitment, unnecessary adjournments;
- unpreparedness of legal practitioners;
- inadequate equipment, poverty; and
- illiteracy of the accused which lead to inability to pay for legal defence.

Gabriel (2018:5) finds that cases of awaiting trial detainees drag on for years in Nigeria because of adjournments, perpetual strikes by members of the bench, loss of case files, delays in obtaining advice on the case from the Director of Public Prosecution and lack of court's jurisdiction to entertain cases. Feelings of hostility towards the offenders make it difficult for them to reintegrate successfully in the community as expressed by the respondents in the study conducted by Shabangu (2006:274). The expressions include articulations such as the 'taxpayers should not be seen funding the training and development of offenders at the expense of the law abiders'.

Edwards and Stone (2016:18–19) find that the factors associated with length of stay in remand detention in South African detention facilities were postponement of bail hearings, lack of provision for custody limits, postponement of trials and case backlogs. The seven-day postponement that frequently occurs is due to inadequate information to assist the presiding officer to decide on bail. Section 49G of the Correctional Services Act 111 of 1998 (RSA, 1998:43) makes provision for referral of remand detainees to court for consideration of their length of detention before completing the period of two years from the date of admission. If the court decides that the remand detainee should continue with detention, subsequent applications should be submitted annually.

Section 50 of the Criminal Procedure Act 51 of 1977 (RSA, 1977:25) provides that any arrested person with or without a warrant for allegedly committing an offence or for any other reason, shall be brought to a police station. If the arrest is for giving effect to a warrant, the person would appear in the place expressed in the warrant. The National Instruction 3 of 2016 (SAPS:1–46) unpacks the processes to be followed by the officials regarding the awarding of bail and release of arrested persons. The accused who is in custody in respect of any offence, other than an offence referred to in Part II and Part III of Schedule 2 of the Criminal Procedure Act 51 of 1977 might be released on bail by any police official of or above the rank of a non-commissioned officer in consultation with the investigating officer (SAPS:6).

Several authors such as Griffiths and Murdoch (2009:29–30 & 39–41), Fagan (2002:18), Kambellari (2015:4330), Clear and Austin (2009:313,315 & 324) and UNODC (2013:41, 43, 45, 51, 53, 58–59 & 70–72) recommend various strategies for curbing overcrowding. The strategies include:

- Focusing on crime prevention, rehabilitation and offender reintegration;
- Creating and adequately resourcing non-custodial measures;
- Increasing the release of arrested persons by police through the use of police bail;
- Extensive use of plea bargain;
- Using non-custodial measures as alternatives to pre-trial detention;
- Developing programmes for early release;

- Considering legislation that will reduce the number of persons sent to prisons, and the length of time spent in pre-trial detention and serving custodial sentence;
- Improving the effectiveness of criminal justice administration with focus on the following:
 - strategic planning;
 - improved case management system;
 - improved cooperation mechanism between and among various role players; and
 - creation of a good information management system;
- Decriminalisation of certain types of offences or reclassification to less serious offences so that they do not attract penalties that will lead to detention;
- Increasing prison capacity with focus on housing inmates in safe and humane conditions;
- Using compassionate release, national pardoning mechanism and amnesties;
- Increasing community participation including dealing with resistance to schemes that allow the accused person to remain in the community pending trial and intervention for reducing public opposition to non-custodial measures and early release of prisoners;
- Improving transparency and accountability through inspections and external oversight mechanisms;
- Creating and promoting mechanisms for access to legal assistance and legal aid; and
- Creation of evidence-based policies that respond to individual country needs through conducting monitoring and regular evaluations for measuring and analysing the impact of criminal justice system policies.

The challenge of managing overcrowding of remand detainees is complex because of the number of criminal justice system role players involved from arrest to detention and release. Reforms recommended to improve pre-trial processes include:

- release before the bail hearing;

- provision of information and feedback to the judiciary regarding the persons they sent to detention;
- supportive services and reminders for court appearance for those placed under the non-custodial system; and
- the implementation of non-monetary condition of release (Stevenson & Mayson, 2017:31 & 33).

1.5 AIMS AND OBJECTIVES OF THE STUDY

The aim of the study was to determine the effectiveness of certain criminal justice system strategies in curbing overcrowding with focus on bed spaces, police bail, bail review process initiated by the DCS and the implementation of the protocol on maximum incarceration periods of remand detainees.

The objectives of the study are:

- To explore the process of creation and maintenance of bed spaces including building of new facilities;
- To profile centres through the use of daily unlock in order to determine occupancy levels and overcrowding at national, regional and centre level;
- To determine profiles of remand detainees based on snapshots obtained from the databank;
- To examine the use of police bail in preventing overcrowding during pre-trial phase;
- To explore the implementation of the bail protocol; and
- To critically examine the implementation of the protocol on maximum detention period of remand detainees.

1.6 RESEARCH QUESTIONS

The determination of research questions is an important step in both the qualitative and quantitative research processes. Research questions are regarded as even more crucial in mixed methods research because they drive the methods used, dictate the design used, the sample size, sampling scheme, types of instruments to be administered, and data analysis techniques (Onwuegbuzie & Leech, 2006:475).

The study is intended to address the qualitative research question on how effective are the criminal justice system strategies in curbing overcrowding of remand detainees?

The sub-questions were developed in order to address the main question with regard to the overcrowding phenomenon. With regard to bed space management in DCS, the questions that are addressed are:

- How are bed spaces calculated at the correctional centre or detention facility level?
- What factors influence the availability of bed spaces at the correctional centre level?
- How are bed spaces maintained?
- What model is utilised for upgrading existing, and building new correctional centres?
- What are the trends regarding the creation of bed spaces in the last 10 years with focus on building new correctional centres and upgrading of existing correctional centres?
- What challenges are faced at the correctional centre level (centres that will participate in the study) and nationally regarding the creation and maintenance of bed spaces?

With regard to the profile of correctional centres in DCS, the following questions are addressed:

- What are the trends in the occupancy level nationally and regionally?
- Which detention facilities have the highest occupancy level in the last three years i.e., the levels exceeding 100% of design capacity?
- How are the detention facilities categorised?
- How are the inmates categorised?

With regard to the profile of remand detainees, the following questions are addressed:

- What are the trends regarding the population of remand detainees in the last three years based on the analysis of the daily unlock numbers?

- Which remand facilities detain remand detainees?
- What is the length of period spent by remand detainees nationally and for those detained in the facilities samples participating in the study?
- What are the feeder courts for the correctional centres sampled to participate in the study?
- Which police stations collect remand detainees for court appearance from the correctional centres sampled to participate in the study?
- How many remand detainees are detained in correctional centres including remand detention facilities with and without bail?
- How many foreign nationals are detained nationally and in correctional centres sampled to participate in the study?
- How much does it cost to detain remand detainees with bail based on their length of detention?

With regard to the use of police bail the following questions were addressed and the focus was only on sampled police stations and the unit responsible for visible policing at the national office.

- Are the guidelines for police bail including the offences available?
- What is the criterion for giving police bail?
- Who authorises the police bail?
- What is the role of the investigating officer in police bail?
- How is the address confirmation done?
- If police bail is not given, are reasons for refusal provided to the accused?
- What are the reasons often cited when police bail is denied?
- What is the trend regarding the giving of police bail in the last two years?
- How many cases were opened in the last two years?
- What bail conditions are given to the accused who are placed on police bail?
- What is the interval between the granting of police bail and court appearance?
- What are the common breaches?
- What measures apply if the police bail conditions are breached?
- How is the court notified of the police bail?
- How is the police bail marketed?
- What challenges are faced regarding the giving of police bail?

- How is the bail money managed and accounted for?

With regard to the process of bail review the following questions were addressed:

- Who qualifies for bail protocol?
- Who does not qualify for bail protocol?
- Who qualifies for section 63(1) submission of application?
- How many applications were submitted to court in the past two years for bail protocol and section 63(1)?
- What were the court outcomes?
- How is the follow up with the courts made?
- What are the challenges experienced?
- How are they handled?
- What are the local caseflow structures which are linked to sampled centres for participating in the study?
- Who attends the caseflow meetings?
- How is overcrowding handled at the local caseflow structures?

With regard to the implementation of the 49G protocol the following questions were addressed:

- How many applications were submitted to court in the past two years?
- What were the court outcomes?
- How is the follow up with court made?
- What are the challenges experienced?

1.7 KEY THEORETICAL CONCEPTS

1.7.1 BAIL PROTOCOL

The term refers to the Justice Crime Prevention and Security cluster policy which was developed to promote, facilitate and regulate cooperation between the DCS, the NPA, the DoJ&CD and SAPS in the implementation of section 63A of the Criminal Procedure Act 51 of 1977 (DoJ&CD, 2012:5).

1.7.2 CORRECTIONAL CENTRES

The terms refer to any place established under Correctional Services Act 111 of 1998 to receive, detain, confine and train or treat unsentenced and sentenced inmates (RSA, 1998:8). In this study the terms will be utilised interchangeable to refer to all the centres or facilities that detain inmates.

1.7.3 INMATES

The Correctional Service Act 111 defines the term as referring to any person whether convicted or not, who is detained in custody in any correctional centre or remand detention facility or who is enroute from one correctional centre or remand detention facility to another centre or remand detention facility (RSA, 1998:9).

1.7.4 MIXED FACILITY

The term will be utilised when referring to facilities that detain both remand detainees and sentenced offenders in the DCS. Mixed facilities will be differentiated from the dedicated remand detention facilities since the latter detain predominantly remand detainees with less than 10% of sentenced offenders allocated to perform labour activities that cannot be assigned to remand detainees.

1.7.5 OVERCROWDING

Overcrowding is generally defined with reference to the occupancy rate and the official capacity of the correctional facility. The concept refers to a situation where the number of inmates detained exceed the official prison capacity or approved bed space (UNODC, 2013:9).

1.7.6 POLICE BAIL

In this study the term will refer to the bail given by the South African Police in line with section 59 of the Criminal Procedure Act 51 of 1977 as outlined in the National Instruction 3 of 2016 (South African Police Services, 2016 & RSA, 1977:25–26).

1.7.7 POLICE STATIONS

Police stations are defined as facilities where communities could access policing services and supporting government services which are provided under the auspice of the South African Police Service (Parliamentary Monitoring Group, 2012). The latter

is responsible for transportation of remand detainees from courts to DCS correctional centres and vice versa. There are police stations that are assigned specifically to collect and drop remand detainees in correctional centres for ensuring court appearance.

1.7.8 PROTOCOL ON MAXIMUM DETENTION PERIODS OF REMAND DETAINEES

The term refers to the Justice Crime Prevention and Security cluster policy which was developed to promote, facilitate and regulate cooperation between the DCS, the NPA, The DoJ&CD and SAPS in the implementation of section 49G of the Correctional Services Act 111 of 1988 (DoJ&CD, 2012:3).

1.7.9 REMAND DETAINEE

The remand detainee is categorised as an unsentenced inmate and the concept refers to a person detained in a remand detention facility of the DCS while awaiting finalisation of his or her trial, whether by acquittal or sentence, if such a person has not commenced serving a sentence or is not serving a prior sentence (RSA, 1998:11).

1.7.10 REMAND DETENTION FACILITIES

The Correctional Services Act 111 of 1998 (RSA, 1998:11) defines the term as a place established for the reception, detention, or confinement of a person liable to detention in custody. The term in this study will be utilised when referring to the facilities dedicated to detaining remand detainees only with few sentenced offenders placed for performing labour activities that cannot be assigned to remand detainees.

1.7.11 SENTENCED OFFENDERS

The term refers to convicted persons sentenced to incarceration or correctional supervision (RSA, 1998:12). In this study the concept refers to sentenced inmates who are incarcerated in correctional centres for serving their sentences, therefore parolees and probationers are excluded.

1.8 VALUE OF THE RESEARCH

The researcher works in the DCS and has insight and understanding of overcrowding in the context of the department and the criminal justice system value chain. The study will therefore benefit the government, the public and the research fraternity.

1.8.1 VALUE FOR GOVERNMENT

The study contributes to the field of criminal justice and public policy. In the field of criminal justice, the study provides the contextualisation of overcrowding phenomenon which is aligned with the legislative and policy framework of South Africa. The study reflects the technical definition of overcrowding in alignment with the variables that define it and the electronic system developed by the DCS for measuring the phenomenon in the context of bed space management.

The study further provides a more detailed explanation and analysis on the strategies utilised to reduce overcrowding of remand detainees with focus on bail review and 49G. The study provides an explanation of the policy on the implementation of the police bail.

The study shares international trends on measuring of overcrowding, drivers of the population in corrections environment and strategies applied by selective countries in reducing overcrowding of remand detainees. This information may be utilised for benchmarking which may assist in reconsideration and review of the strategies utilised in the country.

In the field of public policy, the study contributes by reflecting the impact of policy implementation in relation to the evaluation of the strategies for management of overcrowding in the DCS in the area bed space management. The study further evaluates the effectiveness of the strategies implemented as the direct and indirect measures for reducing the overcrowding of remand detainees. The direct measures referred to are bed space management, bail review and 49G. The indirect measure constitutes police bail.

1.8.2 VALUE FOR THE PUBLIC

The study provides the summary of the interest of justice factors which are considered by the courts when dealing with the application for bail in general and

bail review. The study provides an understanding on the use of police bail which presumably is an area of interest to the South African public.

1.8.3 VALUE FOR THE RESEARCH FRATERNITY

The study contributes in the field of research by adding findings in the area of criminal justice with specific focus on management of overcrowding. The study further shares the multistage random sampling scheme applied in the context of utilising the mixed method design. Furthermore, the study reflects the expansiveness of data collected through the multimodal approach including the benefit of access to historical information.

1.9 RESEARCH APPROACH

1.9.1 THEORETICAL FRAMEWORK

Phenomenology as a branch of postmodernism is an umbrella term which incorporates the philosophical movement and a variety of research approaches (Kafle, 2011:181). When applied to research, phenomenology is a study of a phenomenon with regard to its nature and meanings (Finlay, 2009).

Phenomenology can be classified under several schools. However, in this study the two commonly cited schools that have been discussed are the transcendental phenomenology and Hermeneutic phenomenology (Creswell, 2013:79–80).

Transcendental phenomenology focuses on the descriptions of experiences of individual participants and its forefather Edmund Husserl refers to his descriptive method as reduction. This school of phenomenology is premised on the notion that experience has to be transcended to discover reality and bracketing should be done which entails suspending of personal prejudice and opinions in an attempt to arrive at the essences (Lavery, Calgary & Canada, 2003:21; Kafle, 2011:186).

Hermeneutic phenomenologists are concerned with the life world or experiences of human beings. The focus is on elucidating details and trivial aspects within the experiences of human beings which are often taken for granted. The aim is to create a meaningful understanding of the lived experiences (Lavery et al, 2003:24; Kafle, 2011:191). As a research approach, hermeneutic phenomenology purports to

generate rich descriptive texts regarding the experiences of the selected phenomenon in the life world of human beings.

In this study, the researcher focused on overcrowding phenomenon and the strategies implemented to reduce overcrowding of remand detainees. The questions regarding overcrowding will lead to the creation of descriptive and interpretative texts regarding the phenomenon under inquiry.

1.9.2 RESEARCH DESIGN

Leedy and Ormond (2013:74) define the research design as a strategy for solving a research problem. Salkind (2010:1253) describes the research design as a plan which guides and outlines the logical process for data collection, measurement and analysis to address the research problem and answer research questions. The research question is a determining factor in selecting the research design. The design should be able to answer the research questions (Tully, 2014:33). According to Creswell (2003:2), the framework elements which guide the design should be understood by the researcher and these are:

- Philosophical assumption about what constitute the knowledge claims;
- Strategies of inquiry; and
- Methodology.

In this study the researcher utilised a mixed method design since the phenomenon under inquiry is complex and requires both qualitative and quantitative information that will be obtained from divergent sources. According to Teddlie and Tashakkori (2010:9), mixed methods arose from the triangulation literature associated with convergent results. There is growing emphasis for divergency in results which can lead to a more in-depth focus on uninvestigated facets of the phenomenon.

The important feature in the mixed method research is the design typology. The rationale for the design includes the provision of the blueprint, legitimising the mixed method research by introducing designs that are clearly distinct from those employed in qualitative and quantitative studies and establishing a common language for the field (Teddlie & Tashakkori, 2010:22). Three general strategies and several

variations employed in mixed methods research are sequential, concurrent, and transformative procedures (Creswell, 2003:16). The type of the design typology is dependent on such factors as theoretical perspective, priority strategy, sequence of data collection implementation and the point at which data are integrated (Terrell, 2012:260).

The classification framework for the mixed methods research is dependent on the emphasis on approaches selected and the integration of data. With regard to approaches equal status may be given to both qualitative and quantitative approaches or a dominant approach may prevail between the qualitative and quantitative approaches (Heyvaert, Maes, & Onghena, 2013:13).

In this study a concurrent triangulation strategy was utilised and equal priority was given to both quantitative and qualitative approaches. Data integration was instituted during the analysis and interpretation phase (Terrell, 2012:268).

1.9.3 SAMPLING STRATEGY

Collins, Onwuegbuzie and Jiao (2006:84–85) provided a list and description of sampling schemes that may be used by the researcher in a mixed methodology study. The list consists of both generic random schemes such as simple, stratified, cluster, systematic and multistage schemes, as well as the non-random purposeful sampling schemes such as stratified, criterion, snowball, opportunistic, mixed, and convenience. The researcher utilised a multistage purposeful random scheme which consisted of the following stages:

- Stage 1: Determination of most overcrowded facilities;
- Stage 2: Determination of the provincial location of the most overcrowded facilities for randomly identifying three provinces which will participate in the study;
- Stage 3: Determination of four correctional centres, three police stations and three courts in each province which will participate in the study. The correctional centres will be randomly selected from those identified during Stage 1. Police stations will be randomly selected from the list of large police stations which implement the police bail policy. The courts will be randomly

- selected from the list of feeder courts i.e., those that sent the remand detainees to the sampled correctional centres;
- Participants will be drawn or will be those that work in the focus areas for the study. The summary of the areas is as follows:
 - South African Police Service: Officials who process police bail including approval and compilation of statistics from the provinces that will be sampled and one official from the visible policing unit at national office.
 - Department of Correctional Services: Officials who process court applications for bail review and referral of remand detainees to court for consideration of their length of detention, as well as compilation of statistics. Officials who work with bed space determination and plans for facilities maintenance.
 - Courts: Court managers and clerks of courts. The court managers and clerks were excluded since the approval for conducting research was not granted despite sending several requests.
 - The management team that oversees the areas selected for the study were interviewed for validation of findings and especially where further clarity was required.

1.9.4 DATA COLLECTION

According to Lester (1999:2), in phenomenological-based research a variety of such methods as interviews, participant observation, focus groups, conversations and analysis of personal texts and action research can be used. A good researcher as articulated by Leedy and Ormrod (2013:74) is someone eclectic and willing to draw on whatever sources that appear to offer productive methods or evidence to address the problem.

Marshall and Rossman (1999:112) describes phenomenological interviews as a specific type of in-depth interviewing which is based on the theoretical tradition of phenomenology. Phenomenological researchers conduct lengthy interviews which may take between one and two hours.

The focus group interviews are typically composed of between seven and ten people however a smallest group may consist of four people while the largest group may consist of twelve people (Marshall & Rossman, 2011:149). Focus group interviews constitute a purposive discussion of a specific topic or related topics between individuals with a similar background or common interests (Schurink, Schurink & Poggenpoel, 1998:314).

Data collection methods utilised in this study were interviews, records analysis, participant observation, focus groups and analysis of historical data. The latter consisted of various sets of data i.e., a snapshot from the databank, which was in excel spreadsheet format, the daily unlock reports presented in excel spreadsheets format and records or reports on remand detainees referred to court for bail review and consideration of the length of detention and accused who were arrested and given police bail, as well as relevant policy documents.

In the light of Covid-19 pandemic, the initial plan was to conduct asynchronous and synchronous interviews through one-to-one and multi-user audio communication (O'Connor, Madge, Shaw, Wellens, Fielding, Lee, & Blank, 2013). With the further relaxation of the containment measures, as well as lack of receiving rich and understandable feedback, the researcher opted to conduct face to face interviews with participants from Gauteng region due to proximity.

1.9.5 DATA ANALYSIS AND INTERPRETATION

Onwuegbuzie and Teddlie (2003:373) designed a seven-step process for mixed analysis which includes such steps as data reduction, data display, data transformation, data correlation, data consolidation, data comparison and data integration.

In this study a parallel mixed analysis was conducted, the qualitative and quantitative data were analysed separately. The results from both quantitative and qualitative analysis were integrated during the interpretation and discussion of results (Anguera, Blanco-Villaseñor, Losada, Sánchez-Algarra, & Onwuegbuzie, 2018:9; Kroll & Neri, 2009:39; Onwuegbuzie & Leech, 2004:779; Terrell, 2012:268).

Microsoft Excel was utilised to analyse the quantitative data and narratives were created to give meaning to the presented data. Some of the qualitative data was transformed through quantitising and themes were created by extracting them from the interviewing tools (Bazely, 2012:14; Creswell, 2009:218; Creswell, 2012:550; Onwuegbuzie & Combs, 2011:7; Ryan & Bernard, 2003:88).

1.10 VALIDITY AND RELIABILITY

1.10.1 INTERNAL CONTEXTUAL VALIDITY

Internal validity which is referred to as credibility is influenced by the richness of data collected during the study and refers to how believable and trustworthy the findings are. In mixed methods study internal validity applies to both the quantitative and qualitative approaches. With regard to the quantitative approach internal validity relates to drawing of valid conclusions taking into consideration the research design and controls employed while in qualitative approach credibility relates to the evidence and conclusions drawn (Eeva-Mari & Lili-Anne, 2011).

Threats to internal validity may occur during the design, data collection, data analysis and interpretation phases. Controls applied in the study to ensure credibility include the use of- multistage sampling scheme, triangulation, secondary data from the databank and established reports instead of creating an instrument for quantitative data, different sets of participants and the establishment of a judgement criteria for providing guidance on effectiveness regarding the implementation of strategies for reducing overcrowding.

1.10.2 EXTERNAL VALIDITY

External validity refers to generalisability and transferability of the results. With regard to quantitative approach, external validity is a determination on whether general conclusions can be drawn on the basis of the model utilised and data collected. With regard to qualitative approach, internal validity relates to whether results can be transferable, have theoretical generalisability, have empirical applicability, have practical usefulness and have contextual and constructive generalisability (Eeva-Mari & Lili-Anne, 2011).

Eeva-Mari & Lili-Anne (2011), enumerate a list of threats to external validity which relate to population, time, environment, failure to reconnect the empirical findings to those other cases and theories, and failure to provide explanation on how new evidence would enhance the understanding of the research question.

Controls applied in the study to ensure external validity include adequate and representative sample and the interpretation process linked evidence with the research question and applicable theories regarding the phenomenon under inquiry.

1.10.3 ENSURING RELIABILITY

Reliability refers to consistency with which the research will produce the same results if repeated. In mixed methods research, reliability applies to both qualitative and quantitative approaches. With regard to the quantitative approach, reliability refers to the extent to which a variable of a set of variables is consistent in measuring what it intends to measure. In qualitative approach reliability relates to the consistency in measurement i.e., accurately capturing the phenomenon or attributes under investigation (Eeva-Mari & Lili-Anne, 2011).

Factors that impact on reliability include lack of clear instructions, ambiguity in the description of items leading to misinterpretation, inadequate indicators for measuring abstract concepts, differing administration conditions, inaccurate and unsystematic interview questions, inaccurate transcriptions, failure to record or take notes on spot and lack of a comprehensive research plan. Controls applied to ensure reliability in the qualitative approach include: the use of interview guides; electronic recording of certain responses; developing a coherent set of notes on all the evidence; and additional and follow up questions which were posed to participants (Eeva-Mari & Lili-Anne, 2011).

With regard to quantitative data, reliability was ensured by including a control variable in the list of variables included in the snapshot analysis for the remand detainees and the data cleansing process was instituted.

1.11 ETHICAL CONSIDERATIONS

Permission was sought from the National Commissioners of Correctional Services and SAPS, as well as the Director-General of Justice and Constitutional Development through the departmental research ethic committees and approval was only obtained from the two former institutions. In the absence of permission from the DoJ&CD, participants were excluded in data collection.

The ethical issues that were adhered to relate to informed consent, confidentiality and anonymity. All the participants that did not show any willingness to participate in the study were excluded and their decision was respected (Cohen, Manion & Morrison, 2011:480).

Confidentiality means that information obtained from the participants would not be divulged to others or made public (Polit & Hungler, 1999:143). In this study all information obtained during data collection phase from the participants was treated with strict confidentiality and would be utilised only for the study.

The principle of anonymity could not be adhered to for participants that were interviewed however their names were not written in the interview questionnaires.

The researcher benefitted by being an employee of the Department of Correctional Services as she was able to gain access to quantitative and qualitative secondary data. If the researcher was an 'outsider' she would have not known which secondary data was available and how it was configured. The 'insider' position therefore benefitted the study in terms of the richness of the secondary data that was accessed by the researcher.

1.12 DISSERTATION LAYOUT

The dissertation consists of seven chapters which are arranged as follows:

- Chapter one provides an overview of the study. It covers such areas as the problem statement, the objectives of the study, definition of key terms, research methodology and ethical consideration.

- Chapter two provides a historical, philosophical and theoretical framework regarding the use of imprisonment and the overcrowding phenomenon.
- Chapter three gives an international overview of the phenomenon.
- Chapter four presents the literature review with focus on the South African creation and maintenance of bed spaces; role players in the criminal justice system and their association with crowding of detention facilities; strategies for managing overcrowding and challenges of overcrowding; and implications for the DCS and other criminal justice system role players.
- Chapter five provides a detailed explanation on research methodology including the strategy for analysis of data.
- Chapter six reflects data analysis with focus on bed space management, determination of trends in occupancy and profile of remand detainees.
- Chapter seven reflects the analysis of data with focus on referral of remand detainees to court for bail review, and for consideration of their length of detention as well as police bail.
- Chapter eight provides a summary on discussion of findings, conclusions, limitations and recommendations.

1.13 SUMMARY

This chapter introduced the study with focus on background, problem statement, aims and objectives including the research questions, definition of key concepts, value of the research, research approach, ethical consideration and the dissertation layout. The next chapter will focus on historical, philosophical and theoretical framework within the context of the use of imprisonment and the overcrowding phenomenon.

CHAPTER TWO

USE OF IMPRISONMENT: HISTORICAL, PHILOSOPHICAL AND THEORETICAL FRAMEWORK

2.1 INTRODUCTION

This chapter focuses on philosophical theories of punishment as they relate to detention/incarceration/imprisonment in the context of criminal justice, and more specifically their influences on the issue of crowding in correctional centres. Areas addressed are conceptualisation of punishment, theories of punishment, factors to be considered when instituting punishment including imprisonment, criminological theories, the limitations of the theories of punishment and criminological theories, history of overcrowding in South Africa, crowding as an outcome of incapacitation, contextualisation of the theories of punishment to research on overcrowding and relationship between theories of punishment and the South African Jurisprudence.

It is important to keep in mind that, although this study has a strong focus on overcrowding of remand detainees (or unsentenced inmates), the history, philosophy and theory of punishment cannot be fully understood without consideration of both preventive and punitive incarceration. Both preventive and punitive incarceration exercise fundamental influences on crowding inside correctional centres. In some instances the one may even influence the other directly or indirectly.

2.2 CONCEPTUALISATION OF PUNISHMENT

Imprisonment in the context of the criminal justice occurs after arrest as either preventive or punitive detention. The former applies to categories of detainees who are arrested and detained as remand detainees before conviction, while the latter applies to sentenced offenders detained after conviction. Kitai-Sangero (2008:904), Miller and Guggeinheim (1990:344 & 349) and Wallen (2011:1238–1239), uphold that preventive detention entails the incarceration of a person who has not yet been convicted of a criminal offence and is justified by the following factors:

- Allegation of involvement in serious (or sometimes other) crime;
- Allegation of dangerousness;
- Prevention of reoffending;

- Mental illness;
- Foreign nationals pending deportation; and
- Protection of material witnesses during investigation.

Preventive detention has extended to sentenced categories such as those classified as dangerous, certain categories of sexual offenders and those classified as terrorist offenders (Gamache, Zaitchik, Williams, Platania, Williams & Rieger, 2019:143; Smith & Nolan, 2016:163).

Preventive detention is applied to those placed under non-custodial system when they breach conditions set by the court and/or the Department of Correctional Services (DCS). The categories referred to are awaiting trials, parolees and probationer. The period spent in detention after the allegation of breaching the conditions is dependent on the investigative process as well as the sanctions applied. Progressive discipline is applied unless the allegations constitute a serious breach (RSA, 1977:77, 224, 238, 243–244; RSA, 1998:46–47; DCS, undated:133–135).

In situations where the management of the breach is delegated to the Correctional Supervision and Parole Board (CSPB) or the Commissioner of Correctional Services, the possible outcomes are as follows:

- Adjustment of the conditions for non-custodial placement;
- Replacement in the system of community corrections; and
- Revocation of parole or correctional supervision (DCS, undated: 136).

The minimum requirements that apply to the awaiting trials for ensuring effective monitoring are the address which is fixed and verifiable, reliable support system and lack of risk to the community. These conditions are added to the conditions set by court which may include house arrest and restriction to one magisterial district (RSA, 1998:46; DCS, undated:149).

Progressive discipline is applied when handling violation of conditions for containment of the number of persons that are sent back for imprisonment as a

strategy to reduce overcrowding. The elements of progressive discipline include the following:

- Issuing of warning which may be verbal or written;
- Adjustment of conditions as specified by the court and this is done in consultation with the court that ordered the placement under supervision by the correctional officer in line with section 62(f) of the Criminal Procedure Act 51 of 1997;
- Tightening of the monitoring conditions; and
- Written submission by the awaiting trial of the acknowledgement of the violation (DCS, undated: 134; RSA, 1977: 77).

Zimbardo and Leippe, who were both known researchers in the field of social psychology define punishment as ‘a stimulus whose occurrence following a behaviour leads to a decrease in that behaviour’. The philosophy of their definition formed a moral fibre of ecclesiastical penitence through contemplative incarceration which was administered before the eighteenth century. Criminality was treated through segregation since it was considered an illness hence the hospitals, mental health, prisons and ecclesiastical architecture shared the philosophical and historical infrastructure (Jonescu, 2011:35).

Pollock (2005:3) defines punishment as an unpleasant experience or pain inflicted upon an individual in response to a violation of a rule or law by a person or persons who have lawful authority. It may involve ‘infliction of some deprivation or suffering on criminal wrongdoers’ (Matravers, 2016:1).

2.3 THEORIES OF PUNISHMENT

The goal of the theories of punishment is crime prevention and reduction which are approached from various perspectives. Some theories emphasise the retrospective focus for determining the deserved punishment while others conceptualise punishment as a preventive approach to futuristic crimes by reducing the likelihood of crime (Carlsmith et al, 2002:286; Gerber & Jackson, 2013:63). The theories of punishment discussed in this chapter are the retribution theory and utilitarian theories.

2.3.1 RETRIBUTION THEORY

Retributive theorists align themselves to the concept of deserved punishment, which is referred to as desert i.e., just punishment muted for balancing wrong and doing justice. (Cottingham, 1979:1; Berman, 2013:84; Brooks, 2017:203; Pollock, 2005:3; Robinson, 2008:147). The desert model focuses on past occurrences (Rachels, 2002:471). Deserts which will be discussed in this section are just desert, vengeful-, deontological-, and empirical deserts.

2.3.1.1 *Just deserts*

Just deserts are based on the notion that ‘a person deserves punishment proportionate to the moral wrong committed’ (Carlsmith, Darley & Robinson, 2002) and criminal sanctions should be commensurate with the seriousness of the offence and harm inflicted (Sloan & Miller, 1990:19). As a philosophy of punishment, the just deserts reflect the desire of the society to punish wrongdoers harshly by means of stricter and longer prison sentences (Dunlap & Hill, 2009). Factors that determine the level of deserved sanction are:

- The seriousness of the offence that the person is convicted for including the harm attached to it;
- The individual’s past criminal record;
- Frequency of the criminal offence; and
- Visibility of the offence (Sloan & Miller, 1990:21–23).

Severity of punishment refers to the type of sanction, which is referred to as the qualitative dimension and the length of the term of sentence, which is referred to as quantitative dimension (Sloan & Miller, 1990:23).

With regard to frequency, there are several characteristics that emerge such as crimes that occur in great numbers but remain invisible to the public, crimes that occur in smaller numbers which receive public attention, and crimes that rarely occur but attract high visibility due to extensive media coverage, high number of witnesses and presence of physical evidence (Sloan & Miller, 1990:23).

In the age of social media, physical evidence in the form of pictures and videos spread through various platforms such as Facebook and Twitter. This subsequently results in crime waves i.e., social awareness of crime which is brought to the public consciousness through various media platforms (Fishman, 1978). High frequency crimes influence the disposal methodology in the criminal justice system from arrest to prosecution and court decisions. The preferred alternatives for responding to high frequency crimes may include plea bargains, diversion, reduction of charges and waiver trials instead of using a bench method. High visibility crimes attract serious sentences such as incarceration due to potential injury, death or massive destruction of property (Sloan & Miller, 1990:25).

2.3.1.2 Vengeful desert

In a vengeful desert, punishment is regarded as institutionalisation of revenge by the victim for the harm or suffering and the offender or the wrongdoer cannot complain when punished. The offender is punished in a way that mirrors the suffering he or she caused and as such the principle of '*lex talionis*' should be applied which suggests that punishment should correspond in kind and in degree to the offence committed by the wrongdoer. Vengeful desert is victim centred and criticised for communicating the feelings of hatred and revenge (Robinson, 2008: 147).

2.3.1.3 Deontological desert

In a deontological desert, principles of right and good are applied for determination of moral blameworthiness of the offender. The blameworthiness is determined through the calculation of the seriousness of evil deed and the extent of harm. Other factors given consideration are culpability which relates to the state of mind of the offender, as well as aggravating and mitigating factors. The blameworthiness is utilised to determine the amount of punishment that the offender deserves using an ordinal ranking system. Principles of justice are implemented independently of personal and community opinions and there is less focus on harm caused by the offence (Alexander & Moore, 2007:5; Berman, 2016:5; Edney, 2005:82; Robinson, 2008:147–148, 151 & 153).

2.3.1.4 *Empirical desert*

In an empirical desert the assessment of deserved punishment for blameworthiness is applied identically to all the defendants by the institutions of justice available in the community taking into consideration such factors as the extent of harm, offender's situation and personal capabilities (Robinson, 2008:147–148).

The empirical desert has been criticised for its dependency on the institutions of justice for determining the deserved punishment because of the following factors:

- Varied views of people regarding punishment;
- The lack of a single metric to measure people's desert-related opinions;
- People's judgement for punishment which is driven by factors relating to effective deterrence or incapacitation than desert i.e., just or deserved punishment; and
- The intuitional nature of judgements on wrongdoing made by lay people (Robinson, 2009:35, 65; Slobogin & Brinkley-Rubinstein, 2013:123).

Lay people focus more on giving the offenders their just deserts, unless they receive salient information about the crime situation that persuade them to consider the utilitarian approaches such as special and general prevention. The former refers to prevention of recidivism and the latter constitute emulation of the crime by others (Twardawski, Karen, Tang, & Hilbig, 2020:195).

Other criticisms of the empirical desert are its vagueness, draconian, potential immorality, misleading and ambiguity (Lee, 2010:1142; Robinson, 2009:32, 35–37). The defence provided by Robinson for his theory is that 'by tracking society's institution of desert, the criminal justice system increases its moral credibility and therefore its normative influence over individuals in the community' (Robinson, Barton & Lister, 2013:313). He further contends that empirical desert cares that offenders receive the amount of punishment they deserve and does not prescribe the methodology to be imposed (Robinson et al, 2013:135). He conceded by criticising the model developed by Slobogin and Brinkley-Rubinstein referred to SBR model:

'In reality, what SBR propose is a system based on dangerousness, where detention decisions are made at the back end by experts. Such an approach promotes the worst

of the failed policies of the 1960s, and conflicts with the modern trend of encouraging more community involvement in criminal punishment, not less' (Robinson et al, 2013:312).

Retributivists hold a view that crime involves taking an unfair advantage over the law-abiding citizens and the punishment removes such advantage by ensuring that all the citizens are protected from certain kinds of harm through the state which becomes the author and the guarantor of criminal law (Duff & Hoskins, 2017:11). Retributivists regard criminal act as immoral therefore justifies the response through inflicting punishment (Caruso, 2018:1).

Legal punishment as one of the authoritative sanctions applied to respond to crime, may include arrest, conviction and several forms of sentence which may range in severity from non-custodial to custodial and death penalty (Paternoster, 2010:780). The criminal justice system as the legitimate and political arm of the state responsible for inferring punishment, is expected to have laws that it will strictly enforce with sanctions that are applied soon after the crime has been convicted (Paternoster, 2010:784). Harm and deprivation caused by legal punishment on the offender is intentionally instituted by the state authority (Bülow, 2014:3).

Hegel, the German philosopher distinguishes three categories of wrong which are unintentional wrongs, deception and crime. He views the former as the least harmful kind of wrong which constitutes mistaken agreements. His understanding of deception is that it is a more serious wrong because of dishonesty and lack of shared commonality. He concedes that the third category of wrong which he considers to be serious is 'a criminal's rejection of another will's capacity of right'. Hegel calls for objective actuality of right or restoration of right through punishment hence he holds a position that 'it would be impossible for society to leave a crime unpunished' (Brooks, 2004:9). Hegel is regarded as retributivist since his point of emphasis is that punishments should be distributed to deserving people and must be proportional in value to their precipitating crimes (Brooks, 2004:5–7 & 9).

Moore who is regarded as a giant of legal philosophy, believes that retributivism is a justified theory of punishment and offenders are punished because they deserve it. He maintains that rendering criminal punishment is morally permissible and the

moral responsibility of the offender gives the society the duty to punish. In his argument he upholds that retributive justice provides for a justification of punishment as a deserved suffering by the offenders. The obligation to establish and maintain institutions devoted to institute punishment stems from the goodness and rightness of giving the wrongdoers what they deserve (Bauer & Poama, 2020:1; Berman, 2016:3&5; Levy, 2005:270).

While Kant believes that it is just to subject the law breakers to punishment as a categorical imperative, punishments must be administered on the basis of criminal guilt (Potter, 1998:172). He upholds the view that should it appear that the number of criminals is so great that the state would be left without any subjects if execution would be applied to those that committed such crimes as murder, the sovereign must emerge and assume the role of the judge (Brooks, 2003:207, 210 & 212–213; Cottingham, 1979:2; Reddy, 2004:3). The most famous statement on punishment by Kant is:

'Juridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime. For one man ought never to be dealt with merely as a means subservient to the purpose of another... Against such treatment his inborn personality has a right to protect him, even though he may be condemned to lose his civil personality. He must first be found guilty and punishable before there can be any thought of drawing from his punishment any benefit for himself or his fellow-citizens... It is better that one man should die than the whole people should perish. For if justice and righteousness perish, human life would no longer have any value in the world' (Pincoffs, 1966:2–3).

Tadros upholds that wrongdoer deserve to suffer and experience pain or anguish. Physical pain which is regarded as indirect suffering may include depression and anxiety while directed suffering stems for the frustration of a desire or interest. Directed suffering will be experienced in the form of inability to provide adequately for one's family (Berman, 2013:87).

Morris (Berman, 2013:94) believes that someone who knowingly violates the rules, brings punishment on himself, therefore he incurs debt to the society which is repaid by the institution of punishment.

Peno (2018:186) states that according to the pure theory of repayment and expressive theory, the perpetrator deserves punishment which constitute payment, as well as condemnation. Positive retributivists believe that only harmful conduct should be punished and the foundation claim for the deontological retributivists is that ‘we ought to punish those who deserve it’ (Cottingham, 1979:1; Tomlin, 2014:278).

In a constitutional punishment, deprivation should fit a certain criteria and Miller & Guggenheim, (1990:370) cited that deprivation must:

- Involve a restraint on liberty, property otherwise enjoyed by a free citizen;
- Be imposed by the authorised and legitimate legal authority;
- Be imposed based on final adjudication finding on violation of law or specific anticipation regarding the violation of law; and
- Not be justified by a clear, substantially non-punitive purpose.

2.3.2 UTILITARIAN THEORIES

The utilitarian theories are regarded as forward looking and concerned with future consequences of punishment. They are referred to as consequentialists or instrumentalists (De Keijser, Van der Leeden & Jackson, 2002:319).

The originators of utilitarian philosophy on penology, Beccaria and Bentham contributed to the field of criminal justice. Their conception of utilitarianism emanates from Helvetius who advocated that human behaviour is driven by pursuit of pleasure and avoidance of pain and therefore could respond well to incentives than preaching. Helvetius equated bad behaviour with bad government and as such his subject was government and not ethics (Binder, 2002:333&334).

Beccaria and Bentham view criminal law as the institution of government and do not favour the capital punishment of public display characterised by torture. Beccaria advocates for utilitarian imprisonment as a form of punishment where proportionality

is equated with the severity of crime. Bentham on the other hand, significantly influenced the understanding of the architectural power and surveillance (Jonescu, 2011:35&36).

Frase (2005:72–73) states that utilitarian theories impose several limitations regarding the form and severity of punishment and these include the following:

- Criminal penalties should not cost more than benefits they achieve in terms of crime control;
- Penalties should not be severe or costly than necessary;
- Prison beds and other scarce correctional resource should be reserved for most socially harmful offences and offenders;
- Prisons should not be used beyond their effective capacities as overcrowding violates several rights including right to humane treatment. Overcrowded prisons are regarded to be unsafe to both the inmates and the staff and they contribute to the likelihood that the prisoners will leave the prison as more violent since there is limited security and inadequate resources for rendering programmes.

The utilitarian theories discussed in this section are incapacitation, deterrence, and rehabilitation.

2.3.2.1 Incapacitation

Incapacitation through penal imprisonment emerged in the system of the church in the middle ages by making provision for the elementary administrative capacity to care for inmates charged for petty crimes which was regarded as the breach of the secular legal system. From the fourteenth century there was a growing use of short-term imprisonment as a sanction for economic and moral regulations in Italy, France, Germany and England and only the church prisons detained those charged for serious crimes (Langbein, 1976:39).

Further developments in the penal systems surfaced, which were the gallery, workhouse and the transportation systems, with the former utilised as a form of extreme punishment for instituting the corporal punishment and death penalty. The

workhouse came up as a response to poverty and vagrancy with features such as honest labour and training in working skills through discipline and moral instruction. The transportation of convicts was introduced as a form of pardon in lieu of labour (Langbein, 1976:44, 48–54).

The workhouse was reformatory and applied for punishing and correcting. The workhouse provided for a variety of skills such as making gloves, silk, tennis balls, spinning and weaving. The concept of the workhouse spread across Europe and worked parallel with the system of capital punishment including death penalty. It was extended to accommodate those convicted of serious crimes. The only difference was that the latter were subjected to hard labour for longer periods of time as compared to those convicted for petty crimes (Langbein, 1976:44, 48–54).

Imprisonment as penal enterprise has more than one philosophy; it is regarded as incapacitating, deterrent, rehabilitative, denunciative and retributive (Frase, 2005:70; Meijer, Annison & O’Loughlin, 2019:5; Pollock, 2005:17; Wright, 2010:1). Anthony Duff upholds a view that even a brief period of imprisonment may shock the offender to repentance (Cochrane, 2015:12).

The notion upheld about incapacitation is that crime is prevented by imprisoning high-risk offenders since they are restrained from committing further crimes against the society (Frase, 2005:70). According to Binder (2017:1–2), the proponents of penal incapacitation hold the view that offenders are inherently dangerous and likely to reoffend regardless of where they are placed, and this gives a presumption that incarceration will prevent reoffending.

Pollock (2005:12) upholds that imprisonment has an incapacitation effect because of the belief that the offenders cannot commit crimes. He further highlights the less expensive forms of incapacitation such as house arrest and electronic monitoring. According to Glaeser and Sacerdote (2000:2) the criminals with high recidivism rates should be detained for longer periods.

Hoskins (2019:1) regards risk assessment which guides criminal sentencing as punitive and unjustifiable since this form of incapacitation aims at reducing future

criminal wrongdoing. The punitive measure of life imprisonment without parole or death penalty are preferred forms of sentence for incapacitating those convicted for serious crimes and this leads to overcrowding of detention facilities, ineffective discipline, as well as inadequate delivery of rehabilitation programmes due to inadequate personnel and decreased budgetary allocations (Dunlap & Hill, 2009).

Incarceration has not always been considered a form of punishment since the retributive corporal punishment was normally delivered in public spaces and drew an audience to witness an approach that was torturous and instilling fear, as well as deterrence (Jonescu, 2011:35).

Imprisonment for incapacitating dangerous persons which is known as preventive detention is a dominant goal of the new criminal law which is justified as prevention of harm to others. The focus is more on the characteristics of the offender than the offence and previous criminal history is utilised to determine the element of dangerousness (Sampsel-Jones, 2010:723 & 757–758).

Preventive detention in the context of criminal justice entails detention of a person who has not been convicted of a criminal offence, however, his detention would be driven by the defendant's alleged dangerousness (Katai-Sangero, 2008:904; Miller & Guggenheim, 1990:344). In several countries preventive detention is regulated through the legal instruments. It differs from punitive detention since the latter applies when the wrongdoer has been convicted and sentenced (Saito, 2018:4). Citizen's demands for protection and perception of public vulnerability to future crimes places pressure on the criminal justice system to apply preventive detention (Robinson, 2001:1433–1434).

In 1966, the Federal Bail Reform Act, which is the law of United States of America, was amended to provide for detention of defendants based on the high risk of further criminal conduct. Preventive detention further existed as a disguise by setting unaffordable amount of bail to the categories that could not afford such amounts so that they could remain in custody. The practice of setting high bail amounts affected the poor (Miller, 1969; Portman, 1970:224–227).

During the 60s, Professor Beeley (Portman, 1970:227–228) was concerned with the inhumane prison conditions and the fact that the pre-trial detainees were kept for eighteen hours under the conditions similar if not worse than those provided for maximum classified offenders. These detainees were housed in overcrowded units with no work and few recreational facilities. He conducted an empirical study which revealed that magistrates based their bail decisions on recommendations made by the prosecutors with little or no regard for the circumstances of the pre-trial detainees. The justification utilised by the defence attorneys was that trial preparation was very difficult and compounded by the difficulties to trace witnesses. The findings of the research led to reconsideration of the report and bail reforms were introduced in America which led to a federal probation service favouring pre-trial detainees. A system of non-monetary bail and posting of cashless bail was introduced and the latter was refundable (Portman, 1970:228–229).

A chemical engineer and industrialist, Schweitzer who was concerned with the economic discrimination that applied in the bail system, established the Vera Foundation to assist the defendants that were indigent. He further contributed to the development of law, justice and civil liberties in America (Portman, 1970:229–230).

The system of pre-trial screening which was introduced as part of reforms was implemented by law students prior to the first court appearance and the report was submitted to the judge and the district attorney. Further developments and national conferences on bail and criminal justice drew multidisciplinary approach which included judges, prosecutors, defence lawyers, police and prison officials. The bail reform spread to other countries and the Bail Reform Act of 1966 gave birth to the presumption of the right to be released in the lieu of bail. Other developments included setting of conditions such as the following:

- Placement in the custody of a designated person;
- Restrictions regarding travelling;
- Execution of bail bonds; and
- Imposing any other condition (Portman, 1970:224 & 230–233).

The federal law in the United States of America does not regard preventive detention as punishment and the position upheld by government is that preventive detention is a regulatory mechanism which restricts the person's liberty for protecting the community from danger (Miller & Guggenheim, 1990:352 & 370).

Kitai-Sangero (2008:933–934) believes that preventive detention may be unavoidable however, he proposes restrictions to its use and came up with the following criteria:

- There must be strong evidence of dangerousness;
- Preventive detention must be utilised for a limited duration;
- Proportionality requirement must be met;
- There must be compensation for the deprivation of liberty; and
- Conditions of confinement must be pleasant.

Miller and Guggenheim, (1990:360) cites the following conditions where preventive detention may be applied:

- Accused persons arrested pending their prompt appearance before a magistrate;
- Accused persons who pose a danger to witnesses;
- Accused persons who pose a flight risk;
- Persons found to be dangerously mentally ill in both civil and criminal proceedings;
- Dangerous individuals in times of war; and
- Dangerous foreign nationals pending deportation.

Schönteich (2018:59) cites the following as the drivers of pre-trial detention:

- Public fear of crime;
- Country's political system;
- Responsiveness of policy makers to public concerns;
- The extent to which the public use the informal or traditional justice mechanism rather than formal legal system; and
- The role of media in instilling public fears.

The paradigm of detention to satisfy the demands by the public for vengeance is cited by Miller & Guggenheim, (1990:335, 338 & 339) where Raymond Buckley was detained for four years without bail and the cases of all his co-accused were dismissed due to weak evidence.

Dershowitz (1970:25) specifies several areas where preventive justice strategies were used, which are; peace bond, juvenile statutes, material witnesses and preventive arrest. In Pennsylvania the judge required the accused charged with assault to pay a certain amount even if he was acquitted for keeping peace for a specified period and failure to pay the peace bond led to imprisonment. With regard to juveniles, the statutes provided for the detention of young persons who had not committed crime but suspected of having the likelihood of becoming criminals. Some states incarcerate material witnesses who are regarded as important witnesses.

Preventive detention has extended to sentencing and parole placement. Certain courts would impose consecutive rather than concurrent sentences based on the offenders' history of previous crimes. Some federal governments extend the stay in detention for offenders who display signs of mental illness beyond the sentence expiry date (Allen & Laudan, 2011:793 & 794).

Incapacitation as a form of preventive detention for those in pre-trial detention is regarded as double punishment since the detainees are punished for the offences they have not been convicted of, as well as the crimes that they have not yet committed. The factors which are central to the desert principle are completely neglected when applying preventive detention since incarceration is based on preventing harm (Allen & Laudan, 2011:782; Robinson, 2001:1440 & 1446).

The theories of punishment consider incapacitation as a restraint to a person for prevention of future crimes and this form of punishment is regarded as desirable to corporate punishment as a strategy to introduce reforms in private companies (Thomas, 2019:973).

2.3.2.2 Deterrence

According to Paternoster (2010:770), Bentham who is regarded as a deterrent theorist and the formulator of utilitarianism, believes that human behaviours are directed by twin goals of attainment of pleasure and the avoidance of pain and the two masters are the determinants of what people shall do. Actions that bring pleasure provide utility and those that bring pain provide disutility. When the sum total of the actions of the individuals bring more utility than disutility, happiness is maximized.

The four general sources of pleasure and pain are physical, political, moral and religious. With regard to physical pain, in the context of crime one should think of a situation where the criminal gets shot and in physical pleasure the experience of excitement when under the influence of drugs is relevant. Political pain entails the pain associated with the sanctions received and political pleasure is equated with recognition and prestige that the persons enjoy. Other pleasures include good reputation and wealth and other pains include poverty and ill reputation (Paternoster, 2010:771 & 772; Von Hirsh, 1992:57).

Gibbs revived the theory of deterrence by adopting a theory that focused on legal sanctions than on utility. His interest on the effectiveness of actual punishment in reducing crime led him to undertake empirical research for determination of existence of the relationship between the certainty and severity of punishments in individual states and their crime rates. He found that there is an inverse relationship between the certainty for punishment and homicide rate. His position was that if the deterrence doctrine was valid, states with high certainty and severity of punishment would have lower homicide rates. He further finds that punishment generates compliance with laws (Paternoster, 2010:779). Kennedy (1983:4 & 5) states that statistics favours the conclusion that punishment certainty deters crime more than severity of punishment. He further conceded that subjective probability of punishment has a greater deterrent effect than the subjective unpleasantness.

Individuals decide to offend based on the probability of the outcome which is a blend of various benefits and costs of crime and non-crime. While the benefits of crime would include easy money, prestige, reputation and excitement, the cost of crime would include getting arrested, convicted, imprisonment, enormous cost to taxpayers,

loss of contacts with one's family, loss of respect and loss of work. The last three are referred to as objective deprivations by the expressivist and non-expressivist retributivists according to Simons (2009:2). Benefits associated with non-crime include steady and safe income, physical security from not being shot or getting sick as a result of drug ingestion. Costs linked to non-crime include low wages, feelings of being a failure or low prestigious job (Cochrane, 2015:1; Paternoster, 2010:783).

Properties of legal punishment that enforce a deterrent effect are certainty regarding arrest and punishment, severity of the penalty and celerity or swiftness of punishment (Frase, 2005:71). The economist Steven, in the study he conducted on the relationship between imprisonment and crime rates, found that court orders implemented to reduce overcrowding in correctional facilities led to drop in inmates and a decline in the probability of convicted offenders going to prison. He drew a conclusion that the likelihood of imprisonment was insignificant in relation to crime reduction (Paternoster, 2010:800).

Paternoster (2010:803) proposes that while the view that imprisonment has to some extent a deterrent effect, this cannot be upheld as an absolute position. It can also not be ignored that the threat of imprisonment proved to be a deterrent that led to crime reduction from 1990 to 2000 in America. He urges that legal sanctions cannot be discarded based on failure of the empirical evidence that suggests deterrent effect of imprisonment and further advise that legal sanctions should be linked with the notion of enforcing morality to some extent (Paternoster, 2010:822).

The unfortunate side effect of pain and suffering to the family due to the imposition of punishment may be regarded as a deterrent to potential criminals (Cahill, 2010:16). JSS Law College (2013:7) regards death sentence as the most effective deterrent while imprisonment is considered to be reformatory in addition to the deterrent effect. Death sentence has been abolished in most countries on the grounds that it is vengeful, immoral, unjust for the family of the offender and infringes the right to life. According to Amnesty International (2020):

'at the end of 2019, 106 countries (a majority of the world's states) had abolished the death penalty in law for all crimes, and 142 countries (more than two-thirds) had abolished the death penalty in law or practice'.

In South Africa death penalty was abolished in 1995 since it was regarded as cruel, inhumane, and degrading violation of the country's constitution (The Citizen, 2019).

In America preventive arrest, according to Dershowitz (1970:28), was broadly applied in various situations such as people that were found to be loitering around the stores, bus stops and parked cars and known pick pocketers. The arrests were mainly for crime prevention.

Allen and Laudan (2011:789–790 & 792), state that criminalisation of inchoate crimes i.e., planned or incited crimes may be realised if they are not prevented in time by police. Police are given authority to intervene to prevent harm. Inchoate crimes include possession of dangerous substances and equipment including explosives, possession of burglary tools, vagrancy and loitering.

2.3.2.3 Rehabilitation

The rehabilitation model in the penal system has its origin from the workhouse system, which was introduced before the eighteenth century as a means of correcting behaviour of those charged and convicted for petty crimes (Langbein, 1976:48). The assumption in rehabilitation is that the offender has identifiable and treatable problems which causes him to commit a crime therefore the provision of treatment and education will reduce future criminality (Frase, 2005:70).

Kirkwood and McNeill (2015:12), Maruna (2011:108), McNeill (2012:17, 18 & 19); Meijer (2017:147) and Meijer et al (2019:8–9) cite four interconnected forms of rehabilitation which are:

- Moral rehabilitation;
- Social rehabilitation;
- Psychological rehabilitation; and
- Judicial or legal rehabilitation.

Duff (2005:18) believes that moral rehabilitation is required since a relationship between the wrongdoer and those he wronged has been threatened. Moral

rehabilitation entails apologetic repentance which should be expressed in serious situations where the wrong is likely to have long lasting negative effects. Meijer et al (2019:8) and Kirkwood & McNeill (2015:23) state that the offender should payback before he could be restored to a social position as a citizen with good character.

Social rehabilitation entails recognition and acceptance of the reformed offender, as well as enforcement of custodial sentences, probation orders and other types of alternatives (Meijer, 2017:147; Meijer et al, 2019:8; McNeill, 2012:18).

Psychological rehabilitation rests on promoting positive change in the offender at the individual level. Legal or judicial rehabilitation also known as requalification refers to the restoration to the offenders, their rights and duties as full citizens, which is taken away by a criminal record (Meijer et al, 2019:8 & 10).

Moral rehabilitation may be equated with Duff's communicative theory of punishment. He sees imprisonment as an ultimate sanction for those that wilfully fail to comply with all forms of punishment and believes that prison may be an appropriate shock or stimulus to an offender's repentance. He does not support the notion of giving fines since they lack the rich communicative aspect which is embedded in other forms of punishment (Cochrane, 2015:7&93). Intervention programmes recommended by Duff include victim-offender mediation, probation which includes restriction of services, and educational programmes. The programmes provided to offenders detained for serious crimes are meant to assist them understand the impact of their behaviours and be helped to cope with triggers and community service orders (Cochrane, 2015:6 & 7).

Meijer (2017:160) and Rotman, (1987:1025), the professor of law and the author of the book titled *Beyond punishment: a new view on the rehabilitation of criminal offenders*, distinguish between two theories of rehabilitation which are:

- An authoritarian and paternalistic model; and
- A humanistic liberty centres model.

The former is regarded as the outdated repressive model which involves moulding of the personalities of offenders by reconditioning their thoughts and behaviours. Rehabilitation in this model is meant to address the socio-economic equalities and problems through providing offenders with skills that would increase the likelihood of job stability upon release. The model allowed for cost-benefit analysis to determine whether the social benefits of rehabilitation superseded the cost of providing the rehabilitation services (Meijer, 2017:160; Rotman, 1987:1026).

The humanistic model originates from the anthropocentric view and is characterised by the tenant that upholds that significant change can occur only from the individual's own insight therefore a dialogue is utilised to encourage the process of transforming the offender to change (Meijer, 2017:160; Rotman, 1986:1026).

Rehabilitation has a utilitarian conception since the notion is to change the offender to reduce harm and develop the offender through provision of skills and education so that he can contribute to public good (McNeill, 2012:8). The deontological concept of rehabilitation can be equated with Beccaria's notion of requalification which refers to the restoration of duties and rights of the offender through judicial or legal rehabilitation in the form of expungement of records which can be automatic or through a prescribed process (McNeill, 2012:8).

Rehabilitation in corrections environment is equated with those that have been punished by the courts through sentencing to either imprisonment or correctional supervision. The DCS through the White Paper on Corrections (2005) provides a description of rehabilitation in the context of South African correctional system which was introduced during the democratic era. Rehabilitation is conceptualised as follows:

- Rehabilitation is a process with three objectives which are:
 - Correcting offending behaviour;
 - Human development; and
 - Promotion of social responsibility and positive social values;

- Correcting offending behaviour and development of human beings are perceived as two distinct but linked responsibilities which have a common objective of rehabilitation;
- The sentence planning process which entails the engagement of the offender at different levels which are social, spiritual, educational and mental is cornerstone for facilitation of rehabilitation;
- The rehabilitation objective of social responsibility entails reconciliation of the offender with the community, promotion of health family relations and implementation of restorative justice programmes; and
- Promotion of the human development of remand detainees is associated with the poor socio-economic backgrounds that many of them are coming (White Paper, 2005:37–39, 46).

The White Paper on remand detention management in South Africa (2014: 47), stresses the importance of maintaining the principle of presumption of innocence which is accorded to all remand detainees in line with the Constitution of the RSA (RSA, 1996:15). The presumption of innocence principle therefore dictates that the programmes geared towards correcting offending behaviour be restricted to life skills development as part of crime prevention and not secondary prevention equated with rehabilitation driven by sentence planning. The guiding factors for provision of programmes which have been included in the policy framework (DCS, 2017:6) include the following:

'The RDs have a right to be presumed innocent and as such will not be provided with programmes based on inferred charges unless such programmes are prescribed by the courts; The RDs are a very unstable population whose length of detention is beyond the control of detention institutions, therefore the programmes delivered should be flexible enough to accommodate the constant change of faces; ... Preparation for court must take precedence over the attendance of programmes; The RDs should be encouraged to attend programmes which are aimed at self-development' (DCS, 2014:46).

2.4 FACTORS TO BE CONSIDERED WHEN INSTITUTING PUNISHMENT, INCLUDING IMPRISONMENT

The infliction of punishment should take cognisance of several factors such as the public views, degree of threat imposed by the crime, fairness to the victim and the community, cost implications, violation of rights, dangerousness, flight and harm risk, subjective reaction of the offender, proportionality, parsimony, communication effect and punishment of the innocent (Cahill, 2010:12; Christopher, 2002:902; Duff & Hoskins, 2017:12; Frase, 2005:67; Peno, 2018:187; Simons, 2009:6; Von Hirsh, 1992:79).

2.4.1 PUBLIC VIEWS

The expressivist retributivists believe that punishment should publicly convey the message of wrongness regarding the offender's conduct (Simon, 2009:3). This notion may find its explicit expression in the legal policies through a system of differentiation between petty and serious crimes and the sentence regime which describes categories of crimes. Legal retributivists hold the view that wrongdoing which is criminally prohibited should be legally defined (Tomlin, 2014:278).

2.4.2 DEGREE OF THREAT IMPOSED BY THE CRIME

In retributivist view, the severity of punishment is influenced by the threat imposed by the crime to the security of the society (Brooks, 2004:12). Kennedy (1983:5) states that the threat of punishment as a deterrent must be credible and communicated, and the threatened group must trust the capability of the law enforcement system in apprehending and punishing offenders.

2.4.3 FAIRNESS TO THE VICTIM AND THE COMMUNITY

The elements of fairness include fairness to the victim, victim's family, law-abiding citizens who have not committed the offence and the defendant or the accused (Frase, 2005:73). Punishment should be instituted to acknowledge the sense of grievance felt by the victim of the offence and the satisfaction that will be brought by the suffering of the offender (Cottingham, 1979:4). The absence of punishment or failure to punish is regarded as unfair to those who respect the rights of others (Cottingham, 1979:4).

2.4.4 COST IMPLICATIONS

A theory of punishment should consider the social cost of punishment including the cost of incarceration rather than to focus on the rights of victims or the public (Chiao, 2015:2 & 8). Deontological theorists uphold a view that it is permissible to punish any criminal wrongdoer regardless of the costs implications if there are justifiable reasons (Chiao, 2015:9). Richard Posner, the modern follower of Jeremy Bentham deems that punishment should be subjected to cost-benefit analysis i.e., the cost of punishment should be weighed against the benefits gained through crime prevention penalties (Von Hirsh, 1992:63).

2.4.5 VIOLATION OF RIGHTS

Alan Brudner, the criminal law professor and a deontological theorist upholds that punishment is permissible and required as an expression of the vindication of rights. He argues that the criminal renders himself or herself vulnerable to punishment by intentionally denying someone else's rights. Deontological theorists endorse the view that wrongdoers forfeit their rights or deserve punishment when they perform acts that are criminalised (Chiao, 2015:5 & 11).

2.4.6 DANGEROUSNESS, FLIGHT AND HARM RISKS

Tadros, the professor of criminal and legal theory, believes that wrongdoers should recognise that they have done wrong therefore the harm they produce should be distributed to them and not the innocent (Berman, 2016:5). The "Mill harm principle" which was founded by A P Simester and Andreas Von Hirsh justifies the detention based on real harm or the risk of harm to other. According to the Mill harm principle, harm is a necessary condition for exercising authoritative power by the state in the form of punishment; the focus and harm prevention may be a necessary intervention (Gerber & Jackson, 2016; Tomlin, 2014:280).

2.4.7 SUBJECTIVE REACTION OF THE OFFENDER

Professor Kolber, in his provocative essay titled 'the subjective experience of punishment' defends the justification for punishment which is equated to the subjective reaction of the offender. There is a belief though that the entertainment of the subjective reaction would benefit the wealthy offenders who may openly display their negative reaction to imprisonment (Simons, 2009:6).

2.4.8 PROPORTIONALITY

Retributive theorists concede that sanctions should be proportionate to the blameworthiness of the offender or the wrongdoer and scaled according to the seriousness of crimes. Application of proportionality in sentencing, as well as uniformity is equated to the reinforcement of public views regarding the seriousness about crime and this will invariably lead to respect of the criminal justice system by the public (Frase, 2005:67; Kennedy, 1983:4; Von Hirsh, 1992:79). The principle of proportionality encapsulates the notion of justice and fairness and promotes respect for law (Von Hirsh, 1992:56 & 68). The subjective view which entails considering the reaction of the wrongdoer, received negative criticism based on the position of the retributivists who believe that the state has a responsibility to ensure that punishment is proportionate to the desert (Simons, 2009:4).

2.4.9 PARSIMONY

While parsimony relates to preference for the least severe alternative of punishment by limiting retributivists, the principle acknowledges the cost implication of severe penalties and harm brought to offenders which has to be balanced with the lack of certainty with regard to crime control (Frase, 2005:67). Von Hirsch (199:92) emphasised that when applying parsimony, proportionality should not be forfeited. With regard to remand detainees, parsimony may be applied during the pre-trial phase through consideration for use of restorative justice strategies such as diversion and informal mediation (National Prosecuting Authority, 2012:30-31; Republic of South Africa, 2008:10).

2.4.10 COMMUNICATIVE EFFECT

Punishment communicates the condemnation that offenders deserve for their crimes and it is imperative to ensure that the censure is administered formally through the criminal justice system (Duff & Hoskins, 2017:12). Von Hirsch (1992:67) states that censure in punishment conveys a message that the state recognises the criminal conduct which is a wrongful behaviour.

2.4.11 PUNISHMENT OF THE INNOCENT

Punishing the innocent is opposed as negative retributivism; it is regarded as harmful, morally wrong and forbidden (Cahill, 2010:12). Utilitarian theorists classify punishing the innocents as categorically wrong and not permissible (Von Hirsh, 1992:59). According to Peno (2018:187), punishing the innocent is because of an error committed during criminal proceedings which may be attributed to judicial negligence or circumstances beyond the control of those in charge of the court proceedings such the faulty plea by the innocent and imperfection in methods applied to arrive at the so-called “truth”. The retributivists hold a view that the doctrine of double effect which entails punishing the innocent and the guilty justifies the punishment of the unknown innocents as permissible on condition that it does not justify the intentional punishment of the identifiable innocents (Christopher, 2002:902).

2.5 CRIMINOLOGICAL THEORIES

The criminological theories have been included in this study since remand detainees are the clients of the criminal justice system and their detention is related to the allegation of crimes that they have been charged for. While they have to be presumed innocent for the crimes that they have been detained for, the population consists of the those that have a history of previous crimes including those that were previously convicted and sentenced.

The decision by the judicial officers to detain remand detainees is influenced by the consideration of the interest of justice factors during the bail application phase at either pre-trial phase or post-conviction phase. These factors include:

- Previous criminal history for determination of disposition to commit other offences;
- Seriousness of the offence with regard to nature and gravity;
- The nature and gravity of punishment which is likely to be imposed if the accused is convicted; and
- The declaration of previous convictions (Republic of South Africa, 1977: 71-72 & 75).

The inclusion of criminological theories in this chapter is based on the fact that preventive detention which is applied to remand detainees has a direct link to crime. Therefore, it becomes imperative to understand these theories. The theories that will be discussed are the systems theory, the Rational Choice Theory, the social structure theories and the social process theories.

2.5.1 SYSTEMS THEORY

Systems theories focus on the arrangement as well as the relationship between various parts which constitute a system referred to as whole. When relating a system to a department, one would imagine the branches, sections and units which are interrelated and interdependent. The system is defined by its elements that are presented as inputs, processes, outputs, and outcomes (Chikerere & Nwoka, 2015:1–3; Gordon 2022).

Hartje (1975:312, 319–324) describes the systems approach to criminal justice administration which was introduced by the congress for improving planning and administration in relation to the capturing, allocation and monitoring of cases from the office of the prosecutor. The reported crimes and the arrested persons were regarded as inputs and information on arrests was fed into the system referred to as Prosecutor’s Management Information System (PROMIS). The capabilities of PROMIS were:

- Receiving, sorting, classification, filing and storage of large amounts of information collected by police from arrest;
- Determining the importance of cases by using the following factors as the criteria:
 - Seriousness of crime based on the determination of such elements as extent of injury, value of the lost property and intimidation;
 - Seriousness of the criminal record of the accused with emphasis on the number and density of previous arrests;
 - The age of the case which was determined by calculating the number of postponements; and
 - The subjective determination of the probability to win the case;
- Provision of real time data with regard to the following:

- All case-related information relevant to the case registered in the system;
- Docket number, pending cases, and their statuses; and
- All cases in relation to the scheduled appearances of a particular police officer (Hartje, 1975:321–325).

The PROMIS was utilised in conjunction with the Justice System Interactive Model (JUSSIM) with the latter providing guidance in decision making regarding policy formulation and planning. The information management system elevated the management role of the prosecutor by including the following:

- Conducting research into the incidence of crime;
- Publishing patterns and trends in criminal activities;
- Determination of pressure points in courts in terms of congestion and delays; and
- Proposals for implementation of remedial actions (Hartje, 1975:313, 317, 342–343, 348).

Bernard, Paoline and Pare (2005:203) contend that criminal justice is a ‘system in the sense of general systems theory’. They provide a description of the systems theory of criminal justice. The elements of their theory are summarised as follows:

- The criminal justice system is a complex system with multiple layers and consists of inputs, processing and outputs;
- The components of the entire system which are police, courts and corrections must maintain equality between inputs and outputs;
- Offenders are processed as inputs as well as outputs of the next subsystem through forward and backward processing;
- The goal of the criminal justice system is to change offenders into non-offenders and ensuring of victim and public satisfaction;
- The system through processing its cases which are offenders, victims and the public generates completed and defective products;
- There is no consensus on how to achieve the completed products and this may be due to different objectives that are assigned to each subsystem;

- There are no criteria for assessing the completed or the defective products and all the agents within each subsystem apply an educated guess. This according to the researcher may be equated to the fact that in each subsystem the rules applied in processing cases are linked to the objectives of the subsystem;
- Upon determination that completion has been attained, the product is sent back to the external environment;
- Inadequate capacity to process cases generates backward pressure in the entire system;
- Defective products are regarded as ineffective and undesirable and may return to the system due to termination of processing before completion; and
- Defective products exit the system as outputs and return as inputs and therefore contribute in caseload creation (Bernard et al, 2005:205–207).

2.5.2 RATIONAL CHOICE THEORY

The Rational Choice Theory (RCT) is regarded as an expansion of the deterrence theory and incorporates several variables which apply to both potential offenders and victims (Brown, Esbensen & Geis, 2013:194–195). RCT operates from the premise that individuals apply rationality in thinking through decisions they make, and have the ability to differentiate between the means and the ends. As rational actors, individuals apply a strategy of cost-benefit analysis by determining the risks in relation to costs and benefits and when benefits are higher than the cost the ‘do it’ becomes a rational choice. The opposite applies when the cost appears to be higher than the benefits (Burke, 2009:50). The principles applicable to rational choice approach as construed from the perspective of the potential offender and the victim are as follows:

- The decision made as a choice is linked to preferred outcomes which may be goods, services or the state of being, and these may be arranged in a rank order of preference (Bridge, 2020:207; Bruinsma & Weisburd, 2014:4);
- Both benefits and costs may be monetary, emotional and social and are influenced by gathered information (Bruinsma & Weisburd, 2014:4);
- The cost–benefit analysis is applied when choosing to commit a crime or to obey the laws; (Bruinsma & Weisburd, 2014:2–6; Paternoster, Jaynes & Wilson, 2017:654);

- Readiness to offend is purposive behaviour influenced by the choice selected to meet the individual's goals and may include the type of crime, the targets, consideration for place, time and instruments or tools as well as opportunity and threat factors (Cornish & Clarke, 2003:58; Felson & Clarke, 1998:7; Siegel & Ziembo-Vogl, 2010:99–101);
- Personal and situational factors are considered when law-violating behaviour is selected in the pursuit of a certain goal (Siegel & Ziembo-Vogl, 2010:98);
- Choices are made as part of ongoing process since they are influenced by situational factors and information (Brown et al, 2013:195); and
- Abandonment of crime is driven by perceived consequences which may include fear of being caught, punishment and its consequences, as well as losing respect with subsequent endangerment of reputation (Bouffard, Exum, & Collins, 2010:405; Siegel & Ziembo-Vogl, 2010:100).

2.5.3 SOCIAL STRUCTURE THEORIES

The social structure theories operate from a premise that the determinants of patterns of criminal behaviour in lower-class areas are prevailing social and economic forces (Siegel & Ziembo-Vogl, 2010:182). The three theories that will be discussed are the social organisation, strain and culture deviance theories.

2.5.3.1 SOCIAL DISORGANISATION THEORY

The theory associates crime with social disorganisation which is a feature that predominates in neighbourhood and communities that are underdeveloped. The breakdown of social control is presented in the form of high unemployment, deterioration in housing, high school drop-out rate, low-income levels and large number of single household families. The factors that contribute to underdevelopment and deterioration are high rates of unemployment and poverty, lack of stability due to migration of the community to better areas and lack of external support and investments. Such communities and neighbourhoods tend to attract crimes and they become breeding areas for more criminals especially among the youth, due to deviant values that replace the acceptable conventional norms and values (Siegel & Ziembo-Vogl, 2010:182–184).

2.5.3.2 STRAIN THEORY

The strain theories hold the belief that people share similar values and goals and they all want material things such as money, house, home, car and nice clothes. Furthermore, people want to provide for their families including giving them education. Crime emerges as a result of the conflict between the goals of achieving and the means selected to realise the goals. The structural strain leads to the creation of anomic society i.e., the one where values, customs, and norms have broken down to the extent that social conditions drive the criminal behaviour. Inability to realise the goals may lead to anger, frustration and resentment and these constitute the strain associated with the emergence and sustenance of crime (Britannica, 2020; Thaxton & Agnew, 2018:48; Siegel & Ziembo-Vogl, 2010:191–197).

Aspiration for such cultural goals as material possession, symbols of status, accomplishment and esteem are part of social learning and criminal behaviour occurs when the institutionalised means for attaining the goals are negatively influenced by the social structure (Burke, 2009:120). Possible reaction to strain may lead to several adaptation strategies including conformity, retreatism and rebellion.

Conformity may be achieved by adhering to the institutional goals and the conventional ways of achieving them or dealing with the strain by abandoning the institutional goals and commitment to institutionalised means of realising goals. Retreatism prevails through the abandonment of conventional ways and the individual strain may be reflected through one's choice which may be drug addiction, school dropouts, and chronic alcoholism. Rebellion according to Merton reflects the rejection of both the socially approved means and goals and may lead to changing of the existing social system (Burke, 2009:122).

2.5.3.3 CULTURAL DEVIANCE THEORY

The theory constitutes the elements of both the social disorganisation and strain theories. The subcultures that emerge in the socially deprived and disorganised communities prevail and conflict with the institutionalised and conventional social norms. Furthermore, the norms become an institutionalised culture and passed to other generations through families, peers and occupational gatherings as well as religious activities. The subcultures develop new values referred to as focal concerns

which are embraced as fitting in the lower-class cultures. The values give rise to urban crime and include toughness, and violence. Toughness is equated with social power while violence may be utilised to acquire material wealth, control or humiliate others and disregard authority. The criminal careers that emerge in such subculture with deviant values include gangsterism, drug use and violent assaults, and the most affected people are the youth (Siegel & Ziembo-Vogl, 2010:183–204).

2.5.4 SOCIAL PROCESS THEORIES

Criminality is viewed by the social process theories as a function of the interaction of people with organisations, institutions and processes in society (Siegel & Ziembo-Vogl, 2010:238). The social process theories that will be discussed are social learning, social control and social reaction theories.

2.5.4.1 Social learning theory

Social learning theorists advocate for a position that ‘people learn how to commit crime’ (Siegel & Ziembo-Vogl, 2010:238). The theories that will be discussed are differential association and differential reinforcement.

2.5.4.1.1 Differential association

This social learning theory can be traced to the work of Sutherland who came up with nine propositions. The latter have been integrated and summarised as follows:

- Criminal behaviour occurs within intimate groups and is learned in interaction with other persons;
- Learning includes techniques of committing crime which vary from simple to very complicated;
- Learning entails specific direction of motives, drives, rationalisations and attitudes;
- Learning on the direction of motives and drives is linked to legal codes which are defined as either favourable or unfavourable;
- An individual becomes delinquent because of learning more about the definitions that favour violation of law over the definitions that are unfavourable to violations; and

- Differential association may vary in frequency, duration, priority and intensity (Brown et al, 2010:277; Piquero, 2016:230–231; Siegel & Ziembo-Vogl, 2010:220; Walsh, undated:144–145).

The chances of committing a criminal/deviant act are highly correlated with the increase in learning definitions that favour the violation of law. The term definitions refer to a compendium of dimensions which are summarised as follows:

- Attitudes, values and orientations considered by individuals as either good or bad, right or wrong, desirable or undesirable, appropriate or inappropriate, justifiable or unjustifiable;
- The definitions whether favourable or unfavourable in relation to crime and deviant acts can be applied in generic terms or to a specific behaviour or a situation; and
- The definitions may be expressed in positive manner though they constitute deviance or criminal act (Piquero, 2016:230 & 233).

Burgess and Akers revised the principles of Sutherland by reformulating the list and the revision includes the following:

- The principal part of learning of criminal behaviour occurs in groups consisting of major reinforcements;
- The learning of criminal behaviours including techniques, attitudes and avoidance procedures is a function of effective and available reinforcers as well as existing reinforcement contingencies; and
- Criminal behaviour is a function of norms which are discriminative for criminal behaviour and learning takes place when such behaviour is more highly reinforced than non-criminal behaviour (Piquero, 2016:231–232).

Differential association as articulated in the Akers social learning theory is one of the elements that contribute in shaping behaviour. Other elements are definitions, differential reinforcement; and imitation. The latter refers to imitation of criminal or deviant models and the reinforcement incurred due to lack of punishment. Akers's theory expanded differential association by expressing the importance of the interaction with others in peer group settings such as neighbours, churches, school

teachers, legal and authority figures as well as the virtual groups and the process of social learning that occurs in the context of social interaction (Brown et al, 2010:283; Piquero, 2016:231–232 & 234).

2.5.4.1.2 Differential reinforcement

Differential reinforcement is explained both as a theory of social learning and the element of social learning theory advocated by Akers (Brown et al, 2010:283; Piquero, 2016:232; Siegel & Ziembo-Vogl, 2010:231–232).

Differential reinforcement constitutes perceived, anticipated or actual consequences of engaging in a certain behaviour which may be in the form of a reward or punishment. People tend to assign more value to rewarded behaviours than punished behaviours. High reinforcement is common in frequently rewarded behaviours and this may result in frequent occurrence of such behaviours regardless of whether they are deviant or not (Akers & Jennings, 2015:233; Piquero, 2016:233; Siegel & Ziembo-Vogl, 2010:231–220).

2.5.4.2 Social control theory

Social control theories uphold that people have a potential of being criminals and the attachment that people have towards the society influences the commitment to conventional actions. While the society has multiple opportunities for illegal activities, the strong moral sense may play a role in preventing people from committing actions that violate others and breaching of the social norms (Siegel & Ziembo-Vogl, 2010:226, 238).

The social bond theory of Hirschi equates the weakening of ties that bind people to society to the onset of criminality as there will be no fear regarding the damaged relationships with friends, parents, neighbours, teachers and employers. The four elements that assist a person to maintain the social bond with the society are attachment, commitment, involvement and belief. Attachment to family, friends and community contributes to the acceptance of social norms and the development of social conscience. Attachment entails sensitivity that the person has towards the interest of others. Building a strong commitment to conventional values is associated with conventional actions in the pursuit of one's future, career, success and personal

goals. Involvement in community activities such as school activities, sports, social clubs and religious groups preoccupies one's time with conventional activities and therefore diminishes the opportunity for engagement in criminal behaviour. Belief in common values which are shared among the group creates sensitivity to the rights of others and the absence of such beliefs may motivate people to engage in antisocial and illegal acts (Brown et al, 2010:301–303; Siegel & Ziembo-Vogl, 2010:227; Walsh, undated:149–150).

2.5.4.3 Social reaction/labelling theory

Burke (2009:167–168), reckons that 'certain people and groups are more likely to attract deviant, criminal and stigmatising labels'. The labelling theorists argue that labels given to people in the society tend to promote certain behaviours. Those labelled as criminals and ex-offenders may lock themselves into the life of crime thus promoting criminality. Furthermore, they believe that there is no behaviour that is inherently deviant or criminal; it is labelled as such after the act has been committed. Labelled individuals are treated differently from the unlabelled people as such they are isolated and handled with suspicion. Labelling in the criminal justice is applied mainly to people from poor socio-economic backgrounds and this may be equated with the discretionary powers applied in arrests (Siegel, 2000; Siegel & Ziembo-Vogl, 2010:233, 238). Labelling is influenced by criminalisation of behaviours through legal codes (Greer & Reiner, 2013:1).

Wickert (2022) and Walsh (undated:153), make a distinction between primary and secondary deviance. The former is regarded as a criminal act and the latter is classified as the criminal career (Siegel & Ziembo-Vogl, 2010:234). Primary deviance is recognised as undesirable however it does not attract reaction that leads to stigmatisation and attachment of labels. Secondary deviance on the other hand may be influenced by the reaction to the primary deviant behaviour.

2.6 LIMITATIONS OF THE THEORIES OF PUNISHMENT AND CRIMINOLOGICAL THEORIES

2.6.1 THEORIES OF PUNISHMENT

Deontological theories are criticised for lacking the resources to constrain the growth of carceral state while they excluded the cost implication of punishment. They tend

to have what is referred to as punishment maximalism and this may lead to mass incarceration. The latter as a deontological response to crime seriously wrecks the lives of millions of people and places extraordinary costs on people, which includes violation of principles of justice that protects individual rights (Chiao, 2015:3 & 23).

Mass incarceration may appear to be permissible under certain circumstances according to the proponents of deontological theories however, it is criticised as an ineffective and ill-advised public policy. Prosecutorial decisions, though not given much attention, have more influence on incarceration rates than actual crime rates (Chiao, 2015:14 &16; Kirk & Wakefield, 2018:187).

The notion that incapacitation in the form of imprisonment restrains offenders from engaging in criminal activities may not be applied as a universal position since there are crimes committed by inmates while they are in detention. Punishment such as incarceration may increase the level of crime instead preventing it and this is reflected in crimes committed during incarceration and reoffending or recidivism rates (Cahill, 2010:17). There are no studies that reflect the deterrent effect of imprisonment.

Incapacitation applied in preventive detention using the test for determination of dangerousness has been challenged by the defendants for being unconstitutionally vague and likely to generate inaccuracies based on discretion applied (Walen, 2011:291).

Retributivists are criticised for excluding prison conditions in their theories including how punishment degrades offenders while making strong articulation regarding what prisoners are owed, what the function of punishment is and what rights are protected by punishment (Flanders, 2010:97).

Retributivists adopt a notion that the prerequisites for deserved punishment should be satisfied to inflict punishment and the criticism for this view is that it is expensive to investigate and establish proof on all the desert-related facts (Kolber, 2018:500). The desert-based sentencing model has been criticised for overreach of punitive policies since it leads to imposition of severe punishments (Van Stokkom, 2017). The desert-

based theories are further criticised for being opaque as they are influenced by several factors cloaked under moral judgement such as racial bias, fear, and disgust when applying the sentence. Punishment is further regarded as ‘incompletely just’ because of the following reasons:

- There is no theory that can completely account for all instances of punishment;
- Imposed penalties are not explainable using available theories;
- Criminal behaviour appears to be exacerbated by the penal practices; and
- Penalties impose cost and will never completely eradicate the damage of crime (Ristroph, 2006:1293, 1296, & 1351–1352).

While the retributivists expect the state to be the author and the guarantor of criminal law, low detection, conviction and incarceration rates have a negative impact on the effectiveness of the criminal sanctions designed to achieve rehabilitation or incapacitation. This may lead to lack of respect for the criminal justice system (Duff & Hoskins, 2017:11; Frase, 2005:79; Kennedy, 1983:7).

Duff’s theory of communication which is linked with moral rehabilitation may not be applied to categories of inmates detained under preventive detention legislation such as remand detainees because these inmates are presumed innocent (Cochrane, 2015:21). Detention of such category of inmates in most overcrowded and inhumane conditions should be regarded as punishment. The communicative aspect which is meant to persuade offenders to repent, reform and achieve reconciliation cannot be applied to those detained under preventive detention laws (Cochrane, 2015:21). The assumption that punishment plays a communicative role cannot be applied to all the categories of inmates such as the psychopaths and those that are mentally ill (Cochrane, 2015:5). There is lack of trust on the effectiveness of rehabilitation in a large authoritarian institution which is characterised by bureaucracy (Cochrane, 2015:2).

Deterrence theory is criticised for lack of empirical evidence since the deterrent effect is dependent on punishment certainty and the understanding of punishment by

the potential offender (Patenoster, 2010:776). Criminal laws may exist but if they are unknown to the potential offender the deterrent effect cannot be established.

The theories of punishment are criticised for giving less attention to the victim by ensuring their security therefore incorporating victimology in the theories of punishment will be regarded as giving justice to the victims and their families (Shelke, & Dharm 2019:1299 & 1301).

2.6.2 CRIMINOLOGICAL THEORIES

2.6.2.1 SYSTEMS THEORY

The systems approach to criminal justice through PROMIS and JUSSIM described by Hartje (1975) may be classified as an electronic information management system than a theory since the system operates as a tool for receiving sorting, classifying filing and storage of information from one central point which is the prosecutor's officer. The theory reduces the criminal justice system to a processing machine with disregard for the role of the decision makers within the system (Hartje, 1975:352).

The systems theory of criminal justice described by Bernard et al (2005), advocates for a self-correcting process in relation to defective products, however the strategies implemented for self-correcting are not explained. The system as described cannot eliminate the creation of backlogs since each stage has less processing capacity than the stage before it (Bernard et al, 2005:206).

When applying the theory to the DCS, termination of processing which occurs within three months of detention (reflected as non-return from court), may not be qualified as the return of defective products. The factor of premature arrest may be equated to the creation of offenders and dissatisfied victims and public, thus contributing to the creation of defective products. Backlogs created due to inadequate processing capacity of the outputs from police contributes to overcrowding of remand detainees in corrections. Furthermore, the creation of the defective products that exit the system as outputs and re-enter as inputs is unavoidable since there is no mechanism for determination of completed product in relation to the release of unsentenced and sentenced inmates.

The release into the external environment may be in the form of placement of remand detainees under non-custodial system and offenders on parole and re-entry into the system may be due to breach of bail or parole conditions or repeat offending. The public outcry and the negative media coverage that may follow, lead to blaming of the criminal justices system agents at different subsystem levels and this may lead to cautiousness in releasing inmates. The avoidance of blame may contribute to the reduction of outputs which are sent back into the external environment and thus contributing to overcrowding.

2.6.2.2 RATIONAL CHOICE THEORY

Rational choice theory is criticised for the assumption of rationality in decision making which is based on cost-benefit analysis. Limited rationality prevails in certain situations and decisions made may be regarded as stupid and emotional reactions. Some decisions may be based on false information and short-sighted goals with little consideration of risk implications (Burns & Roszkowska, 2016:205; Felson & Clarke, 1998:7).

2.6.2.3 SOCIAL STRUCTURE THEORIES

The theories of social structure that equate poverty and limited opportunities with high rate of criminal behaviour have been criticised since the assumption has not been proven to be a pervasive feature among most people that stay in such communities (Merton, 1938:681). The equation of ecology and crime rates as upheld by social disorganisation theorists based on police crime statistics, may be influenced by the discretionary powers of arrests and policing (Siegel & Ziembo-Vogl, 2010:186).

The association of criminal acts and deviant behaviour by social disorganisation and culture deviant theorists with social ecology, and anomie may be influenced by the arrests rates and the profile of those imprisoned. Furthermore, there is disregard for all the unknown cases that are reported and never processed. These cases may give a picture on the expansiveness of crime and criminal acts.

2.6.2.4 SOCIAL PROCESS THEORIES

The labelling theory has been criticised for enforcement of criminal behaviour and stigmatisation which may lead to difficulties in securing employment. Furthermore, negative labelling leads to creation of social outcasts (Siegel & Ziembo-Vogl, 2010:231–232; Walsh, undated:153). Labelling of released offenders by treating them as suspects in relation to certain crimes, may contribute to regression into criminal behaviour. Subsequent arrests of labelled people may lead to imprisonment as a form of incapacitation and this contributes to overcrowding.

The differential association theory is criticised for not providing an explanation on the emergence of all forms of crime (Maloku, 2020:177).

2.7 HISTORY OF OVERCROWDING IN SOUTH AFRICA

Overcrowding in South Africa is not a new phenomenon as it can be traced back to the colonial, apartheid and the democratic periods. During the colonial period, the colony of Natal experienced overcrowding due to imprisonment related to the breach of social control policies and the wars that erupted from time to time. Though imprisonment was an acceptable penal practice it was a least preferred method since it was regarded as humane and the ‘European style of corrections’. The favoured method of punishment entailed corporal punishment and forced labour. The latter yielded economic benefits for the farmers (Peté, 2006, 430; Peté, 2015:105–108).

The breach of social control policies continued to the apartheid era and the recorded overcrowding from the 1980s was also due to imprisonment for petty offences. The imprisoned population included those that were awaiting trial. The term ‘bursting at the seams’ was utilised to describe the level of overcrowding by one of the newspapers in 1983 (Peté, 2015:21, 26, 31). The discussions on using corporal punishment as form of punishment to reduce imprisonment and subsequent overcrowding emerged during the era but there is no evidence that suggests that this form of punishment was eventually applied (Peté, 2015:39).

Post 1994 i.e., in 1997, the South African parliament responded to the call on tightening of the response to crime by introducing a mandatory minimum sentences legislation which led to the increase in the number of offenders given life sentences

(Cameron, 2021). The preventive detention of remand detainees with indefinite length of detention which may range from more than a day to more than five years continues to burden corrections.

When applying the systems theory of criminal justice (Bernard et al, 2005), preventive detention of remand detainees generates inputs (admissions from court) and outputs (release for court appearance) on a regular basis. The processing of cases by corrections is limited to detention responsibility till the next court appearance date unless the remand detainee is detained with an option of bail and pays bail before the next court appearance date. Outputs generated through the bail payment option are difficult to qualify as benefits to corrections since they are replaced by inputs in the form of daily admissions. The processing responsibility which entails monitoring of the period spent in detention has revealed that there is a delay in forward processing of the cases as some of the remand detainees stay in corrections for a period longer than a year. Overcrowding of remand detainees is a constant feature in corrections which can be attributed to regular admissions and the delays in processing of cases.

2.8 CROWDING AS AN OUTCOME OF INCAPACITATION

Gaes (1994:4) defines crowding as a ratio of inmates to its rated capacity. The latter refers to the highest number of inmates that can be accommodated in a facility while providing the minimum level of safety and services (Bleich, 1989:1140). The rated capacity is not a universal figure as it is influenced by the operations of the facility, as well as the infrastructure. It appears that the rated capacity allows for building tolerance levels for crowding which may be above or below the design capacity. The government of Western Australia (2016:37) defines design capacity as:

‘The number of prisoners a facility was designed to house, whether in single cells, or in appropriately designed multiple-occupancy cells. Design capacity includes accommodation that existed when the prison was first commissioned and any new accommodation units’.

The design capacity which is equated with the architectural design of the prison facility is an ideal figure to be utilised for monitoring prison occupancy including overcrowding. However, the increase in inmate population places enormous pressure on states, as such a response for managing the risk of overcrowding has given rise to

the development of tolerance levels. The latter gave rise to the concept “rated capacity” which refers to the highest number of inmates that can be detained in a facility without compromising the levels of safety and services (Bleich, 1989:1140; Harding, 1987).

The determination of space per cell is included in the calculation of the design capacity for each detention facility. The design capacity is determined before the detention facility is constructed and refers to ‘the total number of prisoners a prison can accommodate while respecting minimum requirements, specified beforehand, in terms of floor space per prisoner or group of prisoners including the accommodation space’ (UNODC, 2013:182). On the other hand, the operational capacity is defined as the total number of persons who can be safely and humanely accommodated in a prison at any time and this figure fluctuates over time based on changes made in the detention facility (UNODC, 2013:8).

The added feature in the measurement of overcrowding is the prison conditions which are defined in relation to such dimensions as exercise, adequate accommodation, nutrition, reading material, medical treatment, natural light, fresh air and ventilation in compliance with basic sanitary and hygienic requirements and basic human needs such as shelter and clothing (ARC Foundation, 2019; Centre for Constitutional Rights and the National Lawyers Guild, 2010:39; Council of Europe, 2018:9; RSA, 1996:36).

Other factors for consideration when using the term crowding include the subjective experience of inadequate space, levels of density which are apathetic, and their negative effects; the space and number of inmates housed per cell, misconduct equated to pains or deprivations of inmates, and several categories of capacities such as design or official capacity, rated capacity and operational capacity (Bleich, 1989:1138–1140; Cox et al, 1984:1148; Franklin, Franklin & Pratt, 2006:402; Jon-Nwakalo, undated:14; Marco & Garcia-Guerrero, 2020:94; Stokols, 1972:276).

The subjective experience presented as negative effects may include cognitive strain, anxiety, fear and frustration. The levels of density i.e., spatial and social are influenced by the movements of inmates (Cox et al, 1984:1148). Internal factors

within the corrections environment which can be attributed to crowding related to spatial and social density especially in larger facilities, include the following:

- Admissions and releases process for remand detainees;
- Court appearances;
- Attendance of rehabilitation programmes and labour activities assigned to sentenced offenders;
- Family days; and
- Maintenance work in housing units.

Admissions and release processes, as well as maintenance of housing units lead to increased density in certain areas within the correctional facilities while court attendance and family days provides a temporary relief by reducing congestion related to spatial and social density.

External factors include arrests of large numbers of people who are sent for detention in correctional facilities and epidemics which lead to creation of new crimes and arrests that take place to ensure compliance as a protective measure applied by the state (RSA, 2020:16 and SAPS, 2020). These factors may lead to crisis overcrowding which manifests as sudden and rapid increase in the population of inmates (UNODC, 2013:33–34).

Crowding in corrections environment is considered to be a sticky issue and critical since it is a determinant for construction of additional detention facilities and the latter may be regarded as a gravitation from retributivism to utilitarianism. Crowded conditions are regarded as cruel and unusual punishment which is burdensome to the inmates. While the concept is not clearly defined, the criteria for cruel and unusual punishment requires that negative effects such as impaired health or violence should be demonstrated to support the claim (Cox, Paulos & McCain, 1984:1148 & 1150; Jon-Nwakalo, 2018:30).

The United States Constitution through the Eight Amendment prohibits ‘cruel and unusual punishment’ and the phrase applies to proportionality in sentencing and conditions of imprisonment including overcrowding (Legal Information Institute,

undated). The South African Constitution through the Bill of Rights provides for the rights of the detained, and these include ‘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’ (RSA, 1996:28).

According to Bleich (1989:1144), the court definition of overcrowding has not assisted in providing clarity on what constitute overcrowding because the detention facilities that were found to have acceptable confinement condition did not differ much from those found to have unacceptable conditions.

The perception that overcrowding impacts on inmate conduct has not been supported by any empirical evidence. The misbehaviours of inmates in term of the administrative control model have been found to be associated with shortage of correctional officials and poor managerial skills which may be related to inadequate training (Franklin et al, 2006:408; Glazener, 2016:50).

The deterrent effects of imprisonment may be influenced by the social circumstances of individual inmates regardless of the crowding levels of the detention facilities such as the family ties and homelessness. The deprivation pains associated with imprisonment such as the deprivation of liberty, goods and services, heterosexual relationships, autonomy and security may be insignificant to inmates with no social bonds in the community (Windzio, 2006:358).

2.8.1 BENEFITS OF CROWDING

Crowding has been utilised in the corrections environment as a strong factor for lobbying for additional funding because of rising operational costs and to put corrective measures by building more facilities in response to litigation cases on the grounds of cruel and unusual punishment (Bleich, 1989:1158–1160).

2.8.2 DISADVANTAGES OF CROWDING

Correctional administrators have been criticised for using crowding as a justification for limiting the movements of inmates to common places including justification for

such occurrences as rapes, riots, hostage taking and assaults (Bleich, 1989:1158–1160).

Equating a myriad of challenges experienced in corrections to overcrowding such as riots, and fights has led to misdirection of funding and this results in failure to diagnose real problems for provision of effective solutions. Issues of concern that have been found to be of interest to the inmates are the increase of parole revocations, idleness which may be related to the inadequate opportunities for engaging inmates in meaningful activities and failure to control violence. The factors that contribute to violence include gang confrontation, drug trafficking and arguments over theft of valued possessions. The option of litigating the state due to overcrowding is utilised by inmates as a strategy to harass administration as well as to test the opportunities for settling out of court (Bleich, 1989:1172; 1177–1178; Gaes, 1994:22).

The increase in the entry of contrabands in the corrections environment may also contribute to deviant behaviours among inmates as the laxity in security in the form of inadequate searches and uncontrolled movements are observed by the inmates. Instead of focusing on improving security measures and administrative management of the centre, the likelihood of associating the unruly behaviour with overcrowding is inevitable.

2.8.3 MANAGEMENT OF OVERCROWDING

The supporters of prison expansion have used crowding to lobby for building of new detention facilities, however this decision is taken based on the management of crowding reported by the corrections administrators. The prison reformers have looked at crowding from a different angle hence they introduced the concept of selective incapacitation. The latter suggests that the correctional cells should be reserved for the high-risk and dangerous inmates taking into consideration the scarcity of resources. The rhetoric of ‘tough on crimes’ tends to operate against the concept of selective incapacitation since the imprisoned population would constitute of poor and marginalised charged with petty and non-violent crimes. Prison reformers have advocated for alternatives to imprisonment hence the emergence of

the concept decarceration for the low risk or non-dangerous offenders (Bleich, 1989:1163–1168; UNODC, 2013:25; Visher, 1987:539).

The utilitarian model contributes to the containment of crowding through the introduction of such supervisory sanctions as probation, parole, intensive supervision with random drug and alcohol testing for some category of inmates and judicial rehabilitation. The latter is regarded as the restoration of right to offenders for promoting social reintegration (Loughran, Pogarsky, Piquero & Paternoster, 2012:714–715; Meijer et al, 2019:10). Reformers contribute to the preventive detention of remand detainees by promoting the use bail and placing of the statutory cap in the length of detention (Hans-Jörg, 2016:110; Stevenson & Mayson 2017:21).

Managing overcrowding through building new facilities may be necessary to replace the aging infrastructure however it may be necessary to analyse crime and imprisonment rates since the latter may be due to the country's response to crime through its criminal justice system statutes. The improvements in the pre-trial system should focus more on systems to maximize court appearances than instituting incapacitation for promoting court appearance. While the risk assessment has been introduced to determine risks as crime prevention and containment strategy, it should be utilised with wariness and transparency (Hoskins, 2019:1; Stevenson & Mayson 2017:46–47; UNODC, 2013:34–35).

Siegel and Ziembo-Vogl (2010:117) contend that incapacitation through imprisonment does not reduce crime, especially when it has been proven that 'money can be made from criminal activity'. The gap created by imprisonment of the experienced criminals who made money from crime is filled by the competitors who felt suppressed and this suggests that imprisonment can generate opportunities for crime.

2.9 CONTEXTUALISATION OF THE THEORIES OF PUNISHMENT TO THE RESEARCH ON OVERCROWDING

The desert-based and non-utilitarian theories of punishment which describe punitive and preventive detention contribute to the topic of overcrowding in the corrections environment. The use of incapacitation to institute legal punishment has a direct

influence in the number of inmates detained in correctional facilities. Preventive detention which constitutes incapacitation through imprisonment of remand detainees is regarded as ‘an acceptable function in criminal law’ (Sampsell-Jones, 2010). Factors that drive the use of imprisonment for remand detainees include prevention of future crimes, protection of the public from any foreseeable harm, control of dangerousness and protection of some remand detainees from the public that has a desire to revenge and the past acts are taken into consideration (Kitai-Sangero, 2008:904; Robinson, 2001:1429, 1433 & 1434; Sampsell-Jones, 2010:723, 728 & 755).

The establishment and further developments in both the traditional and modern theorists of punishment have made significant contributions in shaping the criminal justice system. The institution of punishment as understood through various philosophers makes it clear that the controls expressed through punishment by the legal system form part of the political system of the countries for ensuring that the rights of the citizens which include the wrongdoers and the victims are equally protected.

There are moral wrongdoings which are value based and defined within each society, administrative wrongdoings which can be equated to breaches in policies and legal frameworks and wrongdoings which are classified as crimes or criminal acts. The latter have been clearly defined in the criminal justice and penological systems of various countries and give the role players within these systems the authority to act.

The system of punishment creates two possibilities which are placement under the custodial system through incapacitation and placement under the non-custodial system as a form of social rehabilitation. While defining who qualifies to be placed under each of these systems, how long a person should be placed, and what the roles of the criminal justice system are, it is critically important for the society, as part of the political system, to be sensitive of their role as taxpayers in shaping the penal system through the influence they make either directly or indirectly regarding how incarceration should be executed. The prison as a critical role player in the facilitating punishment is regarded as the black box by Kerr (2019:86) since there is no reference to it in the theories of punishment.

The trend to criminalise certain administrative acts which could not be managed effectively under the system of public law and the recommendations for longer periods of detention for preventive and punitive detention will always undermine the efforts that are already in place for curbing overcrowding. The desert-based theories which emphasise just punishment and the utilitarian theories that are forward-looking, all do not reflect a balance that should be considered when applying the principles of punishment in an economically restrained environment. The questions that require unpacking in the field of criminal justice are:

- How is overcrowding catered for in theories of punishment as a by-product of punitive and preventive detention?
- How is the concept of judicial rehabilitation which entails expungement of criminal records embraced within the criminal justice and the society to contribute to social reintegration so that people with prior criminal records can enjoy the benefits of entering the zone of the so-called “law-abiding citizens”?
- How will the balance be created to ensure that punishment certainty is enforced in serious crimes?

2.10 RELATIONSHIP BETWEEN THEORIES OF PUNISHMENT AND THE SOUTH AFRICAN JURISPRUDENCE

With regard to legal punishment, the criminal justice system of South Africa abolished the extreme form of punishment i.e., death penalty, to align its system of legal punishment with section 12 of the Constitution of the RSA which provides that ‘everyone has the right to life’ (RSA, 1996:12). This implies that imprisonment becomes a severe and harsh punishment for certain categories of crimes.

Section 35 of the Constitution (RSA, 1996:36) makes provision for arrested, detained and accused persons. The provisions include rights 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;

- Choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
- To have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- Be presumed innocent, to remain silent, and not to testify during the proceedings; and
- Not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;

The pre-trial detention which constitutes preventive detention allows for bail application and the remand detainees may reopen the bail application process at any stage of trial. The heads of the correctional facilities or the remand detainees with bail may apply to court for review of bail. The former may approach the court when the prison population has reached such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused (RSA, 1977:43 & 44).

Preventive detention as the criminal justice policy may be regarded as punitive when factors such as poverty and lack of social support determines who gets imprisoned. This may be reflected in the profile of inmates which will be overrepresented by poor and marginalised and charged with petty and non-violent crimes (UNODC, 2013:25).

The categories that are detained based on preventive detention are mainly remand detainees and illegal foreign nationals however the latter are no longer detained by the DCS since the end of 2016/17 financial year. The remand detainee population includes those remanded under the Extradition Act 67 of 1962 (RSA, 1962) and the forensic cases (RSA, 1977:52–58). The forensic cases consist of two categories i.e., the observation cases and state patients waiting for beds in mental health establishments (DCS, 2014:24; RSA, 1977:22, 29–31, 37–39 & 43–44).

With regard to punitive detention, the legal punishment is meted in the form of custodial and non-custodial sentences which are provided for in a myriad of

legislation including the Criminal Procedure Act 51 of 1977 (RSA, 1977) and the Child Justice Act 75 of 2008 (RSA, 2008).

There is an increase in the generation of new crimes which are expressed in the Bills and passed laws. The sanctions prescribed in relation to the crimes range from fines to imprisonment. The laws and the Bills are published in the government website and those that have generated criminal offences include:

- Political Funding Act 6 of 2018 (RSA, 2018:16);
- National Qualifications Framework Amendment Act 12 of 2019 (RSA, 2019:10);
- Public Administration Management Act 11 of 2014 (RSA, 2014:14)
- National Credit Act 7 of 2019 (RSA, 2019:35); and
- Cybercrimes and Cybersecurity Bill 6 of 2017 (RSA, 2017:31, 33, 37, 38, 41, 43, 48, 60–61 & 67).

When looking at the themes that emerge from the theories of punishment which include wrongdoing, suffering or harm to the victim and the society, subjecting of the wrongdoer to punishment, determination of the responsibility of the offender with regard to the evil done, blameworthiness, principles of right and good, sanctions that are proportionate to the crimes and deserved by the offender, fairness and protection of the innocent, it becomes clear that the institutions that have authority to deliver the deserved justice should be principled and guided by the legitimate policies of the country. The responsibilities of the system should include:

- Ensuring that the citizens are constantly informed of the wrongdoings which are classified as criminal acts;
- Ensuring that the wrongdoers are subjected to the legal processes that will make them to account for their wrongdoing;
- Ensuring that the principles of rights and their limitations are communicated to the society or public;
- Ensuring that the sanctions are instituted in accordance with the seriousness of crime(s) and the harm done to the victim and the society;
- Ensuring that the criminal justice system develops the principle for identification and protecting the so-called “innocent”;

- Ensuring that the use of imprisonment as one of the sanctions is preferred based on a myriad of factors; and
- Ensuring that the principles of fairness are always applied.

2.11 CONCLUSION

This chapter focused on conceptualisation of punishment, theories of punishment and criminological theories, factors to be considered when instituting punishment including imprisonment, the limitations of the theories described in this chapter, crowding as an outcome of incapacitation, contextualisation of the theories of punishment to research on overcrowding; and relationship between theories of punishment and the South African Jurisprudence. The next chapter will reflect an international overview of overcrowding in the corrections environment.

CHAPTER THREE

AN INTERNATIONAL OVERVIEW OF OVERCROWDING IN THE CORRECTIONS ENVIRONMENT

3.1 INTRODUCTION

In this chapter contextualisation of overcrowding as a wicked problem and general concepts applied when referring to overcrowding will be explained. Other areas covered are measurement of overcrowding, international and regional human rights instruments and guidelines; drivers and causes of the increase in corrections population, effects of imprisonment and overcrowding, cost of imprisonment, strategies and reforms to manage overcrowding and trends in corrections population.

Reference will be made to certain states in the United States of America, selected European countries, some Australian states and territories, and selected African countries. The selection of the countries was informed by analysis of literature obtained through research on overcrowding and related areas in general, but also concerning pre-trial and remand detention in particular.

3.2 OVERCROWDING AS A WICKED PROBLEM

Overcrowding in the corrections environment should be contextualised as a wicked problem created through the implementation of country strategies for dealing with another societal wicked problem called ‘crime’. Euphemia (2020) defines a wicked problem as ‘a social or cultural problem that’s difficult or impossible to solve because of its complex and interconnected nature’. Wicked problems are described as:

- Multifaceted and multidimensional;
- Have layers of challenges;
- Have multiple interests and differing values of stakeholders;
- Are complex, unpredictable, open ended, persistent and stubborn;
- Difficult to control;
- Appear to be resistant to solution;
- Conclusive solutions are non-existent; and

- Each wicked problem is a symptom of another problem (Head & Alford, 2015:714; Rittel & Webber, 1973:162, 163–164).

Different value perspectives upheld by stakeholders with multiple interests when dealing with wicked problems such as crime operate against consensus formation. Furthermore, the gap in reliable knowledge can complicate the situation (Head & Alford, 2015:716). The characteristic cited by Rittel and Webber (1973) may be regarded as ‘free standing attributes’ of a public policy and therefore can be utilised to create an understanding of the wicked problem such as ‘overcrowding’ (Peters, 2017:390). Overcrowding as an outcome of policy responses for dealing with crime at both the front-end and the back-end of the criminal justice system requires a collaborative approach which is inclusive of various role players. Contextual understanding of overcrowding in relation to the criminal justice system processes is crucial.

Anagnostou and Skleparis (2017:67), concede that ‘tackling prison overcrowding and inhumane conditions of imprisonment is an exceedingly complex, time-consuming, and demanding process, which cannot be carried out by legislative reform alone’. The European Committee on Crime Problems (CDPC) organised a conference in 2019 on ‘Responses to Prison Overcrowding’. Of the key messages and conclusions, the position upheld is that ‘reducing overcrowding in prisons is a shared responsibility of prosecutors, judges, prison and probation services and the members of government responsible for the prison service’ (Council of Europe, 2019:1).

3.3 GENERAL CONCEPTS APPLIED WHEN REFERRING TO OVERCROWDING

The concepts utilised when referring to overcrowding are crowding, mass incarceration and decarceration. The concept of “crowding” has already been explained in Chapter 2; therefore, it will not be discussed in this chapter. It is usually defined as ‘the ratio of the number of inmates in a prison [correctional centres] to its rated capacity’ (Gaes, undated:4).

3.3.1 MASS INCARCERATION

The concept is utilised to describe the approach by United States of America to crime and punishment based on the analysis of its prison population rate as compared to other countries (Leipold, 2019:1580). Mass incarceration is equated with racial disparity where blacks have a higher representation in prisons than other racial groups (Kreager & Kruttschnitt, 2018:264). The reformers who advocate against mass incarceration are faced with resistance from the beneficiaries of mass incarceration who oppose such efforts as closure of prisons, sentence reforms and increase in opportunities for early release. The beneficiaries include correctional officials and their unions, offender advocacy groups, politicians who utilise crime issues as a basis for their elections, correctional vendors, the legal representatives of inmates, religious groups and the businesses that benefit from the prison industry including the managers of private prisons (Eisenberg, 2016:101; Hickman, 2007).

3.3.2 DECARCERATION

The concept entails ending of suffering created by the system of imprisonment on American families and communities (Drucker, 2016). It is defined as follows:

'a government policy of reducing either the number of persons imprisoned or the rate of imprisonment in a given jurisdiction. It may also be described as the process of removing people from institutions such as prisons or mental hospitals. It is the opposite of incarceration' (USLegal.com, undated).

The decarceration model focuses on determination of the forces that led to the high rate in the use of incarceration. It also entails an integrated approach which involves prosecutors, police, defence counsel and elected officials at the local level to implement strategies aimed at shifting cases out of the conventional criminal courts. The approach operates in specialised courts which include drug courts, mental health courts, veterans' courts and re-entry courts in the United States of America. The model ran on an experimental basis as follows:

'Without requiring legislative repeal of particular criminal statutes, these courts provide a venue for suspending or dropping criminal charges in drug cases, a range of misdemeanour cases, and, in some instances, even in cases involving more serious felony charges as well as in a range of matters involving mentally ill offenders and veterans. A decarceration approach seeks to locate an alternative for

responding to these matters, and then when the courts have obtained a certain measure of broad-based support, legislators are able to enact statutes that legitimise and institutionalise the decarceration regime’ (McLeod, 2012:1587, 1632 & 1637).

3.4 MEASUREMENT OF OVERCROWDING

Overcrowding is measured differently using two elements which are the total number of inmates and the approved bed space. The latter is utilised for determination of the capacity. Each country has its own system of calculating the capacity and the common unit of analysis is the cell. The cells mostly utilised are the accommodation cells and special cells utilised for detaining certain categories of inmates such as the disciplinary, security, isolation or segregation cells (Council of Europe, 2015:2).

There are permissible square metres or square feet utilised for each individual inmate in either single, double or communal cells. The sum of all the cell calculations is utilised for the determination of a facility bed space. Concepts utilised in bed space management have already been explained in Chapter 2 and are design capacity and rated capacity. The concepts will be further unpacked for providing information on how some countries apply the concepts. In terms of the European Prison Rules, the determination of maximum capacity level should be determined for all the prisons (Council of Europe, 2006:47).

3.4.1 DESIGN AND CAPACITY BED SPACES

The government of Western Australia (2016:37) defines design capacity as:

‘the number of prisoners a facility was designed to house, whether in single cells, or in appropriately designed multiple-occupancy cells. Design capacity includes accommodation that existed when the prison was first commissioned and any new accommodation units’.

The design bed space which is equated with the architectural design of the prison facility is an ideal figure to be utilised for monitoring prison occupancy including overcrowding. However, the increase in inmate population placed enormous pressure on states as such a response for managing the risk of overcrowding has given rise to the development of tolerance levels. The latter gave rise to the concept “rated

capacity” which refers to the highest number of inmates that can be detained in a facility without compromising the levels of safety and services (Bleich, 1989:1140).

Cities such as Perth in Australia introduced an accommodation expansion strategy in the form of bunkbeds which is implemented in conjunction with the building of new facilities. The rated capacity has been replaced with such concepts as “operational”, “modified”, “current actual beds” and “total capacity” and the official adopted concept is “modified capacity”. The latter has been espoused to measure occupancy including overcrowding (DCS, 2009:25; Government of Western Australia, 2016:4; Morgan, 2010:58).

The added feature in the measurement of overcrowding is the prison conditions which are defined in relation to such dimensions as exercise, adequate accommodation, nutrition, reading material, medical treatment, natural light, fresh air and ventilation in compliance with basic sanitary and hygienic requirements and basic human needs such as shelter and clothing (ARC Foundation, 2019; Centre for Constitutional Rights and the National Lawyers Guild, 2010:39; Council of Europe, 2018:9; RSA, 1996:36).

3.4.2 EUROPEAN COUNCIL STANDARDS FOR DETERMINATION OF INMATE LIVING SPACE AND LEGAL PROTECTION

The European Committee for the prevention of torture and inhuman or degrading treatment and punishment (CPT) has set minimum standards for the living space of inmates in corrections environment and these standards are as follows:

- 6 square metres of living space for a single-occupancy cell and sanitary facility;
- 4 square metres of living space per prisoner in a multiple-occupancy cell and fully partitioned sanitary facility;
- At least 2 metres between the walls of the cell; and
- At least 2.5 metres between the floor and the ceiling of the cell (Council of Europe, 2015:1).

The standards are not obligatory prescriptions that each country must follow however they are recommendations for consideration to ensure that inmates are not detained in inhumane condition. For the CPT to arrive at the conclusion that the conditions of detention constitute inhumane and degrading treatment, the cells should either have to be extremely overcrowded or, as in most cases, combine a number of negative elements such as the following:

- An insufficient number of beds for all inmates;
- Poor hygiene;
- Infestation with vermin;
- Insufficient ventilation;
- Heating or light;
- Lack of in-cell sanitation; and
- The use of bucket system or bottles for the needs of nature (Council of Europe, 2015:5).

While the European Council has set the minimum standards for the living space of inmates, the breach of Article 3 on prohibition of torture which provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment' shall be pronounced by the court of law. The European Prison Rules clearly articulate that the European Court of Human Rights regards conditions of accommodation and overcrowding in particular as breach of Article 3 since they constitute inhumane or degrading treatment or punishment (Council of Europe, 2006:46; Council of Europe, 2015:6; Council of Europe, 2013:7). The court of Justice of the European Union in the judgement of joined cases C-404/15 and C-659/15PPU made the following ruling:

'If, in the light of the information provided or any other information available to it, the authority responsible for the execution of the warrant finds that there is, for the individual who is the subject of the warrant, a real risk of inhuman or degrading treatment, the execution of the warrant must be deferred until there has been obtained additional information on the basis of which that risk can be discounted. If the existence of that risk cannot be discounted within a reasonable period, that authority must decide whether the surrender procedure should be brought to an end' (Court of Justice of the European Union, 2016).

SPACE which is the the Council of Europe Annual Penal Statistics (Council of Europe, undated), collates statistics on imprisonment and non-custodial placements of 47 states which constitute the Council of Europe. The collected information is analysed and verified by researchers from the University of Lausanne in Switzerland. The information is available for use by international organisations, policy makers, national authorities and experts in the field of penology (Council of Europe, 2018). The measurement of overcrowding in SPACE is as follows:

‘Overcrowding is measured through an indicator of “prison density” which is obtained by calculating the ratio between the number of prisoners and the number of places available in prisons and is expressed as the number of prisoners per 100 available places. However, the capacity of prisons is calculated in different ways in each country and SPACE statistics rely on the information provided by each country. Without a common standard established by the Council of Europe to calculate prison capacity in the same way across Europe, the figures included in SPACE are not strictly comparable’ (Council of Europe, 2016:6).

3.4.3 LIVING SPACE DETERMINATION IN THE UNITED STATES OF AMERICA

Greenfeld (1992:8), contends that the amount of space allocated for inmates is influenced by the security classification, the number of prisoners each cell could accommodate and the type of prison i.e., whether it is a state or federal prison. The square metre footage driven by security classification for state and federal prisons in 1990 is summarised in Table 3.1.

Table 3.1: Square feet allocated to inmates by security classification in the United States of America

| Security Classification | State Prisons | Federal Prisons |
|--------------------------------|---|---|
| Minimum | 59 square feet (5,481 square metres) | 49 square feet (4,552 square metres) |
| Medium | 56 square feet (5,203 square metres) | 42 square feet (3,902 square metres) |
| Maximum | 54 square feet (5,017 square metres) | 47 square feet (4,366 square metres) |

The square feet calculation for state and federal prisons driven by the number of inmates per cell in 1990 is reflected in Table 3.2 below.

Table 3.2: Square feet allocated to inmates by the number of people per cell in United States of America

| Number of Persons Per Cell | State Prisons | Federal Prisons |
|-----------------------------------|---|---|
| 1 inmate | 61 square feet (5,667 square metres) | 44 square feet (4,088 square metres) |
| 2 inmates | 40 square feet (3,716 square metres) | 42 square feet (3,902 square metre) |
| 3 to 5 inmates | 63 square feet (5,853 square metres) | 53 square feet 4,924 square metres) |
| 6 to 49 inmates | 58 square feet (5,388 square feet) | 50 square feet (4,645 square metre) |
| 50 inmates and above | 66 square feet (6,132 square metres) | 41 square feet (3,809 square metres) |

Overcrowding is measured by reporting mainly on prison population rate per state and for the entire country. The prison population rate constitutes the number of inmates per 100 000 of the state or the national population in the United States. The top five states with the highest prison population rates are Louisiana (719), Oklahoma (704), Mississippi (619), Arkansas (598) and Arizona (569). The states with the lowest rates are Massachusetts (120), Maine (134), Rhode Island (170), Vermont (180), and Minnesota (191) (Walmsley, 2018:2; World Prison Brief, Undated).

The Eighth Amendment to the Constitution of the United States includes a clause on the prohibition of cruel and unusual punishment. The clause applies to the protection of inmates against overcrowded conditions through the right to safety and humane conditions of imprisonment. However, the inmates should prove that serious

deprivation of basic human needs occurred (Centre for Constitutional Rights and the National Lawyers Guild, 2010:39; Legal Information Institute, 1992).

3.4.4 OVERCROWDING IN NIGERIA

Overcrowding is referred to as “congestion” (Ayade, 2010:45). Most articles on overcrowding provide an explanation with focus on prison conditions without any specific measurement relating to bed space calculation. The prison conditions referred to include poor ventilation, widespread of diseases and poor medical attention (ARC Foundation, 2019; Opafunso & Adepoju, 2016:2).

The Nigerian court has not given any landmark decision though there have been complaints by inmates which relate to inhumane conditions of detention such as poor sleeping conditions, poor feeding, and degrading treatment (Ayade, 2010:85).

3.5 INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS AND GUIDELINES

This section will focus selectively on instruments and guidelines that talk to issues of pre-trial and overcrowding.

3.5.1 INTERNATIONAL INSTRUMENTS AND GUIDELINES

The Universal Declaration of Human Rights through articles 9 and 10, respectively, provides for rights that prohibit arbitrary arrest, detention or exile, as well as the right to be presumed innocent until proven guilty in terms of law in a public trial (United Nations General Assembly, 1948:3).

The International Covenant on Civil and Political Rights provides for the rights to liberty and security, as well as the entitlement to take processing before the court of law when one’s liberty has been deprived due to arrest or detention. Being a victim of unlawful arrest is protected by an enforceable right to compensation (United Nations General Assembly, 1966:6).

The United Nations General Assembly (2015:31) through the Nelson Mandela Rules supports the treatment of unconvicted prisoners under the presumption of innocence and further propose that:

'Member States [should] continue to endeavour to reduce prison overcrowding and, where appropriate, resort to non-custodial measures as alternatives to pre-trial detention, to promote increased access to justice and legal defence mechanisms, to reinforce alternatives to imprisonment and to support rehabilitation and social reintegration programmes, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures...'
(United Nations, 2015:6).

3.5.2 REGIONAL INSTRUMENTS AND GUIDELINES

3.5.2.1 Africa

The African Charter on Human and People's Rights (ACHPR) is a regional human rights instrument which was developed for promotion and protection of human rights in the African context. It provides for several rights including the following:

- Right to have one's cause heard which incorporates right to appeal to competent national organs when the fundamental rights have been breached;
- Right for presumption of innocence; and
- Right to defence and to be tried within a reasonable time by an impartial court or tribunal (African Union, 1981:3).

The Kampala Declaration on Prison Conditions in Africa recognises poor prison conditions in Africa and proposes several reforms for improving conditions in corrections environment. The areas include issues relating to remand detainees, prison staff, alternative sentencing, and plan of action, as well as effecting of the provisions on ACHPR and the United Nations Standard Minimum Rules through inclusion in the legislative and policy framework (African Commission Justice Reform, 1996).

The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa communicates the recommendations made by the participants who attended the second Pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18–20 September 2002. The proposals include the following:

- Reducing of the prison population;
- Making African prisons more self-sufficient;

- Promoting the reintegration of offenders into society;
- Applying the rule of law to prison administration;
- Encouraging best practice;
- Promoting an African Charter on Prisoners' Rights; and
- Looking towards the United Nations Charter on the Basic Rights of Prisoners (African Commission on Human and Peoples' Rights, 1996).

The Arusha Declaration on Good Prison Practice in Africa is a symbolic adoption by the prison services in Central, Eastern and Southern African (CESCA) of the principles adopted for improving the management of prisons in the African continent. The principles cater for a broad spectrum of areas which include the following:

- Promotion and implementation of good prison practice which conforms to international standards;
- The increase in transparency and efficiency in the management of prisons;
- Improvement in the working and living conditions of service for the staff; and
- The invitation of the civil society groups into prisons for contribution towards the improvement of the conditions of prisoners and the prison working environment (Penal Reform International, 1999:2).

Luanda guidelines were adopted in 2014 by the African Commission on Human and People's rights as a subordinate instrument for the protection of rights of those subjected to pre-trial detention and applies to those detained in correctional environment and police cells (The African Policing Civilian Oversight Forum, 2017:12).

3.5.2.2 American instruments and guidelines

The American Convention on Human Rights through Article 6 and 8 provides for the rights to humane detention and fair trial respectively. The humane detention includes the following elements:

- Right to have physical, mental and moral integrity respected;
- Application of punishment to persons regarded as criminals; and

- Inclusion of the reform and social adaptation as the essentials on punishment that incorporates the deprivation of liberty (Organization of American States, 1969:3–4).

3.5.2.3 European instruments and guidelines

The European Convention on Human Rights provides for rights on prohibition of torture which extends to treatment in detention facilities, right to liberty and security, right to fair trial, and right not to be punished without law (Council of Europe, 2013). The Permanent Representatives Committee developed a directive to strengthen the right to presumption of innocence for complementing the legal framework provided by the Convention (Council of Europe, 2015:1).

Giacomi, Protasova, & Scandurra, (Undated:7–8), cite several rights of all detainees which include the right to a living space which does not constitute inhumane condition and punishment including overcrowding, right to be guaranteed minimum standards as prescribed by the Committee on Prevention of Torture and right to adequate hygienic sanitary facilities.

The Recommendation No (99) 22 on prison overcrowding and prison population (Council of Europe, 1999:1–3) which was adopted by the Committee of Ministers on 30 September 1999 reflects recommendations on measures that governments of member states should consider when reviewing their legislation and practice. The recommendations include:

- Determination of the maximum capacity for penal institutions to avoid excessive levels of overcrowding;
- Creation of several community sanctions and measures with gradings according to severity for use by prosecutors and judges;
- The possibility of decriminalization or reclassification of certain offences so that they do not attract punishment which entails imprisonment;
- The widest possible use of alternatives to pre-trial detention;
- Involvement of prosecutors and judges in the process of creating policies relating to prison overcrowding and prison population inflation for soliciting

support and prevention of sentencing practices that are counterproductive; and

- The development of measures which reduce the actual length of sentence such as parole and such collective measures as amnesties and pardons.

3.6 DRIVERS AND CAUSES OF THE INCREASE IN CORRECTIONS POPULATIONS

The drivers of the inmate population are beyond the control of the administrators of corrections and these include changes in crime rates in general, increase in serious crimes including the introduction of new types of offences in the national criminal codes and long sentences (Charles Colson Task Force on Federal Corrections, 2016; Council of Europe, 2016:6; Albrecht, 2012:62). Other factors include strict penal legislation and policies established to respond to crime and slow court proceedings which lead to increased time spent in remand detention (Criminal Justice, undated; Gnatovskyy, 2019:1). In his opening speech in April 2019 at the high-level conference on prison overcrowding, the President of the European Committee for the Prevention of Torture expresses the following:

‘We all agree prison overcrowding is toxic. It can turn a prison into a human warehouse and can undermine all the efforts made to give the absolute prohibition of torture and inhuman or degrading treatment or punishment a practical meaning in prisons. It can also expose the most vulnerable prisoners to criminal subcultures and make prisons crime schools. In short, it can defeat the very purpose of imprisonment’ (Gnatovskyy, 2019:1).

3.6.1 CRIMINAL JUSTICE LEGISLATION AND POLICY LEADING TO OVERUSE OF THE PENAL SYSTEM

The dramatic prison increase observed in America during mid-80s, was equated to the drug and weapon offences, as well as the introduction of mandatory minimum sentences which required that long sentences be given. Other contributors were the scrapping of the parole system including the credit system (Charles Colson Task Force on Federal Corrections, 2016; Kreager & Kruttschnitt, 2018:264–265; UNODC, 2013:24).

Countries that adopted the mandatory minimum sentences legislation include Canada, Australia, United Kingdom, United States and South Africa. Some countries have since introduced reforms as a strategy to reduce to prison population (Gray, 2017:392, 396, 401 & 409). Mandatory minimum sentence according to the UNODC (2013:194) refers to ‘the fixed sentence that a judge is obliged to deliver to an individual convicted of a crime, notwithstanding the culpability and other mitigating factors involved in the crime’.

3.6.2 INCREASE IN THE USE OF PRE-TRIAL DETENTION

The rationale for the use of pre-trial which manifests as denial of bail is driven by crime prevention approach to protect the community from the likelihood of reoffending and to ensure court appearance. The risk of Failure to Appear (FTA) is one of the reasons for denial of bail and is applied in countries such as the United States, Australia and New South Wales (Bartels, Gelb, Spiranovic, Sarre, & Dodd, 2018; Kim, Chauhan, Lu, Patten, & Smith, 2018:17–18; Koepke & Robinson, 2018:1725; McMahan, 2019:33; Ng & Douglas, 2016:37; Maxwell, 1999:139; Rempel & Pooler, 2020:4; State of Connecticut, 2017; Van Nostrand & Keebler, 2009:3).

3.6.2.1 Socio-economic factors and money bail

In United States and Europe, of those in detention during pre-trial phase some are detained with an option of bail and remain in detention longer or until their cases are disposed because they cannot afford to pay bail. The category affected by this includes African Americans, as well as indigent defendants charged with non-violent offences and petty crimes (Baughman, 2019; Jones, 2019:1066; Leslie & Pope, 2017:529; Tabar, Miravalle, Ronco & Torrente, 2016:34). The increase in money bail releases led to less use of the Release on Own Recognisance (ROR). Factors relevant for placement of defendants under the ROR are as follows:

- The seriousness of the crime;
- Previous offences, criminal record, and history of court date appearances;
- Whether or not the defendant is considered a flight risk;
- A background check;
- Family and ties to the community; and
- Employment (About Bail, 2020).

Money bail is implemented in conjunction with bail schedules which are driven by the offences without taking into consideration the characteristics relating to each individual defendant (Carlson, 2010:3). The use of money bail is regarded as unjust, counterproductive, expensive and unconstitutional because it infringes on due process and equal protection rights since it affects the poorest sector in communities through its discrimination based on wealth (Albrecht, 2012:62; Hopkins, Bains & Doyle, 2018:679; Wiseman, 2018:239 & 242).

The pronouncement of the unconstitutionality of money bail led to litigations and the summary of some cases appears in Table 3.3 below (Centre for Access to Justice, 2017).

Table 3.3: Court cases where unconstitutionality of money bail was pronounced

| Case Reference | Outcome |
|---|---|
| Snow v. Lambert (M.D. La. 2015) | <ul style="list-style-type: none"> • The court’s order outlines the final settlement between the parties, in which the Parish agreed to create a new policy for misdemeanour arrestees and to stop holding misdemeanour arrestees in jail due to an unaffordable monetary bond. |
| Thompson v. Moss Point, Mississippi (S.D. Miss. 2015) | <ul style="list-style-type: none"> • The court adopted the parties’ settlement agreement i.e., the city agreed to abandon its secured bail requirement for persons seeking release from jail after a warrantless arrest or after an initial warrant arrest, and to instead release those persons on recognizance or on an unsecured bond. • The city also agreed to improve its procedures for notifying arrestees of court dates. |
| Powell v. The City of St. Ann (E.D. Mo. 2015) | <ul style="list-style-type: none"> • The court adopted the parties’ settlement agreement i.e., the city agreed to stop requiring arrestees to post a secured bail for release. • Instead, the city agreed to release arrestees if they agreed to provide an unsecured bond or on their own recognizance, except when the arrestee is a threat and detention is required to protect the community. • The city also agreed to improve its procedures for |

| Case Reference | Outcome |
|--|---|
| | notifying arrestees of court dates, and to release persons arrested for failure to attend court dates on unsecured bonds. |
| Pierce et al v. The City of Velda City (E.D. Mo. 2015) | <ul style="list-style-type: none"> • The court adopted the parties' settlement agreement and issued a declaration judgement i.e., the city agreed to end the use of the challenged cash bond system. • According to the declaratory judgement it is a violation of equal protection to keep an arrestee in custody because the person is too poor to post a monetary bond was set. |
| Martinez v. City of Dodge City (D. Kan. 2016) | <ul style="list-style-type: none"> • The court held that it is inconsistent with the Equal Protection Clause to put a person in custody after a non-warrant arrest because they are too poor to post a monetary bond. • It also entered an injunction ordering that individuals arrested in Dodge City for violation of municipal ordinances be released on their own recognizance without further conditions of release and without requiring any monetary bond. |

The due process of the law and the right of the accused measure the respect for the basic rights of criminal suspects in terms of the World Justice Project (2020:13) and include the following:

- Presumption of innocence;
- Freedom from arbitrary arrest and unreasonable pre-trial detention;
- Ability by criminal suspects to access and challenge evidence against them;
- Provision of adequate legal assistance and exposure to abusive treatment; and
- Respect for the basic rights of prisoners after conviction.

Social factors such as housing and social networks influence the decision on placement on pre-trial detention. The researchers that conducted a study on the pre-trial detention in Italy discovered that irregular immigrants were generally placed in detention while the European Union citizens had greater chance of being placed under less restrictive conditions (Parisi, Santaro & Scandurra, 2015:4).

3.6.2.2 *Bail bond complexities*

The bail bond system is a money-lending business which existed in England during the 13th century. The system was introduced in San Francisco, United States during 1898 to provide financial assistance to pre-trial detainees as a surety for court appearance. The bondsmen added a non-refundable 10% charge to the bail amount given by the court and some states resolved to put a cap of less than 10% (About bail.com, 2020; Kenton, 2020; May, 2018; Rispoli, 2019:41).

The bail bond system has contributed to mass incarceration of the defendants who could not pay bail because of poor socio-economic background, since their families could not afford to pay the bondsman the required percentage. The bondsmen often preferred to bail out those defendants that were given large amounts of bail since the lower amounts were regarded as not financially attractive (Hood & Schneider, 2019:127; Sparks, 2018:1008; The Pre-trial Justice Institute, 2012:6).

The inability to pay bail led to some defendants opting for taking plea deals regardless of whether they committed the crimes or not that they were charged for, in order to bail themselves from spending the pre-trial phase in detention and this led to the creation of people with criminal records. The plea deals were also taken because of the promise that they would lead to shorter sentences (Leipold, 2019:1618). May (2018) conceded that:

‘The bail system drives people to plead guilty — even when they’re not. New York City courts processed 365,000 bail hearings in 2013, but less than 5 percent of those cases went to trial. Pre-trial detention causes defendants to plead guilty, whether they are or aren’t. But why would an innocent person do that? “Imagine for a moment that it’s you stuck in that jail cell, and you don’t have the \$500 to get out,” says Steinberg. “Someone comes along and offers you a way out. ‘Just plead guilty,’ they say. ‘You can go home, back to your job. You can kiss your kids goodnight tonight.’” The cost of pleading guilty is both high and lasting: they end up with a criminal record. But plea deals enable America’s already overwhelmed courts to function’.

3.6.2.3 Lack of differentiation in the management of serious and less serious crimes

The mass incarceration in United States has been characterised by the detention of high number of those charged with misdemeanours due to the implementation of the money bail system (Carlson, 2010:59; Digard & Swavola, 2019:1). Misdemeanour is defined as follows by Find law (2019):

'A misdemeanour is a criminal offense that is less serious than a felony and more serious than an infraction. Misdemeanours are generally punishable by a fine and incarceration in a local county jail, unlike infractions which impose no jail time. Many jurisdictions separate misdemeanours into three classes: high or gross misdemeanours, ordinary misdemeanours, and petty misdemeanours. Petty misdemeanours usually contemplate a jail sentence of less than six months and a fine of \$500 or less. The punishment prescribed for gross misdemeanours is greater than that prescribed for ordinary misdemeanours and less than that prescribed for felonies, which customarily impose state prison. Some states, like Minnesota in its state misdemeanour laws, even define a gross misdemeanour as "any crime that is not a felony or a misdemeanour."

The detention of those charged with misdemeanour and low risk felonies has no link with the factor of dangerousness and flight risk which are some of the factors considered for placement of pre-trial detainees under preventive detention (Rispoli, 2019:41; Stevenson & Mayson, 2017:1). Though the misdemeanours constitute more than 90% of arrest, the criminal justice system in United States has been established around the felonies i.e., serious crimes. The main challenge is that there is no standardised legal framework on bail reforms and each state has its own release standard, and these standards even differ from city to city or counties in individual states (Baughman, 2019:5–9 & 22). The application of similar factors to felonies and misdemeanours such as the bail schedules and the risk assessments including criminal records may have contributed to the disregard for the use of ROR.

The misdemeanours have burdens such as criminal records and other collateral damages reflecting as loss of employment with subsequent strain on families. Detention of defendants for misdemeanours has been linked with reoffending as such a strong recommendation for separating the management of them from felonies has gained attention in the reform policies (Baughman, 2018:882; Brown, 2016:2–3).

‘In New York City, when clients of The Legal Aid Society who were charged with a misdemeanour in 2017 entered their initial arraignment, they had anywhere between a 2 and 26 percent chance of the judge setting a cash bail, depending on which judge was randomly assigned to oversee the court that day. For felonies, the range was even wider: anywhere between 30 and 69 percent. Those not assigned bail are likely to be released without having to pay, which means getting arrested on the wrong day can have a major consequence: You are more than twice as likely to have to pay your way to freedom.’ (Barry-Jester, 2018).

3.6.3 INEFFICIENT MEASURES TO PROMOTE SOCIAL REINTEGRATION

While the international standard prescribes that the principle of assisting offenders with social reintegration for prevention of reoffending should be at the heart of correctional management strategies and policies, a large proportion of the corrections budget is used to provide security, safety, and order. Only a small portion is dedicated to development programmes such as workshops, skills training, educational facilities, as well as sports and recreation (UNODC, 2013:32).

3.6.4 BREACHES OF EARLY CONDITIONAL RELEASE AND PROBATION ORDERS

The project funded by the European Commissions for examining the alternatives to imprisonment in eight European Union countries including Italy, France and Spain, found an extensive use of non-custodial sanction with less focus on rehabilitative and supportive programmes. The breach of non-custodial conditions invoked an automatic sanction of imprisonment (Heard, 2016:6) and this is one of the key considerations proposed for understanding the rates of imprisonment related to the early breaches of non-custodial conditions (UNODC, 2013:33).

3.6.5 INADEQUATE PRISON INFRASTRUCTURE

Inadequacy in prison infrastructure has a direct link to overcrowding in corrections environment. Building more detention facilities to respond to overcrowding is not highly recommended as it will have a direct influence on pushing inmates into the system to fill in the newly created bed spaces. The existing prison infrastructure was built long ago and does not meet the rehabilitation needs and with constant

overcrowding even the newly built prisons tend to dilapidate faster. Over time building new prisons becomes crucial to replace the aging infrastructure and to provide for accommodation that meets the minimum requirements as prescribed by legislation and other relevant prescripts (Criminal Justice, undated; Horvath, 2017:33; Ravena & Mahmud, 2019:1; UNODC, 2013:34).

3.6.6 POLITICAL FACTORS AND OPPOSITION FROM THE BENEFICIARIES OF MASS OVERCROWDING

The political influence in crime response may contribute to overcrowding through advocating for tighter crime control measures. The latter focuses on imprisonment as a key strategy for dealing with offences in general and targeting imprisonment as the best response for serious crimes with lack of investment in social crime prevention strategies. This may be reflected in the laws and policies developed by the legislature which tend to conflict with the support provided such as lack of investment in programmes for building new prison infrastructure (Lynch & Verma, 2016:22; O'Connor, 2014).

Beneficiaries of mass overcrowding contribute to the sustained situation through their opposition stance by utilising media to lobby against prison closures (Eisenberg, 2016:79). Lennard (2018) contends that prison officials and their unions oppose prison reform based on fear of losing jobs. Furthermore, prison officials collude with businesses that benefit from the cheap prison labour. Private prison management prefer punitive laws and longer sentences since they benefit by providing additional bed space to the state at a profit (Eisenberg 2016:96 & 119).

3.6.7 CRISIS OVERCROWDING

Crisis overcrowding presents itself as sudden and rapid increase in overcrowding levels because of a crisis. The increase in the inmate population may be due to an introduction of legislation with subsequent enforcement which plays out in increased levels of arrests to enforce behavioural change. It may also be linked to an introduction of the legislation that broadens the discretionary powers to arrest by police (UNODC, 2013:33).

The Covid-19 pandemic created crisis overcrowding which was induced by the requirement to implement social distancing to contain the spread of the virus in correctional settings. The unsanitary conditions in corrections environment which are accompanied by the high turnover rate through the daily releases and admissions may contribute to the spread of communicable diseases including the Covid-19 (Surprenant, 2020:2).

3.6.8 CONTRIBUTION BY SEVERAL CRIMINAL JUSTICE SYSTEM ROLE PLAYERS

3.6.8.1 Police arrests

Overreliance of arrests by police as a control measure for crime, the performance measurement approach which incentivize arrests and the use of arrest to create a pool for fingerprints and DNA are all associated with overcrowding in corrections since the arrested persons are passed through the court to corrections as pre-trial detainees. In the United States during 2016 for every 100 arrested persons, 99 ended up as jail admissions as compared to the situation in 1994 where 100 arrests generated 70 imprisoned detainees. Most of those arrested are charged for minor offences with Blacks more likely to be arrested than their White counterparts. The discriminatory arrest approach led to mistrust of law enforcement in several communities in some states, and this led to the creation of the movement referred to as #BlacklivesMatter (Neusteter, Subramanian, Trone, Khogali, & Reed, 2019:1–4, 23 & 27).

The overreliance on arrests may reflect limited alternatives available for consideration by police or may be driven by individual choices made by police since they have discretionary powers to implement such alternatives as the use of citation, bail, warning and diversion. Furthermore, the overreliance may reflect an absence of utilising an integrated approach of involving other community referral services that can be available for such categories as mentally ill, those with substance abuse and the homeless persons (Neusteter et al, 2019:6 & 25).

Arrests which are accompanied by delays in finalising investigations contribute to the increased length of stay in pre-trial detention as the hearing of the cases cannot commence before the finalisation of the investigations. Other factors that contribute to increased detention are the increased caseload and lack of judicial resources and

the intervention by the High Regional Courts led to revocation of certain arrest warrants throughout Germany in 2019 (Jung, Petrick, Schiller, & Münster, 2021:311).

3.6.8.2 Prosecutors

Griffin and Yaroshefsky (2017:306) and Leipod (2019:1579), contend that prosecutors contribute to mass incarceration through their prosecutorial power which is driven by increase in violent and property crimes, as well as political and social pressure reflected through the legislation that prescribes longer sentences. Davis (2018:8–9) maintains that the criminal justice system is in a state of crisis, locks up too many people for too long and has an unjust model of prosecution which is characterised by unjustifiable racial disparities. She further maintains that overcharging gives prosecutors an advantage during the plea bargain stage though some charges would be difficult to prove.

3.6.8.3 The role of the Judiciary

The decision to imprison a person either as a remand detainee or sentenced offender is pronounced by the magistrates and judges, however, the literature on overcrowding is empty on contribution made by such key role players. In the study on reform of the criminal justice in Massachusetts and Alabama in which judges participated, it was found that judicial attitudes and sentencing practices may correlate with high rates of incarceration. The tough stance of responding to crime by giving harsh sentences in line with mandatory minimum sentences contributes to high rates of incarceration by taking away the discretionary powers from the judiciary. While all the judges that participated in the study acknowledge the role of the legislature in driving the criminal justice system reform through “the power of pen and purse”, they conceded that public demand for punishment has an impact on legislative decisions and this leads to the retention of harsh sentences (Todd, 2019:193–194, 200–201).

3.7 EFFECTS OF IMPRISONMENT AND OVERCROWDING

The overcrowded environment with inadequate resources hampers on the responsibility of correctional administrators to render effective rehabilitation of offenders and this leads to high rate of recidivism and thus creates a vicious cycle by

detaining repeat offenders (Grawert, Camhi & Chettiar, 2017:1; Salins & Simpson, 2013:1200; Schönteich, 2016:49). Overcrowding further hampers the provision of purposeful activities which form part of rehabilitation (Justice Committee, 2015:67). The effect of mass imprisonment in America with subsequent expansion of the prison population and depletion of state resources has been described as follows:

'As a result, this practice of essentially cataloguing [cataloguing] mass amounts of inmates appear to have resulted in a system whose practices, financial situation, depleting amount of resources and ultimately the inability to achieve rehabilitation has resulted in a system accomplishing only incapacitation' (O'Connor, 2014).

In extreme situations overcrowding creates unofficial sharing of the administrative responsibility with prisoners where some prisoners operate as supervisors and preside over the disciplinary processes (Schönteich, 2016:50).

Overcrowding strains the health care services in corrections environment, contributes to increase in tensions thus leading to violence between prisoners and staff and may lead to refusal of prisoner transfer requests because of human rights concerns (Council of Europe, 2016:9 & 28). Furthermore, overcrowding creates reduction in recreation time for inmates, increased cost for maintenance of facilities and reduced opportunities for participating in skills development programmes (Criminal Justice, undated).

Imprisonment has a criminogenic effect for certain categories of prisoners. Difficulties in adjustment in the society post release may create a push effect which manifest in reoffending thus leading to reincarceration for certain categories of prisoners (Schönteich, 2016:51). Leslie and Pope (2017:529), discovered that those detained for felony charges have a probability of conviction by 13%. The increase in the length of detention in pre-trial phase in jails is associated with a modest increase in the likelihood of misconduct later during a stay in prison. Interaction effects indicate that more time spent in jail prior to imprisonment may be harmful for potentially at-risk inmates such as youth, female, and those with mental illness (Toman, Cochran & Cochran, 2018:1).

In Malawi it was found that the remand detainees would spend months and even years without trial or conviction and the legislated time limit was not monitored by the correctional officials as they deemed this to be the responsibility of the remand detainees (Msiska, Mhango & Redpath, 2013:6).

3.8 COST OF IMPRISONMENT

Delay in resolving the cases of remand detainees has an impact on the period spent in detention thus leading to increased incarceration cost and other related costs which include investigation and judicial processes (Leslie & Pope, 2017:555; UNODC, 2013:118). Overpopulation on its own incurs costs for providing basic requirements of inmates such as food, bedding and clothing, toiletry, health care services and the maintenance of facilities which experience regular breakages as a symptom of overuse. Funding for incarceration takes away from the fiscus geared towards the provision for other social services such as health, education and public transportation.

The social cost extends to individuals, family members and communities. Families spend both the hidden and apparent cost in the form of court fees, fines and the support they provide by supplying amenities and establishing communication via visits, as well as telephone and video calls (Hanna, 2016:43 & 50; National Institute of Corrections, 2015:1; The Marshall project, 2019; Murray, 2005:444). Other social cost prevails in form of recidivism which may occur because of the lack of support from the family and significant others during incarceration thus leading to the adoption of the prison environment as another home.

Wilson and Lemoine (2021:2–3) argue that quantification of costs of incarceration is crucial in the light of having to deal with tight budgets. The cost determination for estimates on incarceration are based on the total aggregate of direct spending by government and computation of the average cost per inmate. Marginal costs are recommended though complicated as they would include several elements that are critical in determining the cost of incarceration. The literature search done by Wilson and Lemoine (2021:18–19) could not assist in arriving at a conclusive method for calculating the marginal costs therefore a knowledge gap in the area has been identified.

According to reported statistics by the Ministry of Justice of UK (2020), the cost per prisoner is aligned with the cost per place and is reported under two categories i.e., direct resource expenditure and overall resource expenditure. Under the direct resource expenditure for public sector prisons the cost per prisoner reported for 2019/2020 is £28,196 and under the overall expenditure the cost per prisoner is £43,751.

The criminal records limit the opportunities of getting formal employment and in situations where the ex-offenders get jobs they may have to settle for reduced salaries and this impact on building of economic stability (National Institute of Corrections, 2015).

3.9 STRATEGIES INCLUDING REFORMS TO MANAGE OVERCROWDING

The UNODC (2013:4, 57, 62, 75, 110–111, 118–119, 178–179, 181 & 185) recommends several strategies for reducing overcrowding of inmate population in the corrections environment. These strategies include decriminalization, diversion, deferring of sentences, use of non-custodial measures and sanctions, remission, electronic monitoring, reducing of pre-trial detention and consideration of the cost implications of imprisonment. The assessment of the operations of the whole criminal justice system machinery is proposed with focus on the following:

- Review of legislation;
- Use of pre-trial detention;
- Sentencing policies and trends;
- Implementation of non-custodial measures and sanctions;
- Monitoring overcrowding levels in prisons;
- Profiles of prisoners;
- Trends in imprisonment;
- Access to legal aid; and
- Cooperation between the services rendered in the community and the criminal justice authorities.

The assessment results will guide the development of medium and long-term strategies for reducing overcrowding (UNODC, 2013:174).

3.9.1 USE OF NON-CUSTODIAL MEASURES

The criminal justice system should have a wide range of non-custodial measures which cut across the whole value chain from arrest to sentencing for reducing pre-trial detention and imprisonment. The measures comprise several approaches such as:

- Police bail;
- Diversion including police and court driven programmes;
- Community corrections system for monitoring parolees, probationers and defendants or accused placed under non-custodial system with conditions; and
- Electronic monitoring (UNODC, 2013:31, 62, 78, 97, 101; Kim et al, 2018:20).

The Nelson Mandela Rules recommends the following:

'Member States continue to endeavour to reduce prison overcrowding and, where appropriate, resort to non-custodial measures as alternatives to pre-trial detention, to promote increased access to justice and legal defence mechanisms, to reinforce alternatives to imprisonment and to support rehabilitation and social reintegration programmes, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures the Tokyo Rules' (United Nations, 2015:6).

Specialised courts such as drug and therapeutic courts have been created in several countries in the United States to increase the use of alternatives to incarceration for certain categories of offenders including those charged for substance related crimes (Cohen, 2017:1).

3.9.2 DECRIMINALISATION

Decriminalization may include an imposition of a sanction which is administrative in nature or abolishment of the sanctions (UNODC, 2013:181). Heard (2016:6), advocates for decriminalization of people with social, mental health and drug

dependency problems by diverting them from punishment and imprisonment. In the United States the decriminalization model applied for misdemeanours maintains many of the collateral, even direct criminal consequences of a conviction such as fines, criminal records and even imprisonment in extreme cases. The model eliminates the use of counsel during the charging process and the principle of due process does not apply (Natapoff, 2015:1058 & 1083).

'In sum, while decriminalization appears to offer relief from the punitive legacy of overcriminalization and mass incarceration, upon closer inspection it turns out to be a highly conflicted regulatory strategy that preserves and even strengthens some of the most problematic aspects of the massive U.S. penal system' (Natapoff, 2015:1055).

Another reform that contributed to the reduction of the inmate population in the United States was the reclassification of offences that were previously classified as felonies to misdemeanours and this increased the possibility of consideration for placement under the non-custodial system (Kang-Brown, Hinds, Heiss & Lu, 2018:26).

3.9.3 DIVERSION

Diversion is an administrative process of bypassing the formal criminal justice system for avoidance of prosecution and conviction and includes mediation processes or treatment programmes (UNODC, 2013:197). In England and Wales, liaison and diversion programmes were introduced with focus on provision of right treatment as quickly as possible and funding was allocated to mental health professionals to work cooperatively with police and courts. The liaison and diversion services are extended to police station, courts and correctional services (Heard, 2016:29–30).

In Italy the pre-trial probation is implemented in children and adult cases. It entails the suspension of prosecution and extinguishing of offence from the record. It is applied under the following conditions:

- It can be offered once and only limited to offences that have imprisonment sentences of four years and below;
- Is offered on request therefore a consent is a prerequisite;

- A social investigation with focus on personal circumstances is conducted by social workers prior to giving approval;
- The order of approval is granted, entails a probation period with programmes supervised by the social workers; and
- The offence is only expunged upon completion of the programme and punishment will cease (Heard, 2016:29).

In Greece the target group for diversion from prosecution of those arrested for drug offences is 13 to 24 years. The intervention programme includes assessment and provision of support and advice, as well as voluntary participation in therapeutic programme (Heard, 2016:29).

3.9.4 DEFERRED SENTENCE

Deferred sentence entails setting of conditions regarding the effecting or taking away of the sentence. The offender would be compelled to undergo treatment in circumstances where there is relation between the offence committed and the use of the drug or dependency producing substance (UNODC, 2013:197). In France the deferral process is applied through the provision of rehabilitation programmes and reparation for damage and may be accompanied by supervision. In Paris the deferral system undertaken as a pilot, was conducted by providing evaluation for determination of the impact of the dependency producing substance on the life of the defendant and the report was submitted to court (Heard, 2016:30).

3.9.5 ELECTRONIC MONITORING

Electronic monitoring was invented in the 1960s and is considered a relatively new tool in the field of criminal justice. The tool was introduced in 2010 in Austria. Electronic monitoring as the management tool is utilised for enforcing pre-trial and penal measures and has been found to work better when implemented with therapeutic interventions or counselling. It was introduced in England, Germany and Netherlands for monitoring high-risk offenders with public profiles to respond to perceived threats on public safety. It is regarded to be expensive than the ordinary probation and parole (Belur, Thornton, Tompson, Manning, Sidebottom & Bowers, 2017:95; Hucklesby & Holdsworth, 2016:3).

In Austria electronic monitoring is implemented as either a “front door” version i.e., for the whole prison term or a “back door” version i.e., for shortening the prison term. The target group constitute socially integrated persons with a prison term not exceeding twelve months and remand detainees. The prisoners contribute toward the tagging and there is no reimbursement for electronic monitoring which replaces remand detention (Republic of Austria, 2016:31–32).

There is no robust information which provides experiences on electronic monitoring from both the academic and practice fields in European countries (Borseková, Krištofík, Koróny, Mihók & Vaňová, 2018:39). The preference for electronic monitoring must be balanced against the extensive assessment of its projected cost implication as reflected in the statement below:

‘A prominent driver for increasing the use of EM particularly in Belgium and England but also to a lesser extent in the other jurisdictions is the cost of EM. Although the actual costs of EM are hotly debated, it was agreed that EM is substantially cheaper than imprisonment. In the wake of the financial crisis, fiscal concerns have become more prominent as governments have attempted to reduce the use of imprisonment. There appeared to be little awareness that EM’s cost reducing capacities would be limited if it replaced other non-custodial measures instead of imprisonment’ (Hucklesby & Holdsworth, 2016:5).

3.9.6 BAIL REFORMS IN UNITED STATES OF AMERICA

Bail reforms were introduced through the creation of several bills by some states including counties and cities. The summary of statutes and reforms are presented in the table below.

Table 3.4: Summary of Bail reforms in terms of statutes

| Statute | Bail Reform on release decision |
|------------------------|---|
| Alaska (2016): SB91 | <ul style="list-style-type: none"> • Provides for pre-trial risk assessment. • Includes a presumption of release on personal recognizance or unsecured bond. • Mandatory release on personal recognizance or unsecured bond for low and moderate-risk defendants charged with non-violent, non-Driving Under Influence (DUI) |

| Statute | Bail Reform on release decision |
|--|--|
| | <p>misdemeanours and low-risk defendants charged with non-violent, and non-DUI class C felonies.</p> <ul style="list-style-type: none"> • In all other cases including moderate and high-risk defendants charged with a crime against the person, domestic violence, sex offence, or higher-level felony, defendants can be required to execute a surety bond, deposit bond, or performance bond. • In all cases, the courts may order additional, non-monetary release conditions, including complying with pre-trial supervision, so long as they are the least restrictive conditions necessary to ensure public safety and the defendant’s future appearances in court. • Non-monetary conditions of release include residential restrictions, refraining from alcohol and controlled substances, as well as adhering to treatment or medication requirements. |
| <p>Arizona Supreme Court Rule Amendment: R-16-0041</p> | <ul style="list-style-type: none"> • Provides for a “deposit bond” and elimination of the requirement for a secured bond. • Expressly defines and allows “unsecured appearance bond.” • Includes a presumption of release on own recognizance. • Non-monetary conditions of release include, travel and residence restrictions, regular reporting requirements, and firearm/alcohol restrictions ‘any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from risk posed by the person or securing the person’s appearance’. • Mandates that monetary conditions be individualised rather than based on a schedule. • If a monetary condition is necessary, the court should impose the least burdensome of the types of bonds allowed. • Establishes the right to counsel in misdemeanour cases for the purpose of determining release conditions. |
| <p>Connecticut (2017) HB 7044</p> | <ul style="list-style-type: none"> • Prohibits cash-only bail; courts are required to accept surety bonds from defendant. • Requires the court to remove financial conditions of release for defendants charged with only misdemeanours unless: <ul style="list-style-type: none"> - The person is charged with a family violence crime; |

| Statute | Bail Reform on release decision |
|----------------------------|--|
| | <ul style="list-style-type: none"> - The person requests financial conditions for release; or - The court makes a finding on the record that there is a risk of <ul style="list-style-type: none"> (i) failure to appear; (ii) obstruction of justice through witness or juror intimidation; or (iii) a threat to the safety of the individual or others. <ul style="list-style-type: none"> • Bail review hearing conditions. |
| Illinois (2017) SB 2034 | <ul style="list-style-type: none"> • Includes a presumption of release with non-monetary conditions and requires imposition of only the least restrictive conditions necessary to assure the defendant's appearance. • Requires the court to consider the socio-economic circumstances of the defendant when imposing monetary and non-monetary conditions of release and conditions of release can include, electronic home monitoring, drug counselling, curfews, in-person reporting, and stay-away orders. • Requires that defendants who are unable to post bail and who are charged with non-violent misdemeanours or Class 3 or 4 felonies be given a bail review hearing at the next available court date or within 7 days of bail being set. • Allows the court to reconsider conditions of release for any individual whose sole reason for continued incarceration is the inability to post monetary bail. • States that the Illinois Supreme Court may establish a state-wide risk assessment tool that does not discriminate by race, gender, educational level, socio-economic status, or neighbourhood. • Establishes that defendants charged with non-violent misdemeanours or Class 3 or 4 felonies receive a \$30 deduction from money bail for every day they are incarcerated. • Provides right to counsel at bail hearings. If the person is unable to obtain counsel, the court is required to appoint a public defender or licensed attorney to represent the defendant at the bail hearing. |

| Statute | Bail Reform on release decision |
|--|--|
| Nebraska (2017) LB 259 | <ul style="list-style-type: none"> • Requires the court to consider all methods of bond and conditions of release to avoid pre-trial incarceration. • If the court determines the defendant cannot be released on their own recognizance, the court is required to consider the defendant’s financial ability to pay a bond and impose the least onerous conditions to reasonably assure the defendant returns for the next court date or eliminate / minimize the risk of harm to the public. • Allows the court to order the supervision of a defendant by a person, organisation, or pre-trial services to ensure the defendant complies with the conditions of release. • Requires the court to waive any associated costs and fees of conditional release or supervision if the court finds the defendant is unable to pay. • States that eligibility for release or supervision may not be conditioned upon the defendant’s ability to pay. • Allows the court to impose additional conditions of release including, among other things, phone or in-person check-in, home visits, mental health or substance abuse treatment, drug/alcohol testing, and electronic or GPS monitoring. • Prohibits the use of any incriminating results of any drug or alcohol test or any information learned by a representative of the organisation or program for any proceeding except those relating to revocation or the amending of bond release conditions. • Removes provisions allowing the court to consider defendant’s character and mental condition in setting bond. |
| 2018 Prison Reform Legislation - Summary by Senator William Brownsberger (extract – bail reform) | <ul style="list-style-type: none"> • The judge should consider the financial capability of the defendant and bail should be set as high as needed for ensuring court appearance. • If there is need for a judge to set unaffordable bail, a written finding that the Commonwealth’s interest in assuring court appearance outweighs the harm of detention to the individual and their family. • Use of community corrections by judges for pre-trial release. • Create a modern system approach for reminding the |

| Statute | Bail Reform on release decision |
|---------|---|
| | defendants of their next court dates. <ul style="list-style-type: none"> • Creation of the commission on bail to monitor change and recommend improvements (Todd, 2019:209). |

3.9.7 BAIL SUPPORT SERVICES IN AUSTRALIA

Each Australian state or territory has a service or programme to support those placed on bail. The programmes differ in range, extent, duration and eligibility criteria and others have been merged (Willis, 2017:5). Bail can be paid by the third party in the form of surety or bail payment. The requirement for keeping a record of contact and communication with the person for whom bail was paid is crucial (Anderson, 2014:3). In South Australia, as well as in Northern and the Australian Capital Territories, lists of offences have been predetermined which constitute a presumption against bail (Bartels, Spiranovic, Sarre & Dodd, 2018:95). South Australia applies a presumption of release on bail unless certain conditions prevail including the following:

- The seriousness of the offence;
- The likelihood of absconding, reoffending, interfering with witnesses or breaching of an intervention order;
- Consideration for physical protection of the accused;
- Requirements for medical or any other care that the accused may require; and
- History of contravention of previous bail agreement (Bartels et al, 2018:94).

Character reference provided as a bail condition is regarded as the statement and may be tested through cross examination. The statement that suggests that the accused is a “good character” has an influence on the charges and the sentence should the accused be found guilty (Anderson, 2014).

While bail is regarded as an agreement to appear in court, bail placement may be accompanied by one or more conditions such as forfeiture of money paid if the accused fails to appear in court, surrendering of the passport, reporting at the police station at stated times, attendance of drug treatment programmes and avoidance of contact with a certain person or an area. Police may oppose bail in situations where the accused is likely not to appear in court, or likely to threaten or interfere with the

witness, or may commit other offences or does not have family or work ties or has drugs or alcohol problem which are incapacitating to the accused. Failure to appear in court is regarded as an offence unless the accused has a reasonable excuse (Anderson, 2014:2).

The bail support service in Australia includes the use of bail hostels. Bail hostels operate as the non-custodial measure for housing the accused during pre-trial and before sentencing in situations where the court does not have adequate information on the address of the accused. Hostels are also utilised in the lieu of bail in situations where a recommendation is made by the defence lawyer or where police officers oppose bail for fearing of failure to appear in court. Hostels are utilised for the poor, unemployed, uneducated and those with social problems and are managed and supervised by probation officers. Hostels are often underutilised though the demand for space is high because of inadequate communication between the hostel staff and the probation officers (Marriner, 2018:21 & 22; Pratt & Bray, 1985:160; White & Brody, 1980).

Willis (2017:27) cites several bail support services and programmes offered in certain states and territories in Australia and the summary appears in table 3.5 below.

Table 3.5: Summary of bail support services in Australia

| Jurisdiction | Programme or service | Key features | Target group |
|-------------------------------------|----------------------------------|---|---------------------------|
| Australian Capital Territory | After-Hours Bail Support Service | <ul style="list-style-type: none"> • Assistance to divert young people from remand through community-based options. • Assistance to comply with bail and Good Behaviour Order conditions. | Children and young people |
| Victoria | Bail supervision | <ul style="list-style-type: none"> • Government agency supervision of young people placed on bail and awaiting sentence. • State-wide assistance with accommodation, education, | Children and young people |

| Jurisdiction | Programme or service | Key features | Target group |
|-------------------------|---|--|---|
| | | training, employment, direct or referral to treatment programs. | |
| | Youth Justice Intensive Bail Supervision Program | <ul style="list-style-type: none"> • Voluntary but set as bail condition. • Intensive case-managed services to small number of clients in selected areas. • Covers accommodation, education, training, employment, physical and mental health, drug and alcohol treatment. | Children and young people Includes indigenous-specific program |
| | Central After-Hours Assessment and Bail Placement Service | <ul style="list-style-type: none"> • State-wide service operating at night and weekends and public holidays. • Assessment for bail suitability • Advice and support to assist with the granting of bail. • Advice and support to assist compliance with bail conditions, accommodation support and referrals for treatment and services. | Children and young people |
| Victoria (Cont.) | Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) Combined with Bail Support Program | <ul style="list-style-type: none"> • Assessment and treatment for defendants while on bail. • Brokered drug treatment, including counselling and residential rehabilitation. • Transitional housing and crisis accommodation. • Assistance with longer-term housing, budgeting, life skills. • Assistance with mental | Adults |

| Jurisdiction | Programme or service | Key features | Target group |
|-----------------|--|--|---------------------------|
| | | health needs, disability services, employment, identification document, and court date reminders. | |
| | Court Integrated Services Program (CISP) | <ul style="list-style-type: none"> • Assistance between charging and sentencing, up to four months. • Available to any person who is a party to a court proceeding in the Magistrates' Courts. • Individualised case management, priority access to treatment and community supports. | Adults |
| New South Wales | Bail supervision | <ul style="list-style-type: none"> • Support and interventions based on assessed risk, generally up to four weeks. | Children and young people |
| | Bail Assistance Line | <ul style="list-style-type: none"> • After-hours phone service for police. • Assistance with transport, contacting parents or guardians, accommodation, referrals to service providers. | Children and young people |
| | Magistrates' Early Referral into Treatment (MERIT) | <ul style="list-style-type: none"> • Assessment and drug treatment for defendants while on bail: <ul style="list-style-type: none"> - Period of three months - Based on Victorian CREDIT program - Excludes defendants charged with serious violent or sexual offences, or histories of such offences, or other wholly indictable offences. | Adult |

3.9.8 REFORMS IN EUROPE

A study conducted for determination of the impact of fluctuation in alternatives on the prison population trends failed to determine a relationship between the non-custodial sanctions and the reduction in inmate population. While the non-custodial sanctions assist in containing the prison population, they need to be implemented with structural reforms that focus on the dimension on reducing the entrance into the criminal justice system. The other finding was the structural crisis relating to the rehabilitation which presents as a failure to contribute to the goal of social reintegration and social inclusion in cases where financial and suspended sentences are given. With regard to parole, the treatment strategies oriented to rehabilitation include the element of restriction of movement. Lastly the linguistic confusion was found regarding the obligations to be observed by the sentenced offenders in relation to such areas as unpaid work and reparation to the victim and social reintegration. The obligation has a dual aim of providing punishment and rehabilitation however support is not provided to the sentenced offenders (Tabar et al, 2016:9, 69–70).

General findings include the lack of understanding of alternatives to detention by the public, equating by the media of reoffending as the failure of alternatives without substantive evidence and thus blaming the courts that granted bail and lack of in-depth analysis on the effectiveness of alternatives, as well as poor attention and social interest on alternatives (Tabar et al, 2016:17–18 & 34).

The summary of reforms is presented in table 3.5 below (Tabar et al, 2016:10, 36–37).

Table 3.6: Summary of reforms in Europe

| Country | Reforms |
|---------|--|
| Latvia | <ul style="list-style-type: none">• Comprehensive Criminal Law was adopted in 2013.• A number of criminal offences were decriminalised.• Community-based sanctions were broadened for a wider range of crimes.• Lower sanctions were established for a wide range of crimes, in particular for property crimes. |
| Italy | <ul style="list-style-type: none">• Several government decree laws limited pre-trial detention. |

| Country | Reforms |
|---------|---|
| | <ul style="list-style-type: none"> • Alternative measures were strengthened. • Temporary raise of the sentence reduction for good behaviour. • The law was introduced in 2010 which offered the possibility of serving the last year of a sentence at home and the period was raised to 18 months in 2012. • Law 67/2014 introduced a new measure called “<i>messa alla prova</i>” which provides for the defendant to request for suspension of criminal proceedings for crimes punishable by sentences not longer than four years. <ul style="list-style-type: none"> ○ The defendant would be placed on probation to follow a programme under the supervision of social services. ○ The suspension of criminal proceedings is only granted once and the crime is cancelled upon the completion of probation. |
| Spain | <ul style="list-style-type: none"> • Penal Code 2010 was introduced as a reform with emphasis on the implementation of alternative measures, in particular to tackle short sentence imprisonment. |
| Greece | <ul style="list-style-type: none"> • Victim compensation i.e., reparation was introduced as a diversionary settlement on condition that the victim is fully compensated. • Penal mediation in cases of intra-family violence was introduced and the prosecutor acts as mediator. • Diversion through postponement of prosecution for drug related offences was introduced, on condition that the suspect participates in an official drug treatment program. Prosecution may be cancelled if the treatment program is successfully completed. • Penal reconciliation in certain felony offences under the direction of the prosecutor during the pre-trial stage is implemented and restrictive conditions that may be imposed include: <ul style="list-style-type: none"> ○ Surety; ○ The obligation of the accused to report periodically to the investigating judge or other authority; ○ Placement in a drug treatment programme; ○ Home detention with electronic monitoring; |

| Country | Reforms |
|--------------------------------|---|
| | <ul style="list-style-type: none"> ○ Compliance to the imposed restrictive conditions is supervised by the police authorities; ○ The investigating judge authorises the order on restrictive conditions and when the public prosecutor and the judge disagree, the council which constitute a judicial body makes a ruling. |
| France Judicial supervision | <ul style="list-style-type: none"> ● Supervision is regarded as a flexible pre-trial measure that may subject a person to various obligations/ or prohibitions until his appearance in court. ● The obligations may include rehabilitative actions, such as the compulsory submission to socio-educational monitoring, undergoing of examination, treatment and care for detoxification purposes or submission to social, psychological or healthcare measures in cases of domestic violence, or reporting periodically to designed services in charge of monitoring. |

3.9.9 RISK ASSESSMENT

The risk assessment was introduced in several states to replace the money bail. The objective of the assessment is for determination of risk for failure to appear in court including flight and risk related to public safety including the possibility of being rearrested. The system was found to be successful in certain courts; however, it has been criticised for the likelihood of entrenching another racial discrimination which may be justified as scientific. The actuarial system which incorporates the use of objective tools cannot accurately predict the risk therefore the courts are advised to use the tools as guides (Azari, 2019:79–80; Baughman, 2019:1; California Legislative Information, 2018:1–2; Issue Brief, 2015:5; Limoncelli, Mellow & Na, 2019:14; McMahon, 2019:29; Monsma, 2018:25; Picard-Fritsche, Rempel, Tallon, Adler, & Reyes, 2017:1 & 18; Schaefer & Hughes, 2019; Steinberg, 2018; Stevenson & Mayson; 2017:16; Tafoya, Bird, Nguyen, & Grattet, 2017:16; UNODC, 2013:107).

Buskey (2020:388), proposes for the development of a legal standard for preventive detention beyond money bail by the Supreme Court and further recommends that the society considers norms of building the risk tolerance beyond the labels of risk

assessment instruments. In England and Wales, the risk assessment is a policy requirement however, it was found that it is not consistently applied across police forces (Stoneman, Jackson, Dunnett & Cooke, 2018:951).

The risk assessment has not yielded the positive results in all the states such as in Springfield County the objective of reducing the jail population by detaining only those deemed as too risky and releasing other low risk categories was not realised.

‘Two years after reform was introduced, the situation remains disappointing. Springfield’s average pre-trial jail population has declined slightly, but the sweeping change supporters first imagined has not arrived. Moreover, the number of defendants remanded to custody with no offer of bail actually increased. And the number of individuals with non-financial conditions of release, especially GPS monitoring, has skyrocketed. Rearrest rates remain the same, while failure to appear rates have risen slightly. And judges reject the risk assessment tool’s recommendations in nearly half of cases—nearly always in a more punitive direction relative to what the tool recommended’ (Koepeke & Robinson, 2018:1727).

3.9.10 THE ROLE OF STAKEHOLDERS

3.9.10.1 Citizen Jurors in Australia

The citizen jurors in such Australian cities as Sydney, Canberra and Perth, support the use of alternatives to imprisonment however they contend that deprivation of liberty should apply to cases involving serious crimes (Simpson, Guthrie, Lovell, Walsh, & Butler, 2014:2). The jurors further suggested in their policy recommendations, an approach to prevent people from entering into the criminal justice system space which includes social determinant of health and offending (Simpson, Guthrie, Lovell, Doyle & Butler, 2015:17).

3.9.10.2 Release authorised by the Judiciary

The Federal Republic of Nigeria (1977) through the development of section 1(1) of the Criminal Justice (Release from Custody) (Special Provisions) Act Cap 79, assigns discretionary powers to the Chief Justice or the Chief Judge to issue an order of release which will be directed to the officer in charge of the prison. The latter is authorised to release the prisoners upon the receipt of the order. The conditions under which the order may be released are unlawful detention and upon reaching the

maximum detention period and the criteria extends to remand detainees. In 2016 and 2017 several prisoners were released from Kirikiri maximum and medium prisons, as well as Ikoyo prison as a strategy to decongest prisons (Hon, 2017).

The constitutionality of pardons and amnesty which are given by the Chief Justice and the Chief Judges have been a subject of debate between two advocates in Nigeria with one arguing that only the President has powers conferred to him or her by section 175(1) of the Constitution of the Republic of Nigeria to grant such releases. Hon (2017) who advocates against the practice, further provided an explanation that the authorities conferred with such release powers are President, after consultation with the Council and Governor of the State. He conceded that:

‘The practice of Chief Judges, particularly of the states, granting pardon or amnesty to offenders has been going on for quite some time now, but I make bold to say that it is clearly unconstitutional’ (Hon, 2017).

The Justice Safety Valve Act was developed by the members of the American Legislative Exchange Council to allow for deviation from the mandatory minimum sentence legislation based on the prescribed criteria (Newburn, 2016:4). Review of the mandatory minimum sentences through assigning more discretionary powers to the judges for low level drug related cases and non-violent crimes is one of the recommended strategies for dealing with overcrowding (Eisenberg, 2016:86–87).

3.9.10.3 Engagements between the judiciary and the legislature

In the study conducted in Alabama and Massachusetts the judges proposed awareness raising of the electorates and legislature to encourage a movement towards a “smart on crime strategy” than “tough on crime”. The judicial ethics in both states allows for judicial engagements with the legislators and the public on court related matters such as sentencing and criminal justice system reforms (Todd, 2019:201).

3.9.10.4 Pressure groups

In America lobby groups have emerged to fight injustice relating to several social problems including mass detention of prisoners from low socio-economic backgrounds. These groups include Centre for Community Alternatives and Vocal-NY (Citizen Action or New York, undated).

The Bronx Freedom Fund was established in 2007 to offer support to pre-trial defendants by paying bail and thus contributed to the reduction of mass overcrowding equated with criminalisation associated with poverty and race. Of the 2 000 defendants that were bailed out through this funding model, 60% had their cases dismissed. The posting of funds stopped in 2020 due to reforms introduced by ending cash bail in the majority of cases (May, 2018).

3.9.11 POLICE DRIVEN STRATEGIES

The police driven strategies include the implementation of social crime prevention strategies as alternative responses to societal problems outside the criminal justice system such as community drop-off centres. The centres are utilised for the categories that are likely to attract arrest which is related to social factors such as mental illness and drug related problems. Services to be provided comprise assessment, crisis intervention and referral to other services. The short-term crisis care is provided in Texas for 24 hours as recovery centre and a voluntary sobering centre (Neusteter et al, 2019:6 & 38).

In Houston, Texas, the Houston Recovery Centre, which is open 24/7 year-round, provides short-term crisis care, as well as a voluntary sobering centre that offers a safe, supportive environment. The use of the centres has not been found to be effective in producing positive criminal justice system outcomes of limiting the contact with police by the target group because of the lack of understanding of the variety of factors that play a role in reoffending (Neusteter et al, 2019:6 & 38).

Other strategies are police diversion and police bail. The police diversion programme should be introduced to deal with such minor violations as drug possession, disorderly conduct, public drunkenness, vagrancy, loitering, curfew violations, vandalism and interfamilial disputes (Neusteter et al, 2019:6 & 48).

Police bail which is referred to as pre-charge bail in England and Wales is applied in situations where further investigations are required before instituting formal charges and upon referral of the case to the Crown Prosecution Services for a charging decision. It assists in preventing unnecessary pre-trial detention. It is applied with

conditions such as requirements that include lack of contact with the victim directly and indirectly, reporting at the police station on specific days of the week and at specific times, travel restrictions including passport surrender in situation where there is a possibility of flight risk and living and sleeping at a specified address (Policing and Crime Act, 2017:23 & 25).

In order to curb the abuse in the use of pre-charge bail characterised by placing a person on bail for many months and even years without any judicial supervision, several legislative measures were introduced in England for implementation since April 2017. The measures include presumption of release without bail, a cap in the period of bail which includes an initial 28-day bail period with the first extension of up to three months subject to approval by the superintendent and the second extension of up to three months subject to approval by an assistant chief constable or commander for exceptional cases. In situation where the police requires to place the person longer than three months, an application is escalated to the magistrate (College of Policing, 2017:1–2; Gov UK, 2017; Policing & Crime Act, 2017:93–94).

3.9.12 PROSECUTOR DRIVEN STRATEGIES

Griffin and Yaroshefsky (2017:306), advocate for a cultural change in prosecution as a strategy to deal with mass incarceration. The reforms recommended include the following:

- Ensuring independence and accountability from the police;
- Creation of charging procedures and policies based on objective, data-driven information system; and
- Maintenance of accurate and complete data about the decision to charge and its consequences.

Davis (2016:1085) argues that prosecutors have an ethical duty to contribute towards the reduction of mass incarceration. She further contends that a new model which aims at bringing reforms including addressing mass incarceration and racial disparities in prosecution is implemented in various jurisdictions in United States. Progressive reforms implemented by prosecutors comprise the following strategies:

- Alternatives to incarceration;

- Second chances;
- Expanded use of diversion;
- Clemency programmes;
- Bail reforms;
- Transparency;
- Institution of fairer charges; and
- Declining prosecution for minor drug offences.

In Philadelphia the Chief Prosecutor, Larry Krasner contributed towards reducing mass incarceration through the memorandum he issued which included such reforms as decline of certain charges, diversion of many cases and recommendation for lower sentences where incarceration was appropriate (Davis, 2016:1081 & 1083; Davis, 2018:10 & 11).

3.9.13 MANAGEMENT OF RESISTANCE FROM UNIONS

Addressing of the fear of loss of employment by engaging with unions in situations where the closure of correctional centres may lead to unemployment is critical. In some states in United States, prison reformers were successful in reducing the union pressure by absorbing correctional officer jobs into other related industries. The Michigan Department of Corrections' efforts to reduce its prison population in the face of a powerful correctional officers' union are illustrative. The Department of Corrections closed twenty prisons and, for the first fifteen closures, the lay-off approach was not implemented, however the Department of Corrections anticipated these closures and therefore opted to stop filling vacant posts unless it was necessary according to Patricia Caruso, former Director of Michigan's Department of Corrections who supervised these efforts for seven years (Eisenberg, 2016:123).

Governor Cuomo contends that the reduction in the number of inmates may require closure of certain detention facilities and this right sizing should be regarded as contributing to saving of taxpayers' money since corrections is not an economic development strategy (Harding, 2020).

3.9.14 IMPROVEMENTS IN PRE-TRIAL DETENTION

The duration of time spent during pre-trial detention may be reduced by determining by law, maximum time limits or the detention of the remand detainees should be reviewed at regular intervals by an independent judicial authority for determination of the necessity to continue with detention. Judicial inspection may be conducted for determination of adherence to laws (UNODC, 2013:117).

In Malawi the maximum custody limits have been determined and are categorised by the court jurisdiction responsible for hearing the case of the remand detainee and the serious of the offence that the accused has been charged for. The maximum period of 30 days has been set for holding an accused person pending the commencement of trial in a subordinate court. In situations where the case is heard by the high court the person may be held in detention for a maximum period of 30 days. In cases where the accused has been charged for serious offences such as treason, murder, genocide and rape, the maximum detention period for holding a person in detention pending on the commencement of the trial is 90 days (Kayira, 2011:39).

The prosecutors may apply for an extension of custody limits which shall not exceed 30 days on condition that the application is submitted to the court hearing the case seven days before the expiry of the maximum detention period. Granting of extension is dependent on the submission of good and sufficient cause by the prosecutor however the code does not provide any expanded explanation on what constitute a 'good and sufficient cause' (Kayira, 2011:39). The absence of the mechanism for monitoring the period spent in detention by those in pre-trial, as well as the failure to unpack the processes to be followed leads to lack of implementation of the provisions on maximum custody limits (Msiska et al, 2013:2).

Custody limits vary from country to country with Italy and Spain using six and four years respectively while some countries have not prescribed any custody limit (Martufi, & Peristeridou, 2020:157).

Digard and Swavola (2019:8), propose several approaches to improve pre-trial processes and these include:

- Meaningful bail hearing which extends longer than few minutes in the presence of the legal representative of the accused;
- Pre-trial and additional supervision for those identified as high-risk categories to promote pre-trial success;
- Sending of court reminders to promote court appearance; and
- Increase in the use of unsecured bonds by allowing for release of remand detainees without any money upfront.

Those charged with misdemeanours and who do not pose a public safety or flight risk should be managed through the use of citations in the lieu of arrest or detention. The use of citations assists in reserving detention for those classified as dangerous and are utilised by police and judiciary. They assist in preventing collateral consequences of imprisonment which include loss of employment and loss of contact with family (Heaton, Mayson & Stevenson, 2017:749; Neusteter et al, 2019:7–8).

3.9.15 EVALUATION OF THE EFFECTIVENESS OF THE OVERCROWDING REDUCTION STRATEGIES

Evaluation of the effectiveness of the strategies by various stakeholders in the criminal justice system including academics and non-governmental organisations is critical and this can be done through workshops and seminars. Critical areas of assessment as suggested by UNODC (2013:65, 94, 165) include the following:

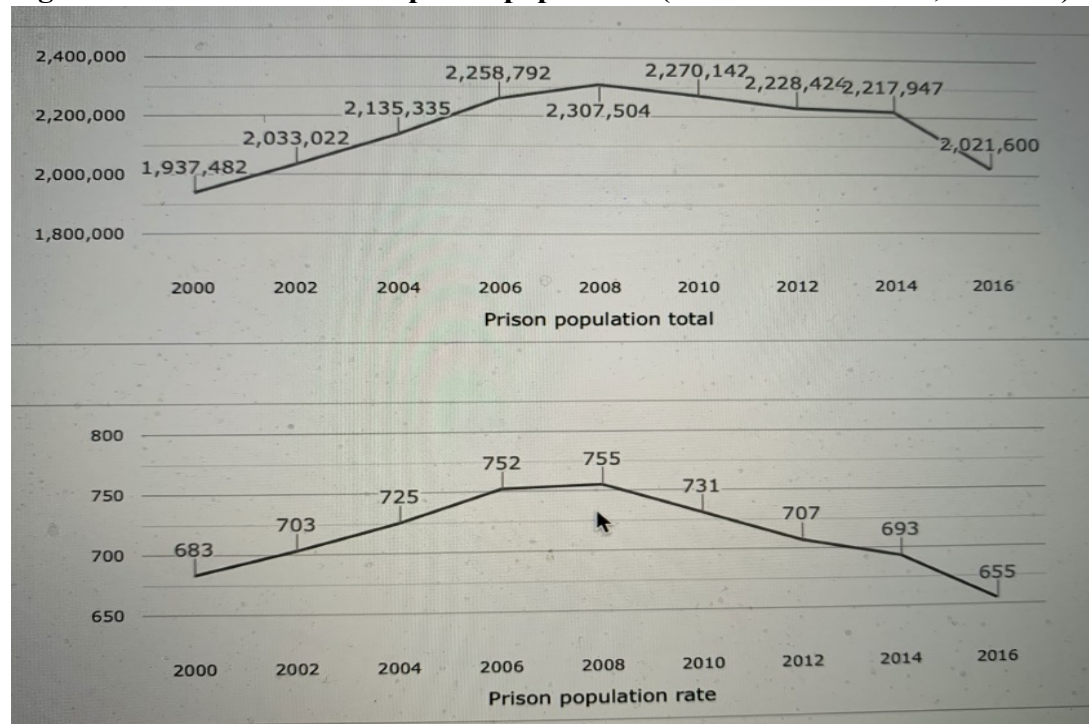
- Arrests patterns;
- The use of pre-trial detention;
- Implementation of legislation in practice, sentencing policies and trends;
- Implementation of non-custodial measures and sanctions;
- Overcrowding levels;
- Profiles of inmates including reclassification of offenders at prescribed interval for ensuring that security declassification takes place;
- Trends in imprisonment rates;
- Services offered for non-custodial measures; and
- Cost of imprisonment including projections on refurbishments.

3.10 TRENDS IN CORRECTIONS POPULATION

3.10.1 THE UNITED STATES OF AMERICA

The statistics on inmate population in United States of America is reported through reporting prison population totals and prison population rate. The reported information is an aggregated figure reflecting those detained in local jails, those detained in state facilities and those detained in federal facilities. The number of establishments were according to World Prison Brief (undated), 4 455 i.e., ‘3,163 [for] local jails at 2014, 1,190 [for] state confinement facilities at 2005, [and] 102 [for] federal confinement facilities at 2005’. According to the World Prison Brief (undated), the [inmate] population in United States of America reflects a reduction of more than 10% from 2008 to 2016 with remand detainees constituting less than a quarter of the detained population. The official capacity for 2017 was 2 150 000 and the occupancy level was 99,8%. The figure below reflects the trend on prison population totals and the prison population rate for selected years from 2000 to 2016. The prison population rate has been dropping since 2008 and this reflects a correlation with the gradual drop in inmate population.

Figure 3.1: Trend on USA prison population (World Prison Brief, undated)



3.10.2 EUROPEAN COUNCIL COUNTRIES

The data reported is collected annually and sourced from administrative records and therefore is an incomplete representation of the European Council countries information with regard to the prison population, bed space and occupancy. Of the 47 countries of the Council of Europe the table below provides information on 41 countries. Table 3.6 below, represents occupancy for 2008, 2013 and 2018 as extracted from data reported on prison capacity and number of persons held (Eurostat, 2020) and is similar to reporting implemented by corrections in South Africa. In 2021, countries with the highest number of bed spaces and prisoners were France, Italy and Poland with 62 673, 53 660 and 71 258 number prisoners respectively. There has been an increase in bed spaces from 2013 to 2021 in all the three countries and the number of prisoners has been reducing from 2018 to 2021 (Eurostat, 2020 & World Prison Brief, undated).

Table 3.7: Bed space, prisoners and occupancy for European Union Countries

| European Union Countries | 2008 | | | 2013 | | | 2018 | | |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | Bed space | Prisoners | Occupancy | Bed space | Prisoners | Occupancy | Bed space | Prisoners | Occupancy |
| Belgium | 8 445 | 9 811 | 116,18 | 9 715 | 11 818 | 121,65 | : | : | |
| Bulgaria | 9 408 | 9 408 | 100,00 | 8 834 | 8 834 | 100,00 | 8 241 | 6 651 | 80,71 |
| Czechia | : | 20 502 | | 20 928 | 16 645 | 79,53 | 21 058 | 21 577 | 102,46 |
| Denmark | : | 3 451 | | : | 4 091 | | 3 795 | 3 635 | 95,78 |
| #Germany | : | 73 793 | | : | 66 221 | | 74 386 | 65 762 | 88,41 |
| Estonia | 3 880 | 3 656 | 94,23 | 3 420 | 3 023 | 88,39 | 3 334 | 2 584 | 77,50 |
| Ireland | 3 827 | 3 484 | 91,04 | 4 244 | 4 088 | 96,32 | : | 3 962 | |
| Greece | 9 664 | 11 736 | 121,44 | 9 909 | 12 693 | 128,10 | : | 10 654 | |
| Spain | : | 73 558 | | : | 66 765 | | 64 323 | 58 883 | 91,54 |
| France | 51 997 | 62 252 | 119,72 | 57 516 | 67 075 | 116,62 | : | 70 059 | |
| Croatia | 3 501 | 4 734 | 135,22 | 3 921 | 4 352 | 110,99 | 3 558 | 3 217 | 90,42 |
| Italy | 43 843 | 59 284 | 135,22 | 48 559 | 63 848 | 131,49 | 51 141 | 61 131 | 119,53 |
| Cyprus | 322 | 652 | 202,48 | 370 | 553 | 149,46 | 566 | 619 | 109,36 |
| Latvia | 8 042 | 6 548 | 81,42 | 8 144 | 5 136 | 63,06 | 3 522 | 3 522 | 100,00 |
| Lithuania | 9 062 | 8 000 | 88,28 | 9 399 | 9 261 | 98,53 | 8 011 | 6 485 | 80,95 |
| Luxembourg | : | 762 | | : | 656 | | 711 | 656 | 92,26 |
| Hungary | 12 556 | 14 743 | 117,42 | 12 584 | 17 841 | 141,78 | 14 469 | 16 303 | 112,68 |
| Malta | 516 | 662 | 128,29 | 628 | 615 | 97,93 | : | : | |
| Netherlands | : | 14 610 | | 15 283 | 12 721 | 83,24 | : | 11 251 | |
| Austria | 8 682 | 8 248 | 95,00 | 8 636 | 8 862 | 102,62 | : | 9 163 | |
| Poland | 85 049 | 84 978 | 99,92 | 88 662 | 80 165 | 90,42 | 85 940 | 72 818 | 84,73 |
| Portugal | 12 464 | 10 807 | 86,71 | 12 400 | 14 535 | 117,22 | 12 934 | 13 021 | 100,67 |
| Romania | 34 299 | 26 212 | 76,42 | 29 389 | 33 434 | 113,76 | 19 414 | 20 792 | 107,10 |
| Slovenia | 1 098 | 1 318 | 120,04 | 1 293 | 1 360 | 105,18 | 1 339 | 1 396 | 104,26 |
| Slovakia | 10 818 | 8 166 | 75,49 | 11 812 | 9 753 | 82,57 | 11 499 | 10 294 | 89,52 |
| Finland | : | 3 530 | | : | 3 295 | | 2 975 | 2 956 | 99,36 |

| European Union Countries | 2008 | | | 2013 | | | 2018 | | |
|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | Bed space | Prisoners | Occupancy | Bed space | Prisoners | Occupancy | Bed space | Prisoners | Occupancy |
| Sweden | 7 175 | 7 073 | 98,58 | 6 675 | 5 723 | 85,74 | 6 539 | 6 114 | 93,50 |
| England and Wales | : | 81 674 | | 88 444 | 81 884 | 92,58 | 88 491 | 81 904 | 92,56 |
| Scotland | : | 7 827 | | : | 7 894 | | : | : | |
| Northern Ireland (UK) | 1 722 | 1 543 | 89,61 | 1 905 | 1 796 | 94,28 | 1 855 | 1 407 | 75,85 |
| Iceland | 145 | 140 | 96,55 | 164 | 147 | 89,63 | : | 136 | |
| Liechtenstein | 18 | 78 | 433,33 | 20 | 68 | 340,00 | 20 | 63 | 315,00 |
| Norway | : | 3 477 | | : | 3 869 | | : | : | |
| Switzerland | : | 5 303 | | : | 6 652 | | 7 518 | 6 602 | 87,82 |
| Montenegro | 1 280 | 1 216 | 95,00 | 1 116 | 1 064 | 95,34 | 1 345 | 1 125 | 83,64 |
| North Macedonia | 1 681 | : | | : | : | | : | : | |
| Albania | 4 166 | 4 916 | | 4 577 | 4 998 | 109,20 | 6 236 | 5 316 | 85,25 |
| Serbia | : | 9 701 | | 9 200 | 10 031 | 109,03 | 10 307 | 10 871 | 105,47 |
| Turkey | : | : | | 154 115 | 145 468 | 94,39 | 213 862 | 264 842 | 123,84 |
| Bosnia and Herzegovina | : | : | | 3 297 | 2 898 | 87,90 | 3 480 | 4 377 | 125,78 |
| #Kosovo | : | : | | 2 127 | 1 776 | 83,50 | 1 567 | 1 567 | 100,00 |
| #Germany (until 1990 former territory of the FRG) | | | | | | | | | |
| Red: Occupancy level above 100% | | | | | | | | | |

(Adapted Eurostat Statistics, 2018)

Changes in pre-trial detention as a percentage of inmate population reflect the following trend in the countries with the highest number of bed spaces reported in table 3.6:

- France: There was an increase of 10% based on figures reported for 2015 and 2021. The pre-trial population comprised 22.4 and 32.4% in 2015 and 2021 respectively.
- Italy: There was a decrease of 3.6% based on information reported for 2015 and 2021. The pre-trial population constituted 34.1 and 30.5 in 2015 and 2021 respectively.
- Poland: There was an increase of 6.3% based on information reported for 2015 and 2021. The pre-trial population constituted 5.9% and 12.2% in 2015 and 2021 respectively (World Prison Brief, Undated).

3.10.3 AUSTRALIA

According to the World Prison Brief (undated) the inmate population in Australia has been gradually increasing since 2000. The population increased from 21 714 in 2000 to 42 974 in 2018. The inmate population dropped to 41 060 on 30 June 2020. The official capacity as at 2017 was 36 730 and this converts to occupancy level of 112.2%. The remand population constituted 27.4% and 31.9% in 2015 and 2020 respectively and this translates to an increase of 4.5%.

3.10.4 NIGERIA

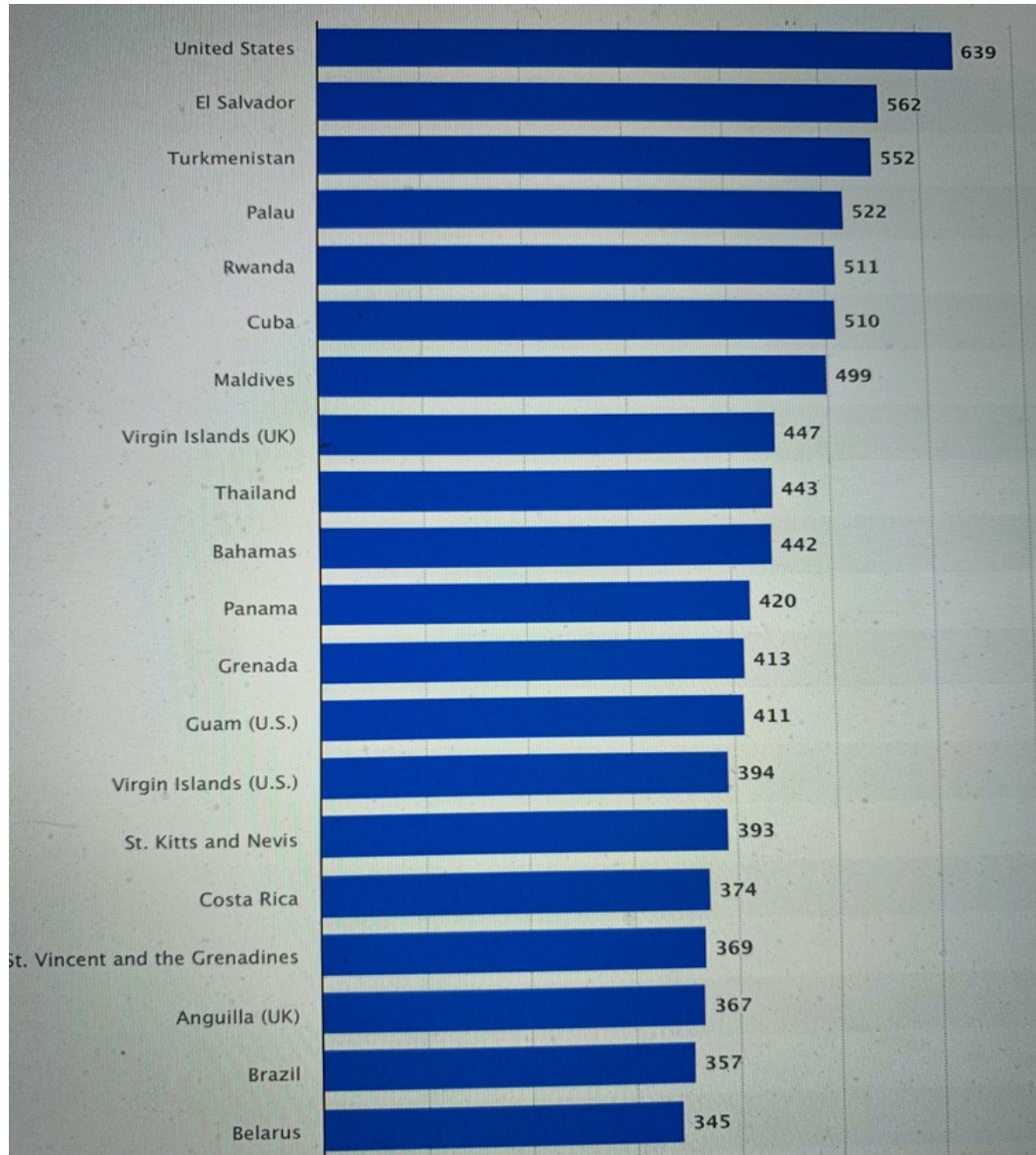
The inmate population reflects a gradual increase from 2006 to 2018 i.e., from 40 953 to 71,522. The official capacity as at July 2018 was 50 153. The pre-trial population constitute more than 60% of the detained inmates since 2000 and as at 2021 the percentage of those in pre-trial increased to 72.9%. The prison population rate remains low at below 40 (World Prison Brief, Undated).

3.10.5 COUNTRIES WITH HIGHEST PRISON POPULATION RATE

The top five countries with the highest prison population rate are United States, El Salvador, Turkmenistan, Palau and Rwanda. South Africa does not appear in the top twenty countries with the highest prison population rate since its rate constituted 248

based on inmate population of 147 922 which was recorded on for May 2021 (Statista.com 2021; World Prison Brief, undated).

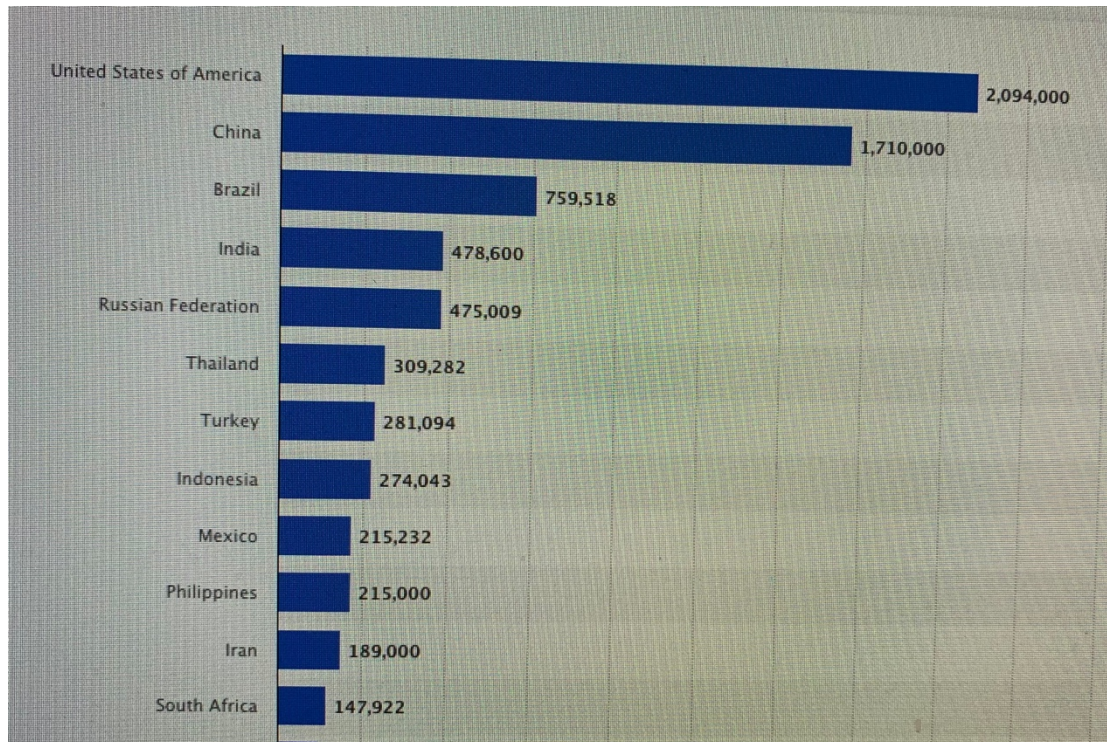
Figure 3.2: Countries with highest prison population rate: May 2021: Statista.com



3.10.6 COUNTRIES WITH THE HIGHEST NUMBER OF PRISONERS

The top five countries with the highest number of inmates as at July 2021 as per Figure 3.3 below were United States, China, Brazil, Russian Federation and India. South Africa has the highest inmate population in Africa as compared to all other countries based on figures reported by Statista and Institute for Crime & Justice Policy Research (Statista, 2021 & World Prison Brief, undated).

Figure 3.3: Countries with highest number of prisoners: July 2021: Statista.com



3.10.7 FOREIGN NATIONALS IN DETENTION

The number of foreign nationals in detention differ from country to country and region to region. In Europe foreign nationals constituted 15% of the inmate population as at January 2020; however, the figure varies from between 2% and 70% (Penal Reform International; 2021:125). Countries with the largest share of foreign nationals where they consist of more than 50% of the inmate population are Macau in China with 70.7%, Qatar with 73.3%, Gambia with 66.7%, Greece with 57.8% and American Samoa with 62.2% (Statista; 2021).

3.11 CONCLUSION

Chapter three was an illustration of international overview of overcrowding in corrections environment with focus on overcrowding as a wicked problem, general concepts applied when referring to overcrowding, measurement of overcrowding, drivers and causes, effects of overcrowding, cost of imprisonment and strategies and reforms to manage overcrowding. The next chapter will reflect literature reviewed on management of overcrowding in the South African environment.

CHAPTER FOUR
MANAGEMENT OF OVERCROWDING IN SOUTH AFRICAN
CORRECTIONS ENVIRONMENT THROUGH THE
IMPLEMENTATION OF THE CRIMINAL JUSTICE SYSTEM
STRATEGIES

4.1 INTRODUCTION

This chapter covers a literature review regarding areas relating to overcrowding, as well as factors that contribute to it in the domain of managing inmates with focus on remand detainees since the study undertaken is on determination of the effectiveness of criminal justice system strategies in curbing overcrowding of remand detainees in South Africa. The areas discussed in this chapter are:

- Contextualisation of overcrowding;
- Overarching legislative and policy framework;
- Elements for measuring overcrowding;
- Factors that influence crowding;
- Strategies for managing overcrowding; and
- Judicial visits and court judgements.

4.2 CONTEXTUALISATION OF OVERCROWDING

Overcrowding is not a new phenomenon in the corrections environment of South Africa and can be traced back to before 1990 (Peté, 2015:105–108). The contributing factors are embedded in the response model applied by each country to respond to crime. In the White Paper on Corrections (Department of Correctional Services, 2005:33), the outlined causes of overcrowding are as follows:

- Inefficient functioning of the criminal justice system;
- Introduction of the minimum sentence legislation for particular categories of serious crimes, this leading to long sentences which in turn affect the availability of bed spaces;
- Crime trends in South Africa, especially in relation to serious violent crimes;
- Levels of awaiting trial [remand detainees] held in correctional centres; and
- Inadequate needs-driven facility planning in the Integrated Justice System.

The overcrowded space is shared by both unsentenced and sentenced inmates and the strategies for dealing with overcrowding are limited to the provisions of the legislative and regulatory framework, which are reflected in protocols, operational policies, and strategies. The South African Human Right Commission (2020:28) acknowledges in its report that:

“While the living conditions of remand detention are a serious concern, the remand population contributes significantly to the overcrowding in correctional centres. Overcrowding is associated with the transmission of diseases with epidemic potential, such as acute respiratory infections, etc. In highly overcrowded conditions, disease outbreaks are likely to be more frequent and more severe”.

With the Covid-19 pandemic that threatened the international world, the overcrowding strategies were scrutinised for responding to the requirement of creating social distancing in the prison environment. Political leaders were urged to respond to overcrowding by considering limiting the deprivation of liberty, including pre-trial detention to a measure of the last resort (UNODC, 2016:6; UNODC, 2020:1). The Minister of Correctional Services, honourable Lamola, in his acknowledgement that overcrowding prevents social distancing stated the following:

“Under human rights law, states are obliged to prevent foreseeable threats to public health and ensure that all who need vital medical care receive it. Over and above that, the UN set out measures to protect those in detention. The high commissioner also advises people to look for ways to release low-risk offenders who are at risk of contracting the virus” (Timeslive.co.za, 2020).

The reduction could only be effected in one segment of the correctional services population i.e., sentenced offenders through the special parole dispensation targeting the release of 19 000 low risk offenders with the aim of reducing overcrowding by more than 10% (Gear & Gaura, 2020; Ministry of Justice and Correctional Services, 2020:6; Timeslive.co.za, 2020; Wardle, 2021). Presidential remissions were previously granted as provided for in the Constitution and these include the December 2019, the April 2012, the May 2005, the April 1995 and the May 1994 (Republic of South Africa, 1996:46; Republic of South Africa, 1998:64; Department of Correctional Services, 2019). The remand detainees could not benefit from the

remission and special parole dispensation since the law that governs their release is out of the control of correctional services (JICS, 2020:25; Wardle, 2021).

The limited strategies i.e., the options for bail review and referral to court for consideration of the period spent in detention empowers correctional services to make a referral to court and the decision of either to release or to continue with detention, or to grant and or reduce bail are all judicial decisions. In her publication, Wardle (2021), raises concerns regarding the discriminatory response that excluded a certain category of inmates in release consideration. During the Covid-19 pandemic the exclusion of the remand detainees from Covid-19 release may be construed as equivalent to breach of several rights, such as the right to equality, the right to equal benefit of the law, and the right to protection of legitimate expectations.

The remand detainee population reflects an increase of more than 30% over the period of three years from 2017 to 2020 during the month of May when analysing the monthly averages. The sentenced population dropped by almost 15% during the same period and the level of overcrowding constituted 31.17%. The percentage of remand detainees to the inmate population increased from less than 30% to almost 36% while the sentenced population reduced to almost 64% from more than 70% and can be regarded as a significant reduction over the period of 10 years.

The pervasiveness of overcrowding has significant negative implications for correctional services as it cannot deliver effectively on its core mandate (Department of Correctional Services, 2005:12). In his address at the strategic planning session held in November 2020, the Deputy Minister of Correctional Services, Nkosi Phathekile Holomisa articulated the following:

“The causes of overcrowding are not only dependent on the scope of criminal justice system, but penetrate to other socio-economic policies such as the lack of education, inadequate social welfare, abject poverty and joblessness. We therefore need a holistic and coordinated response to overcome the challenge of overcrowding” (Department of Correctional Services, 2020).

Karim (2020) acknowledges that rethinking bail and how it operates for marginalised people requires consideration and in the era of Covid-19, while unsanitary conditions with limited running water creates difficulties to maintain good hygiene.

4.3 OVERARCHING LEGISLATIVE AND POLICY FRAMEWORK

4.3.1 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

The Constitution provides for the protection of rights through the Bill of Rights outlined in Chapter 2. These rights include those that apply to the arrested, and detained. It further provides for the dimensions that are consistent with human dignity and adequate accommodation is among those dimensions (Republic of South Africa, 1996:36). The Correctional Services Act 111 of 1998 unpacks the dimension on accommodation to include floor space, lighting, ventilation and sanitary installation (Republic of South Africa, 1998:16).

The Constitution through section 35(1) provides that everyone who is arrested for allegedly committing an offence has the right:

- To be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest;
- To be charged or to be informed of the reason for detention and for the continuation of detention or to be released at the first court appearance after being arrested; and
- To be released from detention if the interest of justice permits, subject to reasonable conditions (Republic of South Africa, 1996:14).

Section 35(2) provides that everyone who is detained, including every sentenced prisoner has the right:

- To be informed promptly of the reason for being detained;
- To choose, and to consult with a legal practitioner, and to be informed of the right promptly; and
- To challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released (Republic of South Africa, 1996:15).

Section 35(2)(e) provides for the conditions of detention which form part of the elements utilised for defining overcrowding. These conditions are encapsulated in the right below:

“Everyone who is detained, including every sentenced prisoner, has 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” (Republic of South Africa, 1996:15).

Section 35(3) provides that every accused has a right to have their trial begin and conclude without unreasonable delay, to be presumed innocent and the right of appeal to or review by a higher court (Republic of South Africa, 1996:15 & 16).

4.3.2 CRIMINAL PROCEDURE ACT 51 OF 1977

The sections covered under this area are provided for in the Criminal Procedure Act 51 of 1977. They form part of the strategies implemented to reduce the overcrowding of remand detainees in the Department of Correctional Services. They are police bail, prosecutor bail, court bail and bail review (Republic of South Africa, 1977:68, 69–75 & 78–79).

4.3.2.1 POLICE BAIL

The Criminal Procedure Act 51 of 1977 provides for the processes to be followed from arrest to detention and release. With regard to police bail, section 59 provides that:

“An accused who is in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2 may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official” (Republic of South Africa, 1977:68).

Section 59 further stipulates the activities to be performed by the police official when releasing the accused on bail which are as follows:

- Completion and handing to the accused a recognisance on which a receipt shall be given for the sum of money deposited as bail; and

- Forwarding of a duplicate original of such recognisance to the clerk of the court which has jurisdiction for handling the case.

The recognisance should include information on the offence that the accused paid bail for and the trial related information in terms of the date, time and the place which will be the name of the court for the first court appearance. The bail granted under section 59 remains in force subject to amendment of condition which can only be made by the court in terms of section 62 of the same Act (Republic of South Africa, 1977:68 & 76).

4.3.2.2 PROSECUTOR BAIL

With regard to release on bail authorised by the Director of Public Prosecution, section 59A provides that:

- A Director of Public Prosecutions having jurisdiction, or a prosecutor authorised in writing by the Director of Public Prosecutions concerned, may, in respect of the offences referred to in Schedule 7 (attached as Annexure H) and in consultation with the police official charged with the investigation, authorise the release of an accused on bail unless there are restrictions pertaining to release as provided for in section 59(1)(a)(ii);
- The release be implemented upon payment of the sum of money determined for bail or providing of a guarantee to pay, subject to reasonable conditions imposed by the prosecutor;
- The accused shall be provided with the details on date, time and court for his or her first court appearance;
- The amendment of bail conditions shall be made by the court in line with section 62 of the same Act; and
- Bail granted in terms of section 59A shall be regarded as bail granted by a court in terms of section 60 (Republic of South Africa, 1977:68 & 69; Republic of South Africa, 2020:6).

4.3.2.3 COURT BAIL

The bail application by the accused in court is provided for in section 60 which states clearly that the accused shall be entitled to be released on bail at any stage before his

or her conviction, provided that the court is satisfied that the interest of justice permit, subject to conditions stipulated in section 50(6). If the court is satisfied that the interest of justice allows for release on bail, the ability to pay bail is considered and where the accused is not able to pay, appropriate conditions are considered. Factors considered by court as extracted from the Criminal Procedure Act 51 of 1977 and Criminal and Related Matters Amendment Act 12 of 2021 (Republic of South Africa, 1977:69–75; Republic of South Africa, 2021:11–12) have been summarised in Table 4.1 below:

Table 4.1: Criminal Procedure Act 51 of 1977 and Criminal and Related Matters Amendment Act 12 of 2021: Factors considered during bail application

| Section of the Act | Factors for Consideration |
|--|---|
| Section 60(2A) | <ul style="list-style-type: none"> • Pre-trial service report with regard to the desirability of releasing an accused on bail; and • <i>#The view of any person against whom the offence in question was allegedly committed, regarding his or her safety.</i> |
| Section 60(4) Interest of justice does not permit the release | <ul style="list-style-type: none"> • <i>#Likelihood of endangering safety of public or any person against whom the offence in question was allegedly committed, or any particular person;</i> • Likelihood of attempt to evade trial; • Likelihood of attempt to influence or intimidate witnesses or conceal or destroy evidence; • Likelihood of undermining or jeopardising the objectives or the proper functioning of the criminal justice system including bail system; and • Likelihood of disturbing the public order or undermine the public peace or security. |
| Section 60(5) | <ul style="list-style-type: none"> • Degree of violence towards others which are implicit in the charge against the accused; • <i>#Threat of violence which the accused may have made to a person against whom the offence in question was</i> |

| Section of the Act | Factors for Consideration |
|--------------------|--|
| | <p><i>allegedly committed</i> or any other person;</p> <ul style="list-style-type: none"> • #Any resentment the accused is alleged to harbour against <i>a person against whom the offence in question was allegedly committed</i> or any other person; • Disposition to violence on the part of the accused through looking at the evidence on past conduct; • Previous criminal history for determination of disposition to commit schedule 1 offences and particular types of offences; and • Previous history of bail breaches. |
| Section 60(6) | <ul style="list-style-type: none"> • The emotional, family, community or occupational ties of the accused to the place at which the trial will take place; • Assets held by the accused where they are situated; • The means and travel documents held by the accused which may be suggestive of a flight risk; • The extent to which the accused can afford to forfeit the bail amount which may be set; • Whether extradition could be readily implemented should the accuse flee across borders of the country; • Seriousness of the offence with regard to nature and gravity of the charge; • The strength of the case against the accused and the incentive to attempt to evade his or her trial; • The nature and gravity of punishment which is likely to be imposed if the accused is convicted; • The binding effect and enforceability of bail conditions for determination of the ease of breaching conditions; and • Any other factor that may be deemed necessary to consider. |
| Section 60(7) | <ul style="list-style-type: none"> • Familiarity with the identity of the witnesses and with |

| Section of the Act | Factors for Consideration |
|--------------------|---|
| | <p>evidence that may be brought against the accused;</p> <ul style="list-style-type: none"> • Whether the witnesses have already made statements and agreed to testify; • Whether the investigation against the accused has already been completed; • The relationship of the accused with various witnesses and the extent to which they could be influenced or intimidated; • The effectiveness and enforceability of bail conditions prohibiting communication between the accused and witnesses; • Whether the accused has access to evidentiary material which is to be presented at his or her trial; • The ease at which the evidentiary material could be concealed or destroyed; and • Any other factor that may be deemed necessary to consider. |
| Section 60(8) | <ul style="list-style-type: none"> • Provision of false information at the time of arrest or during the bail application proceedings; • Whether the accused is on parole; • Whether the accused is in detention on another charge; • Presence of an indication that the accused will not comply with any bail condition; and • Any other factor that may be deemed necessary to consider. |
| Section 60(8A) | <ul style="list-style-type: none"> • Likelihood of the nature of crimes and circumstances to induce a sense of shock or outrage in the community where the offence was committed; • Whether the shock or outrage of the community may lead to public disorder if the accused is released; |

| Section of the Act | Factors for Consideration |
|---|---|
| | <ul style="list-style-type: none"> • Whether the safety of accused will be jeopardised by his or her release; • Whether the release of the accused will undermine or jeopardise public confidence in the criminal justice system; and • Any other factor that may be deemed necessary to consider. |
| Section 60(11B) Schedule 5 and 6 charges | <ul style="list-style-type: none"> • Declaration of previous conviction; and • Declaration of pending charges and whether the accused has been released on bail in respect of those charges. |
| #: Factors sourced from the Criminal and Related Matters Amendment Act, 2021 | |

Factors highlighted under section 60(4) as per table above apply to police bail and prosecutor bail.

4.3.2.4 BAIL REVIEW

The Criminal Procedure Act 51 of 1977 provides for bail review which is initiated in line with section 63A and the one which can be initiated either by the accused or the prosecutor in line with section 63(1). The conditions for submitting an application to court by the head of the prison [correctional centre] to apply for release of the remand detainee on warning instead of bail or amendment of bail conditions are as follows:

- Satisfaction that the prison [correctional centre or remand detention facility] population of a particular prison [centre of facility] has reached such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused;
- The accused must have been charged with schedule 7 crimes or offences for which a police official may grant bail in terms of section 59;
- The accused must have been granted bail by the lower court i.e., the magistrate or the regional court and unable to pay the amount of bail set by the court; and

- The accused must not be in detention for other crimes that are not classified as schedule 7 crimes (Republic of South Africa, 1977:78–79).

The application may be considered in the presence of the accused if deemed necessary by the court. The possible court outcomes upon consideration of the application are as follows:

- Ordering for release of the accused from custody;
- Warning of the accused to appear in court at date and time determined by the court;
- Imposition of any condition in line with section 62 of the Criminal Procedure Act; and
- Reduction of bail if deemed appropriate and amend or supplement any bail condition imposed (Republic of South Africa, 1977:79).

Section 63(1) provides for submission of an application for amendment of conditions of bail by either the prosecutor or the accused and the application may be considered in the absence of the accused (Republic of South Africa, 1977:77).

The conditions of bail that may be set by court as additional conditions of bail or in the lieu of bail in line with section 62 are summarised as follows:

- The accused may be required to report in person at a specified time to any specified authority;
- The accused may be forbidden to go to places that will be specified in the court order;
- The accused may be prohibited from communicating with witnesses;
- The accused may be advised of the place for serving documents on him; and
- The accused may be placed under supervision of a probation officer or a correctional official (Republic of South Africa, 1977:76–77).

4.3.3 CORRECTIONAL SERVICES ACT 111 OF 1998

Section 2 of Correctional Services Act provides that the purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by enforcing sentences of the courts in the manner prescribed by the Correctional

Services Act, detaining all inmates in safe custody whilst ensuring their human dignity; and promoting the social responsibility and human development of all sentenced offenders. Section 3 on establishment, functions and control of the department, was extended through the Correctional Matters Amendment Act 5 of 2011 by adding the responsibility for detaining remand detainees to correctional services and this led to the closure on confusion relating to the management of remand detainees (Republic of South Africa, 2011:6; Republic of South Africa 1998:12–13).

With regard to accommodation, section 7 provides that inmates must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity (Republic of South Africa, 1998:16).

Section 49G was introduced through Correctional Matters Amendment Act 5 of 2011 for ensuring that the court is informed of period spent in detention by remand detainees. The section provides for the referral of remand detainees to court for consideration of their detention before they complete a period of two years from the initial date of admission and subsequent referrals must be made annually should the court decide that the remand detainees continue with detention. The section further stipulates that the National Commissioner may, in consultation with the National Director of Public Prosecutions, issue directives regarding the procedure to be followed for bringing court application (Republic of South Africa, 2011:14; Republic of South Africa, 1998 43.44).

Section 5(2)(b) of the Correctional Services Act 111 of 1998 was amended through the Correctional Matters Amendment Act 5 of 2011 by taking away the condition that allowed for an extended period in detention in police cells for longer than one month. The amended provision states that ‘if there is no correctional centre or remand detention facility in a district an inmate may be detained in a police cell but not for a period longer than seven days’. All the agreements that the Department of Correctional Services had with SAPS for detaining of remand detainees in their police cells ceased to operate after the issuing of operational policies by the two departments

in 2012 (Department of Correctional Services, 2013; Republic of South Africa, 2011:4; Republic of South Africa, 1998:15; SAPS, undated).

Section 49F was also introduced through Correctional Matters Amendment Act 5 of 2011 to regulate the temporary release of remand detainees to SAPS for further investigations. The criminal justice protocol which was developed to guide the implementation of this section was extended to cater for release of remand detainees to SAPS for ensuring early arrival in court (Republic of South Africa, 2011:14; Republic of South Africa, 1977:43).

4.3.4 CORRECTIONAL SERVICES REGULATIONS

Regulation 2 stipulates conditions for cell accommodation which are summarised as follows:

- Cells must have sufficient floor and cubic capacity space;
- Cells must be ventilated in accordance with the National Building Regulations SABS 0400 of 1990 issued in terms of Section 16 of the Standards Act, 1993; and
- Cells must be sufficiently lighted by natural and artificial lighting (Department of Correctional Services, 2012:13).

4.3.5 CRIMINAL JUSTICE SYSTEM PROTOCOLS

The Bail Protocol (Department of Justice and Constitutional Development, 2012) and the Protocol on Maximum Detention Period (Department of Correctional Services, 2012) were developed to give effect to the relevant provisions of the Criminal Procedure Act 51 of 1977 and Correctional Services Act 111 of 1998 respectively by outlining the responsibilities of various criminal justice system role players. The two protocols unpack the processes to be followed by the role players and the objectives outlined include contribution to the reduction of remand detainees (Department of Correctional Services, 2012; Department of Justice and Constitutional Development, 2012; Republic of South Africa, 2005:28).

4.4 ELEMENTS FOR MEASURING OVERCROWDING

Overcrowding is measured through the use of two elements which are the total number of inmates and the approved bed space. The latter is calculated through the determination of the design capacity. Since the design capacity is not a constant figure other terms associated with bed spaces have been coined and these are operational capacity, rated capacity and modified capacity (Bleich, 1989:1140; Government of Western Australia, 2016:4; UNODC, 2013:8). The closures of accommodation sections for repairs, renovation and upgrading of facilities as part of maintenance have the direct influence on the design capacity. While the operational capacity is a fluctuating figure which is influenced by changes in the detention facility, the rated capacity is determined for building tolerance of overcrowding taking into consideration the minimum levels of safety and services. The rated capacity which was determined as a universal figure for all correctional centres in South Africa is 150%. This figure was determined as a result of a court order that directed government to reduce the number of remand detainees at Pollsmoor remand detention facility to 150% in 2017 (Sonke Gender Justice v Government and others, 2017).

4.4.1 BED SPACE MANAGEMENT

In terms of the revised overcrowding reduction strategy, (Department of Correctional Services, 2020:11), bed space management is the practice of planning, controlling and monitoring the allocation of available bed space to the population of inmates. It involves the following processes:

- The physical recording of accommodation cell dimensions on the G309 form i.e., a form which was developed for recording cell measurements that are transferred or captured into an electronic system;
- Capturing of the recorded data from the G309 form into the computerized Accommodation Determination System;
- Computation by the Accommodation Determination System based on the norms that are pre-programmed into its algorithm; and
- Reporting the occupancy levels and the reports which inform management if a correctional centre is overcrowded or underutilised, so that accommodation can be managed.

Bed space management was developed to:

- Capture the variables for each cell on the computerized Accommodation Determination System;
- Determine the officially designed accommodation determination plan for each cell at the correctional centre and remand detention facility with due consideration of all the relevant factors and especially the dormant variables such as the floor space, light quality and air content; and
- Keep an account of all the alterations made to each cell (Department of Correctional Services, 2020:11–12).

Bed space calculation is driven by the prescribed minimum permissible cell area dimensions per inmate which are utilised for calculation of design capacity and are as follows:

- Ordinary communal cells: 3,344 square metres;
- Ordinary communal cells for new generation centres: 2,6 square metres;
- Ordinary single cells for all centres including new generation centres: 5,5 square metres;
- Hospital section communal cells including new generation centres: 4,645 square metres; and
- Hospital section single cells including new generation centres: 9,0 square metres (Department of Correctional Service, 2020; 10; Guideline on bed space management, 2020:6).

The design capacity which is based on the architectural design constitutes the baseline for developing an electronic bed space monitoring system utilised to measure occupancy including overcrowding in the Department of Correctional Services.

The principles that will be upheld for keeping an updated record for ensuring an effective system of bed space management are:

- Establishment and keeping of a record of facilities which delineates the three statuses regarding the bed spaces per facility which are approved, functional or usable and unusable bed spaces;

- Reporting and recording of changes in bed spaces in the Accommodation Determination System and ensuring that reported changes reflect accordingly in alignment with the three types of bed spaces;
- Ensuring that the partially closed facilities reflect the functional or operational bed spaces;
- Where the design bed space cannot be fully utilised because of inadequate personnel, the functional or operational bed spaces must be determined to avoid creation of crisis overcrowding; and
- Of the three bed spaces that should be determined from the Accommodation Determination System, the approved or design bed space should be constant and must only change when the facility has been renovated and additional bed spaces amended (Department of Correctional Services, 2020:11–12).

Bed space management in privately managed correctional centres is driven by profit therefore human occupancy is a critical factor for driving profits. While empty private prisons represent a piling stock on inventory, the proliferation of the approach may operate against the decarceration model hence they can be perceived as driving the capacity for criminalisation (Mitchelson, 2014:330). South Africa has in its correctional centres two privately managed correctional centres utilised to accommodate sentenced offenders and provide 5 952 bed spaces.

Bed space management in the Department of Correctional Services is saddened with challenges such as poor conditions of facilities, overutilisation of accommodation due to overcrowding and subsequent breakages and dilapidation that require constant attention and constant maintenance. The constitutional obligation to create conditions of detention that are consistent with human dignity including adequate accommodation obligates correctional services through its facilities management portfolio to continuously assess, maintain and refurbish facilities as their status affects the operational capacity in terms of availability of functional bed spaces (JICS, 2020:31; Department of Correctional Services, 2018:15; Republic of South Africa, 1996:15). This requirement is a tall order and is dependent on constant supply of resources in terms of ringfenced budget, human capacity and technical

skills for managing capital projects and the latter requires value management. Value management as a management approach has several outcomes which include the following:

- Effective risk management;
- Enhancement of project functionality, and project worth; and
- Reduction of operating costs, as well as project capital costs and the success factors are client support, active participation, plan for implementation and interaction among key stakeholders in the process of structured thinking (Mangquku, 2020:4 &10).

4.4.2 INMATE POPULATION

Inmate population is one of the elements utilised to determine occupancy and overcrowding. It is a continuously changing dimension as it is influenced by admissions and releases, as well as the length of stay in detention. The inmate population in South Africa constitutes unsentenced and sentenced inmates. The unsentenced category consists of remand detainees and the state patients, while the sentenced category is a mixture of those serving determinate sentences, short-term sentences and life sentences. With regard to state patients, the Department of Correctional Services operates as a transit while waiting for availability of a bed space in designated mental health establishments (Republic of South Africa, 1977:95).

The inmate population for 31 March 2021 consisted of 93 066 sentenced offenders and 47 882 unsentenced inmates. Of the unsentenced, remand detainees were 47 749. Remand detainees constituted 99,72% of the unsentenced inmates and 33.88% of the total inmate population of 140 948 (Department of Correctional Services, 2018:13; Department of Correctional Services, 2021:55 & 58).

4.4.3 LEVEL OF OVERCROWDING

Occupancy and overcrowding are monitored daily through the determination of head count at each centre which is recorded on the daily unlock and calculated against the predetermined bed spaces or approved accommodation for each centre. The aggregation of reported information for each region is presented per correctional centre and management area. The elements of the reporting tool are:

- The approved bed space or accommodation;
- The number of remand detainees and other unsentenced categories;
- The number of sentenced inmates;
- The total number of all inmates; and
- The occupancy percentage and overcrowding levels.

The national report which is a consolidation of reports from regions utilises the date for each reporting as the unit of analysis for regional and national reports. Reporting on bed spaces has been criticised as unreliable due to the outdated Accommodation Determination System, as well as constant change in approved bed spaces which cannot be accounted for (Department of Correctional Services, 2020:30). The number of approved bed spaces constantly change due to maintenance requirements in the form of repairs, renovations and upgrades.

The analysis of long-term trends revealed that over the period of 15 years from 2002/2003 to 2017/2018 the Department of Correctional Services managed to increase the bed space from 110 619 to 118 723 and this converts to an increase of 7.33%. During the same period the inmate population decreased by more than 10% and occupancy percentage decreased from 164.12% to 135.26% (Department of Correctional Services, 2018:42). This suggests that overcrowding levels dropped from more than 50% to 35.25%. On 31 March 2021 overcrowding level was 27.17% and this was calculated against the bed space of 110 836 and inmate population of 140 948 (Department of Correctional Services, 2021:55, Department of Correctional Services, 2021).

4.5 FACTORS THAT INFLUENCE PRE-TRIAL CROWDING

This section will focus selectively on instruments and guidelines that talk to issues of pre-trial and overcrowding.

4.5.1 INADEQUATE INFRASTRUCTURE

The property portfolio of the Department of Correctional Services, provides a supply of bed spaces for 243 facilities with statuses that are not stable. Of the 243 facilities only fifteen are new generation correctional centres (Department of Correctional

Services, 2021:8). The latter are the podular designed facilities which allow for direct supervision due to multiple cells that face a central area (Carter, undated:329; Tartaro, 2002:219). The new generation correctional centres further allow for grouping of inmates into manageable units (Luyt, 1999:93). Some facilities are old and outdated since they were built before 1990 and are inadequate for meeting the needs of rehabilitation.

The constant challenge of overcrowding contributes to the maintenance needs with subsequent cost as there are constant breakages which require repairs. The plumbing and hot water system break on a regular basis due to overuse and constitute cost drivers under facility maintenance. At any given stage there would be a number of facilities that would be closed because of renovation, upgrading, and dilapidation. The process of repairs and upgrading also takes long and further adds on the reduction in bed spaces and some projects would be on the planning stage for more than five years. While the provision of bed spaces is dependent on the status of facilities utilised for housing inmates, the decision to build and maintain the existing facilities requires a well-balanced decision since the newly created bed spaces may also dilapidate if the attention is not given to repairs (JICS, 2019:25; JICS, 2020:31; Department of Correctional Services, 2018:16; Department of Correctional Services, 2020:13–15 & 21; Department of Correctional Services, undated:2; Department of Correctional Services, 2020:8).

Factors that contribute to maintenance challenges include the lack of clearly defined day-to-day maintenance procedures for responding to defects and breakdowns and failure to conduct regular inspections for determination of defects and functionality, as well as delays in implementing repairs (Botha, 2017:123 & 124).

Blazely, Gonguet and Stokoe (2020:265–268) advocate for the position that maintenance of infrastructure assets is often neglected because of several factors such as political, economic, fiscal, institutional and capacity reasons. The latter may be equated to lack of up-to-date information on the state of assets which is a common feature in low-income countries, lack of standardised methodology for determination of maintenance needs and preference for new investment projects than maintenance projects (Schwartz, Fouad, Hansen, & Verdier, 2020:192).

Bed space management through upgrading, renovation and expansion forms part of infrastructure investment in the corrections environment and is not void of challenges that are generically experienced in infrastructure management. Schwartz et al (2020:1–5 & 194–195) enumerate several challenges related to inefficiencies in infrastructure management with inevitable loss in resources, and these are:

- Poor infrastructure governance with infrastructure governance defined as “the institutions and frameworks for planning, allocating and implementing infrastructure investment spending” (Schwartz et al (2020:1);
- Poor project appraisal;
- Faulty project selection;
- Inadequate maintenance;
- Corrupt behaviour which manifests in the form of bribes, kickbacks, collusion, embezzlement and influence peddling;
- Weak interagency coordination processes;
- Selection of projects driven by political considerations without feasibility studies;
- Cost overruns with lack of benefits;
- Weak budgeting system characterised by failure to budget realistically and misrepresentation of costs or benefits for manipulating results of economic analysis and lack of funding to complete ongoing projects;
- Challenges in procurement characterised by bids higher or lower than estimated project costs, unclear definition of bid amounts, repeat awards to same contractor;
- Poor record keeping which presents in incomplete contract files or missing required documents, lack of records that indicate work progress and work variations, failure to monitor the performance of the contractor, certification of work or services without physical inspection, maintenance expenditure too low compared to capital stock, high percentage of infrastructure assets classified as in poor condition; and
- Risk sharing arrangement benefits the contractor.

Mitigation strategies recommended by Schwartz et al (2020:10) include:

- Establishment of a strong infrastructure governance;
- Creating a proactive approach to corruption risk management;
- Clearly outlined decision making authority;
- Transparency and clearly delineated criteria for taking infrastructure decisions;
- Enforceable accountability for decision making;
- Promotion of integrity in management of transactions; and
- Determination of “red flags” for detection and management of corrupt acts.

Spending on infrastructure maintenance in the form of upgrades for repairs and renovation, as well as for replacement is inevitable in corrections environment especially in situations where overcrowding is a prominent feature since it contributes to overutilisation of assets and subsequent depreciation with ecological waste. The latter prevails in the form of water wastage which occurs through daily leakages (Schwartz et al, 2020:270).

4.5.2 SOCIO-ECONOMIC FACTORS

Affordability of bail for certain categories of remand detainees, setting of bail amounts without considering the individual circumstances of the detainees and address verification have been identified as factors that contribute to overcrowding (Cameron, 2020:8; Karim, 2020; Madi & Mabhenxa, 2018:19; Wits Justice Project, 2013:13). These factors tend to affect those from the lower socio-economic class. Madi & Mabhenxa (2018:20) concede that the absence of the fixed address is due to difficulties to navigate informal settlements, inability to find the house and lack of police cars.

The factors found to play a role in continued detention based on a sample of remand detainees kept in the Department of Correctional Services with an option of bail during 2016 are bail affordability, unemployment and lack of family support. Of the 341 remand detainees that participated in the audit conducted in August 2016, 121 were from Mthatha remand detention facility, 56 were from Pollsmoor female and 164 were from Pollsmoor remand detention facility. The summary of findings appears below:

- 90.32% could not afford bail given by the court;

- 64.22% reported that they did not have employed family members; and
- 87.68% did not receive any family visit though they had been in detention for more than three months (Department of Correctional Services, 2016:4&21).

4.5.3 LENGTH OF PERIOD SPENT ON REMAND

The drivers of the population of the remand detainee population are the increase in the number held on remand and period spent in detention before being acquitted or convicted. The referral to court by the Department of Correctional Services may not have any impact since the section on referral does not regulate the criminal justice process (Muntingh, 2016:37 & 38). The applications submitted by the Department of Correctional Services for consideration of the length of detention are considered through applying the options utilised when dealing with bail review applications (Department of Correctional Services, 2012:7).

Factors that contribute to increase in period spent in detention by remand detainees include bail application process that takes too long with frequent postponements due to unavailability of information and premature arrests undertaken before the prima facie case is established (De Ruiter & Hardy, 2018:3&27). While there is no stipulated time for bail hearing, the duration depends on the extent of charges in relation to the nature and counts, cross examination of witnesses and the number of co-accused involved in a case (Department of Justice and Constitutional Development, undated).

Another complication related to repeated postponements is the loss of interest in witnesses and therefore stay away from attending court cases and this further contributes to increase in period spent behind bars by detainees (Helen Suzman Foundation, 2011:21). With the absence of custody limits, some remand detainees stay up to five years and longer and the referral to court for consideration of period spent in detention by the Department of Correctional Services does not appear to be yielding any positive results (JICS, 2019:26).

4.5.4 LIMITED USE OF ALTERNATIVES

Findings on Pre-trial Service study conducted in Port Elizabeth court centre, revealed that less use of police bail and warning led to high number of accused in custody at first court appearance even for those charged for non-violent crimes (Open Society Foundation for South Africa, 2008:13). De Ruiter and Hardy (2018:1) acknowledge in their study that alternatives to remand are not used across the criminal justice system though South Africa has a comprehensive legal framework which is largely aligned with the Luanda Guidelines and related norms and standards. Reasons for inadequate use of alternatives include corruption, lack of knowledge of the legal framework, unwillingness to grant police bail, performance targets and rewards, community perceptions of crime and violence and public pressure placed on the criminal justice sector (African Commission on Human and Peoples' Rights, undated; De Ruiter & Hardy, 2018:1).

4.5.5 CRISIS OVERCROWDING

Crisis overcrowding differs from structural overcrowding which may be due to systemic issues in the criminal justice system in that the increase in population becomes sudden and may be linked to a particular event or situation such as the introduction of a new law which is accompanied by the requisite enforcement in the form of arrests leading to detention and emergency (UNODC, 2013:33).

The response to Covid-19 pandemic during 2020 which led to complete lockdown from 26 March to 16 April 2020 contributed to a sudden increase in the number of remand detainees with subsequent crisis overcrowding especially in Gauteng region which has the highest number of remand detainees. The state of disaster which was declared for implementation of a coordinated and integrated response to deal with the pandemic had an impact in several areas of service delivery including courts. The disaster management regulations issued to give effect to the proclamation of the disaster gave the Minister of Justice and Correctional Services authority to issue directions aimed at addressing, preventing and combating the spread of Covid-19 in all correctional centres, remand detention facilities, as well as courts and court precincts. The court directions were issued after consultation with the Chief Justice (Department of Co-operative Governance and Traditional Affairs, 2020:5–6; Republic of South Africa, 2020:1; South African Government 2020; Voigt, 2020). The average

population of remand detainees increased by 9.7% while the sentenced population dropped by almost 4% from 30 March to 30 April 2020. Of the six regions in the Department of Correctional Services, Gauteng had an increase of almost 16% in a space of less than two months. The highest increase in the remand detainee population was observed on 05 May 2020 with remand detainees reaching 57 254 (Department of Correctional Services, 2020).

4.5.6 DELAYS IN FINALISING INVESTIGATIONS

Delays in finalising investigations may be related to several factors such as the model of arrest implemented in the country which is “arrest and investigate”, backlog in forensic laboratories due to inadequate DNA testing kits, increased caseload of investigators and requests for postponements mainly for further investigation which may include ballistic analysis (Centre for Applied Legal Studies, 2013:23; Iruoma, 2005:96; JICS, 2020:25; Leslie, 2012:20; Mathews, 2009:108; Ngalo, 2017:27 & 34; Polity, 2021; Republic of South Africa, 2018:13).

The unintended consequence of delays in finalising DNA analysis is the impact on memories of the victims relating to the traumatic event that led to taking a DNA test (Woodard, 2019:22). While postponements contribute in delaying cases, the court cannot unnecessarily refuse to grant a postponement since investigations also contribute in creating a trial-ready case.

4.5.7 TIGHTENING OF BAIL LAWS AND BAIL ADMINISTRATION

Tightening of bail laws influence release decisions by creating conditions that make getting bail a lot tougher and is considered as an option to respond to the surge in violent crimes. The review of bail laws has been the subject of discussion in the security cluster for a considerable period of time. The tighter approach would be adopted to respond to complaints raised by the communities that “criminals were too easily released by the courts” and bail was easily granted in cases of violent crime (Cameron, 2020:2; Mkhwanazi, 2017; Open Society Foundation for South Africa, 208:1). The move towards developing victim-centric laws was supported by parliament through passing of the Criminal and Related Matters Amendment Bill in June 2021. The factors for consideration by court has been expanded by including “a

person against whom the offence in question was allegedly committed” in several sections dealing with bail consideration (Republic of South Africa, 2021:5–10).

Bail decision and amounts are unique for each court with some courts implementing stricter rules (Open Society Foundation of South Africa, 2008:13). Research findings on bail and remand detention in Gauteng criminal courts revealed several factors which impact negatively on court performance and these include:

- Lack of court infrastructure and equipment;
- Congestion of court rolls;
- Failure of case flow management;
- Early arrest by police;
- Insufficient investigations into the amount of bail to be set by the courts;
- Lack of application of non-financial bail conditions; and
- Saturation of court rolls equated with the model of “arrest first [and] investigate later” (Centre for applied legal studies, 2013:22 & 23; Leslie, 2012:26; Wits Justice Project, 2013:13–14 & 22).

Centre for applied legal studies (2013:22), cites several factors that contribute to overcrowding such as denial of bail in high numbers of remand detainees who are charged for committing Schedule 5 and 6 crimes, inadequate consultation with the accused by legal representatives before a formal bail application is instituted and failure to provide remand detainees with reasons for denial of bail. Sonke Gender Justice (2017) cites factors such as sluggish criminal justice system, strict and discriminatory bail practices as causes of overcrowding. Denial of bail on the basis of flight risk due to the lack of sufficient assets alone has been posed in certain cases and this was criticised by one appeal court with the view that other factors should have been considered such as the personal circumstances of the accused (Lebitse, 2019; *Masoanganye v the State*, 2011:7).

Of the remand detainees who are in custody during the pre-trial phase, some are waiting for the conclusion of address verification and verification of identity by SAPS through engagement with the Department of Home Affairs (Centre for applied legal studies: 2013:22; Leslie, 2012:12; Republic of South Africa, 1997:10; Wits Justice

Project, 2013:13). The complexity of address verification is that some remand detainees stay in informal settlements with no street addresses and therefore the required verification cannot be obtained thus leading to denial of bail (Leslie, 2012:13; Omar, 2016:30; Madi & Mabhenxa, 2018:19).

Reluctance to consider the option of bail may be associated with the lack of effective mechanism to monitor those placed under non-financial bail conditions since there is inadequate probation officers and correctional supervision officers. Imbalance in implementation of bail regime may lead to errors in detention with subsequent overcrowding of the remand detainee population (Leslie, 2012:5, 8 & 23).

4.5.8 BACKLOGS IN COURT AND OTHER ADMINISTRATIVE ISSUES

Case backlog occurs due to inadequate capacity to deal with workload and when court performance is not optimised. Factors that contribute to case backlog are:

- Insufficient number of courts and permanent staff including magistrates;
- Non-attendance of court proceedings by accused;
- Incomplete investigations of which some are due to insufficient capacity and resources in forensic laboratories;
- Inadequate court capacity to deal with incoming cases i.e., magistrates, prosecutors, legal aid representatives, interpreters and the increase in the number and length of postponements; and
- Unnecessary postponements which lead to unreasonable delay in commencing and finalising cases (Department of Justice and Constitutional Development, 2015:1 & 7; Gopaul, 2015:79; Hartley v Others, 2015:2; Mathews, 2009:108; Sonke Gender Justice, 2017; Wits Justice Project 2013:67).

Factors that contribute to delay of cases and subsequent increase in period spent in detention include inability to access legal representation and dissatisfaction with legal representation, lack of consultation outside the court appearance and lack of consultation of remand detainees regarding further remands (Centre for Applied Legal Studies, 2013:23). Additional challenge is the increased workload for legal representatives especially Legal Aid South Africa as the larger number of remand detainees are represented through the system of legal aid since they fall under the

category of poor and indigent (Leslie, 2012:29; Department of Correctional Services, 2020:1; Department of Justice and Constitutional Development, 2010:70; Department of Planning, Monitoring and Evaluation, undated:8–9; Wits Justice Project, 2013:13–17).

Court administration related issues which contribute to prolonged remand include loss of court files, records and transcripts, inadequate systems used to capture data and lack of capturing of case related information, resources and equipment used by court personnel, absenteeism from court sessions and double booking (Centre for Applied Legal Studies, 2018:23; Wits Justice Project, 2013:13–17 & 65, 66, 70, 72). The loss of court records in certain cases leads to reconstruction of the cases based on the notes kept by magistrates and this further contributes to delay in finalising cases (Wits Justice Project, 2013:73 & 74).

The existence of case backlog and the strategies for managing it are acknowledged in the annual reports of National Prosecuting Authority, the Department of Justice and Constitutional Development and Legal Aid South Africa (Department Justice and Constitutional Development, 2020:32; Legal Aid South Africa, 2020:31; National Prosecuting Authority, 2020:76). According to Department of Justice and Constitutional Development (2020:32), its inability to effectively manage the backlogs is due to resources and budget constraint and the department has made the following commitments in its annual report of 2019/2020:

“The Department sought to address the increasing number of backlog cases, both historical and those caused by the challenges created by the Covid-19 pandemic by developing a draft national integrated criminal case backlog management plan in collaboration with all stakeholders. Furthermore, a Covid-19 Court Optimisation Committee was set up under the leadership of the Deputy Minister of Justice and Correctional Services with all stakeholders to unpack the challenges and bottlenecks that courts were facing” (Department of Justice and Constitutional Development, 2020:32)

4.6 STRATEGIES FOR MANAGING OVERCROWDING

The Department of Correctional Services revised its eight-pronged strategy which has been in existence since 2006 and replaced it with an extensive and integrated strategy

that incorporates elements extracted from the criminal justice system document that outlines guidelines on awaiting trial detainees. This section will outline the cluster strategies, as well as direct and indirect measures implemented to reduce overcrowding in corrections environment in South Africa (Department of Correctional Services, 2020; National Prosecuting Authority, 2005).

4.6.1 KEY ROLE PLAYERS

The key role players in management of overcrowding who also play a significant role in the criminal justice system value chain are SAPS, Legal Aid South Africa, the National Prosecuting Authority, the Department of Justice and Constitutional Development and the Department of Correctional Services, and the Department of Social Development. The extension of the child and youth care centres managed by Department of Social Development to accommodate the detention of children in conflict with the law as provided for in the Child Justice Act 75 of 2008 has contributed in the reduction of the number of children in Department of Correctional Services. The number of children reduced from a historical high of an annual average of 4 126 in 2003 to 88 in 2021 (Department of Correctional Services, 2021:9; Department of Correctional Services, 2019:9; Republic of South Africa, 2008:4). The figure below represents the criminal justice system processes.

Figure 4.1: Extracted from the Overcrowding Reduction Strategy of Department of Correctional Services



4.6.2 CLUSTER STRATEGIES

The criminal justice system strategies constitute a myriad of options which are grouped under measures prior to first court appearance, methods at first appearance, methods to fast-track certain cases of remand detainees and the management of juveniles. Measures prior to first court appearance include arrest and release in terms of several sections of the Criminal Procedure Act 51 of 1977 and the release may be authorised by police or the prosecutor. Methods of reducing remand detainees at first court appearance include awarding of bail with or without conditions, diversion and restorative justice. Methods of fast-tracking certain remand detainee cases include among others, the use of plea-bargaining which may be formal or informal, securing of criminal records within ten days, fast-tracking of cases for DNA analysis, mental observation, probation services including assessments and methods of fast-tracking the investigation and trial. The selective strategies to be discussed in this section are:

- Police bail;
- Prosecutor bail;
- Bail review;
- Restorative justice; and
- Case flow management as a cluster coordination process (Department of Correctional Services, 2014:53–55; Department of Correctional Services, 2020:18; National Prosecuting Authority, 2005:7, 22 & 32).

4.6.2.1 Police bail

The SAPS has a policy which guides the implementation of bail to give effect to the relevant section of the Constitution and the Criminal Procedure Act 51 of 1977. The interest of justice factors cited in the Criminal Procedure Act equally apply when consideration is made for placement of the arrested persons on police bail (Republic of South Africa, 1977:68; Republic of South Africa, 1996:14). The sergeant is expected to consult the investigating officer for indicating whether the interest of justice permits the release of a person on bail. Other prescribed processes are:

- Verification of the correctness of the information provided by the arrested person including personal and employment details;

- Conducting system inquiries including verification of identity with the Department of Home Affairs;
- Determination of the reasonable amount of bail in line with guidelines provided by magistrate courts on bail money applicable to most prevalent offences in the magisterial district;
- Affording the accused person an opportunity to contact a legal representative, family member or friend to obtain bail money;
- Issuing of bail receipt (J398) with details of the next court date, place and time and communication of the consequences for failure to appear in court;
- Release of the accused after bail payment with no bail conditions;
- Providing of the clerk of court with the original copy of the J398;
- Verification of information provided to determine the correctness of the name, address, personal details, and employment details which can be done through visiting the address provided by the arrested person; and
- Recording of the recommendations for opposing bail including reference to proper knowledge of the facts recorded in the case docket (National Prosecuting Authority, 2005:9; SAPS, undated; SAPS, 2016:2–8).

Police bail which is of force at the time of the first court appearance in the magistrates and regional courts continues to be in force after such appearance in a similar way as the bail granted by the court under section 60, but subject to the provisions of section 62 of the Criminal Procedure Act 51 of 1977. The latter provides for adding of further conditions of bail by the court (Republic of South Africa, 1977:68; SAPS, 2016:9). Breach of police bail in the form of non-court attendance is managed according to section 67 of the Criminal Procedure Act. The section outlines the processes to be followed including the issuing of the warrant of arrest (Republic of South Africa, 1977:82–83).

Open Society Foundation for South Africa (2008:13) and De Ruiter and Hardy (2018:1) contend that the option of police bail and warning are less used than legally permitted and there is generally unwillingness to grant police bail. Practical hurdles

cited by De Ruiter and Hardy (2018:2) based on the baseline study conducted in 2015 for measuring of South Africa's remand system against the Luanda Guidelines were lack of awareness of legal provisions and authority to grant bail, as well as absence of police officers authorised to grant bail.

4.6.2.2 Prosecutor bail, bail review

The National Prosecuting Authority contributes in the reduction of overcrowding in corrections environment through awarding and reviewing bail in terms of section 59 and 63(1) of the Criminal Procedure Act 51 of 1977 and the implementation of restorative justice processes classified as alternative dispute resolution methods (Republic of South Africa, 1977:68 & 69; Republic of South Africa, 2020:6; SAPS, 2016:8). The facilitation of the implementation of the prosecutor bail requires that a list of standby prosecutors and their contact details be available at all the community service centres. The prosecutor bail occurs as a result of a consultation initiated by the investigating officer and the interest of justice factors will be applied as provided for in the Constitution and the Criminal Procedure Act. The investigating officer provides assistance with regard to the bail conditions that may be set including consideration of the affordability factor (Department of Justice and Constitutional Development, 2010:66; National Prosecuting Authority, 2005:14; SAPS, 2016:8).

4.6.2.3 Restorative justice

The restorative justice strategies utilised are diversion and informal mediation. Diversion constitutes disposal of selected criminal cases by withdrawal of charges after attendance of certified programmes. Cases that were diverted during 2019/2020 before enrolment in line with Child Justice Act 75 of 2008 and after enrolment were 3 217 and 33 574 respectively (Department of Justice and Constitutional Development, 2010:5; National Prosecuting Authority, 2012:30–31; National Prosecuting Authority, 2020:78; Republic of South Africa, 2008:10). In informal mediation the prosecutor operates as a mediator to resolve the conflict in a manner that seeks to deliver justice with subsequent withdrawal of the case from the court roll (National Prosecuting Authority, 2012:31).

Marhula and Singh (2019:35) support the use of diversion to reduce overcrowding in correctional centres. Diversion programmes are rendered by several service providers

from government, non-governmental organisations and educational bodies and the accreditation is provided by the Department of Social Development (Department of Social Development, 2010).

4.6.3 CLUSTER COORDINATION THROUGH CASE FLOW MANAGEMENT

According to the Department of Justice and Constitutional Development (2010), the concept ‘court and case flow management’ is a term which was formulated to represent a collection of principles and practices implemented to support and manage the criminal courts and the cases that flow through them. The fundamental elements of case flow management are leadership, case management, education, training and development, human resources, community communication and information technology. The key role players are Judiciary, Department of Justice and Constitutional Development, National Prosecuting Authority, Legal Aid South Africa, SAPS, and Department of Correctional Services. All stakeholders operate on the principle of equal partnership in the case flow structures (Department of Justice and Constitutional Development, 2010:3, 16 & 20; Department of Planning, Monitoring and Evaluation, undated:5–6).

The objectives of case flow management include:

- Establishment of case flow management structures at all relevant levels under the leadership of the judiciary;
- Adoption of measures to ensure that judicial officers manage court proceedings and maintain control of caseflow;
- Development of a custom of practices which are less tolerant of delays in the criminal justice;
- Contribution to the reduction of the number of awaiting trial detainees;
- Ensuring timely conclusion of cases consistent with circumstances of the case;
- Regarding of every court appearance as an opportunity to finalise the matter;
- Enhancement of public confidence in the judicial system; and
- Ensuring that justice is equally and timely available to all persons (Department of Justice and Constitutional Development, 2010:4).

The governance structures that lead the case flow structures are at national, provincial and district levels and are referred to as efficiency enhancement committees. Contributions made by the Department of Correctional Services involves sharing of trends on inmate population including pressure areas regarding the detention of inmates, sharing of documents on analysis of the reduction strategies and marketing of the system of community corrections including sharing of information on community services opportunities (Department of Justice and Constitutional Development, 2018; Department of Correctional Services, 2020:19 & 25).

Other case flow related projects that were established for prioritization of certain cases including the cases of remand detainees include the Court Optimisation Project and the National Integrated Criminal Case Backlog Management Plan (NICCBMP). The latter was developed to address case backlogs that continued to accumulate due to the national state of disaster as per direction given by the Minister of Justice and Correctional Services, honourable Lamola (Department of Justice and Correctional Services, 2020:8; National Prosecuting Authority, 2020:20).

4.6.4 CORRECTIONAL SERVICES DRIVEN STRATEGIES

Strategies driven by correctional services will include those targeting remand detainees and sentenced offenders however the detailed explanation will be on remand detainees since they are the focus of this study. There are only two direct measures applied to reduce the population of remand detainees and the responsibilities of correctional services is limited to referral and making follow ups with the courts, as well as to share analysed reports on bail categories and those detained for longer than two years.

4.6.4.1 Processing of bail review application

The bail protocol developed to give effect to section 63A of the Criminal Procedure Act 51 of 1977 is regarded as the criminal justice system policy and its objectives are as follows:

- Promote, facilitate and regulate cooperation between correctional services, the prosecuting authority, the Department of Justice and Constitutional Development and SAPS;

- Promote, strengthen the development of mechanisms and procedures to pace an application contemplated in the provisions of section 63A before the lower courts; and
- Promote the reduction of remand detainees in custody and thus assist in alleviating overcrowding in remand detention facilities and correctional centres (Department of Justice and Correctional Services, 2012:5).

The responsibilities of correctional services are:

- Determination of qualifying remand detainees in line with the criteria set in the Act which has already been explained in the paragraph on bail review;
- Completion and submission of documents to court via the relevant prosecutors for further screening aimed at determining the qualifying remand detainees since the warrant of detention sent to correctional services does not always reflect all the charges. Some remand detainees have many charges and will therefore not fit in the space provided in the warrant of detention. Another complexity is that the charges may change as the remand detainee challenges them and additional charges may be added as the investigation continues;
- Making follows ups with court and ensuring that the remand detainee appears in court as per requisition from court if the application will be considered in the presence of the remand detainees; and
- Keeping a record of submitted applications and court outcomes (Department of Justice and Correctional Services, 2012:5).

The applications for bail review are submitted on the third month of detention from the date of admission for prevention of loading the saturated courts soon after the decision has been made (Department of Correctional Services, 2014:21).

The responsibilities of the prosecuting authority entail screening of the applications, provision of feedback to correctional services with regard to the list submitted for screening, informing of the clerk of court of the application for placing it before the relevant magistrate and to prepare a certificate on whether the application will be opposed or not. The responsibility of SAPS through the investigating officer

encompasses the determination of personal circumstances and other factors for assisting on whether to oppose the bail application or not and advise the prosecutor accordingly for making an informed decision (Department of Justice and Constitutional Development, 2012:10–12).

The clerk of court has the following responsibilities:

- Placing of the application before the court;
- Notification of the head of the centre and the legal representative of the remand detainee of the court appearance date;
- Arranging for the court date, place the matter on the court roll and provide correctional services through the head of the centre with a court order if court appearance will be required; and
- Keeping of a register on applications received, dates booked for court appearance and court outcomes (Department of Justice and Constitutional Development, 2012:8–9).

The bail protocol is implemented in conjunction with section 63(1) which allows for bail review initiated by either the prosecutor or the accused and in this case the remand detainee must give consent for the process to be initiated. The process is preferred as it does not have a detailed exclusion criteria similar to the one prescribed for 63(A). The training material in the form of a detailed presentation has been shared with several criminal justice system role players including the South African Judicial Education Institute (Department of Correctional Services, 2014).

With regard to bail protocol, the Department of Correctional Services has not been implementing the protocol effectively and the reluctance is for prevention of civil litigation in relation to the requirement to submit an affidavit as a confirmation of the levels of overcrowding (Wits Justice Project, 2013:13–17). Another challenge from the side of correctional service is the use of the amount of bail for determination of qualifying remand detainees for submitting application to court. Certain regions were found to be submitting application for remand detainees with a R1000 bail or less and this conflicts with the provisions of the 63A. A declaration was made in the judgement relating to *State v Thekiso* (2011:20) that it was “unlawful for Department

of Correctional Services to impose monetary limit as a threshold in respect of application of the provision of section 63A of the Criminal Procedure Act”.

The JICS through its memorandum of understanding with Legal Aid South Africa refers several complaints of inmates relating to bail and legal representation. These include request for legal representation, complaints about lack of feedback from legal representatives on appeals and petitions and provision of legal assistance for bail applications (JICS, 2017:72). Correctional Services has a protocol with Legal Aid South Africa which was developed for regulating procedures to consult with remand detainees, implementation of measures to facilitate bail applications and to assist remand detainees who cannot afford bail with the aim of reducing the number of remand detainees (Department of Correctional Services & Legal Aid South Africa, 2014:4).

4.6.4.2 Processing of application for consideration of the length of detention

The Correctional Matters Amendment Bill of 2011 introduced in the Correctional Services Act section 49G on maximum incarceration period as a clause that provides for referral to court and not necessarily setting a maximum custody limit. Section 49G(1) provides that:

“The period of incarceration of a remand detainee must not exceed two years from the initial date of admission into the remand detention facility, without such matter having been brought to the attention of the court concerned in the manner set out in this section: Provided that no remand detainee shall be brought before a court in terms of this section if such remand detainee had appeared before a court three months immediately prior to the expiry of such two year period and the court during that appearance considered the continued detention of such detainee” (Republic of South Africa, 2011:14; Republic of South Africa, 1998:43).

The section allows for referral of remand detainees to court for consideration of their cases in terms of the length of period spent in detention before completion of a period of two years and subsequent applications are submitted annually if the court decides that the remand detainee should continue with detention. In order to facilitate the monitoring of period for determination of qualifying remand detainees, an electronic system which automatically calculates the period spent in detention was incorporated

in the admission and detention system utilised in centres (Department of Justice and Constitutional Development, 2012:4).

The responsibilities of correctional services are as follows:

- To determine qualifying remand detainees by accessing an electronic name list from the admission and detention system;
- To verify and print the electronically completed forms;
- To submit the application or referral to court via the clerk; and
- To make a follow up and keep a record of submitted applications and court decisions (Department of Justice and Constitutional Development, 2012:4).

Since there is no parallel provision in the Criminal Procedure Act 51 of 1977 that refers to section 49G, the processes followed with the handling of bail protocol applications were extended to 49G (Department of Justice and Constitutional Development, 2012:6–7).

Based on the monitoring visits conducted by the office of the inspecting judge, the position expressed in the annual report is that 49G does not appear to yield any positive results as reflected in the number of remand detainees kept by correctional services (JICS, 2019:26). The other view is that an assumption cannot be made that the court will consider the application submitted by correctional services for investigation of undue delays since there is no authority provided in the Correctional Services Act and “the Correctional Services Act does not tell the court what to do with a section 49G case” (Muntingh, 2016:38).

Centre for Applied Legal Studies (2013:13) in its recommendation proposed for an analysis of the effectiveness or otherwise of section 49G of the Correctional Matters Amendment Act, since there is no single solution for addressing the challenges of managing remand detainees in the criminal justice system. Ballard and Subramanian (2013:19), concede that:

“..., although a mechanism such as a custody time limit is certainly a step in the right direction, especially in light of the excessive periods of detention that South Africa’s remand detainees are frequently forced to suffer, there is the risk that it will be used, simply, as a benchmark for the maximum time

it should take to conclude a case. And two years is a very long time to wait, especially if the case is a relatively simple one”.

While it appears that there are remedies available for remand detainees such as the release from custody, refusal of postponements, and a stay of prosecution, these require consideration of myriad of factors as cited in section 60 of the Criminal Procedure Act 51 of 1977 (*Sanderson v Attorney-General*, 1998:33). The processes for consideration on their own are managed as separate trials for those that have economic muscle to submit requests for appeal.

4.6.4.3 Conditions for placement under non-custodial system

Conditions that may be imposed by the courts when placing remand detainees under the non-custodial system which requires supervision by a correctional official after considering the bail review or 49G application are as follows and some are also included in the Correctional Services Act 111 of 1998 for facilitation of monitoring of those placed on parole and probationers placed by court:

- Placement under house detention;
- Participation in treatment, development and support programmes;
- Participation in mediation between victim and offender or in family group conferencing;
- Restriction to one or more magisterial districts;
- Residing at a fixed address;
- Abstinence from using alcohol or illegal drugs;
- Abstinence from committing a criminal offence;
- Abstinence from visiting a particular place;
- Abstinence from contacting a particular person or persons; and
- Abstinence from threatening a particular person or persons by word or action (Department of Correctional Services, 2015:5–6; Republic of South Africa, 1977:68 & 76; Republic of South Africa, 1998:45 & 46).

Other conditions that have been set based on successful appeals are:

- Providing a guarantee for the value of a million rand to the registrar;

- Specifying of the residential addresses to be used by the accused if he or she has to travel for business;
- Notification of the commanding officer two days before undertaking a travel;
- Notification of the court registrar of changes, if any, in the residential address;
- Prohibition from applying for passport; and
- Reporting at the police station at certain intervals (Majali v the State, 2011:8; Rohde v the State, 2019:3).

The reluctance to use non-custodial system is linked to several factors such as lack of confidence in the system of non-custodial placement, inadequate and lack of investment in the infrastructure required to promote the use of non-custodial measures including cooperation between criminal justice system role players and lack of public support (UNODC, 2013:32 & 135).

4.6.4.4 Measures for reducing sentenced offenders

The measures for reducing sentenced offenders are summarised as per table below, and their implementation is critical for the Department of Correctional Services since more than 50 percent of facilities detain for both sentenced and unsentenced inmates. The reduction realised from any of the inmate categories reduces the load for the correctional centre or the remand detention facility in relation to the resources utilised such as the provision of meals and health services to some extent.

The special remission and the special parole dispensation which were implemented in 2019 and 2020 respectively benefited correctional services since the downward trend was observed in the population of sentenced offenders and this should be regarded as a historical success (Department of Correctional Services, 2022:17; Department of Correctional Services, 2021:47; Department of Correctional Services, 2021:14). More than 13 000 as well as more than 14 000 sentenced offenders were released from correctional facilities as a benefit from special remission and parole dispensation respectively (Department of Correctional Services, 2020:49; Department of Correctional Services, 2021:19).

Table 4.2: Measure for reducing sentenced offenders: Department of Correctional Services, 2021

| Measure | Applicability | Legislative and Policy Framework | Success/Failure Factors |
|---|----------------------|--|---|
| Monitoring of the Sentence Expiry Dates (SEDs) and ensuring that no sentenced offender is kept beyond his or her SED unless there are reasonable circumstances that justify detention such as the state of disaster | Sentenced offenders | Not Applicable | Electronic system for monitoring offenders three months before the sentence expires. |
| Presidential pardon or reprieve and emittance of fines, penalties or forfeitures | Sentenced offenders | Section 84 of Constitution of the Republic of South Africa Africa (108, 1996) Section 82 of the Correctional Services Act 111 of 1998 | Determination of qualifying offenders. |
| Amnesty or special remission of sentence | Sentenced offenders | Section 84(2)(j) of the Constitution of the Republic of South Africa, Act 108 of 1996 | Dependent on President of the Republic. Usually granted to sentenced offenders to mark and celebrate special national events. The immediate |

| Measure | Applicability | Legislative and Policy Framework | Success/Failure Factors |
|---|----------------------------|--|--|
| | | | <p>impact is usually a reduction in the inmate population; however it is short-lived and does not result in sustainable and consistent reduction in the inmate population.</p> |
| <p>Compassionate release – release on medical parole</p> | <p>Sentenced offenders</p> | <p>Applicable sections of the Correctional Services Act, 1998 as amended</p> | <p>Recommendation of the Medical Parole Advisory Board.</p> <p>This measure is only applicable to a small number of qualifying offenders.</p> |
| <p>Placement on parole (Lifers and determinate sentences)</p> | <p>Sentenced offenders</p> | <p>Applicable sections of the Correctional Services Act, 1998 as amended</p> | <p>Serving of stipulated minimum detention period. Meeting the requirements for placement.</p> |
| <p>Referral to court by Department of Correctional Services for conversion of a sentence of imprisonment to</p> | <p>Sentenced offenders</p> | <p>Applicable sections of the Correctional Services Act, 1998 as amended and</p> | <p>Dependent on the <i>court a quo</i> to approve applications for conversion of sentence.</p> |

| Measure | Applicability | Legislative and Policy Framework | Success/Failure Factors |
|--------------------------|---------------|---|-------------------------|
| correctional supervision | | the Criminal Procedure Act, 1977 as amended | |

4.6.4.5 *Other measures*

Other measures implemented in correctional services are transfers between correctional centres, use of progressive discipline for those placed under community corrections, renovation and upgrading of detention facilities. Transfers between correctional centres are done within and between regions based on the occupancy levels and consideration for security classification. Where remand detainees are considered for transfers, the next court date is the driving factor and transfers are applied to remand detainees whose next court date is beyond the period of six months. Use of progressive discipline for breaching non-custodial conditions is utilised as a last resort since it can contribute to overcrowding and probably crisis overcrowding if applied with each breach reported. There are situations where revocation of parole is unavoidable due to loss of support systems, reoffending and abscondment (Department of Correctional Services, 2020:39; Department of Correctional Services, 2020:20–21; UNODC, 2013:174–180).

Additional proposals include renovation and replacement of outdated correctional centres and building of new centres, electronic monitoring and decriminalization and criminalisation. Renovation and upgrading of detention facilities contributes in the provision of required bed spaces. Renovation and replacement of outdated correctional centres and building of new correctional facilities including the types of facilities are measured against the cost implications taking into consideration the maintenance costs since correctional centres fall under the services that drive social spending in the country. The use of electronic tagging for monitoring those placed under the non-custodial system has been implemented erratically because of several challenges that are documented in correctional services reports including those submitted to the oversight body such as the Portfolio Committee of Justice and Correctional Services. The challenges as outlined are as follows:

- Insufficient Information and Communication Technology (ICT) equipment at various levels from the head office to regional office, management areas and community corrections offices; as well as equipment to access electronic monitoring systems;
- Unavailability of hardware infrastructure i.e., network, servers and storage; and
- Inadequate electricity and telephone infrastructure (Parliamentary Monitoring Group, 2008; Parliamentary Monitoring Group, 2015).

A cluster protocol for electronic tagging of remand detainees was developed to give effect to the proposal of the National Development Plan 2030, that talks to consideration for placement of remand detainees under the electronic monitoring system as a strategy to reduce overcrowding. The approved policy could not be implemented due limited numbers that the solution was initially rolled out for. There are certain courts though that included the tagging as one of the conditions for placing remand detainees under supervision by a correctional official in line with section 62(f) of the Criminal Procedure Act 51, 1977 (Republic of South Africa, 2011:403; Department of Correctional Services, 2015).

4.7 JUDICIAL VISITS AND COURT JUDGEMENTS

4.7.1 JUDICIAL VISITS

Judicial visits benefit the Department of Correctional Services through the reports that are provided by the judges and overcrowding including the prison conditions is one of the issues raised in their reports. Section 99 of the Correctional Services Act 111 of 1998 on access to correctional centres, provides for the judges of the the Constitutional Court, Supreme Court of Appeal and High Court, as well as magistrates within their areas of jurisdiction to visit correctional centres. The access allows for the following:

- Visitation of any part of the correctional centre;
- Provision with any documentary record;
- Interviewing of inmates; and

- Bringing of any matter to the attention of the National Commissioner, the Minister, the National Council of Correctional Services and the inspecting judge (Republic of South Africa, 1998:74).

The summary of visits and findings based on the reports provided by the judges to correctional services appear in the table below:

Table 4.3: Summary of Judicial visits

| Name of the Judge | Prison Visited | Date of the Visit | Summary of Findings (Overcrowding) |
|--------------------------|--|--------------------------|---|
| Judge Khampepe | Durban Westville (Female Section and Medium B) | 24 June 2016 | <ul style="list-style-type: none"> • Overcrowding in male facility • Approved bed space of 2137 against the occupancy of 4016 • Crumbling infrastructure with plumbing problems |
| Judge Froneman | Sada Correctional Centre | 29 October 2017 | <ul style="list-style-type: none"> • Approved bed space of 216 against the occupancy of 411 • Ablution not functioning optimally because of low pressure of water and broken pipes. |
| Judge Cameron | Pollsmoor Correctional Centre – Remand Centre and Women’s Centre | 23 April 2015 | <ul style="list-style-type: none"> • The Pollsmoor remand detention facility was overcrowded at over 300% capacity • The Pollsmoor female facility housed 787 inmates but had the capacity for only half the number of inmates. |

4.7.2 COURT JUDGEMENT

The Department has received court judgements based on conditions of detention since they constitute the rights of the arrested and detained (Republic of South Africa, 1966:15). Of the judgements received by correctional services over a number of years on conditions of detention, the focus will be on *Sonke v Government and others* (2017) which will be referred to as Saldanah judgement. The judgement was about overcrowding and inherent conditions in Pollsmoor remand detention facility. Sonke Gender Justice and Lawyers for Human Rights launched a case on extreme overcrowding and inhumane conditions in Pollsmoor remand detention facility. The order granted by the court on 5 December 2016 is summarised as follows:

“It is declared that the first respondent [The Government of the Republic of South Africa as represented by the Department of Correctional Services] has failed to provide the inmates of Pollsmoor RDF [Remand Detention Facility] with exercise, nutrition, accommodation, ablution facilities and health care services of a standard that complies with the requirements of the Correctional Services Act 111 of 1998, and that such failure is inconsistent with the Constitution” (Sonke v Government and others, 2017:3).

The elements of the final court order included the following:

- Reduction of number of persons detained in Pollsmoor remand detention facility to 150% of the approved accommodation within six months of the date of the order which was 22 December 2016;
- Filing of a progress report to the court on 21 April 2017; and
- Filing of the final report on 30 June 2017 on whether the detention facility complied with the order (Department of Correctional Services, 2017:3–4; *Sonke v Government & others*, 2017:74).

The Department of Correctional Services filed the required action plan on 13 February 2017, provided the court with progress reports and submitted the closing report which reflected the occupancy of 147.62%. The reduction was short-lived though as the occupancy increased to 169.98% by 21 February 2018. The reduction of population in Pollsmoor remand detention was achieved by transferring some remand detainees to other centres in addition to referral of application court for bail review and consideration of length of detention. While the department is expected to reduce

its inmate population to a considerable level, it is also not in a position to refuse detention of inmates regardless of the levels of occupancy because refusal is equivalent to breaching section 165(5) of the Constitution. The section provides that “an order or decision issued by a court binds all persons to whom and organs of state to which it applies” (Sonke Gender Justice v Government of the Republic of South Africa, 2017; Republic of South Africa, 1996:82).

4.8 CONCLUSION

This chapter reflected strategies applied for management of overcrowding in correctional centres in South Africa, including the applicable legislative and policy framework with more focus on strategies for reducing the population of remand detainees. The chapter reflected the co-dependencies to other criminal justice system role players in the strategies for reducing the population of remand detainees. The next chapter will focus on research methodology including the planned strategy for analysis of data.

CHAPTER FIVE

RESEARCH DESIGN AND METHODOLOGY

5.1 INTRODUCTION

This chapter is an illumination of the research strategy applied in this study. The areas covered are the theoretical framework, the research design and methodology, population and sampling strategy, and data collection. Other areas include validity and reliability conditions, and research ethics.

5.2 THEORETICAL FRAMEWORK (PHENOMENOLOGY)

In this study, the approach followed is the integration of the hermeneutic phenomenology and Interpretative Phenomenological Analysis. Phenomenology is an umbrella term which incorporates the philosophical movement and a variety of research approaches (Kafle, 2011:181; Mayoh & Onwuegbuzie, 2015:5 & 7). When applied to research, phenomenology is a study of a phenomenon regarding its nature, meanings, and the life experiences by one or more individuals in relation to the phenomenon and can address a variety of topical research questions (Gill, 2014:31; Haradhan, 2018:8; Somekh & Lewin, 2005:121).

The primary concern in phenomenological research is for creation of experiential meanings which constitute fresh, in-depth and rich textured descriptions of the phenomenon based on lived experience (Chan, Fung & Chien, 2013:6; Finlay, 2009:6; Finlay, 2013:173; Kafle, 2011:182). The phenomenological research methods entail a relationship of responsiveness between the phenomenon and subjective interconnection between the researcher and the researched (Finlay, 2009:6).

Phenomenology can be classified under several schools. However, in this study the three schools discussed are the transcendental phenomenology, Hermeneutic phenomenology, and Interpretative Phenomenological Analysis (Creswell, 2013:79–80; Finlay, 2009:8).

5.2.1 TRANSCENDENTAL PHENOMENOLOGY

Transcendental phenomenology was conceptualised by Edmund Husserl who is regarded as the forefather of the descriptive phenomenology. The focus is on the descriptions of experiences of individual participants and Husserl refers to his descriptive method as reduction (Asper, 2009:2; Moran, 2011:27). This school of phenomenology is premised on the notion that experience must be transcended to discover reality and bracketing should be done which entails suspending of personal prejudice and opinions to arrive at the essences (Barua, 2007:3; Kafle, 2011:186; Greening, 2019:89; Lavery, Calgary & Canada, 2003:21; Padilla-Díaz, 2015:102).

Bracketing assists in scrutinising the ‘whatness’ of the phenomenon regardless of whether it occurs in the real or fantasy world in order to give meaning (Barua, 2007:2; Flick, 2014:186). Essence refers to essential structures of subjective experience and can be seen through intuition or the process called variation. The phenomenological approach developed by Husserl focuses on identifying the core components of the phenomenon or experiences that makes it unique and distinct from others (Pietkiewicz & Smith, 2014:8).

In this study transcendental phenomenology has been added since it shares basic components with the hermeneutic phenomenology. Both schools are ‘concerned with the life world or human experiences as it is lived’ (Lavery et al, 2003:22 & 24). Hermeneutic phenomenology is the approach followed in this study and is regarded as the extension of transcendental phenomenology.

5.2.2 HERMENEUTIC PHENOMENOLOGY

Hermeneutic phenomenologists are concerned with the life world or experiences of human beings. The focus is on elucidating details and trivial aspects within the experiences of human beings which are often taken for granted. The aim is to create a meaningful understanding of the lived experiences hence the notion of suspending opinion is rejected and replaced with interpretive narration to the descriptions provided (Kafle, 2011:186 & 191; Lavery et al, 2003:24). As a research approach, hermeneutic phenomenology purports to generate rich descriptive texts regarding the experiences of the selected phenomenon in the life world of human beings as

individuals and groups (Kafle, 2011:186). According to Kafle, (2011:189), the researcher in phenomenological research is regarded as:

“a signpost pointing towards essential understanding of the research approach as well as understanding of the research approach as well as essential understandings of the particular phenomenon of interest”.

The well-known hermeneutic phenomenologist, Martin Heidegger, believes that the meaning of phenomenological description as a method relied in the interpretation and viewed description as a form of interpretation. Hans-Georg Gadamer another well-known hermeneutic phenomenologist held a view that understanding of phenomenon and interpretation are bound together and the latter is an evolving process. Meaning is created by understanding the context and the back-and-forth strategy referred to as hermeneutical circle may be applied (Aspers, 2009:2; Moran, 2011:11). The circle entails reading, reflective writing and interpreting (Kafle, 2011:195). Gadamer viewed bracketing as impossible as his perspective is that prejudice is a condition of knowledge, which is found to be intelligible in any situation. In his view he acknowledged the irrefutable presence of historicity of understanding and that it plays a positive role in the search for meaning (Lavery et al, 2003:25).

Gadamer regarded interpretation as a fusion of horizons and the latter is defined as ‘a range of vision that includes everything seen from a particular vantage point’ (Lavery, 2003:25). Gadamer further conceded that the presence of unquestionable historicity of understanding plays a positive role in search for a meaning. Interpretations emerge because of fusion of the text, the context, the participants, the researcher and their contexts (Finlay, 2012:11; Lavery et al, 2003:25 & 30).

Hermeneutic phenomenological research is based on grounds of subjective knowledge. Therefore, subjective experience and insights contribute to the creation of knowledge. While the step-by-step method is not the focus of the Hermeneutics, the six research activities which are recommended are:

- Commitment to an abiding concern;
- Orientation towards the question;
- Investigation of experience as it is lived;
- Describing of the phenomenon through writing and rewriting; and

- Consideration of part or whole phenomenon (Kafle, 2011:194).

In the context of applying the hermeneutic phenomenological principles, the researcher collected data from several sources in order to have rich descriptions for understanding overcrowding as well as the strategies implemented for its reduction. The reflective analysis of data which entails interpretation and elucidation for creating an understanding of the phenomenon was applied during data collection phase (Finlay, 2012:10; Grondin, 2015:2). The back-and-forth process was applied by conducting of follow up inquiries with the participants (Grondin, 2015:13; Moran, 2011:11; Wojnar, 2007:175). An additional follow up by creating clarity seeking questions that were sent through the emails, telephonic interviews, use of focus groups and analysis of historical documents assisted in creating meaning from the blend of the researcher's understanding of the phenomenon.

5.2.3 INTERPRETATIVE PHENOMENOLOGICAL ANALYSIS (IPA)

Interpretative Phenomenology is an emergence from the work of such hermeneutic philosophers as Heidegger and Gadamer (Finlay, 2009:11). Interpretative Phenomenological Analysis (IPA) is not an operationalisation process of any specific philosophical idea. It is a qualitative research approach that is participant-oriented and focuses on examining and interpreting the 'lived experiences' of the participants. The researcher makes sense of what is said or written through interpretive engagement and use of valuable expert knowledge (Alase, 2017:11; Mayoh & Onwuegbuzie, 2015:11; Pietkiewicz & Smith, 2014:8; Smith & Osborn, 2015:41).

Smith and Shinebourne (2012:53 & 66) concede that the IPA allows for creating meaning through sustained engagement with the text and a process of interpretation. Furthermore, they argue that IPA "can be described as having cognition as a central analytic concern" (Smith & Shinebourne, 2012:54). IPA operates from a premise that there is no uninterpreted phenomenon and the interpretive process makes the analysis richer and more comprehensive (Pietkiewicz & Smith, 2014:8). According to Eatough and Smith (2017:28), the existential matters which are the focus of IPA are transformative, demand reflection and re-interpretation therefore researchers who adopt IPA are encouraged to be imaginative and flexible in the design and the execution of the study. Furthermore, Miller and Minton (2016:2) advise that

researchers who apply IPA principles should bring their diverse perspective and content application to the research process and creativity should be implemented in data collection. The variety of data collection forms should be applied in addition to the semi-structured interviews (Eatough & Smith, 2017:30).

Alase (2017:10-18) elucidates the elements of IPA that researchers should consider. The summary of the elements includes the following:

- As a qualitative research approach, the IPA is a ‘participant-oriented’ descriptive process of ‘lived experiences’ which entails an interpretive process for making sense of what is being said or written;
- The research questions should capture the essence of what the study is all about and reference to theory or literature should be done only if it is informed by the selected qualitative strategy of inquiry;
- Homogenous sample with a size range of between two and twenty five participants is recommended;
- The data collecting process should focus on quality and adequate security for safekeeping of the data as well as for protecting the rights and privacy of the participants;
- The interviews should be conducted from a period of one hour to three hours and follow-up interviews should be done when necessary; and
- Data analysis should include data reduction for capturing the ‘core essences’ in relation to the phenomenon under investigation without misrepresenting the responses of the participants. The research themes should be utilised as they assist in the presentation of ‘core essences’.

In this study, the hermeneutic phenomenological and IPA approaches were integrated and the intended benefits are:

- The provision of explanation on the experience of individuals and groups regarding the phenomenon which is not well understood though extensively reported on (Wilson, 2015:41);
- The research design phase allowed the researcher to work out in a progressive manner the strategies that satisfied the research aims through developing questionnaires and using multiple methods for addressing the

main research question relating to the phenomenon (Lester, 1999:2; Wilson, 2015:41);

- The analytical process was applied from the sampling approach to data collection and analysis, as well as interpretation. The multiple interpretation system was an integration of processes which includes the understanding of meaning created by participants and judgement of the meaning expressed by the participants against predetermined theoretical concepts and standardised operational procedures (Pietkiewicz & Smith, 2014:8); and
- The ‘whatness’ of the phenomenon was scrutinised through the analysis of established theoretical framework, the subjective and unique experiences of the participants, consideration of part and whole phenomenon and historicity of the phenomenon. The knowledge that has been created should be regarded as developing, unanticipated, and subject to alternative interpretations (Finlay, 2009:17; Flick, 2014:186; Kafle, 2011:187, 191 & 194).

In this study the researcher focuses on the overcrowding phenomenon and the strategies implemented to reduce overcrowding of remand detainees in a South African context, but with potential wider application to the rest of Africa and beyond. The questions regarding several focus areas which are bed space management, profile of correctional centres and remand detainees, bail review, length of detention and police bail led to the creation of descriptive and interpretative texts. The latter were utilised to answer the main research question on the effectiveness of the criminal justice system strategies to reduce overcrowding of remand detainees.

5.3 RESEARCH DESIGN AND METHODOLOGY

The term research design is defined differently by various authors. Leedy and Ormond (2013:74) define it as a strategy for solving a research problem, while Salkind (2010:1253) describes it as a plan that guides and outlines the logical process for data collection, measurement and analysis to address the research problem and answer research questions.

Akhtar (2016:68) defines it as a plan and a glue that hold all the elements of the research project together. The research question is a determining factor in selecting the research design. The design should be able to answer the research questions (Tully, 2014:33). According to Creswell (2003:2), the framework elements which guide the design should be understood by the researcher and these are:

- Philosophical assumption about the “what” constitute the knowledge claims;
- Strategies of inquiry; and
- Methodology.

In this study the researcher utilised a mixed method design since the phenomenon under inquiry is complex and requires both qualitative and quantitative information obtained from divergent sources.

5.3.1 MIXED METHOD DESIGN

Mixed method design entails the use of both quantitative and qualitative methods in a single study or in a series of studies and the inquiry may include induction, deduction and abduction (Creswell, 2013:4; De Lisle, 2011:92; Edmond & Kennedy, 2017:178; Gunasekare, 2013:364; Johnson & Onwuegbuzie, 2007:129; Schoonenboom & Johnson, 2017:108; Tariq & Woodman, 2013:1; Wheeldom & Ahlberg, 2014:113). According to Teddlie and Tashakkori (2010:9), mixed methods arose from the triangulation literature associated with convergent results and in-depth investigation of unexplored aspects of the phenomenon.

The classification framework for the mixed methods research is dependent on the emphasis on approaches selected and the integration of data. With regard to approaches, equal status may be given to both qualitative and quantitative approaches or a dominant approach may prevail between the qualitative and quantitative approaches (Heyvaert, Maes, & Onghena, 2013:13).

The important feature in the mixed method research is the design typology. The rationale for the design includes the provision of the blueprint, legitimising the mixed method research by introducing designs that are clearly distinct from those employed

in qualitative and quantitative studies and establishing a common language for the field (Teddlie & Tashakkori, 2010:22).

Three general strategies and several variations employed in mixed methods research are sequential, concurrent and transformative procedures (Creswell, Plano, Guttman & Hanson, 2003:181–186; Creswell, 2003:16; Creswell, 2009:211–216; Creswell, 2012:540–545; Kroll & Neri, 2009:43; Teddlie & Tashakkori, 2006:20–23). The procedures guide the labelling of the designs. The type of the design typology is dependent on such factors as theoretical perspective, priority strategy, sequence of data collection implementation and the point at which data are integrated (Terrell, 2012:260). Several designs enumerated from the mixed method approach are:

- The convergent or concurrent designs, which can be described as triangulatory, transformative and embedded;
- The sequential designs which can be described as exploratory, explanatory and transformative; and
- The multiphase design (Creswell, 2009:211–216; Creswell, 2012:540–546; Driscoll, Appiah-Yeboah, Salib & Rupert, 2007:20–21; Teddlie & Tashakkori, 2006:20–23; Terrell, 2012:261–272).

In this study the convergent, or concurrent triangulation strategy will be applied and equal priority will be given to both quantitative and qualitative approaches. Data integration will be instituted during the interpretation phase (Terrell, 2012:268).

5.3.1.1 The convergent or concurrent triangulation strategy

The strategy consists of two concurrent data collection phases and equal priority is given to both sets of data. Integration which is the critical step in any mixed method mostly occur during the interpretation or discussion phase of the results (Creswell, Plano Clark, Guttman & Hanson, 2003:183; Creswell, 2009:213; Creswell, 2012:540; Terrell, 2012:268). The rationale for the strategy is multipurpose i.e., may be utilised for:

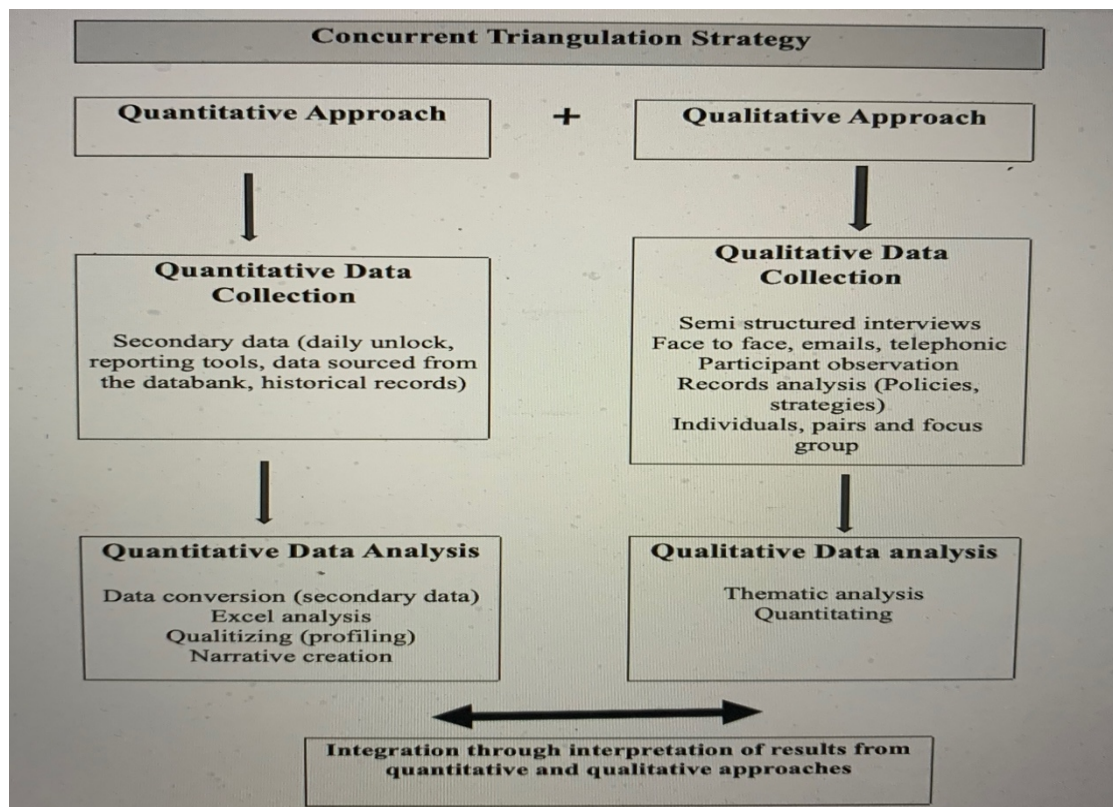
- ensuring complementarity by using one method to clarify the results of another method;
- confirmation or corroboration of results;

- ensuring completeness in explanation or description of the phenomenon under inquiry;
- development of knowledge by using the results from one approach to inform the other approach; and
- expansion for reflecting breadth and depth of the study (Bamberger, 2012:4; Caruth, 2013:113; Kroll & Neri, 2009:43; Greene, Caracelli & Graham, 1989:259–269; Terrell, 2012:268; Vankatesh, Brown & Bala, 2013:41).

The strategy has a shorter data collection period as compared to the sequential methods; however, it requires a great deal of expertise in both qualitative and quantitative research (McKim, 2017:202; Terrell, 2012:268).

The diagrammatic representation of the concurrent triangulation strategy applied in this study appears in Figure 5.1 below.

Figure 5.1: Diagrammatic representation: Concurrent triangulation strategy



In terms of the diagramme above, qualitative and quantitative approaches were implemented as parallel processes. Various data collection tools and sources were utilised and integration was applied during the interpretation of results.

5.4 POPULATION AND SAMPLING STRATEGY

The term population in any study is critical as it is linked to the objectives of the study, the sampling approach, and to generate findings from the study. Shukla (2020:2) defines the term as ‘a set of all the units which possess variable characteristic under study and for which findings of research can be generalised’. The phenomenon under inquiry is complex and the main research question and the subset of questions warranted an approach that could accommodate various population groups. The population groups are clearly articulated in the sampling approach selected for the study.

5.4.1 SAMPLING STRATEGY

Collins, Onwuegbuzie and Jiao (2006:84–85) provide a list and description of sampling schemes that may be used by the researcher in a mixed methodology study. The list consists of both generic random schemes such as simple, stratified, cluster, systematic and multistage schemes, as well as the non-random purposeful sampling schemes. The latter includes stratified, criterion, snowball, opportunistic, mixed, and convenience sampling methods. The researcher utilised a multistage purposeful random scheme consisting of the following stages:

- Stage 1: Determination of most overcrowded facilities;
- Stage 2: Determination of the provincial and regional location of the most overcrowded facilities for identifying randomly, three provinces; and
- Stage 3: Determination of four correctional centres, three police stations and three courts from sampled provinces.

The process followed in the determination of provinces and correctional centres as well as police stations is further unpacked in paragraphs 5.4.2 and 5.4.3 respectively. The process of sampling for the courts was abandoned since there was no response received from the Department of Justice and Constitutional Development. The participation by the clerks of courts since they handle the applications and referrals

with regard to the implementation of the strategies for reducing overcrowding of remand detainees would have enriched the data collection process. The focus group with heads of correctional centres was conducted as a process of validation for corroboration by presenting and discussing the findings on data analysis. The corroboration approach which is advocated by Padilla-Díaz, (2015:107) has to some extent assisted in providing clarity on issues raised with regard to responses on challenges on bail review and consideration of length of detention by courts.

Participants were those that work in the focus areas for the study and are outlined below:

- Department of Correctional Services: Officials who process court applications for bail review and referral of remand detainees to court for consideration of their length of detention, as well as compilation of statistics. Officials who work with bed space determination and plans for facilities maintenance;
- South African Police Service: Officials who process police bail including approval and one official from the visible policing unit at national office;
- The heads of correctional centres from Gauteng and Eastern Cape regions represented a convenient sample because of limitations imposed by adherence to Covid-19 regulations, therefore they were recruited to participate in the area on bed space management factors. Some heads of centres from Gauteng were further recruited to assist with validation of findings in areas that needed further clarity.

The samples are summarised in table below:

Table 5.1: Samples for the study

| Area | Target group | Number of participants |
|---|---|-------------------------------|
| Court applications for bail review and consideration of the length of detention | Officials from case management administration | 9 |
| Bed space availability | Heads of correctional centres | 43 |
| Creation of bedspaces | Managers: Facilities management | 8 |

| Area | Target group | Number of participants |
|---|--|-------------------------------|
| | portfolio | |
| Verification of bedspaces (participant observation process) | Managers of facilities and officials from the correctional centres | 3 |
| Caseflow management | Managers from case management administration and other managers who attend caseflow meetings | 7 |
| Police bail | Officials from police stations who work in sections that deal with police bail and the manager from head office who work in visible policing section | 5 |
| Focus groups | Heads of correctional centres and remand detention facilities | 6 |
| | Investigators from the police station | 4 |

The samples were representative as they consisted of participants that were working in all the identified areas with the exception of the bed space management sample. The questionnaire on bed space availability factors was initially addressed to the managers in facilities management portfolio. During the data collection phase it was detected that the participants were not a representative sample. The corrective measure was applied by redesigning a questionnaire and distributing it to the heads of correctional centres. The problem associated with sampling is common especially in qualitative investigations. Oppong (2013:202) recommends strategies for addressing sampling errors that include ensuring that the sample is adequate and representative for ensuring that conclusions drawn are not compromised by invalidation related to sample errors.

In the area of bail review and consideration of the length of detention, twelve participants were recruited i.e., four from Gauteng region, four from Eastern Cape region and four from Western Cape region. One official from Eastern Cape region

refused to participate in the study since he did not want to engage in telephonic interviews outside the official working hours. Other three officials verbally agreed to participate in the study in the telephonic engagements held with them, however they did not return the questionnaires.

5.4.2 DETERMINATION OF THE MOST OVERCROWDED CORRECTIONAL CENTRES FOR THE SELECTION OF CORRECTIONAL CENTRES

The daily unlock for 01 April 2021 was utilised for drawing up a sample of correctional centres from which the pool of various participants was drawn. A multiple stage process was applied which consisted of the following steps:

- Creating of a single spreadsheet with all the correctional centres that detain inmates, including the regional and provincial location of the correctional centres;
- Determination of the correctional centres that detain remand detainees;
- Coding of the regions for determination of most overcrowded facilities;
- Selection of three regions with the most overcrowded facilities; and
- Selection of four most overcrowded correctional centres with remand detainees from each of the three regions.

The process described below for sampling of correctional centres is inclusive of the sampling for provinces:

- The single spreadsheet consisting of 243 correctional centres excluding the privately managed centres was developed by integrating all the daily unlocks from six regions for 1 April 2021;
- The correctional centres that detain remand detainees were determined and found to be 128;
- Of the 128 correctional centres, the most overcrowded were selected and found to be 86;
- The provincial location of the most overcrowded correctional centres was determined for sampling the provinces for participating in this study. The three provinces with the highest number of most overcrowded facilities were Eastern Cape, Gauteng and Western Cape. They were automatically selected

and are also regions in the Department of Correctional Services. The Department of Correctional Services reorganised the provincial location of correctional centres into regions. The regions are as follows:

- Eastern Cape (EC);
 - Free State and Northern Cape (FSNC);
 - Gauteng (GP);
 - KwaZulu-Natal (KZN);
 - Limpopo, Mpumalanga and North West (LMN); and
 - Western Cape.
- The sampling for selecting correctional centres for participating in the study was done per region/province through the determination of the sampling pool. The factors considered were the occupancy range of overcrowded correctional centres, and the percentage of remand detainees against the total inmate population in the correctional centre with focus on those with more than 90% of remand detainees. Furthermore, the correctional centre with the highest level of overcrowding automatically qualified for inclusion in the provincial/regional sample. In situations where the application of the three factors did not convert into the selection of four correctional centres, the simple random selection strategy was applied for the remaining correctional centres. The names of the remaining correctional centres from the sample pool were written and placed in a container and random selection was done. The summary of the selected correctional centres per province/region are reflected in Table 5.1. The process applied for each region is described below:
 - **Eastern Cape:** The occupancy in sixteen (16) most overcrowded correctional centres ranged from 117.91% to 304%. The number of correctional centres with more than 90% of remand detainees were seven (7) and constituted the sampling pool. The lowest occupancy in the list of correctional centres selected for the sampling pool was 162.30%.
 - **Gauteng:** The occupancy in eight (8) most overcrowded correctional centres ranged from 113.67% to 217.60%. The number of correctional centres with more than 90% of remand detainees were two and were automatically included in the sample. The sampling pool of six (6)

correctional centres was utilised for selecting four correctional centres. The lowest occupancy in the list of correctional centres that were selected for the sampling pool was 122.89%.

- **Western Cape:** The occupancy in twenty-six (26) most overcrowded facilities ranged from 107.38%, to 263.64%. The number of facilities with more than 90% of remand detainees were determined and the sampling pool of seven (7) correctional centres was utilised for selecting four centres. The lowest occupancy in the list of correctional centres that were selected for the sampling pool was 151.69%.

The summary of the correctional centres per region/province selected for participating in this study appears in Table 5.1. The information provided for each centre is based on the status of 01 April 2021. The information includes the variables utilised for the determination of the sampling pool and these variables are the percentage of remand detainees against all inmates and the occupancy level which depicts the level of overcrowding.

Table 5.2: Correctional centres sampled

| Gauteng | Eastern Cape | Western Cape |
|---|---|--|
| <p><i>Johannesburg Med A</i></p> <ul style="list-style-type: none"> • Remand Detainees: 97.8% • Bed space: 2630 • Total number of inmates: 5723 • Occupancy: 217.6% | <p><i>Queenstown</i></p> <ul style="list-style-type: none"> • Remand Detainees: 98.2% • Bed space: 125 • Total number of inmates: 380 • Occupancy: 304.0% | <p><i>Allandale</i></p> <ul style="list-style-type: none"> • Remand Detainees: 64.2% RDs • Bed space: 319 • Total number of inmates: 841 • Occupancy: 263.6% |
| <p><i>Krugersdorp</i></p> <ul style="list-style-type: none"> • Remand Detainees: 58.1% • Bed space: 1625 • Total number of inmates: 2548 • Occupancy: | <p><i>King William's Town</i></p> <ul style="list-style-type: none"> • Remand Detainees: 94.4% • Bed space: 338 • Total number of inmates: 728 • Occupancy: | <p><i>George</i></p> <ul style="list-style-type: none"> • Remand Detainees: 50.6% • Bed space: 563 • Total number of inmates: 1111 • Occupancy: |

| Gauteng | Eastern Cape | Western Cape |
|--|--|---|
| 156.8% | 215.4% | 197.3% |
| <i>Modderbee</i> <ul style="list-style-type: none"> • Remand Detainees: 45.3% • Bed space: 2479 • Total number of inmates: 3546 • Occupancy: 143.0% | <i>St Albans Medium A</i> <ul style="list-style-type: none"> • Remand Detainees: 95.8% • Bed space: 706 • Total number of inmates: 1301 • Occupancy: 184.3% | <i>Worcester Males</i> <ul style="list-style-type: none"> • Remand Detainees: 79.8% • Bed space: 573 • Total number of inmates: 912 • Occupancy: 159.2% |
| <i>Kgoši Mampuru II Local</i> <ul style="list-style-type: none"> • Remand Detainees: 97.4% • Bed space: 2171 • Total number of inmates: 3006 • Occupancy: 138.5% | <i>East London Medium B</i> <ul style="list-style-type: none"> • Remand Detainees: 97.5% • Bed space: 543 • Total number of inmates: 962 • Occupancy: 177.2% | <i>Pollsmoor RDF</i> <ul style="list-style-type: none"> • Remand Detainees: 97.9% • Bed space: 1786 • Total number of inmates: 2751 • Occupancy: 154.0% |

5.4.3 DETERMINATION OF POLICE STATIONS

Police stations were randomly selected from the list of large police stations that implement the police bail policy in the three regions with correctional centres selected for participating in the study. The summary of selected police stations appears in Table 5.2 below:

Table 5.3: Police stations sampled

| Gauteng | Eastern Cape | Western Cape |
|---|---|--|
| <ul style="list-style-type: none"> • Pretoria Central • Mamelodi East • Sebokeng | <ul style="list-style-type: none"> • Mount Road (Port Elizabeth) • East London • Mthatha | <ul style="list-style-type: none"> • Cape Town Central • Khayelitsha • Nyanga |

5.5 DATA COLLECTION

Creswell (2013:27) cites several data collection methods utilised under qualitative and quantitative research. Some are employed in phenomenological-based research

(Lester, 1999:2). The qualitative methods include interviews, participant observation, audio-visual material, document analysis, focus groups, conversations and analysis of personal texts. The quantitative methods employ such tools as instruments, behavioural checklists and records (Creswell, 2013:27; Heigham, Robert & Croker, 2009:77; Onwuegbuzie, Dickson, Leech & Zorah, 2009:6). Interviews may be recorded, or notes can be crafted (Zohrabi, 2013:257). Probing may be required for getting adequate information that will assist in categorising of themes (Castro, Kellison, Boyd & Kopak, 2010:14). E-interviews may be conducted through the use of emails and telephone conversations (Bampton & Cowton, 2002:35–36).

Marshall and Rossman (1999:112) describe phenomenological interviews as a specific type of in-depth interviewing which is based on the theoretical tradition of phenomenology. Phenomenological researchers conduct lengthy interview which may take between one and two hours. In this study, interviews were conducted with all the relevant participants as stated in the sampling strategy.

The focus group interviews are typically composed of between seven and ten people. However, the smallest group may consist of four people, while the largest group may consist of twelve people (Marshall & Rossman, 1999:149). Focus group interviews constitute a purposive discussion of a specific topic or related topics between individuals with a similar background or common interests (Schurink, Schurink & Poggenpoel, 1998:314).

Kamberelis and Dimitriadis (2010:15) state that focus groups generate data that will not be possible to produce through such methods as observations and individual interviews. They further stipulate that focus groups,

“allow the researcher to see the complex ways people position themselves in relation to each other as they process questions, issues, and topics in focused ways. These dynamics, themselves, become relevant “units of analyses” for study”.

Data may be collected through the use of a snapshot which is a read-only file that represents a status at a particular point in time as copied from a file system (Guthrie,

2005:1). In this study data collected as the snapshot has been described under the sources for quantitative data.

The primary and secondary data sources utilised under the quantitative strand are described below:

- Reporting tool referred as the daily unlock: The tool is utilised for recording of daily head count against the approved bed space at the correctional centre level. The information is aggregated to reflect occupancy at different levels which are correctional centre, management area, regional and national levels. The correctional centres are grouped and organised into management areas. Management areas within each province are grouped and some provinces have been amalgamated to form one region. Of the nine provinces in South Africa, the amalgamated provinces are Free State and Northern Cape (FSNC) with Limpopo, Mpumalanga with North West (LMN);
- Remand reporting tools: These are monitoring tools utilised at the correctional centre level to record the number of court applications or referrals and the court outcomes. The reporting tools are completed on a monthly basis and the aggregation for reporting is similar to the one explained above;
- Data sourced from the databank: The information obtained from the databank is the 'namelist' of remand detainees presented in the excel format and consists of multiple variables. The variables include the following categories of information:
 - The detention information in terms of the correctional centre, management area and the region;
 - The identification information in terms of name and surname, registration number, age, gender, race and nationality; and
 - The case-related information in terms of the police station name and the Case Administration System (CAS) number, the court name and the case number, bail amounts and categories, crimes and crime categories, date of admission and period spent in detention in days and years and the next court appearance date.

- Historical data: Strategic reports and presentations from the Department of Correctional Services were utilised to source secondary data on inmate population trends and bed spaces as well as cost determination for incarcerating remand detainees.
- Questionnaire: A questionnaire was developed for determination of factors that influence the availability of bed spaces and has been attached as Annexure F2.

Data collection methods utilised under the qualitative strand in this study are semi-structured interviews, participant observation, records analysis, focus groups, interviews and use of historical data. The assertive interviewing style with provocation to clarify self-contradiction was utilised and it helped in the articulation of ‘interpretative repertoires’ (Brinkmann, 2014:285 & 291–292). Interpretative repertoires are relatively coherent ways of talking about objects and events in the world and can be flexible and contradictory (Lindgren, 2011:3). McKenzie (2005:2) concedes that:

“Repertoires could be seen as building blocks speakers use for constructing versions of actions, cognitive processes, and other phenomena. Any particular repertoire is constructed out of a restricted range of terms used in a specific stylistic and grammatical fashion.”

In the light of the Covid-19 pandemic, data was collected by using asynchronous and synchronous interviews through one-to-one audio communication. The multi-user audio communication could not be utilised because of delays in getting responses and inability to get participants to commit on scheduled interviews especially after hours (O'Connor, Madge, Shaw, Wellens, Fielding, Lee, & Blank, 2013). The emails and recorded video were utilised for the asynchronous interviews. For the synchronous interviews face to face interactions and phone calls were implemented.

The methods applied to collect data under the qualitative strand are described below:

- **Interviews:** Semi-structured, face to face, and electronic interviews were conducted. The latter was done through sending the interview guides to participants for completion and by conducting telephonic interviews. The

interview guides that have been attached as (Annexure F1 to F4) were developed for collecting data in the following areas:

- 49G (court referrals for consideration of length of detention), bail review and caseflow;
 - Bed space management for determination of factors that influence the availability of bed spaces;
 - Bed space increase plan;
 - Police bail; and
 - Police bail focus group.
- **Participant observation:** The researcher visited Johannesburg Medium A remand detention facility with the management team of facilities management portfolio from the Gauteng Regional Office to observe the verification process conducted to measure single and communal cells as part of bed space determination.
 - **Focus groups:** The first focus group session was held with six heads of correctional centres and remand detention facilities in Gauteng region over a period of an hour. The second focus group session was held for two hours with four participants from Pretoria Central police station.
 - **Records analysis:** Historical records analysed were:
 - Bed space management. The following documents were analysed:
 - Policies on bed space management including the business requirements and supplementary policies developed for creating an electronic system for determination of bed spaces at the correctional centre level and reports generated from the electronic system;
 - Daily unlock;
 - The draft infrastructure master plan;
 - The Memoranda of Agreement (MOA) with the Independent Development Trust (IDT) and the Development Bank of Southern Africa (DBSA);
 - Annual Performance Plans of the Department of Correctional Services from 2011/12 to 2022/2023; and

- Annual report of the Department of Correctional Services of 2021/2022.
- Categorisation of facilities and inmates: The daily unlock, the standard operating procedures and several reports were utilised.

5.6 DATA ANALYSIS AND INTEPRETATION

Onwuegbuzie and Teddlie (2003:373) designed a seven-step process for mixed analysis which includes such steps as data reduction, data display, data transformation, data correlation, data consolidation, data comparison and data integration.

In this study a parallel mixed analysis is conducted, the qualitative and quantitative data are analysed separately. The results from both quantitative and qualitative analysis are integrated during the interpretation and discussion of results (Anguera, Blanco-Villaseñor, Losada, Sánchez-Algarra, & Onwuegbuzie, 2018:9; Kroll & Neri, 2009:39; Onwuegbuzie & Leech, 2004:779; Terrell, 2012:268). Of the seven steps designed by Onwuegbuzie & Teddlie (2003:373) six steps were utilised with the exception of the data consolidation step which incorporates combining quantitative with qualitative data for creation of new data sets.

Microsoft Excel was utilised to analyse the quantitative data and narratives were created to give meaning to the presented data. Some of the qualitative data was transformed through quantitating and themes were created by extracting them from the interviewing tools. The quantitised data is analysed by using Microsoft Excel (Bazely, 2012:14; Creswell, 2009:218; Creswell, 2012:550; Onwuegbuzie & Combs, 2011:7; Ryan & Bernard, 2003:88).

5.7 VALIDITY AND RELIABILITY CONDITIONS

5.7.1 INTERNAL CONTEXTUAL VALIDITY

Internal validity which is referred to as credibility is influenced by the richness of data collected during the study and refers to how believable and trustworthy the findings are. In mixed methods study, internal validity applies to both the quantitative and qualitative approaches. In quantitative approach internal validity relates to drawing of

valid conclusions taking into consideration the research design and controls employed and in qualitative approach credibility relates to the evidence and conclusions drawn (Eeva-Mari & Lili-Anne, 2011).

Threats to internal validity may occur during the design, data collection, data analysis and interpretation phases. Credibility ensures that the research findings can be relied on and that the participants can judge the credibility of the results (Anney, 2014:276). Controls that apply in the study to ensure credibility include the use of multistage sampling scheme, triangulation, secondary data from the databank and established reports instead of creating an instrument for quantitative data, different sets of participants and the establishment of a judgement criteria for providing guidance on effectiveness regarding the implementation of strategies for reducing overcrowding.

Dependability, which is an evaluation of the quality of the integrated processes of data collection, data analysis, and theory generation, will be applied through implementation of controls for the credibility process including the documentation of all the processes that are followed in order to keep an audit trail (Superb Grades, 2020; Tobin & Begley, 2004:392).

Conformability refers to objectivity in report findings and not the subjective characteristics and preferences of the researcher (Anney, 2014:279; Shenton, 2004:72; Superb Grades, 2020). The bias of the researcher is controlled by using triangulation.

While ensuring validity is crucial, views that reflect convergence, consonance and dissonance are reflected in the integration of results from the two strands (Greene, 2006:97).

5.7.2 EXTERNAL VALIDITY

External validity refers to generalisability and transferability of the results. In quantitative approach, external validity is a determination on whether general conclusions can be drawn based on the selected model and data collected. In qualitative approach, internal validity relates to whether results can be transferable,

have theoretical generalisability, have empirical applicability, have practical usefulness and have contextual and constructive generalisability (Eeva-Mari & Lili-Anne, 2011).

Graff (undated) describes transferability as the degree to which findings can apply to situations outside the study that generate the findings. It entails the degree of generalising conclusions from one setting to a similar setting (Teddlie & Tashakkori, 2009: 26). It also reflects the transparency and the accumulation of evidence that supports the argument presented in the study (Newman, Lim & Pineda, 2013:244).

Anney (2014:276) and Elo, Kääriäinen, Kanste, Pölkki, Utriainen, & Kyngäs, (2014:6), describe transferability as the potential for making future projections based on the reasoning that findings can be generalised or transferred to other settings or groups. The researcher ensured that all the processes applied for data analysis which were an integration of quantitative and qualitative data are well articulated.

Eeva-Mari & Lili-Anne, (2011) enumerate a list of threats to external validity which relate to population, time, environment, failure to reconnect the empirical findings to those of other cases and theories and failure to provide explanation on how new evidence would enhance the understanding of the research question.

Controls applied in the study to ensure external validity include an adequate and representative sample and the interpretation process that links evidence with the research question and applicable theories regarding the phenomenon under investigation.

In quantitative data, validity is ensured by determining a control variable in the list of variables included in the snapshot analysis for the remand detainees. The control variable utilised is the next court date and data utilised for 31 March 2020 and 31 March 2021 was for all the remand detainees whose next court date was from 01 April 2020 and 01 April 2021 respectively.

While secondary sources provide big data that can enrich the research report, quality check is required and data cleansing is unavoidable due to data errors associated with databases. Common sources of data errors are data entry, measurement, data distillation and data integration (Lee-Post & Pakath, 2019:10–11; Yue, 2012:205). Data distillation is aggregation of data for reducing the sample (Dyakonov, 2020). Data entry may be related to data capturing errors. Measurements may be related to the dimensions applied for determination of certain calculations. Data integration entails combining data extracted from different sources (Dotmus, undated).

The data cleansing strategy applied by the researcher is data profiling utilising the domain knowledge which includes understanding of the sources of data utilised to effect entries in the admission, detention and release system. Since the technique is manual, labour-intensive and time consuming there is a risk of not detecting some of the errors especially those relating to data entry and measurement related errors. The latter represents add-ons for creating enrichment for increasing the usefulness of data (Huyghues-Beaufond, Tindemans, Falugi, Sun & Strbac 2020:3).

The data profiling technique entails analysis of the spreadsheet for the following:

- ***Next court date:*** This variable assists in determining the validity of data, therefore all the remand detainees with the next court dates that have passed in relation to the date of requesting data for active cases are removed from the spreadsheet. The passed next court date gives an assumption that the remand detainee is no longer incarcerated in correctional services since the validity of detention is up to the date of the next court date. However this assumption is held with an understanding that there may be delays in updating entries into the system due to several factors such as inadequate functioning of the electronic system (downtime) and inadequate personnel to capture information. The next court dates are further scrutinised for the intervals for the futuristic dates. When the latter are beyond one year and five months since the last court appearance or the date of the active population, remand detainees are removed from the spreadsheet. The longest intervals have been more than 100 years and these are data entry errors that may be controlled when building the system to contain the occurrence of massive dirty data which accumulates in databases.

- **Verification of duplicates:** With regard to case related information, remand detainees may have duplicated information such as the co-accused will share the case number and the CAS number which is a police station number. The unnecessary duplicates are deleted and these may be the CAS and case numbers that are entered differently in the system either by omitting or adding some elements such as ‘5/01/2021 and 5/1/21’.
- **Age verification:** The expected lowest age in the spreadsheet is 14 years which is the prescribed age for detention of the children in conflict with the law in the correctional centres (Republic of South Africa, 2008:49). The remand detainees with ages below 14 years are deleted from the spreadsheet utilised for analysis.
- **Bail amounts:** The bail amount of less than R100 is verified before the remand detainee is removed from the spreadsheet and corrections are effected after receiving the warrant from the correctional centre which reflects the correct amount.

5.7.3 ENSURING RELIABILITY

Reliability refers to consistency with which the research will produce the same results if repeated. In mixed methods, research reliability applies to both qualitative and quantitative approaches. In quantitative approach, reliability refers to the extent to which a variable of a set of variables is consistent in measuring what it intends to measure. In qualitative approach reliability relates to the consistency in measurement i.e., accurately capturing the phenomenon or attributes under investigation (Eeva-Mari & Lili-Anne, 2011).

Factors that impact on reliability include lack of clear instructions, ambiguity in the description of items leading to misinterpretation, inadequate indicators for measuring abstract concepts, differing administration conditions, inaccurate and unsystematic interview questions, inaccurate transcriptions, failure to record or take notes on the spot and lack of a comprehensive research plan. Controls applied to ensure reliability in qualitative approach include the use of interview guide, developing a coherent set of notes on all the evidence and additional follow-up questions were posed to interviewees (Eeva-Mari & Lili-Anne, 2011).

5.8 RESEARCH ETHICS

The ethical issues that are adhered to relate to informed consent, confidentiality, anonymity and obtaining permissions. Regarding the informed consent each participant is given a consent form before participating in the study; however, some participants did not complete the consent forms though they were willing to participate in the study. The oral consent is accepted as adequate, as is also confirmed in other research (Mack, Woodson, Macqueen, Guest, Namey, 2005:11). The participants that decided to discontinue their participation in the study were excluded from further follow-ups (Cohen, Manion & Morrison, 2011:480; Creswell, 2012:553). The discontinuity was presented in the form of non-return of questionnaires though the participants had agreed to participate in the study and the outright refusal to participate in the study.

Confidentiality means that information obtained from the participants will not be divulged to others or made public (Polit & Hungler, 1999:143). In this study all information obtained during the data collection phase from the participants is treated with strict confidentiality and utilised only for the study.

The principle of anonymity is adhered to by ensuring that the transcribed information does not include the names of the participants. The researcher informed the participants that their identity information including contact details may be required for obtaining clarity on responses provided; however, the identity of the participants is not included in the research report.

Requests for permission to conduct research were submitted to the College of LAW (CLAW) Research Ethics Committee at UNISA, the Research Ethics Committees of the DCS and SAPS, as well as the branch responsible for research in the DoJ&CD. Participants from the DoJ&CD are excluded in data collection since there was no response received and this may affect the verification process, which is critical in validation of information obtained for arriving at conclusions.

5.9 CONCLUSION

This chapter explained the research methodology followed in determining the effectiveness of certain criminal justice system strategies in curbing overcrowding with focus on bed spaces, police bail, bail review process initiated by the DCS and the implementation of the protocol on maximum incarceration period. The concurrent triangulation strategy, which is a mixed method design to guide the research process, was explained. The next chapter on data analysis presents the analysis of data collected from multiple methods in relation to areas which are the focus of the study i.e., the bed space management, implementation of bail review and 49G protocols, as well as police bail.

CHAPTER SIX

DATA ANALYSIS AND PRESENTATION OF FINDINGS: PART I

6.1 INTRODUCTION

In this chapter the data analysis for the study is discussed in line with the objectives on bed space management, determination of trends in occupancy and profile of remand detainees.

6.2 BED SPACE MANAGEMENT

Bed space management is the cornerstone of managing occupancy in the corrections environment, since it includes the numeric formula utilised in the determination of approved bed spaces for establishing occupancy including overcrowding levels. The questions that are addressed are as follows:

- How are bed spaces calculated at the centre level?
- What factors influence the availability of bed space at the centre level?
- How are bed spaces maintained?
- What are the determining factors concerning bed spaces for building new facilities?
- What model is utilised for upgrading existing, and building new facilities?
- What are the trends regarding the creation of bed space in the last ten years with focus on building of new correctional centres and upgrading of new facilities in the DCS?
- What challenges are faced by the DCS at the centre level i.e., centres that will participate in the study and nationally regarding the creation and maintenance of bed spaces?

6.2.1 CALCULATION OF BED SPACES AT THE CENTRE LEVEL

The DCS created a computerised Bedspace Determination System (BDS) that guides the process of measuring of the cells and the computation which gives the final output in the form of a report referred to as the G309(B): Bed space Determination and Accommodation (Department of Correctional Services, 2021).

The researcher was a participant observer in bed space verification project by visiting Johannesburg Medium A remand detention facility on 19 May 2021. The researcher further analysed the copies of the G309(B) reports for Johannesburg Medium A, Modderbee Correctional Centre, Boksburg Medium A, and Kgoši Mampuru Local.

The process of verification entails the steps articulated below:

- Printing of the G309(B) report from the e-Corrections platform, which is the electronic system developed for accessing different reports;
- Determination of the identity of each cell and verification of measurements of the cells by conducting the actual measurements using a laser tape;
- Capturing of information in the note pad, including hand created diagrammes to reflect the dimensions of the measurements;
- Comparison of the verified measurements per cell against those reflected in the G309(B) report;
- Documenting of discrepancies in the G309(B) report;
- Referring of the report with marked discrepancies to the centre for effecting corrections by recapturing correct measurements in the BDS;
- Reprinting of the revised G309(B) report for comparing it with the originally printed copy and analysis of whether changes were effectively captured;
- Errors that could not be handled by the centres were referred to the national office for effecting changes in the BDS such as the cells that were found to be non-existent at the centre though they were reflecting in the report and correcting the identity of the cells; and
- After all the corrections have been implemented the final report is signed by the head of the correctional centre, the area coordinator of corrections and the area commissioner.

The errors found in the G309(B) reports of Modderbee were:

- Non-existing cells, which were referred to as 'null';
- Missing cells though they were existing in the centre;
- Lack of acknowledgement of deductible square metres to align with the formula for calculating bed spaces at the cell level; and

- Incorrect identity of the cells i.e., cell names reflected in the report differed from those reflected in the doors.

Other bed space management documents analysed are listed below:

- Revised strategy on reduction of overcrowding (Department of Correctional Services, 2021).
- Chapter 2: Guideline on bed space management (Department of Correctional Services, 2020).
- Chapter 2: Computerised bed space determination system procedure manual (Department of Correctional Services, 2021).

The table below represents the analysis of the G309(B) report against the business requirements/rules as extracted from guidelines on bed space management and the revised overcrowding reduction strategy.

Table 6.1: Analysis of the G309(B) report against the business rules/requirements

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|--|---|---|
| Minimum permissible cell area per inmate in single and communal cells including ordinary cells and hospital section are prescribed and expressed in square metres. | Partially factored | <ul style="list-style-type: none"> • Hospital section is excluded from the computerised recognisable measurements. This will lead to reduction in bed spaces in general and approved accommodation in all centres that have hospital sections. |
| Declaration of temporary closure due to dilapidation, conversion or construction. | Not factored | <ul style="list-style-type: none"> • Johannesburg Medium A and Boksburg Medium A have sections that are under renovation, that are temporary closed and this is not reflected in the reports. • The maintenance unit will not |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|---|---|--|
| | | be able to track the lost bed spaces. |
| Declaration of permanent closure due to dilapidation, conversion or construction. | Not applicable | <ul style="list-style-type: none"> • Not Applicable. |
| Declaration of measurements for temporary closed or permanently closed cells. | Partially factored | <ul style="list-style-type: none"> • The temporary unused cells have been indicated as inactive; however, bed spaces constituted by the inactive cells have not been calculated, thus making it difficult to track the lost bed spaces. |
| Recording of all required dimensions and details. | Partially factored | <ul style="list-style-type: none"> • The dimensions included are only limited to length, width, height and the square metre area covered by the cells. All the deductible areas have been excluded in the final report. |
| Consolidation of all cell measurements per unit, block and centre. | Partially factored | <ul style="list-style-type: none"> • The consolidated measurements exclude the deductible measurements and furthermore, do not reflect the bed spaces for demarcated housing units. |
| Indication of whether the centre is new generation, old generation or mixed. | Not factored | <ul style="list-style-type: none"> • The correctional centre details provided include gender, main age group, main distribution profile, correctional size category and security classification for Johannesburg Medium A with the exclusion of the |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|--|---|--|
| | | <p>number of housing units.</p> <ul style="list-style-type: none"> • For Boksburg Medium A, all the dimensions have been assigned a ‘null’. • For the Kgoši Mampuru Local report all the dimensions have been provided with required information including the number of housing units. |
| Indication of whether each cell is active or inactive. | Partially factored | <ul style="list-style-type: none"> • The report differentiates between the active and inactive cells, however, there is underreporting of inactive cells. The number of cells that were found to be inactive during the participative observation process were 52 but the report has only reported ten cells for Johannesburg Medium A. • For Boksburg Medium A, the bed space area regarded as inactive constitute 1 036 bed spaces, however, the declared bed spaces in the report are only thirteen single cells. |
| Provision of reasons for inactive cells. | Not factored | <ul style="list-style-type: none"> • The guideline on bed space management has provided a list of reasons that may contribute to creation of inactive cells and the reasons are not included in the report. The business rules further |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|--|---|--|
| | | <p>advise that the reason that is not provided for in the system should be registered with the national office for inclusion.</p> <ul style="list-style-type: none"> • The absence of the inclusion of reasons in the G309(B) report makes it difficult to determine between the temporary loss of bed spaces and the permanent loss thereof, which the latter will be mainly due to repurposing for accommodating other functional needs in the correctional centre. |
| Determination of units which will not form part of the approved bed space. | Not factored | <ul style="list-style-type: none"> • There is no reference to units that will not form part of the approved bed space. |
| Endorsement of each cell dimension and details in the G309 by the regional commissioner. | Not factored | <ul style="list-style-type: none"> • All the reports are signed off by four functionaries i.e., facility manager as a checker, head of the correctional centre as a verifier, area coordinator corrections as a recommender and area commissioner as the approving officer. |
| Capturing of the cell dimensions and details. | Factored | <ul style="list-style-type: none"> • Cell dimensions are captured in terms of length, width, height, cubic air content and the square metre coverage. |
| Print the Accommodation Determination System report for the Correctional centre. | Factored | <ul style="list-style-type: none"> • The initial report is printed and subjected to verification by the correctional centre |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|---|--|---|
| | | team and representatives from facilities. |
| Occupancy levels should be calculated on the actual available approved accommodation excluding accommodation which is not utilised for accommodating inmates. | Partially factored | <ul style="list-style-type: none"> • The report for Johannesburg Medium A reflects a reduction in bed spaces after the verification process that took place in May 2021 and the figure was transferred to the daily unlock as approved accommodation. Since the bed space calculation for inactive cells has been excluded in the report it is assumed that the approved accommodation is for usable bed spaces. The reduction of bed spaces incurred due to measurements conducted could not be accounted for. The lost bed spaces were 162 (6.16%) when comparing the bed spaces before verification i.e., for 1 April 2021 which were 2 630 bed spaces and for 08 July 2021 which were 2 468 bed spaces. The occupancy for 08 July was 208.83% with overcrowding of 108.83%. • The report for Modderbee reflects an increase in bed spaces after verification from 2 000 to 2 062 though there is a section constituting 1 036 |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|--|--|---|
| | | <p>unusable bed spaces which are under repairs and renovation. After transferring the approved bed spaces to the daily unlock the occupancy for 8 July 2021 was 117.80%, however when using the correct approved accommodation, the occupancy was 236.74%. The error in the determination of approved bed spaces or usable bed spaces led to underreporting of occupancy and overcrowding and may lead to incorrect planning when implementing transfer plan for sharing the burden of overcrowding.</p> <p>Underreporting also has a significant influence on human rights of inmates.</p> |
| <p>Applications for repurposing i.e., utilisation of bed space for other needs other than housing of inmates and reflection of the repurposed cells in the report.</p> | <p>Not factored</p> | <ul style="list-style-type: none"> • The reports of Johannesburg Medium A and Boksburg Medium A have no reference to repurposed cells though Johannesburg Medium A has several cells that were repurposed for establishment of Audio-Visual Courts. • The lack of tracking the lost bed spaces through repurposing makes it difficult to account for changes in |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|---|---|---|
| | | approved bed spaces that are equated with design capacity bed spaces. |
| Use of code descriptors for repurposed cells or cells used for emergency needs other than housing of inmates. | Not factored | <ul style="list-style-type: none"> The report does not make any reference to repurposed cells. |
| Cell identification to include the gender of inmates. | Not factored | <ul style="list-style-type: none"> The coding of the cells has no link to gender and while this may not be a significant problem for Johannesburg Medium A and Boksburg Medium A, gender coding is relevant for mixed facilities that detain both females and males in different sections. |
| Differentiation between correctional centre accommodation and hospital accommodation through the use of symbols “G” and “H”. | Not applicable | <ul style="list-style-type: none"> Johannesburg Medium A and Boksburg Medium A do not have hospital sections, however the report of Kgoši Mampuru has hospital cells clearly identified with the name “Hospital” before assigning the number of the cell. |
| Differentiation between single and communal cells through the use of symbols “E” for single cells and “G” for communal cells. | Not factored | <ul style="list-style-type: none"> There is no coding, however the unit of analysis for each cell is the accommodation type. |
| Cell coding and the number to indicate the section and the level for differentiating between floors. | Not factored | <ul style="list-style-type: none"> The cell numbering utilised for Johannesburg Medium A and Boksburg Medium A does not have a code or a |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|---|---|---|
| | | number that relates to the floor level. |
| Unique identification of cells in the correctional centre – avoid using same cell identification. | Not factored | <ul style="list-style-type: none"> The report of Johannesburg Medium A reflects several single and communal cells that share the same number and the only differentiation is the accommodation type of the cell, which is either single or communal. This requires a paired reading of each cell i.e., the cell number and the accommodation type of the cell. |
| Reasons for change: Particulars of change in the use of cells for determination of various changes ranging from alterations, repair, renovation, alterations, hospital to normal accommodation and vice versa and recovery of the cells from being inactive to active. | Not factored | <ul style="list-style-type: none"> Changes in the use of cells is not reflected at all therefore a determination of whether a formal request was made or not could not be established. |
| Reasons for change: Determination of repurposed cells such as storeroom. | Not factored | <ul style="list-style-type: none"> Changes in the use of cells is not reflected at all. |
| Reasons for change: Determination of unutilised cell accommodation. | Not factored | <ul style="list-style-type: none"> Changes in the use of cells is not reflected at all. |
| Cell dimensions: Length, breadth and height. | Factored | <ul style="list-style-type: none"> All reported cells reflect all the dimensions referred to. |
| Number of beds in each cell | Not factored | <ul style="list-style-type: none"> The number beds in |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|---|---|--|
| with bunk beds regarded as two beds. | | communal cells are not recorded, however the stacking limit prescribed is one. The bed space calculation is based on one level of stacking though most communal and single cells have double stacked beds. |
| Ventilation openings: Number of windows, total areas of windows and the total area of all openings of the windows and ventilators. | Not factored | <ul style="list-style-type: none"> The number of windows including the total area covered by them and all the openings has been excluded. |
| Walls and pillars: Total area of walls and pillars including the volume. | Not factored | <ul style="list-style-type: none"> The area occupied by walls and pillars is excluded in the report. |
| Lockers: Total area of lockers not built in including the volume. | Not factored | <ul style="list-style-type: none"> The area occupied by lockers is excluded in the report. |
| Ablution space in cells as deductible area including the number of water containers, baths, showers, toilets including flush urinals and length, sanitary buckets, including partitions, washbasins, taps without washbasins and the presence of hot water. | Not factored | <ul style="list-style-type: none"> The deductible areas are excluded in the report. |
| Three statuses regarding the bed spaces per facility which are approved, functional and unusable bed spaces. | Not factored | <ul style="list-style-type: none"> All the reports checked i.e., Johannesburg Medium A, Boksburg Medium A and Kgoši Mampuru Local reflect the approved bed space as |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|---|---|--|
| | | <p>zero. Other bed spaces i.e., functional and unusable bed spaces are not indicated at all.</p> <ul style="list-style-type: none"> • There is no differentiation between the bed spaces accrued from the calculations of single cells and communal cells. In Johannesburg Medium A the total number of single cells and communal cells was 275 and 117 respectively. |
| <p>Development of the business requirement specification for guiding the automation process in consultation with facilities and branch Incarceration and Corrections.</p> | <p>Not factored</p> | <ul style="list-style-type: none"> • The computerised Bed space Determination System Procedure Manual which was developed to give effect to the business requirements as articulated in the guideline on bed space management and overcrowding reduction strategy were signed off by three functionaries i.e., GITO, facilities and strategic management. |
| <p>A copy or a blueprint of all the cells per section and their statuses before completing the revised G309s.</p> | <p>Not factored</p> | <ul style="list-style-type: none"> • A copy of Johannesburg Medium A which reflects all the cells per sections in each centre could not be obtained as it was not available. • This leads to lack of paper trail for all the changing statuses of the cells and the sections in a correctional centre and the historical |

| Business Requirements/Rules | Factored, Not factored, Partially factored | Comments/Implications |
|--|--|--|
| | | information about the centre is not documented. |
| Post completion of the verification process: Forms for reporting changing statuses of the cells to prevent the remeasuring of all the cells. | Not factored | <ul style="list-style-type: none"> The forms for managing the reporting of changes as well as effecting changes in the system have not been developed. |
| Alignment of the naming of the facilities in the daily unlock and electronically generated reports. | Not factored | <ul style="list-style-type: none"> The alignment of names has not been done and this leads to constant inquiry on the centres for verification and allocation of facts that emerge from time to time regarding the centres. |

Observations made that contribute to declining bed spaces and lack of details in the revised bed space report i.e., the G309(B) are summarised below:

- The computerised BDS procedure manual disregarded the prescribed measurements for bed spaces which are provided for in the overcrowding reduction strategy and the guideline on bed space management developed by facilities. The prescribed measurements are outlined as follows:

“The DCS guidelines on Bed space Management stipulates the minimum permissible cell area per inmate, excluding areas taken up by ablution facilities, walls and pillars and personal lockers (not built in) in the cell. The prescribed are as follows:

- Ordinary communal cells: 3,344m²*
- Ordinary single cells: 5,5m²*
- Hospital section communal cells (old and new generation centres): 4,645m²*
- Hospital section single cells (old and new generation centres): 9,0m²*
- Ordinary communal cells (new generation centre): 2.6m²*
- Ordinary single cells (new generation centre): 5,5m²”*
(Department of Correctional Services, 2021: 10).

- There is reduction in the prescribed minimum permissible cell dimensions in ordinary communal cells for the new generation centre as compared to the dimensions for the old correctional centres. The design of the older communal cells caters for the inmates to carry out all their indoor activities in the cells, i.e. sleeping, eating, studying, socializing, with ablutions positioned in adjacent spaces. Therefore the space required per inmate is larger.
- In the new generation correctional centres the communal cell design caters for only some of the inmates' indoor activities, e.g. sleeping, studying and a small amount of socializing. The other indoor activities such as eating, group activities, ablutions and socializing take place in the day rooms. Therefore the cells space per inmate does not need to be the same size as those provided in old correctional centres.
- The business rules articulated in the computerised BDS Procedure Manual regard hospital beds as not permanent accommodation. Therefore the default must regard them as zero bed spaces and this totally conflicts with prescribed measurements. The implication for deviation is that all the bed spaces in hospital sections will automatically default to zero and lead to reduction in bed spaces. This can be classified as reduction of bed spaces due to the technical error of ignoring the policy definition of what constitute prescribed measurements for bed space designated areas in correctional centres. All the correctional centres with hospital sections will automatically have reduction in bed spaces due to this error.
- Failure to develop an electronic support system that keeps an audit trail for changing statuses in bed spaces makes it difficult for the department to account for lost and regained bed spaces and this is critical in developing a maintenance plan.
- The cause of error is due to complete disregard of business rules articulated in policies and failure to conduct Joint Application Development (JAD) sessions for articulating the business requirements. The JAD sessions assist in creating a better understanding of the needs of the business thus leading to improved product quality that meet the expectations of the client.

6.2.2 FACTORS THAT INFLUENCE THE AVAILABILITY OF BED SPACE AT THE CORRECTIONAL CENTRE LEVEL

The questionnaire which addresses the factors that influence the availability of bed spaces was developed by the researcher. The factors included in the questionnaire were extracted from various reports, including the analysis of daily unlock of February 2021, which presents the reasons for underpopulated cells i.e., facilities with occupancy of below 100% (Department of Correctional Services, 2021).

The questionnaire was circulated to the heads of correctional centres after the researcher discovered that the initially targeted sample of managers of facilities and regional heads of facilities were not an adequately representative sample. Oppong (2013:202) states that:

“to ensure that the sample size for a given study is adequate as well as representative of the universe of research, the researcher need to ensure that the sample is sufficient so that conclusions drawn from the investigation would not be invalidated as a result of intolerable level of sampling error”.

The questionnaires were distributed to 49 participants and Table 6.2 shows the summary of participants.

Table 6.2: Summary of participants: Bed space availability factors

| Region | Participants | Disqualified | Final Participants |
|---------------|---------------------|---------------------|---------------------------|
| Eastern Cape | 36 | 4 | 32 |
| Gauteng | 13 | 2 | 11 |
| TOTAL | 49 | 6 | 43 |

Of the participants that returned questionnaires, 36 are from the Eastern Cape and thirteen are from Gauteng. Six questionnaires were disqualified due to inadequate completion. The final participants were 43 i.e., 32 from the Eastern Cape and eleven from Gauteng. The sample was representative since the participants constitute more than 50% of the heads of correctional centres for the two combined regions. The summary of factors that influence the availability of bed spaces is presented in Table 6.3 which appears below.

Table 6.3: Factors that influence the availability of bed spaces

| FACTORS THAT INFLUENCE THE AVAILABILITY OF BED SPACES | Eastern Cape (32) | | | Gauteng (11) | | | Yes responses (N=43) | |
|--|-------------------|-----|-------------|--------------|-----|-------------|----------------------|------|
| | No | Yes | No response | No | Yes | No response | Yes | % |
| 1. Minor plumbing repairs that are underway in some of the cells (4)* | 16 | 16 | 0 | 3 | 8 | 0 | 24 | 55,8 |
| 2. Cells are not conducive to accommodate inmates* | 19 | 13 | 0 | 3 | 8 | 0 | 21 | 48,8 |
| 3. Transfers for even distribution of inmates (3)*** | 13 | 19 | 0 | 5 | 6 | 0 | 25 | 58,1 |
| 4. Clearing of space for transfer of offenders*** | 17 | 12 | 3 | 7 | 4 | 0 | 16 | 37,2 |
| 5. Receipt of offenders that must be processed for transfer to other centres *** | 12 | 19 | 1 | 8 | 3 | 0 | 22 | 51,2 |
| 6. Categories of detained inmates that cannot be mixed with other inmates (1)*** | 6 | 22 | 4 | 4 | 7 | 0 | 29 | 67,4 |
| 7. Admission section with low volumes of admissions | 17 | 12 | 3 | 7 | 4 | 0 | 16 | 37,2 |
| 8. Admission section with high volumes of admission**** | 18 | 10 | 4 | 7 | 4 | 0 | 14 | 32,6 |
| 9. Low numbers of admissions in general***** | 17 | 15 | 0 | 5 | 5 | 1 | 20 | 46,5 |
| 10. The state of dilapidation is not conducive for humane | 15 | 16 | 1 | 6 | 5 | 0 | 21 | 48,8 |

| FACTORS THAT INFLUENCE THE AVAILABILITY OF BED SPACES | Eastern Cape (32) | | | Gauteng (11) | | | Yes responses (N=43) | |
|--|-------------------|-----|-------------|--------------|-----|-------------|----------------------|------|
| | No | Yes | No response | No | Yes | No response | Yes | % |
| detention* | | | | | | | | |
| 11. Closure for repairs, renovations and upgrading* | 18 | 11 | 3 | 4 | 7 | 0 | 18 | 41,9 |
| 12. Partial closure for repairs, renovations and upgrading* | 19 | 11 | 2 | 6 | 5 | 0 | 16 | 37.2 |
| 13. Special Parole Dispensation and Special Remission (5)** | 12 | 18 | 2 | 5 | 5 | 1 | 23 | 53.5 |
| 14. Structural defect which possess security risk (2)* | 7 | 22 | 3 | 4 | 6 | 1 | 28 | 65.1 |
| 15. Conversion of certain cells to accommodate other functional needs such as school, laundry* | 19 | 12 | 1 | 7 | 4 | 0 | 16 | 37.2 |
| 16. Inadequate water supply (5)***** | 14 | 17 | 1 | 5 | 6 | 0 | 23 | 53.5 |
| 17. The Centre is used for accommodating Covid-19 cases (Isolation and Quarantine)* | 17 | 14 | 1 | 7 | 4 | 0 | 18 | 41.9 |
| 18. Natural disaster: The centre or portion of the centre was blown by the storm* | 27 | 4 | 1 | 9 | 2 | 0 | 6 | 14.9 |
| 19. Delays in implementing upgrades or renovations (4)* | 15 | 17 | 0 | 3 | 7 | 1 | 24 | 55.8 |
| *: Reduction in bed spaces either due to temporary closure of cells or repurposing through conversion of cells | | | | | | | | |

| FACTORS THAT INFLUENCE THE AVAILABILITY OF BED SPACES | Eastern Cape (32) | | | Gauteng (11) | | | Yes responses (N=43) | |
|---|-------------------|-----|-------------|--------------|-----|-------------|----------------------|---|
| | No | Yes | No response | No | Yes | No response | Yes | % |
| **: Increase in bed spaces as a temporary relief through release of certain category of inmates ***: No impact in bed space increase and decrease due to cross transfers and creation of space for accommodating admissions ****: Impacts on availability of bed spaces where there is a high volume of admissions *****: Insignificant factor Figures in brackets: Ranking of top five factors that influence the availability of bed spaces | | | | | | | | |

Of the nineteen factors that were presented to the participants, eight factors (42.11%) were found to be directly linked to the reduction of bed spaces, either due to temporary closure or due to repurposing of certain cells by using them as administrative offices or converted to provide rehabilitation services. These factors are:

- Minor plumbing repairs that are underway in some of the cells;
- Cells that are not conducive to accommodate inmates;
- The state of dilapidation which is not conducive for humane detention;
- Closure for repairs, renovations and upgrading;
- Structural defect which poses security risk;
- The use of the centre [or the section of the centre] for accommodating Covid-19 cases for isolation and quarantine;
- Natural disaster where the centre or portion of the centre was blown by the storm; and
- Delays in implementing upgrades or renovations.

The factors on partial closure for repairs, renovations and upgrading, as well as conversion of certain cells to accommodate other functional needs such as school and laundry were not regarded as critical factors by 26 participants (60.46%) though they have direct impact in reducing the number of bed spaces. Of all the factors that were presented to the participants, the factor on natural disasters was found to be insignificant by 36 participants (83.72%). The factor on closure for repairs, renovations and upgrading was found to be significant by seven participants (73.63%) from Gauteng region.

The summary breakdown of the top five factors that influence the availability of bed spaces per region and for the two regions combined are presented in Table 6.4. The factors are arranged in a descending order.

Table 6.4: Ranking of significant factors that influence the availability of bed spaces (from highest to lowest)

| Eastern Cape | Gauteng | Two Regions Combined |
|--|--|---|
| <ul style="list-style-type: none"> • Categories of detained inmates that cannot be mixed with other inmates (68.8%)* • Structural defect which poses security risk (68.8%)* • Transfers for even distribution of inmates (59.4%)* • Receipt of offenders that must be processed for transfer to other centres (59.4%) • Special parole dispensation and special remission (56.3%) • Inadequate water supply (53.1)* • Delays in implementing upgrades or renovations (52.1%)* | <ul style="list-style-type: none"> • Minor plumbing repairs that are underway in some of the cells (72.7%) • Cells are not conducive to accommodate inmates (72.7%) • Categories of detained inmates that cannot be mixed with other inmates (63.6%)* • Delays in implementing upgrades or renovations (63.6%)* • Closure for repairs, renovations and upgrading (63.6%)** • Structural defect which poses security risk (54.6%)* • Transfers for even distribution of inmates (54.6%)* • Inadequate water supply (54.6%)* | <ul style="list-style-type: none"> • Categories of detained inmates that cannot be mixed with other inmates (67.4%)* • Structural defect which poses security risk (65.1%)* • Transfers for even distribution of inmates (58.1%) • Minor plumbing repairs that are underway in some of the cells (55.81%) • Delays in implementing upgrades or renovations (55.8%)* • Inadequate water supply (53.5)* • Special Parole Dispensation and Special Remission (53.5%) • Receipt of offenders that must be processed for transfer to other centres (51.2%) |
| <p>*: Factors founds in both regions and in two regions combined</p> | | |
| <p>**8: Factor found only in Gauteng region</p> | | |

The top five factors that influence the availability of bed spaces are:

- Categories of detained inmates that cannot be mixed with other inmates (67.4%);
- Structural defect which poses security risk (65.1%);
- Transfers for even distribution of inmates (58.1%);
- Minor plumbing repairs that are underway in some of the cells and delays in implementing upgrades or renovations (55.8%); and
- Special parole dispensation and special remission as well as inadequate water supply (53.5%).

While the factor on the category of inmates that do not allow for mixing of inmates has been ranked as the most significant factor in the Eastern Cape, in Gauteng, minor plumbing repairs that are underway in some of the cells has been ranked the highest significant factor.

6.2.3 MAINTENANCE OF BED SPACES

Maintenance of bed space is inevitable since the conditions of facilities deteriorate due to overutilisation associated with overcrowding and subsequent breakages and dilapidation that require constant attention. Responses in this section were sourced from records and interviews that were held with the participant from facilities management at the national office. The interview was conducted to get clarity on the terminology utilised under the portfolio of bed space maintenance.

The maintenance of bed spaces is managed under three budgets, which are planned maintenance, day-to-day maintenance, and planned projects. Planned maintenance falls under the responsibility of the National Department of Public Works (NDPW). This type of maintenance can be triggered by regular breakages that can lead to a decision to conduct planned maintenance for repairs and renovation. For day-to-day maintenance, service providers are contracted to the NDPW under emergency services. The planned projects constitute the maintenance portion of the capital work budget and cater for projects initiated by the DCS including the projects where DCS utilises its own resources. These projects normally take longer to complete.

The DCS also makes use of implementing agencies such as Independent Development Trust (IDT) and Development Bank of Southern Africa (DBSA). The agencies enter into agreements in the form of a Memorandum of Agreement (MoA). The scope of work as determined in the MoA may cover any of the following areas:

- Refurbishment, upgrade and maintenance of the prioritised correctional centres;
- Conducting of feasibility studies;
- Capacity development in the form of artisan development for ensuring continuity with facilities maintenance; and
- Technical support and implementation of refurbishment on an existing infrastructure project (Department of Correctional Services, 2022:127).

The infrastructure master plan (Department of Correctional Services, undated:37) provides further clarity regarding the planned and unplanned maintenance as follows:

“Planned and unplanned maintenance responsibilities are mainly funded under the auspices of the Accommodation Charges budget, which is devolved by the National Department of Public Works. Minor maintenance projects are undertaken by the Area Management office (day-to-day maintenance with a limit of R100 000.00 per case): Maintenance Management under the auspices of the Building & Civil Works: Own Resources budget, which is very limited and decided by Regional Offices). Planned maintenance projects, with scheduled maintenance processes are virtually non-existent, with an emphasis on a reactive approach in the case of failure and breakdown by DPW”.

Categories of planned maintenance are described as follows:

- **Statutory maintenance:** This type of maintenance is guided by legislative and regulatory framework as well as standards and codes of practice.
- **Preventive maintenance:** This maintenance entails inspection, monitoring for deterioration and prevention of deterioration and any failures and testing for confirmation of the operational status.
- **Scheduled maintenance:** This maintenance is required for an asset as prescribed by the manufacturer of the asset.

- ***Condition-based maintenance:*** This maintenance requires that the asset be restored to a required condition or standard therefore maintenance work can be programmed based on assessments conducted.
- ***Backlog maintenance:*** This entails all the maintenance that should have been conducted, however could not be done due to a variety of factors including lack of funds. In the context of bed space management, any upgrade or renovation that has been put on hold can be classified under the backlog maintenance. The postponement of maintenance in the area utilised for bed spaces can lead to creation of maintenance for replacement due to the dilapidation status.
- ***Maintenance for replacement:*** The maintenance for replacement entails demolishing of the asset after it has reached the end of its life and replacing it with a similar asset in terms of the size and functionality. In the context of bed space management, correctional centres fall under this type of maintenance. The process followed regarding the replacement of the correctional centres entails:
 - The closure of the facility;
 - Submission of the request to the NDPW to demolish the facility after the cost-benefit analysis exercise has been conducted; and
 - Handing over of the facility to the NDPW as a custodian of the asset for implementing demolition (Department of Correctional Services, undated:41).

Categories of unplanned maintenance are:

- ***Normal breakdown:*** The maintenance intervention requires that the asset be restored to its operational state. Occurrences that require such maintenance in the context of bed space maintenance include fixing of the electric lights and leaking taps.
- ***Emergency breakdown:*** This entails reactive maintenance that requires that the asset be restored to its operational condition. Occurrences that require such maintenance include burning cells and storms that lead to destruction of housing units.

- ***Fatal breakdown:*** These breakdowns cause serious damage to surrounding assets and could lead to loss of critical resources such as water and electricity or could endanger the lives of people including leading to loss of life. The occurrences under emergency breakdown could apply depending on the extent of breakdown.
- ***Incident Maintenance:*** The maintenance required can be traceable to an identifiable incident such as a storm, fire, forced entry and vandalism. The bed space areas are not void from incidents that require this type of maintenance (Department of Correctional Services, undated:41-42).

Bed space maintenance needs are managed under the governance structures that operate as follows:

- The National Building Committee (NBC) which is the head office structure;
- The six Regional Building Committees (RBCs); and
- The facilities management at national and regional levels operate as the secretariat.

The NBC acts as an advisory body to the National Commissioner about the regional and the national infrastructure building needs and priorities. The focus areas for the committee are:

- The establishment of new correctional centres;
- The upgrading, refurbishment and replacement of infrastructure; and
- The maintenance of security systems and related infrastructure.

The process for registration of the upgrading, renovation and building of facilities including the bed space areas is summarised as follows:

- Determination of the needs at a management area level which will constitute the consolidation of the needs from all the correctional centres. The submission is approved by the area commissioners and registered with facilities management unit at the regional office;
- Consolidation of the needs submitted by all the management areas for presentation to the RBC for conducting a prioritisation exercise;

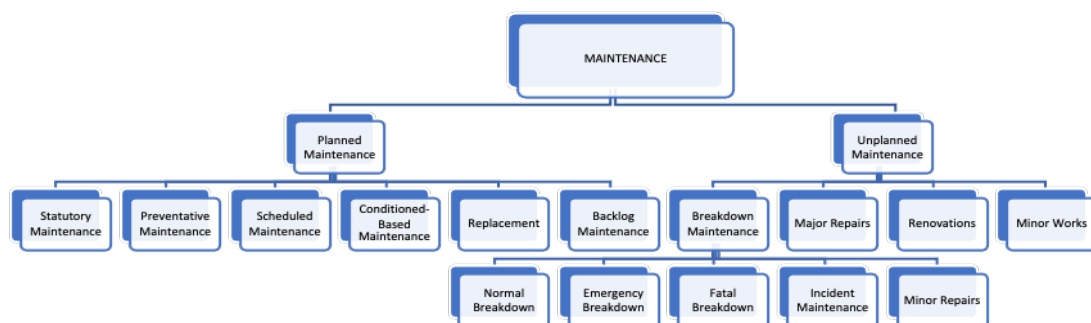
- Compilation of the decisions and the prioritised list for submission to the Regional Commissioner for approval in preparation for tabling at the NBC;
- Submission of the approved regional list to facilities management at the national level;
- Assessment of the merit of the submissions from the regions by the facilities management for making recommendations to the NBC;
- Presentation of the consolidated regional priorities to the NBC and submission of the prioritised projects to National Commissioner for approval; and
- Submission of the approved projects to the NDPW for registration and fund allocation.

The NBC is supposed to meet once a year for consideration of regional submissions, however, with the changes in representation especially the chair, the committee could not honour the meetings. With the meetings held by the committee previously, the discussions were predominantly at the debate level without reaching any conclusion.

6.2.4 MODEL UTILISED FOR UPGRADING EXISTING, AND BUILDING NEW FACILITIES

The diagrammatic representation of the model applied in the implementation of the planned and unplanned maintenance was sourced from the records of the DCS. The model was adapted based on contextualised application of the various categories of planned and unplanned maintenance presented in paragraph 6.2.3.

Figure 6.1: Diagrammatic representation: Model for upgrading existing and building new facilities:



(Department of Correctional Services, undated:40).

Maintenance for replacement was shifted from the unplanned maintenance since the demolition of an asset requires a structured approach, which includes the following:

- Cost-benefit analysis;
- Informed position by the governance structure; and
- Approval by the accounting officer.

6.2.5 TRENDS REGARDING THE CREATION OF BED SPACES IN THE LAST TEN YEARS

Information on trends regarding the creation of bed spaces with focus on building of new correctional centres and upgrading of facilities was sourced from several historical records and the questionnaire. The latter was designed and distributed to the participants working in facilities management in various regions and the national office. The summary of participants in relation to their experience in working in the facilities management portfolio in the Department of Correctional Services is presented in Table 6.5 below.

Table 6.5: Summary of participants: facilities management

| Period | Number of Participants |
|---------------------------|-------------------------------|
| 1-5 Years | 3 |
| Above 5 years to 10 years | 3 |
| Above 10 years | 2 |

The total number of participants were eight i.e., five from the regional offices and three from head office. For the region that did not participate in the study, the information was sourced from the departmental records i.e., the reports, presentations, annual performance plans and annual reports.

Bed space creation in the past ten years was done through the establishment of new correctional centres and maintenance through the upgrade, renovation and expansion of existing centres. Table 6.6 below provides a list on new generation correctional centres that opened from 2011/2012 to 2021/2022.

Table 6.6: New generation correctional centres opened from 2011/2012 to 2021/2022

| Correctional Centres | Region | Year of Operation | Bed Spaces Created | Categories of Inmates (March 2022) |
|----------------------|------------------------------------|-------------------|--------------------|------------------------------------|
| Brandvlei | Western Cape | 2012 | 981 | Sentenced inmates |
| Escourt | KwaZulu-Natal | 2019 | 512 | Sentenced inmates |
| Warmbokkeveld | Western Cape | 2015 | 520 | Sentenced inmates |
| Glencoe | Kwa Zulu-Natal | 2019 or 2020 | 666 | Sentenced inmates |
| Standerton | Limpopo, Mpumalanga and North West | 2019 | 1 486 | Sentenced inmates |
| Tzaneen | Limpopo, Mpumalanga and North West | 2020 | 501 | Sentenced inmates |

The new generation centres provided 4 666 bed spaces and all the correctional centres were utilised for the detention of sentenced offenders.

The bed space creation plan is included in the Annual Performance Plan of the DCS and the targets over the period of ten years (from 2011/2012 to 2021/2022) are reflected in Table 6.7.

Table 6.7: Planned bed spaces from 2011/12 to 2021/2022 financial year

| Years | Centres and the Number of Targeted Bed Spaces |
|-----------|--|
| 2011/2012 | Brandvlei (346) |
| | Warmbokkeveld (282) |
| 2013/2015 | Additional bed spaces (471): Centres not specified |
| 2015/2016 | Additional bed spaces (518): Centres not specified |
| 2017/2018 | Escourt (309) |
| | Standerton Phase III (183) |
| 2018/2019 | Tzaneen (435) |
| | Kgoši Mampuru II Max (C-Max) (12) |
| | Standerton Phase III (183) |
| | Escourt (309) |

| Years | Centres and the Number of Targeted Bed Spaces |
|--------------|--|
| 2019/2020 | Tzaneen (435) |
| | Escourt (309) |
| | Standerton (183) |
| 2021/2022 | Emthonjeni |

Source: Annual Performance Plans, Department of Correctional Services: 2011/12 to 2022/2023

The number of bed spaces planned over the period of ten years including the unspecified centres, with the exclusion of Emthonjeni juvenile facility, since the targeted bed spaces are not included, were 2 556.

Table 6.8 provides a list of correctional centres and types of maintenance from 2011/2012 to 2021/2022 financial years.

Table: 6.8: Correctional centres and types of maintenance for bed space management from 2011/2012 to 2021/2022

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|--------------------------------|---|--|--|--|
| Eastern Cape (3 facilities) | Burgersdorp: Upgrade for repairs, renovation and expansion | <ul style="list-style-type: none"> • The bed spaces will be increased from 220 to 500. • 280 bed spaces to be gained will be added into 2 118 bed spaces at Sada management area and this will result into 2 398 bed spaces. | <ul style="list-style-type: none"> • The project is on the pre-award stage. | <ul style="list-style-type: none"> • Revised project output: Design • Number of bed spaces: 311 • Start date: 31/12/2021 • Completion date: 2025/03/31 |
| | Kirkwood: New Facility | <ul style="list-style-type: none"> • 500 planned bed spaces will be added to 938 existing bed spaces at Kirkwood management area. • The bed space for the management area will increase to 1 438. | <ul style="list-style-type: none"> • The project is on the pre-planning stage. • The site clearance is underway. | <ul style="list-style-type: none"> • Revised project output: Design • Number of bed spaces: 500 • Start date: 2026/04/01 • Completion date: 2029/03/31 |
| | St Albans: Upgrade for repairs, renovation | <ul style="list-style-type: none"> • The plan was to repair and renovate 1 000 bed spaces and the bed spaces will remain unchanged. • The bed spaces were 3 863 in March 2022. | <ul style="list-style-type: none"> • The project was stopped before finalisation. | <ul style="list-style-type: none"> • No reference to bed space maintenance |
| Free State & Northern Cape | Groenpunt Medium: Upgrade for replacement and | <ul style="list-style-type: none"> • The bed spaces will be increased from 687 to a figure to be determined by the NBC. | <ul style="list-style-type: none"> • The feasibility study was conducted. • Planning and design | <ul style="list-style-type: none"> • No reference to the facility |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|------------------------|--|--|---|--|
| (2 facilities) | expansion | <ul style="list-style-type: none"> The gain in bed spaces of the Groenpunt management area will be dependent of the determination of the bed spaces accommodated in the expansion project (excluding the planned Parys increase). | <ul style="list-style-type: none"> commenced in 2020/2021. Preliminary designed were developed by the NDPW. | |
| | Parys: upgrading for expansion | <ul style="list-style-type: none"> The bed spaces of the facility will be increased from 68 to 250. 182 bed spaces to be gained will be added into 3 674 bed spaces at Groenpunt management area and this will result into 3 865 bed spaces (excluding the planned expansion of Groenpunt Medium A). | <ul style="list-style-type: none"> The feasibility study was conducted. Preliminary designs were developed by the NDPW. The facility is in the construction phase since February 2019. Percentage of completed work by end of July 2022: 55%. The revised completion date is April 2023. | <ul style="list-style-type: none"> Revised project output: Construction Number of bed spaces: 176 Start date: 2018/12/07 Completion date: 2021/11/06 |
| Gauteng (6 facilities) | Boksburg Medium A: Upgrade for | <ul style="list-style-type: none"> The plan to repair included the bed space areas. | <ul style="list-style-type: none"> The upgrade for repairs and renovation commenced in | <ul style="list-style-type: none"> No reference to the facility |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|----------------|--|--|---|---|
| | repairs and renovation | <ul style="list-style-type: none"> • With the continued upgrade the bed space of 2 062 is not fully utilised and 1 026 falls under portion which is under the upgrade. • After the upgrade the management area will be left with 2 850 bed spaces. | <p>2016 for completion in 2018.</p> <ul style="list-style-type: none"> • The project was extended since it could not be completed and is still under implementation. | |
| | Emthonjeni: Upgrade for repairs and renovation | <ul style="list-style-type: none"> • The centre was initially designed and completed in 1 997 as a new generation facility to accommodate 640 bed spaces. • In March 2022 the bed spaces recorded 192. • The delay in finalising the upgrades is contributing to the loss of 448 bed spaces. • The renovation which is taking place will increase bed spaces to 650. | <ul style="list-style-type: none"> • The upgrade for repairs and renovation commenced in 2017 for completion in 2020. • The project was extended since it could not be completed and is still under implementation. | <ul style="list-style-type: none"> • No reference to bed space maintenance |
| | Kgoši Mampuru II Max (C-Max): | <ul style="list-style-type: none"> • The bed spaces were increased from 281 to 294 as at December 2019. | <ul style="list-style-type: none"> • The project is completed. | <ul style="list-style-type: none"> • Not Applicable |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|----------------|--|---|---|--|
| | Upgrade and expansion | <ul style="list-style-type: none"> • 13 bed spaces were gained and Kgoši Mampuru II management area increased its bed spaces to 5 653. | | |
| | Johannesburg: Upgrade for repairs and renovation | <ul style="list-style-type: none"> • The existing bed spaces of 4 985 will remain unchanged. | <ul style="list-style-type: none"> • The upgrade for repairs and renovation of 1 000 bed spaces has commenced. | <ul style="list-style-type: none"> • No reference to bed space maintenance |
| | Leeuwkop: New Facility | <ul style="list-style-type: none"> • 1 500 planned bed spaces will be added to 2 916 existing bed spaces at Leeuwkop management area. • The bed spaces for the management area will increase to 4 416. | <ul style="list-style-type: none"> • The pre-feasibility study has been completed. • The site clearance planned for 2019/2020 has been deferred and will commence in 2024/2025. | <ul style="list-style-type: none"> • Revised project output: Design • Number of bed spaces: 1 500 • Start date: 2026/04/01 • Completion date: 2029/03/31 |
| | Nigel: New Facility | <ul style="list-style-type: none"> • 1 500 planned bed spaces will be added to 2 966 existing bed spaces at Modderbee management area. • The bed spaces for the management area will increase to 4 466. | <ul style="list-style-type: none"> • The pre-feasibility study was done. • The site clearance process was deferred due to national lockdown caused by Covid-19 pandemic. • The site clearance will commence during | <ul style="list-style-type: none"> • Revised project output: Design • Number of bed spaces: 1 500 • Start date: 2026/04/01 • Completion date: 2029/03/31 |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|---------------------------------|---|---|---|--|
| | | | 2022/2023. | |
| KwaZulu-Natal (6 facilities) | Glencoe: Upgrade for replacement and expansion | <ul style="list-style-type: none"> The bed spaces of the facility was increased from 267 to 666 in 2021 and has since reduced to 497. | <ul style="list-style-type: none"> The reconstruction of the correctional centre is completed. | <ul style="list-style-type: none"> Revised project output: Construction Number of bed spaces: Not specified Start date: 2022/04/01 Completion date: 2024/03/31 |
| | Maphumulo Heritage: Upgrade with relocation and expansion | <ul style="list-style-type: none"> The bed spaces of the facility will be increased from 44 to 500. 456 bed spaces to be gained will be added into 2 653 bed spaces at Empangeni management area and this will result into 3 109 bed spaces (excluding the planned new facility in Richards Bay). | <ul style="list-style-type: none"> The site clearance process was deferred for giving attention to the issue of land encroachment by other government departments. | <ul style="list-style-type: none"> No reference to the facility |
| | Newcastle: Upgrade with expansion | <ul style="list-style-type: none"> The bed spaces of the facility will be increased from 254 to 500. 246 bed spaces to be gained will be added into 1 867 bed spaces at Waterval management area and this | <ul style="list-style-type: none"> The ketch plan was approved by the department. The project is ready for tender process. | <ul style="list-style-type: none"> Revised project output: Design Number of bed spaces: 186 Start date: 2024/04/01 Completion date: 2027/03/31 |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|---------------------|--|---|---|---|
| | | will result into 2 113 bed spaces. | | |
| | Nongoma: Upgrade and expansion | <ul style="list-style-type: none"> The bed spaces of the facility will be increased from 46 to 500. 454 bed spaces to be gained will be added into 1 628 bed spaces at Encome management area and this will result into 2 082 bed spaces. | <ul style="list-style-type: none"> The site clearance process was deferred for giving attention to the issue of land encroachment by other government departments. | <ul style="list-style-type: none"> No reference to the facility |
| | Richards Bay: New Facility | <ul style="list-style-type: none"> 1000 planned bed spaces will be added to 2 653 existing bed spaces at Empangeni management area The bed spaces for the Empangeni management area will increase to 3 653. | <ul style="list-style-type: none"> The pre-feasibility study has been completed The site clearance has commenced. | <ul style="list-style-type: none"> No reference to the facility |
| | Westville: Upgrade for repairs and renovation | <ul style="list-style-type: none"> The management area has a total of 6 030 bed spaces. | <ul style="list-style-type: none"> The project was for repairs and renovation of 1000 bed spaces The project was stopped before finalisation. | <ul style="list-style-type: none"> No reference to bed space maintenance |
| Limpopo, Mpumalanga | Lichtenburg: Upgrade for | <ul style="list-style-type: none"> The 264 bed spaces will be increased to 500. | <ul style="list-style-type: none"> The project is at the pre-award tender stage for | <ul style="list-style-type: none"> Revised project output: Design |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|--------------------------------|--|--|---|--|
| & North West (5 facilities) | replacement and expansion | <ul style="list-style-type: none"> 236 bed spaces to be gained will be added into 1 398 bed spaces in Rooigrond management area and this will result into 1 634 bed spaces. | construction. | <ul style="list-style-type: none"> Number of bed spaces: 234 Start date: 2021/10/01 Completion date: 2025/03/31 |
| | Standerton: Upgrade with expansion | <ul style="list-style-type: none"> The bed spaces were increased from 265 to 1 460. 1 195 bed spaces were gained and Bethal management area increased its bed spaces to 3 169. | <ul style="list-style-type: none"> The expansion project was implemented in phases which led to gradual increase in bed spaces. The project is completed. | <ul style="list-style-type: none"> Not Applicable |
| | Thohoyandou: New Facility | <ul style="list-style-type: none"> 1 000 planned bed spaces will be added to 1 329 existing bed spaces in the management area. The bed space for the management area will increase to 2 329. | <ul style="list-style-type: none"> The pre-feasibility study is completed. The site clearance process has been scheduled to commence during 2022/2023 financial year. | <ul style="list-style-type: none"> Revised project output: Design Number of bed spaces: 500 Start date: 2026/04/01 Completion date: 2029/03/31 |
| | Tzaneen: New facility for replacement and expansion | <ul style="list-style-type: none"> The bed spaces was increased from 67 in 2016 to 501 in 2021. The bed spaces for Polokwane management area was increased to 1 296. | <ul style="list-style-type: none"> The facility is operational since November 2020. | <ul style="list-style-type: none"> Not Applicable |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|-----------------------------|--|--|---|--|
| | Zeerust: New Facility | <ul style="list-style-type: none"> • 500 planned bed spaces will be added to 1 398 existing bed spaces Rooigrond management area. • The bed spaces for the management area will increase to 1 898. | <ul style="list-style-type: none"> • The planning instruction was issued to the NDPW. • The site clearance process is in place. | <ul style="list-style-type: none"> • Revised project output: Design • Number of bed spaces: 500 • Start date: 2024/04/01 • Completion date: 2027/03/31 |
| Western Cape (4 facilities) | Blue Downs: New facility | <ul style="list-style-type: none"> • 1 500 planned bed spaces will be added to 1 713 existing bed spaces in Goodwood management area. • The bed spaces for the management area will increase to 3 213. | <ul style="list-style-type: none"> • The site identification process has not been concluded. | <ul style="list-style-type: none"> • No reference to the facility |
| | Brandvlei New Generation Completed: | <ul style="list-style-type: none"> • The bed spaces of the management area was increased to adding 981 bed spaces. • The management area bed spaces as at March 2022 was 1 570. | <ul style="list-style-type: none"> • The project was completed in 2012 | <ul style="list-style-type: none"> • Not Applicable |
| | Brandvlei: Upgrade for replacement | <ul style="list-style-type: none"> • The bed spaces of 690 is not usable due to the dilapidation status of the facility. • The refurbishment will contribute to regain of bed space in Brandvlei | <ul style="list-style-type: none"> • The IDT has been to implement the refurbishment project. | <ul style="list-style-type: none"> • No reference to the bed space maintenance |

| Regions | Correctional Centre & Type of Maintenance | Bed Space Information (31 March 2022) | Progress/Comments | Revised Status Annual Report 2021/2022 |
|--|--|--|---|---|
| | | management area from 1 570 to 2 260. | | |
| | Voorberg: New Facility | <ul style="list-style-type: none"> • 1 000 planned bed spaces will be added to 2 475 existing bed spaces in Voorberg management area. • The bed spaces for the management area will increase to 3 475. | <ul style="list-style-type: none"> • The pre-feasibility study was completed. • The site clearance stage will commence in 2022/2023 financial year. | <ul style="list-style-type: none"> • Revised project output: Design • Number of bed spaces: 1000 • Start date: 2026/04/01 • Completion date: 2029/03/31 |
| <ul style="list-style-type: none"> • Bed space figures reported are for March 2021 and before the conclusion of the verification measurement for 2021/2022 financial year. • Projected increase in bed spaces is influenced by the changing statuses of bed spaces therefore the actual numbers are subject to change. <p>Site clearance entails determination of site adequacy to provide for bulk services such as water, electricity, sewerage and whether the ground and soil are suitable for construction.</p> | | | | |

Twenty-six facilities prioritised for upgrade, renovation and expansion are presented in Table 6.8. Of these facilities, seven are regarded as outmoded zinc constructed centres and require replacement as they have limited bed spaces and one centre, referred to as Emthonjeni is a new generation centre which was opened in 1997. The number of bed spaces to be regained are projections based on the number of bed spaces for 31 March 2022. The analysis has revealed the following:

- Of the 26 facilities prioritised for upgrade, renovation and expansion, eleven are not included in the annual report of 2021/2022 therefore their revised statuses in relation to bed space maintenance is not recorded. These facilities are St Albans, Boksburg Medium A, Emthonjeni, Groenpunt Medium, Johannesburg, Maphumulo, Nongoma, Richards Bay, Westville, Blue Downs, Brandvlei.
- The project output for nine facilities is the design and these facilities are Burgersdorp (upgrade with expansion), Kirkwood (new facility), Leeuwkop (new facility), Nigel (new facility), Newcastle (upgrade with expansion), Lichtenburg (upgrade for replacement and expansion), Thohoyandou (new facility), Zeerust (new facility) and Voorberg (new facility). The design phase is planned for a period of between three and four years and will commence at different periods:
 - Burgersdorp and Lichtenburg facilities have design phases planned to commence in 2021 and to be completed in 2025.
 - Newcastle and Zeerust facilities have design phases planned to commence in 2024 and to be completed in 2027.
 - Kirkwood, Leeuwkop, Nigel, Thohoyandou and Voorberg facilities have design phases planned to commence in 2026 and to be completed in 2029.
 - The focus on design phase for multiple facilities which do not generate bed spaces will contribute to delays in creating additional bed spaces. The dilapidation of the existing facilities may exacerbate the situation due to temporary closure of certain cells and this will further lead to the reduction of bed spaces. This will contribute to the increase in the level of overcrowding even if there is slight reduction in the number of inmates.

- The project output for two facilities is construction and these facilities are:
 - Parys with a commencement date of December 2018 and completion date of November 2021. The completion date for Parys was revised to April 2023 and the upgrade was at 55% by end of July 2022.
 - Glencoe with the commencement date of April 2022 and completion date of March 2024.
- The deferral of the commencement date for the construction of new facilities such as Kirkwood, Leeuwkop, Nigel, Thohoyandou and Voorberg is further delaying the process of increasing the bed spaces. With the upgrades for repairs, renovation and expansion, the projects are extended for several periods such as Parys and Emthonjeni, while some are stopped such as the St Albans projects.
- The challenges experienced in the creation and maintenance of bed spaces has a direct link to occupancy and overcrowding therefore if they prevail over a long period of time, the availability of bed spaces for inmates will be compromised. The complexity for correctional services is that overcrowding is not only measured by focusing on design bed spaces, the conditions of detention such as hygiene standard, ventilation, and lighting are also considered.

6.2.6 CHALLENGES FACED BY THE DEPARTMENT OF CORRECTIONAL SERVICES AT CENTRE LEVEL AND NATIONALLY REGARDING THE CREATION AND MAINTENANCE OF BED SPACES

The challenges faced by the department are a representation of the views shared by various participants and grouped into two categories i.e., those that were shared by the heads of centres and those raised by managers working in facilities management portfolio.

Table 6.9: Challenges regarding the creation and maintenance of bed spaces

| Heads of Correctional Centres and Remand Detention Facilities | Managers in Facility Management Portfolio |
|--|--|
| <ul style="list-style-type: none"> • Delays in the appointment of contractors. • Lack of established maintenance team within the centre to deal with the day-to-day breakages that will prevent unnecessary closure of cells. • Outsourcing of the day-to day maintenance contributes to delays as well as increase in the cost of managing maintenance projects. • Inadequate personnel to provide security to offenders that provide maintenance services under the supervision of correctional officials appointed as technicians. • Delays in finalising investigations where some of the cells were burned by the inmates thus leading to the creation of redundant bed spaces. • Dilapidation of the facility due to constant breakages and extensive use of ablution facilities due to overcrowding thus leading to full closure or partial closure of the facility. • Closures for renovation take longer than the predetermined period and the subsequent transfers which are a package of any closure of the centre contribute loss of bed spaces. • Repurposing of certain bed spaces areas to cater for the rehabilitation | <ul style="list-style-type: none"> • Inadequate performance by the governance structures such as the NBC that leads to delays in finalising the prioritisation of the maintenance projects. • Delays in the allocation of funds for prioritised projects. • Lengthy pre-planning phase for capital projects which may contribute to reallocation of funds to other emergency projects. • Delays in completing projects due to multitude of factors that include cash flow challenges for appointed service providers, poor project management and escalation of costs. • Poor performance by certain contractors and service providers resulting in extension of upgrade, renovation and expansion projects thus leading to loss of bed spaces over longer periods than anticipated. • Delays in finalising the litigation cases which lead to deferral of the maintenance project. • Persistent budget cuts to capital works budget due to the requirement for redirecting funding for other pressing priorities contributes to halting of the project which are in the planning phase. Some of the priorities that had to be accommodated are Covid-19 vaccinations and relief as well as university education. |

| Heads of Correctional Centres and Remand Detention Facilities | Managers in Facility Management Portfolio |
|---|--|
| services, office administration and laundry services. <ul style="list-style-type: none"> • Delay in supply chain process. • Old and outdated infrastructure which was built more than 50 years ago. | |

The challenges expressed by the heads of the correctional centres and remand detention facilities reflect concerns regarding the constant loss of bed spaces and delays in the maintenance for regaining lost bed spaces as well as delays in replacing outdated correctional centres. The challenges raised by managers responsible for the facility management portfolio are mirroring frustration relating to projects from planning, implementation and completion.

The list of outdated correctional centres that require replacement as outlined in the infrastructure plan (Department of Correctional Services, undated:28) appears in Table 6.10 below:

Table 6.10: List of outdated correctional centres per region

| Western Cape | Limpopo, Mpumalanga and North West | Free State and Northern Cape |
|---|--|---|
| <ul style="list-style-type: none"> • Voorberg (Zinc) • Brandvlei (Zinc) • Pollsmoor Med C (Asbestos) | <ul style="list-style-type: none"> • Zeerust (Zinc) • Lichtenburg (Zinc) • Tzaneen (Zinc) • Makhado (partly Zinc and partly Brick) | <ul style="list-style-type: none"> • Groenpunt Med B (Zinc) |
| Gauteng | KwaZulu-Natal | Eastern Cape |
| <ul style="list-style-type: none"> • Leeuwkop Juvenile (Zinc) • Atteridgeville (Zinc) | <ul style="list-style-type: none"> • Glencoe (Zinc) • Port Shepstone (Asbestos) | <ul style="list-style-type: none"> • No structure listed for replacement |

The number of facilities with zinc that require replacement is eight and those of asbestos are two. The facility that is partly zinc and partly bricks that requires

replacement is one. The regions with the highest number of facilities that require replacement are Limpopo, Mpumalanga and North West with four facilities and Western Cape with three facilities.

6.3 DETERMINATION OF TRENDS IN OCCUPANCY

Determination of trends in occupancy assist in establishing the overcrowding levels.

The areas addressed in this analysis are as follows:

- Trends in occupancy levels nationally and regionally;
- Centres with the highest occupancy level in the last three years i.e., the levels exceeding 100 percent;
- Categorisation of facilities; and
- Categorisation of inmates.

6.3.1 TRENDS IN OCCUPANCY LEVEL

Information was sourced from departmental records on remand detainees including reports that are shared to various structures in the criminal justice system. Table 6.11 below reflects the long-term trend on inmates and bed spaces from the 1990/1991 to the 2020/2021 financial year.

Table 6.11: Long-term trend: Inmates and bed spaces from 1990/1991 to 2019/2020 - adapted from several sources

| Average: Financial Years | Bed Space | Unsentenced | Sentenced | All Inmates | Occupancy Percentage |
|--|----------------------|--------------------|------------------|--------------------|---------------------------------|
| 1990/1991 | 83 460 | 18 751 | 86 935 | 105 686 | 126.6 |
| 1995/1996 | 94 262 | 24 937 | 85 109 | 110 046 | 116.7 |
| 2000/2001 | 100 707 | 56 156 | 110 431 | 166 587 | 165.4 |
| 2005/2006 | 114 374 | 46 211 | 116 448 | 162 659 | 142.2 |
| 2010/2011 | 118 160 | 47 554 | 112 506 | 160 060 | 135.5 |
| 2015/2016 | * 119 134 | # 45 257 | # 116 727 | #161 984 | 136.0 |
| 2020/2021 | ^ 119 902 | # 49 906 | # 93 441 | #143 347 | 120.0 |
| 1990/1991 to 2010/2011: Source: Situational analysis in the Department of Correctional Services 2018 | | | | | |
| *2015/2016: Bed space information from the situational analysis document | | | | | |
| ^2019/2020: Bed space information: average based on daily unlock monthly | | | | | |

averages

#2015/2015/16 and 2019/2020: sourced from the published annual report of 2019/2020 and adapted

^2020/2021: Bed space information: average based on daily unlock monthly averages

The above-mentioned table reflects that the bed spaces increased by 43.7% from the 1990/1991 financial year to the 2020/2021 financial year and this resulted in the reduction in- occupancy percentage and overcrowding. The highest occupancy of 165.4% was observed during 2000/2001 financial year though there was an increase in bed spaces from 83 460 in the 1990/1991 financial year to 100 707 in the 2000/2001 financial year. While the bed spaces increased by 20.7% (17 247), the inmate population increased by 57.6% (60 901) during the same period. Of the inmate population, remand detainees reflect the highest increase of 199.5% while the sentenced offenders show a growth of 27.0%.

From the 2005/2006 to the 2020/2021 financial year, an erratic pattern of downward and upward trend is observed, and this resulted in the reduction of the annual average number of inmates by 11.9% i.e., from 162 659 to 143 347. The net decrease of 19,8% was only observed in the category of sentenced offenders. The remand detainee population continued with an erratic pattern and the net increase of 8.0% was observed.

Table 6.12 reflects the regional bed spaces and occupancy from the daily unlock for three dates which are 31 March 2020, 31 March 2021 and 31 March 2022. The table reflects fluctuation in bed spaces and inmate population as the two factors are utilised to measure occupancy levels including overcrowding.

Table 6.12: Trends on bed spaces and occupancy: 31 March 2020, 31 March 2021 and 31 March 2022

| Regions | 31-Mar-20 | | | 31-Mar-21 | | | 31-Mar-22 | | |
|----------------------------------|----------------|----------------|--------------|----------------|----------------|--------------|----------------|----------------|--------------|
| | Bed spaces | Inmates | Occupancy % | Bed spaces | Inmates | Occupancy % | Bed spaces | Inmates | Occupancy % |
| Eastern Cape | 13 294 | 20 559 | 154,7 | 12 846 | 18 962 | 147,6 | 12 583 | 20 136 | 160.0 |
| Gauteng | 24 877 | 36 212 | 145,6 | 25 204 | 33 011 | 131,0 | 23 632 | 33 143 | 140.3 |
| KwaZulu-Natal | 20 281 | 25 120 | 123,9 | 21 278 | 22 345 | 105,0 | 18 759 | 22 024 | 117.4 |
| Limpopo, Mpumalanga & North West | 17 799 | 24 663 | 138,6 | 18 929 | 21 763 | 115,0 | 18 643 | 22 232 | 119.3 |
| Free State & Northern Cape | 21 542 | 21 043 | 97,7 | 21 585 | 19 223 | 89,1 | 19 202 | 18 944 | 98.7 |
| Western Cape | 20 779 | 26 840 | 129,2 | 20 725 | 25 644 | 123,7 | 18 017 | 26 765 | 148.6 |
| National | 118 572 | 154 437 | 130,3 | 120 567 | 140 948 | 116,9 | 110 836 | 143 244 | 129.2 |

The summary of the findings for the three dates reflected in Table 6.12 are as follows:

- The region with the highest occupancy in all the three periods is Eastern Cape with occupancy ranging from 147.6% to 160.0%. The increase in occupancy is partly due to the gradual decline in bed spaces and increase in inmates especially for 31 March 2022.
- Gauteng is the second highest region with occupancy of 145.6% on 31 March 2021; however, it dropped on 31 March 2021 to 131.0% and subsequently increased on 31 March 2022 to 140.3%. The increase in occupancy is due to the reduction in bed spaces observed on 31 March 2022.
- Occupancy increased in Western Cape from 129.2% on 31 March 2020 to 148.6% on 31 March 2022. A gradual decrease in bed spaces was observed on 31 March 2021 and on 31 March 2022.
- The observed decline in bed spaces may be equated to the loss of bed spaces due to temporary closure of certain cells for maintenance as well as technical errors in the calculation of bed spaces.
- The region with the lowest occupancy of below 100% in all the periods is Free State and Northern Cape.
- All the regions reflect a reduction in bed spaces on 31 March 2022 when comparing with the other two periods. In Eastern Cape, Gauteng, Limpopo, Mpumalanga and North West and Western Cape, an increase in inmates was observed while bed spaces reduced hence the increase in occupancy percentage. In Free State and Northern Cape and KwaZulu-Natal both bed spaces and inmates decreased; however, the bed spaces decreased at a higher level than the inmates hence the increase in occupancy.

6.3.2 CENTRES WITH HIGHEST OCCUPANCY LEVELS FROM 2019/2020 TO 2021/2022

The snapshot analysis summarised in Table 6.13 is an aggregation based on the information obtained from the daily unlock for the three dates which are 31 January 2020, 01 April 2021 and 31 March 2022.

Table 6.13: Centres with occupancy of more than 100%: Snapshot of 31 January 2020, 01 April 2021 and 31 March 2022: Source Daily unlock

| 31-Jan-20 | | | | | | |
|----------------------------------|-------------------------------|---------------------------|---------------------------|-------------------|--------------------|--------------|
| Regions | More than 100% to 150% | Above 150% to 200% | Above 200% to 300% | Above 300% | Grand Total | % |
| Eastern Cape | 10 | 15 | 9 | 0 | 34 | 20.7 |
| Free State & Northern Cape | 16 | 3 | | 0 | 19 | 11.6 |
| Gauteng | 15 | 6 | 1 | 0 | 22 | 13.4 |
| KwaZulu-Natal | 19 | 6 | | 0 | 25 | 15.2 |
| Limpopo, Mpumalanga & North West | 19 | 8 | 3 | 0 | 30 | 18.3 |
| Western Cape | 20 | 9 | 5 | 0 | 34 | 20.7 |
| Total | 99 | 47 | 18 | 0 | 164 | 100.0 |
| | 60.4 | 28.7 | 11.0 | 0 | 100 | |
| 01-Apr-21 | | | | | | |
| Regions | More than 100% to 150% | Above 150% to 200% | Above 200% to 300% | Above 300% | Grand Total | % |
| Eastern Cape | 11 | 14 | 6 | 1 | 32 | 23.7 |
| Free State & Northern Cape | 11 | 3 | | | 14 | 10.4 |
| Gauteng | 16 | 1 | 1 | | 18 | 13.3 |
| KwaZulu-Natal | 16 | 1 | | | 17 | 12.6 |
| Limpopo, Mpumalanga & North West | 18 | 4 | 1 | 0 | 23 | 17.0 |

| | | | | | | |
|----------------------------------|-------------------------------|---------------------------|---------------------------|-------------------|--------------------|--------------|
| Western Cape | 17 | 11 | 3 | | 31 | 23.0 |
| Total | 89 | 34 | 11 | 1 | 135 | 100.00 |
| | 65.4 | 25 | 8.1 | 1.5 | 100 | |
| 31-Mar-22 | | | | | | |
| Regions | More than 100% to 150% | Above 150% to 200% | Above 200% to 300% | Above 300% | Grand Total | % |
| Eastern Cape | 9 | 18 | 9 | 1 | 37 | 22.0 |
| Free State & Northern Cape | 15 | 7 | | | 22 | 13.1 |
| Gauteng | 15 | 5 | 1 | | 21 | 12.5 |
| KwaZulu-Natal | 23 | 5 | 1 | | 29 | 17.3 |
| Limpopo, Mpumalanga & North West | 18 | 3 | 3 | | 24 | 14.3 |
| Western Cape | 11 | 13 | 11 | | 35 | 20.8 |
| Total | 91 | 51 | 25 | 1 | 168 | 100.0 |
| | 54.2 | 30.4 | 14.9 | 0.6 | 100 | |

The snapshot analysis summarised in Table 6.13 based on information extracted from the daily unlock for 31 January 2020, 01 April 2021 and 31 March 2022 revealed the following:

- The number of facilities with occupancy of more than 100% on 31 January 2020, 01 April 2021 and 31 March 2022 was 164, 135 and 168 for the respective periods.
- The regions with the highest number of overcrowded facilities on 31 January 2020 were Eastern Cape and Western Cape both at 20.7%. The regions with the lowest number of overcrowded facilities at the same period were Free State and Northern Cape (11.6%) and Gauteng (13.4 %).
- The regions with the highest number of overcrowded facilities on 01 April 2021 were Eastern Cape (23.7%) and Western Cape (22.6%). The regions with the lowest number of overcrowded facilities at the same period were Free State and Northern Cape (10.4%) and KwaZulu-Natal (12.6 %).
- The regions with the highest number of overcrowded facilities on 31 March 2022 were Eastern Cape (22.0) and Western Cape (20.8%). The regions with the lowest number of overcrowded facilities at the same period were Gauteng (12.5%) and Free State and Northern Cape (13.1%).
- There was no centre with occupancy of more than 300% on 31 January 2020.
- The facilities with occupancy of more than 100% to 150% constituted the highest number of overcrowded facilities at more than 50% followed by those above 150% to 200%.
- The number of facilities with occupancy of more than 300% were only two i.e., in April 2021 and 31 March 2022 period and constituted less than 1.5% of the overcrowded facilities.

Table 6.14 is a representation of bed space distribution across the six regions of the Department of Correctional Services. The bed spaces were aggregated into six categories i.e., from the lowest to the highest number of bed spaces.

Table 6.14: Bed space aggregation in terms of regional distribution

| 31 January 2020 | | | | | | | | |
|------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|--------------|
| Bed space Aggregation | EC | FSNC | GP | KZN | LMN | WC | Total | % |
| 100 and below | 14 | 5 | | 4 | 1 | 6 | 30 | 18.3 |
| Above 100 to 250 | 4 | 4 | 1 | 3 | 8 | 8 | 28 | 17.1 |
| Above 250 to 500 | 5 | 5 | 4 | 8 | 9 | 10 | 41 | 25.0 |
| Above 500 to 1000 | 10 | 4 | 10 | 6 | 10 | 5 | 45 | 27.4 |
| Above 1000 to 2000 | 1 | 1 | 3 | 2 | 2 | 4 | 13 | 7.9 |
| Above 2000 to 2700 | | | 4 | 2 | | 1 | 7 | 4.3 |
| Grand Total | 34 | 19 | 22 | 25 | 30 | 34 | 164 | 100.0 |
| % | 20.7 | 11.6 | 13.4 | 15.2 | 18.3 | 20.7 | 100.0 | |
| 01 April 2021 | | | | | | | | |
| Bed space Aggregation | EC | FSNC | GP | KZN | LMN | WC | Total | % |
| 100 and below | 10 | 3 | | 1 | 2 | 6 | 22 | 16.3 |
| Above 100 to 250 | 7 | 3 | 1 | 1 | 5 | 8 | 25 | 18.5 |
| Above 250 to 500 | 5 | 3 | 3 | 7 | 6 | 9 | 33 | 24.4 |
| Above 500 to 1000 | 9 | 4 | 7 | 4 | 8 | 5 | 37 | 27.4 |
| Above 1000 to 2000 | 1 | 1 | 4 | 2 | 2 | 2 | 12 | 8.9 |
| Above 2000 to 2700 | | | 3 | 2 | | 1 | 6 | 4.4 |

| | | | | | | | | |
|------------------------------|-------------|-------------|----------------|-------------|-------------|-------------|--------------|---------------|
| Total | 32 | 14 | 18 | 17 | 23 | 31 | 135 | 100.0 |
| % | 23.7 | 10.4 | 13.3 | 12.6 | 17.0 | 23.0 | 100.0 | |
| 31 March 2022 | | | | | | | | |
| Bed space Aggregation | EC | FSNC | Gauteng | KZN | LMN | WC | Total | % |
| 100 and below | 15 | 8 | | 11 | 1 | 7 | 42 | 25.0 |
| Above 100 to 250 | 7 | 5 | 1 | 3 | 8 | 9 | 33 | 19.6 |
| Above 250 to 500 | 6 | 3 | 4 | 6 | 6 | 8 | 33 | 19.6 |
| Above 500 to 1000 | 8 | 5 | 9 | 5 | 7 | 6 | 40 | 23.8 |
| Above 1000 to 2000 | 1 | 1 | 3 | 3 | 2 | 5 | 15 | 8.9 |
| Above 2000 to 2700 | | | 4 | 1 | | | 5 | 3.0 |
| Total | 37 | 22 | 21 | 29 | 24 | 35 | 168 | 100.00 |
| % | 22.0 | 13.1 | 12.5 | 17.3 | 14.3 | 20.8 | 100.0 | |

The aggregated bed spaces in Table 6.14 revealed the following:

- The highest number of facilities with bed spaces that ranged from more than 500 to 1 000 bed spaces (27.4%) and more than 250 to 500 bed spaces (25.0%) on 31 January 2020 were 45 and 41 respectively.
- The highest number of facilities with bed spaces that ranged from more than 500 to 1 000 bed spaces (27.4%) and more than 250 to 500 bed spaces (24.4%) on 01 April 2021 were 37 and 33 respectively.
- The highest number of facilities with bed spaces that ranged from 100 to below (25.0%) and from above 500 to 1 000 (23.8%) on 31 March 2022 were 42 and 40 respectively.
- The bed spaces at the range of more than 1 000 to 2 000 and more than 2 000 to below 2 700 were less than 10% and 5% respectively in all the three reported periods.
- The facilities with bed space range of 100 and below increased by 40% between 31 January 2020 and 31 March 2022.
- The facilities with bed space range of more than 250 to 500 decreased by 19.5% between 31 January 2020 and 31 March 2022.
- The facilities with bed space range of more than 500 to 1 000 decreased by 11.1% between 31 January 2020 and 31 March 2022.
- The regions with overcrowded facilities that have bed spaces above 2 000 were Gauteng (4) and KwaZulu-Natal (1) for all the reported periods except Western Cape which dropped from the biggest number of bed spaces in period of 31 March 2022.

The level of overcrowding differs from facility to facility and Table 6.15 provides a list of the top 20 most overcrowded facilities for the three dates which are 31 January 2020, 01 April 2021 and 31 March 2022

Table 6.15: Top 20 most overcrowded facilities: 31 January 2020, 01 April 2021 and 31 March 2022

| Top 20 Most overcrowded facilities: 31 January 2020 | | | | | | | |
|--|----------------------------------|----------------------------|------------------|------------------|-------------|--------------------|--|
| Ranking | Regions | Correctional Centre | Bed Space | Occupancy | RD % | Sentenced % | Facility Categorisation |
| 1 | Eastern Cape | Lusikisiki | 109 | 287,2 | 20,5 | 79,6 | Mixed facility: Sentenced more than 60% |
| 2 | Western Cape | Pollsmoor Medium B | 437 | 280,8 | 0 | 100 | Sentenced only |
| 3 | Eastern Cape | Burgersdorp | 149 | 277,9 | 68,1 | 31,9 | Mixed facility: Remand detainees more than 60% |
| 4 | Eastern Cape | Bizana | 47 | 276,6 | 88,5 | 11,5 | Mixed facility: Remand detainees more than 60% |
| 5 | Eastern Cape | Queenstown | 125 | 268 | 98,8 | 1,2 | Remand detention facility |
| 6 | Limpopo, Mpumalanga & North West | Thohoyandou Medium B | 219 | 262,6 | 100 | 0 | Remand detention facility |
| 7 | Limpopo, Mpumalanga & North West | Polokwane | 557 | 254,4 | 74,0 | 26,0 | Mixed facility: Remand detainees more than 60% |
| 8 | Eastern Cape | Idutywa | 62 | 248,4 | 0 | 100 | Sentenced only |
| 9 | Eastern Cape | Graaff-Reinet | 63 | 233,3 | 93,9 | 6,1 | Remand detention facility |
| 10 | Western Cape | Allandale | 336 | 230,7 | 74,6 | 25,4 | Mixed facility: Remand detainees more than 60% |
| 11 | Eastern Cape | St Albans Medium A | 706 | 226,1 | 96,3 | 2,6 | Remand detention facility |
| 12 | Western Cape | Beaufort-West | 76 | 223,7 | 82,9 | 17,1 | Mixed facility: Remand |

| | | | | | | | |
|----|--|--------------------------|-------|-------|------|------|--|
| | | | | | | | detainees more than 60% |
| 13 | Eastern Cape | Mdantsane | 582 | 218,7 | 0 | 100 | Sentenced only |
| 14 | Western Cape | Malmesbury RDF | 178 | 214,6 | 94,2 | 5,8 | Remand detention facility |
| 15 | Gauteng | Johannesburg Medium A | 2 630 | 213,9 | 97,5 | 2,5 | Remand detention facility |
| 16 | Limpopo, Mpumalanga & North West | Potchefstroom | 867 | 213,5 | 87,6 | 12,4 | Remand detention facility |
| 17 | Eastern Cape | Mthatha Medium | 720 | 213,1 | 0,3 | 99,7 | Sentenced maximum: Remand detainees less than 5% |
| 18 | Western Cape | Ladismith | 54 | 201,9 | 30,3 | 69,7 | Mixed facility: Sentenced more than 60% |
| 19 | Western Cape | Oudtshoorn Medium A | 300 | 192 | 40,8 | 59,2 | Mixed facility: Sentenced: 50% to 60% |
| 20 | KwaZulu- Natal | Ncome Medium A | 487 | 189,5 | 29,5 | 70,3 | Mixed facility: Sentenced more than 60% |

Top 20 Most overcrowded facilities: 01 April 2021

| Ranking | REGIONS | Correctional Centre | Bed space | Occupancy | RD % | Sentence % | Facilities Categorisation |
|----------------|----------------|--------------------------------|------------------|------------------|-------------|-----------------------|---|
| 1 | Eastern Cape | Queenstown | 125 | 304 | 98,2 | 1,8 | Remand detention facility |
| 2 | Eastern Cape | Bizana | 47 | 287,2 | 91,1 | 8,9 | Mixed facility: Remand detainees more than 60% |
| 3 | Western Cape | Allandale | 319 | 263,6 | 67,2 | 32,8 | Mixed facility: Remand detainees more than 60% |
| 4 | Eastern Cape | Graaff-Reinet | 53 | 235,9 | 93,6 | 6,4 | Remand detention facility |

| | | | | | | | |
|----|----------------------------------|----------------------|-------|--------|------|------|---|
| 5 | Eastern Cape | Burgersdorp | 149 | 232,9 | 68,3 | 31,1 | Mixed facility: Remand detainees more than 60% |
| 6 | Western Cape | Stellenbosch | 71 | 228,2 | 70,4 | 29,6 | Mixed facility: Remand detainees more than 60% |
| 7 | Limpopo, Mpumalanga & North West | Thohoyandou Medium B | 219 | 222,8 | 96,3 | 3,7 | Remand detention facility |
| 8 | Western Cape | Pollsmoor Medium B | 437 | 222,4 | 0,1 | 99,9 | Sentence maximum: Remand detainees less than 5% |
| 9 | Gauteng | Johannesburg Med A | 2 630 | 217,6 | 97,8 | 2,2 | Remand detention facility |
| 10 | Eastern Cape | King William's Town | 338 | 215,4 | 94,4 | 5,6 | Remand detention facility |
| 11 | Eastern Cape | Mdantsane | 582 | 210,1 | 0 | 100 | Sentence only |
| 12 | Eastern Cape | Mthatha Medium | 720 | 208,6 | 0 | 100 | Sentence only |
| 13 | Western Cape | George | 563 | 197,3 | 50,6 | 49,4 | Mixed facility: Remand detainees 50 to 60% |
| 14 | Western Cape | Beaufort-West | 76 | 194,7 | 79,7 | 20,3 | Mixed facility: Remand detainees more than 60% |
| 15 | FSNC | Grootvlei A | 896 | 194,2 | 66,7 | 31,5 | Mixed facility: Remand detainees more than 60% |
| 16 | Eastern Cape | Flagstaff | 56 | 187,5 | 0 | 100 | Sentence only |
| 17 | Eastern Cape | Mount Frere | 48 | 185,4 | 0 | 100 | Sentence only |
| 18 | Eastern Cape | Lusikisiki | 148 | 185,14 | 19,7 | 79,9 | Mixed facility: sentenced more than 60% |
| 19 | Eastern Cape | St Albans Medium A | 706 | 184,3 | 95,8 | 3,3 | Mixed facility: Remand detainees more than 60% |
| 20 | Limpopo, Mpumalanga | Polokwane | 561 | 177,2 | 76,1 | 23,9 | Mixed facility: Remand detainees more than 60% |

| | & North West | | | | | | |
|---|----------------------------------|----------------------------|------------------|------------------|-------------|-------------------|--|
| Top 20 Most overcrowded facilities 31 March 2022 | | | | | | | |
| Ranking | REGIONS | Correctional Centre | Bed space | Occupancy | RD % | Sentence % | Facility Categorisation |
| 1 | Gauteng | Bizana | 48 | 329,2 | 90,5 | 9,5 | Mixed facility: Remand detainees more than 60% |
| 2 | Western Cape | Allandale | 292 | 291,1 | 68,0 | 32,0 | Mixed facility: Sentenced more than 60% |
| 3 | Eastern Cape | Lusikisiki | 122 | 289,3 | 30,3 | 69,7 | Mixed facility: Remand detainees more than 60% |
| 4 | Eastern Cape | King William's Town | 275 | 284,0 | 95,3 | 4,0 | Remand detention facility |
| 5 | Eastern Cape | Queenstown | 129 | 272,9 | 97,4 | 2,6 | Remand detention facility |
| 6 | Limpopo, Mpumalanga & North West | Thohoyandou Medium B | 217 | 253,9 | 97,1 | 2,9 | Remand detention facility |
| 7 | Eastern Cape | Butterworth | 130 | 244,6 | 86,8 | 12,0 | Mixed facility: Remand detainees more than 60% |
| 8 | Western Cape | Worcester Males | 406 | 241,6 | 81,4 | 18,7 | Mixed facility: Remand detainees more than 60% |
| 9 | Eastern Cape | Flagstaff | 54 | 240,7 | 0 | 100 | Sentenced only |
| 10 | Eastern Cape | Mount Frere | 52 | 240,4 | 0 | 100 | Sentenced only |
| 11 | Western Cape | George | 517 | 238,1 | 44,7 | 55,3 | Mixed facility: Sentenced 50 to 60% |
| 12 | Western Cape | Knysna | 167 | 232,3 | 46,7 | 53,4 | Mixed facility: Sentenced 50 to 60% |
| 13 | Eastern Cape | Graaff-Reinet | 70 | 225,7 | 93,7 | 6,3 | Remand detention facility |

| | | | | | | | |
|----|--------------|--------------------------|-------|--------|------|------|---|
| 14 | Western Cape | Oudtshoorn Medium A | 273 | 224,9 | 26,7 | 73,3 | Mixed facility: Sentenced more than 60% |
| 15 | Western Cape | Pollsmoor Medium B | 512 | 219,9 | 0 | 100 | Sentenced only |
| 16 | Gauteng | Johannesburg Medium A | 2 468 | 219,2 | 97,8 | 2,2 | Remand detention facility |
| 17 | Western Cape | Worcester Females | 112 | 211,6 | 23,6 | 76,4 | Mixed facility: Sentenced more than 60% |
| 18 | Eastern Cape | Burgersdorp | 220 | 210,9 | 58,2 | 41,2 | Mixed facility: Remand detainees 50 to 60% |
| 19 | Western Cape | Prince Albert | 38 | 210,5 | 42,5 | 57,5 | Mixed facility: Sentenced 50 to 60% |
| 20 | Western Cape | Beaufort-West | 75 | 208,00 | 73,7 | 26,3 | Mixed facility: Sentenced more than 60% |

Table 6.15 which is a representation of the most overcrowded facilities revealed the following:

- The twenty most overcrowded facilities on 31 January 2020 had bed spaces that ranged from 47 to 2 630 and occupancy that ranged from 189.5% to 287.2%.
- The twenty most overcrowded facilities on 01 April 2021 had bed spaces that ranged from 47 to 2 630 and occupancy that ranged from 177.2% to 304.0%.
- The twenty most overcrowded facilities on 31 March 2022 had bed spaces that ranged from 48 to 2 468 and occupancy that ranged from 208.0% to 329.2%.
- The regions with most overcrowded facilities for all the reported dates were Eastern Cape and Western Cape.
- The region which does not have facilities in the top most overcrowded list is Free State and Northern Cape.
- KwaZulu-Natal does not appear in the most overcrowded top 20 list on the dates of 1 April 2021 and 31 March 2022.

6.3.3 CATEGORISATION OF FACILITIES

The information presented on the daily unlock for 31 March 2022 was analysed for determination of the categories of inmates detained in facilities with occupancy of more than 100%. The process led to the creation of seven categories of facilities which are summarised below:

- Mixed facilities with more than 60% of remand detainees;
- Mixed facilities with more than 60% of sentenced offenders;
- Mixed facilities with remand detainees ranging between 50 to 60%;
- Mixed facilities with sentenced offenders ranging between 50 to 60%;
- Remand detention facilities;
- Facilities for sentenced offenders only; and
- Facilities for sentenced maximum offenders with less than 5% of remand detainees.

Table 6.16 provides a list of the categories of facilities in relation to their regional distribution based on the analysis of the daily unlock of 31 March 2022.

Table: 6.16: Categorisation of facilities with the highest occupancy: Daily unlock of 31 March 2022

| Facility Categorisation | EC | FSNC | GP | KZN | LMN | WC | Total |
|---|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| Mixed facility: Remand detainees 50 to 60% | | 4 | 1 | | 2 | 3 | 10 |
| Mixed facility: Remand detainees more than 60% | 1 | 5 | 2 | | 3 | 5 | 16 |
| Mixed facility: Sentenced 50 to 60% | 2 | 5 | 4 | | 2 | 5 | 18 |
| Mixed facility: Sentenced more than 60% | 3 | 5 | 1 | 6 | 7 | 8 | 30 |
| Remand detention facility | 10 | 1 | 2 | 4 | 3 | 3 | 23 |
| Facility for sentenced maximum offenders: Remand detainees less than 5% | 2 | 1 | | | | 2 | 5 |
| Facility for sentenced offenders only | 19 | 1 | 11 | 19 | 7 | 9 | 66 |
| Total | 37 | 22 | 21 | 29 | 24 | 35 | 168 |

The highest number of overcrowded facilities in general regardless of the occupancy levels constitutes 39.3% and these detain sentenced offenders. They are followed by mixed facilities where sentenced offenders are more than 50% (28.6%) and the mixed facilities where remand detainees are more than 50% (15.5%). Of the 168 facilities that had an occupancy rate of more than 100% on 31 March 2022, the remand detention facilities constituted 13.7% and the maximum facilities with less than 5% of remand detainees were 3.0%.

6.3.4 CATEGORISATION OF INMATES

Records of the DCS including policies and presentations were utilised for sourcing information on categorisation of inmates. The inmates detained in the DCS facilities are categorised as either unsentenced or sentenced. The unsentenced inmates consists of remand detainees and state patients while sentenced offenders include several categories such as those with further charges, those with determinate and

indeterminate sentences, those classified as habitual criminals, dangerous criminals, those with fines, lifers, those serving periodic sentences, parole violators, and day parolees.

Remand detainees can be further categorised in terms of bail and the period spent in custody. The age categorisation is applied in all categories of offenders starting from children with age range of 14–17 years, juveniles with age range of 18–20 and youth with age range of 18–25, adults i.e., from 26 years and elderly i.e., those above 60 years. The youth category as defined in the youth policy was established for ensuring security as well as for provision of appropriate services. In the daily unlock the adult category is inclusive of the elderly.

Security classification is determined by the extent to which the inmate presents a security risk for determination of the correctional centre or part of a correctional centre in which he or she is to be detained. The security classification which is linked to inmate classification is presented in Table 6.17 below.

Table 6.17: Categories of facilities and criteria for allocation of inmates

| Classification of Facilities | Criteria for Allocation of Inmates |
|-------------------------------------|---|
| Closed maximum security | Inmates who pose a major security risk and who require strict security (C-Max and Super Maximum). |
| Maximum centres | Inmates require high level of security supervision and risk profiling tool guide the placement of inmates. |
| Medium centres | Inmates who pose a medium to moderate risk and focus is on placement of offenders in rehabilitation programmes. |
| Minimum centres | Inmates who pose a minimum risk in terms of risk classification. |

The four categories utilised for classification of facilities as well as the determination for housing of inmates are outlined in the above-mentioned table. A separate tool for risk classification of remand detainees is implemented and this allows for categorising them into three levels which are maximum, medium and minimum. The remand

detainees that require high level of security are placed in either maximum or closed maximum facilities.

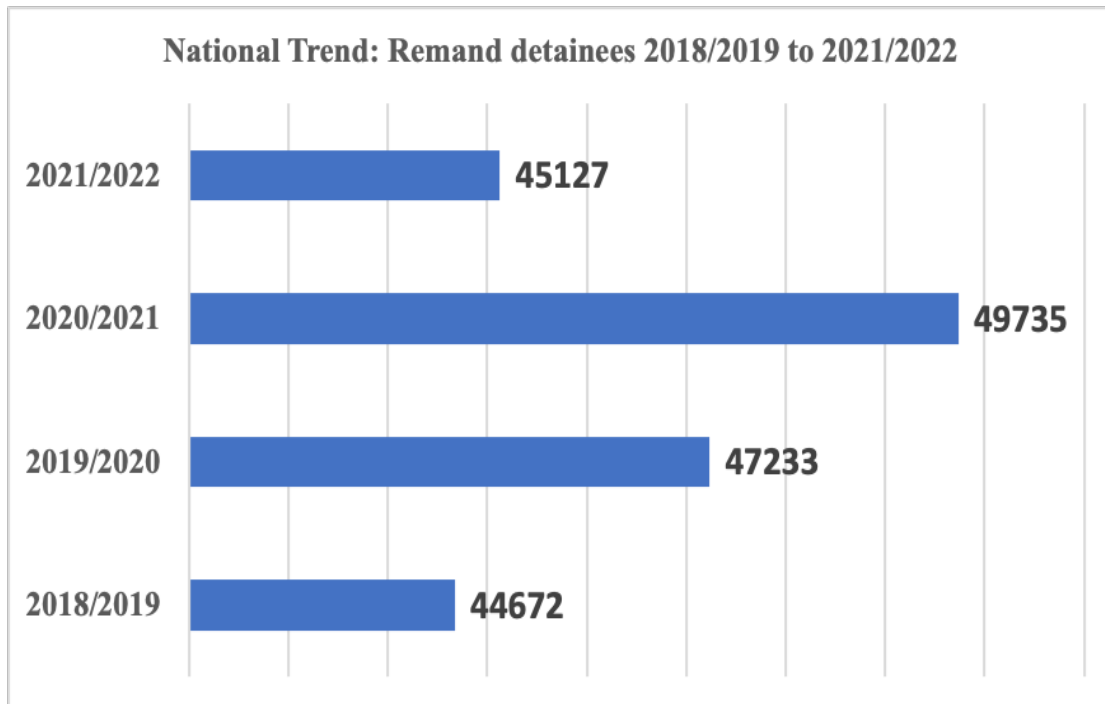
6.4 PROFILE OF REMAND DETAINEES

The profile of remand detainees is based on one day snapshot analysis for 31 March 2021 and 31 March 2020 as well as the analysis of the daily unlock which has been aggregated to create monthly and annual averages. The areas addressed in this analysis are as follows:

- Trends regarding the population of remand detainees in the last three years based on the analysis of the daily unlock;
- Facilities that detain remand detainees;
- The length of period spent by remand detainees nationally and for those detained in facilities sampled for participating in the study;
- Feeder courts for the facilities sampled to participate in the study;
- Police stations collect remand detainees for court appearance i.e., for the facilities sampled to participate in the study;
- Remand detainees with and without an option of bail;
- Foreign nationals detained nationally and in centres sampled to participate in the study; and
- The cost of detaining remand detainees with bail based on their length of detention.

6.4.1 TRENDS ON REMAND DETAINEES FROM 2018/2019 TO 2021/2022

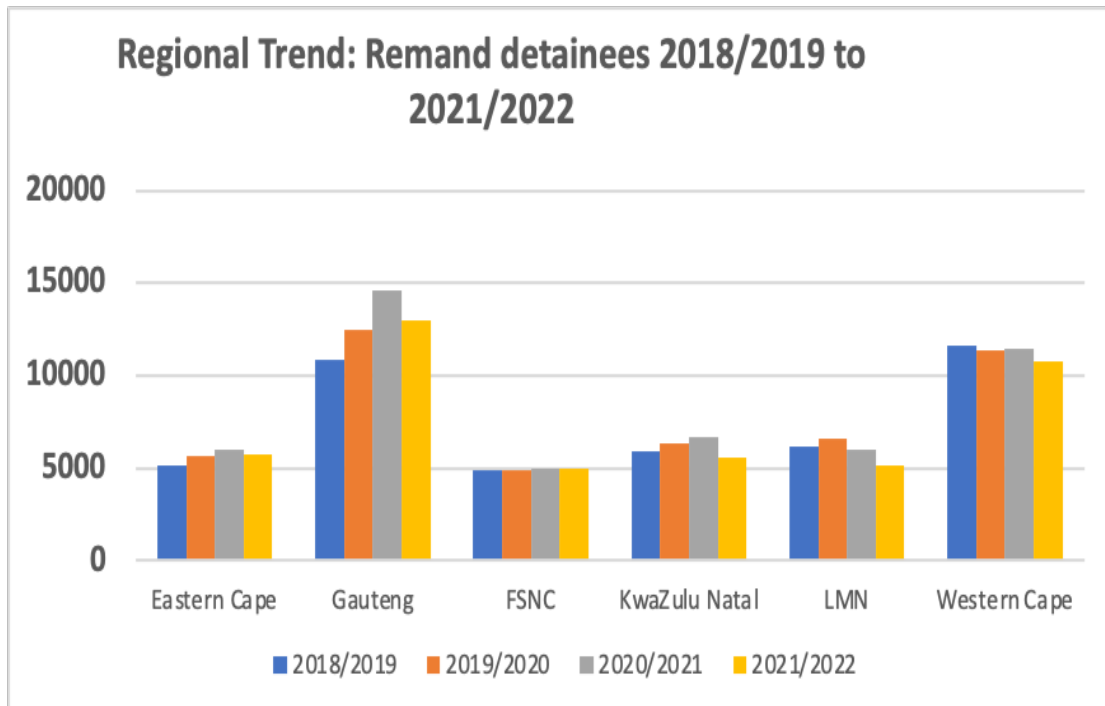
The monthly averages from the daily unlock were determined for each financial year for calculating the annual averages. Graph 6.1 below reflects the annual averages for four years for determination of trends over a period of three years.



Graph 6.1: Clustered bar: National trend: Remand detainees: 2018/19 to 2021/22

The analysis reveals that the remand detainee population increased by 1.0% between 2018/19 and 2021/2022 financial years and decreased by 9.3% between 2020/2022 and 2021/2022. The highest annual average of 49 735 was observed during 2020/2021. Furthermore, the gradual daily increase was observed between 01 April 2020 and 05 May 2020. The population of remand detainees increased from 51 410 to 57 254 over the period of 35 days and this converts to an increase of 11.4%. The region that experienced the highest increase of more than 15% was Gauteng at 16,9% (14 129 to 16 513), followed by Free State and Northern Cape at 16.2% (5 264 to 6 114) and KwaZulu-Natal at 15.1% (6 919 to 7 960). The increase may be equated to the Covid-19 pandemic and the limited functioning of court operations. Furthermore, the closure of courts led to amendments in court appearance dates of those remand detainees who could not appear in court.

The cluster column presented as Graph 6.2 below reflects the trend analysis of remand detainees from 2018/2019 to 2021/2022.



Graph 6.2: Clustered Colum: Regional trend remand detainees: 2018/19 to 2021/22

The three-year trend analysis for regional distribution as per Graph 6.2 above reveals the following:

- The three regions that observed a decrease between 2018/19 and 2021/2022 financial years are Limpopo, Mpumalanga and North West (17.6%), Western Cape at (7.5%) and KwaZulu-Natal (5.2%).
- The regions that observed an increase between 2018/2019 and 2021/2022 are Gauteng (19.8%), Eastern Cape (10.0%) and Free State and Northern Cape (1.1%).
- All the regions observed a decrease between 2020/2022 and 2021/2022 except Free State and Northern Cape region which observed a minimal increase of 0.2%. The regions that experienced the highest decrease were KwaZulu-Natal (16.5%), Limpopo, Mpumalanga and North West (15.3%) and Gauteng (10.9%). The region that recorded the lowest decrease was Eastern Cape (5.1%).

6.4.2 FACILITIES THAT DETAIN REMAND DETAINEES

The number facilities detaining remand detainees are compared with all other facilities that incarcerate inmates in the Department of Correctional Services for the

three dates which are 31 January 2020, 01 April 2021 and 31 March 2022. Table 6.18 provides a summary of facilities in terms of regional distribution.

Table 6.18: Comparison of facilities that detained remand detainees with other facilities in DCS: 31 January 2020, 01 April 2021 and 31 March 2022

| Regions | 31 January 2020 | | 01 April 2021 | | 31 March 2022 | |
|--|--|----------------|--|----------------|--|----------------|
| | Number of Facilities with Remand Detainees | All Facilities | Number of Facilities with Remand Detainees | All Facilities | Number of Facilities with Remand Detainees | All Facilities |
| Eastern Cape | 20 | 44 | 18 | 45 | 20 | 45 |
| Free State & Northern Cape | 36 | 47 | 35 | 47 | 31 | 46 |
| Gauteng | 11 | 26 | 10 | 26 | 11 | 26 |
| KwaZulu-Natal | 18 | 41 | 13 | 41 | 12 | 42 |
| Limpopo, Mpumalanga & North West | 16 | 35 | 21 | 39 | 21 | 35 |
| Western Cape | 29 | 42 | 30 | 43 | 27 | 42 |
| All Facilities | 130 | 235 | 127 | 241 | 122 | 236 |
| :%: facilities that detain Remand detainees | 55.3 | | 52.7 | | 51.7 | |

The analysis revealed the following:

- Remand detainees were incarcerated in 130 facilities on 31 January 2020, 127 facilities on 01 April 2021 and 122 facilities on 31 March 2022. The average number of facilities for the three dates is 126 and constitutes 53.3% of the facilities that detained inmates in the DCS.
- The regions with the highest average number of facilities that detained remand detainees for the three reported dates are Free State Northern Cape at 72.3% (34), Western Cape at 68.3% (29) and Limpopo, Mpumalanga and North West at 53.7% (19). The regions with the lowest average number of facilities that detained remand detainees are KwaZulu-Natal at 35.0% (14), Gauteng at 41.0% (11) and Eastern Cape at 43.0% (19).
- The names of the facilities could not be included because of the number that is more than 100 for each year, but they are known to the researcher. Some of

the facilities are included in Annexures G1, G2 and G3 on the list of facilities with occupancy of more than 100 percent.

6.4.3 LENGTH OF PERIOD SPENT BY REMAND DETAINEES

The snapshot analysis of 31 March 2021 referred to as the length of detention report is based on information drawn from the DCS databank. Since the information is a secondary source influenced by data capturing at the centre level, information may differ from the one reported in the daily unlock because of factors such as the delay in capturing of information and updating statuses regarding the movements of the remand detainees. Table 6.19 is a representation on period spent by remand detainees as per the snapshot analysis of 31 March 2021.

Table 6.19: Period spent in detention by remand detainees on 31 March 2021

| PERIODS SPENT IN DETENTION | EC | FSNC | GP | KZN | LMN | WC | Total | % |
|--|--------------|--------------|---------------|--------------|--------------|---------------|---------------|------------|
| less than a day to 3 months | 1 810 | 2 358 | 4 187 | 2 230 | 2 295 | 4 753 | 17 633 | 41.7 |
| > 3 months to 1 year | 1 337 | 1 441 | 3 962 | 1 764 | 1 609 | 3 687 | 13 800 | 32.7 |
| > 1 year to 2 years | 882 | 677 | 2 375 | 1 007 | 813 | 1 708 | 7 462 | 17.7 |
| > 2 to 5 years | 355 | 263 | 1020 | 349 | 522 | 717 | 3 226 | 7.6 |
| > 5 years | 49 | 5 | 30 | 9 | 29 | 28 | 150 | 0.4 |
| Total | 4 433 | 4 744 | 11 574 | 5 359 | 5 268 | 10 893 | 42 271 | 100 |
| % | 10.5 | 11.2 | 27.4 | 12.7 | 12.5 | 25.8 | 100 | |
| Remand detainees daily unlock (01 April 2021) | 5 758 | 5 065 | 13 804 | 6 379 | 5 656 | 11 089 | 47 751 | |
| Difference between the daily unlock & databank | -1 325 | -321 | -2 230 | -1 020 | -388 | -196 | -5480 | |
| % difference | -23,0 | -6,3 | -16,2 | -16,0 | -6,7 | -1,8 | -11,5 | |
| 5% difference from the daily unlock | 288 | 253 | 690 | 319 | 283 | 554 | 2 388 | |

The snapshot analysis reflected 42 271 remand detainees, while the daily unlock reported 47 751 remand detainees. This denotes a difference of 11.5%. The databank snapshot provides more descriptive information on remand detainees, which is impossible to provide in the daily unlock. The margin of difference in regions ranges between 1.8% and 23.0%, with Western Cape recording the lowest margin of difference and Eastern Cape with the highest margin.

The snapshot analysis in Table 6.19 revealed the following regarding the period spent in detention by remand detainees:

- The period spent by 41.7% i.e., 17, 633 remand detainees ranged from less than a day to three months.
- The period spent by 32.7% i.e., 13 800 remand detainees ranged from more than three months to one year.
- The period spent by 17.7% i.e., 7 462 remand detainees ranged from more than one year to two years.
- The period spent by 8.0% i.e., 3 376 remand detainees ranged from more than two years to ten years. Of these remand detainees 3 226 (95.7%) spent a period that ranged from more than two years to five years and 4.4% i.e., 150 remand detainees spent a period of more than five years. Of those detained for longer than five years, nineteen remand detainees (12.7%) spent a period that ranged from seven to ten years.
- Regarding remand detainees incarcerated longer than two years, the regions with remand detainees that constituted more than the national percentage of 8.0% were Limpopo, Mpumalanga and North West at 10.5%, Eastern Cape at 9.1% and Gauteng at 9.1%.
- In all six regions the highest number of remand detainees i.e., more than 40% spent a period that ranged from a day to three months.
- In all the regions those detained for longer than five years constituted less than 1.2% of the remand detainee population.

The three regions sampled to participate in the study through the multistage purposeful random scheme are Eastern Cape, Gauteng and Western Cape. Twelve facilities in groupings of four facilities per region that were sampled to participate in

the study appear in Table 6.20. The remand detainees from the twelve centres constituted 40.2% of the remand detainee population of 31 March 2021.

Table 6.20: Period spent in detention by remand detainees in twelve Correctional Centres: 31 March 2021

| Regions | Correctional Centres | < day-3 months | > 3 months - 1 year | > 1 year-2 years | > 2 to 5 years | > 5 years | Total | % |
|----------------|-----------------------------|--------------------------|-------------------------------|----------------------------|--------------------------|---------------------|---------------|------------|
| Eastern Cape | East London Medium B | 383 | 267 | 206 | 65 | 15 | 936 | 5.5 |
| | King Williams Town | 353 | 202 | 91 | 34 | 3 | 683 | 4.0 |
| | Queenstown | 18 | 31 | 7 | 9 | 1 | 66 | 0.4 |
| | St Albans Medium A | 405 | 335 | 283 | 106 | 6 | 1 135 | 6.7 |
| Gauteng | Johannesburg Medium A | 1 409 | 1 762 | 1 116 | 474 | 9 | 4 770 | 28.1 |
| | Krugersdorp | 568 | 534 | 228 | 62 | 3 | 1 395 | 8.2 |
| | Modderbee | 417 | 261 | 106 | 47 | 4 | 835 | 4.9 |
| | Kgoši Mampuru II Local | 1 021 | 812 | 534 | 276 | 10 | 2 653 | 15.6 |
| Western Cape | Allandale | 185 | 190 | 106 | 74 | | 555 | 3.3 |
| | George | 215 | 160 | 136 | 40 | 10 | 561 | 3.3 |
| | Pollsmoor RDF | 1 082 | 883 | 432 | 277 | 14 | 2 688 | 15.8 |
| | Worcester Male | 301 | 266 | 119 | 40 | | 726 | 4.3 |
| Total | | 6 357 | 5 703 | 3 364 | 1 504 | 75 | 17 003 | 100 |
| % | | 37.4 | 33.5 | 19.8 | 8.9 | 0.4 | 100 | |

The analysis revealed the following:

- The remand detainees that spent the period ranging from less than a day to three months constituted 37.4% (6 357). The facilities with the highest percentage of remand detainees in this category are Johannesburg Medium A at 22.2% (1 409), Pollsmoor RDF at 17.0% (1 082) and Kgoši Mampuru II Kgoši Mampuru II Local at 16.1% (1 021). The facilities with less than 5% of the remand detainees in this category are Queenstown at 0.3% (18), Allandale at 2.9% (185), George at 3.4% (215) and Worcester at 4.8% (301).
- The remand detainees that spent the period ranging from more than three months to one year constituted 33.5% (5 703). The facilities with the highest percentage of remand in this category are Johannesburg Medium A at 30.9% (1 762), Pollsmoor RDF at 15.5% (883) and Kgoši Mampuru II Local at 14.2% (812). The facilities with less than 5% of the remand detainees in this category are Queenstown at 0.5% (31), George at 2.8% (160), Allandale at 3.3% (190), King Williams Town at 3.5% (202), Modderbee at 4.6% (261), Worcester Male at 4.7% (266) and East London Medium B at 4.7% (267).
- The remand detainees that spent the period ranging from more than one year to two years constituted 19.8% (3 364). The facilities with the highest number of remand detainees in this category are Johannesburg Medium A at 33.2% (1 116), Kgoši Mampuru II Local at 15.6% (534) and Pollsmoor RDF at 12.8% (432). The facilities with less than 5% of the remand detainees in this category are Queenstown at 0.2% (7), King Williams Town at 2.7% (91), Allandale at 3.2% (106), Modderbee at 3.2% (106), Worcester Male at 3.5% (119) and George at 4.0% (136).
- The remand detainees that spent the period ranging from more than two years to five years constituted 8.9% (1 504). The facilities with the highest number of remand detainees in this category are Johannesburg Medium A at 31.5% (474), Pollsmoor RDF at 18.4% (277) and Kgoši Mampuru II Local at 18.4% (276). The facilities with less than 5% of the remand detainees in this category are Queenstown at 0.6% (9), King Williams Town at 2.3% (34), Worcester Male and George both at 2.7% (40), Modderbee at 3.1% (47), Krugersdorp at 4.1% (62), East London Medium B at 4.3% (65) and Allandale at 4.9% (74).

- The remand detainees that spent the period ranging from more than five years constituted 0.4% (75). The facilities with the highest number of remand detainees in this category are East London Medium B at 20.0% (15), Pollsmoor RDF at 18.7% (14) and George and Kgoši Mampuru II Local share the percentage at 13.3% (10). The facilities with less than 5% of the remand detainees in this category are Queenstown at 1.3% (1) and Krugersdorp and King Williams Town both at 4.0% (3). The facilities that did not have remand detainees who have been detained longer than five years are Allandale and Worcester Male.
- Of the sampled facilities, the longest period spent by the remand detainees is ten years.

6.4.4 REMAND DETAINEES WITH AND WITHOUT BAIL

The length of detention report dated 31 March 2021 which is a snapshot analysis includes variables on bail i.e., bail amounts and bail categories. Table 6.21 below provides a summary of remand detainees who were detained with an option of bail and those that did not have bail on 31 March 2021.

Table 6.21: Remand detainees with and without bail: 31 March 2021

| Regions | Bail | | No bail | | Total | % |
|----------------------------|--------------|------|---------------|------|---------------|------|
| Eastern Cape | 625 | 14,1 | 3 808 | 85,9 | 4 433 | 10.5 |
| Free State & Northern Cape | 419 | 8,8 | 4 325 | 91,2 | 4 744 | 11.2 |
| Gauteng | 1 067 | 9,2 | 10 507 | 90,8 | 11 574 | 27.4 |
| KwaZulu-Natal | 651 | 12,2 | 4 708 | 87,9 | 5 359 | 12.7 |
| Limpopo, Mpumalanga | 560 | 10,6 | 4 708 | 89,4 | 5 268 | 12.5 |
| Western Cape | 1 118 | 10,3 | 9 775 | 89,7 | 10 893 | 25.8 |
| Total | 4 440 | | 37 831 | | 42 271 | 100 |
| % | 10.5 | | 89.5 | | 100 | |

The number of remand detainees who were in detention with an option of bail on 31 March 2021 were 4 440 and constituted 10.5% of the remand detention population. Those detained without bail were 37 831 i.e., 89.5%. Of those detained without bail there are various categories which are:

- Those due for commencing with the bail application process;
- Those who are at the bail application phase; and

- Those who were denied bail.

The regions with the highest number of remand detainees without bail were Free State and Northern Cape at 91.2% (4 325) and Gauteng at 90.8% (10 507). Among those with bail, the regions below the national percentage of 10.5% were Free State and Northern Cape and Gauteng. The regions with the highest number of remand detainees with an option of bail were Eastern Cape at 14.1% followed by KwaZulu-Natal (12.2%), Limpopo, Mpumalanga and North West (10.6%) and Western Cape (10.3%).

Table 6.22 represents the aggregation of bail amounts for remand detainees who were in detention on 31 March 2021. The bail categories reported were reformulated based on bail amounts of remand detainees. Therefore, the boundaries in each category reflect the amounts of bail within a defined range.

Table 6.22: Bail categories for remand detainees with bail: 31 March 2021

| BAIL CATEGORIES | EC | FSNC | GP | KZN | LMN | WC | Total | % |
|------------------------|-------------|-------------|--------------|-------------|-------------|--------------|--------------|------------|
| R450 and below | 202 | 80 | 64 | 29 | 42 | 95 | 512 | 11.5 |
| R500 only | 254 | 211 | 297 | 164 | 173 | 355 | 1 454 | 32.8 |
| R600 to R800 | 44 | 5 | 25 | 28 | 14 | 98 | 214 | 4.8 |
| R1000 only | 81 | 92 | 279 | 226 | 166 | 291 | 1 135 | 25.6 |
| >R1 000 to R5 000 | 41 | 30 | 319 | 183 | 161 | 252 | 986 | 22.2 |
| R6 000 to R8 000 | 1 | | 17 | 4 | 2 | 4 | 28 | 0.6 |
| R10 00 to R50 000 | 2 | 1 | 65 | 17 | 2 | 22 | 109 | 2.5 |
| R100 000 | | | 1 | | | | 1 | 0.0 |
| R150 000 | | | | | | 1 | 1 | 0.0 |
| Total | 625 | 419 | 1 067 | 651 | 560 | 1 118 | 4 440 | 100 |
| % | 14.1 | 9.4 | 24.0 | 14.7 | 12.6 | 25.2 | 100 | |

The summary of findings is as follows:

- The highest number of remand detainees were given R500 (32.8%) followed by R1 000 (25.6%) and those that had bail ranging from more than R1 000 to R5 000 (22.2%).
- Two remand detainees with the highest amounts of bail i.e., R150 000 and R100 000 were detained in Gauteng and Western Cape regions respectively.
- Within the range of R450 and below, the regions with the highest number of remand detainees were Eastern Cape at 39.5% (202), Western Cape at 18.6% (95) and Free State and Northern Cape at 15.6% (80). The regions with the lowest number of remand detainees with bail and all below 10% were KwaZulu-Natal at 5.7% (29) and Limpopo, Mpumalanga and North West at 8.2% (42).
- Within the range of R500 only, the regions with the highest number of remand detainees were Western Cape at 24.4% (355) and Gauteng at 20.4% (297). The regions with the lowest number of remand detainees and all below 12% were KwaZulu-Natal at 11.3% (164) and Limpopo, Mpumalanga and North West at 11.9% (173).
- Within the range of R600 to R800, the regions with the highest number of remand detainees were Western Cape at 45,8% (98) and Free State and Northern Cape at 20.6% (44). The regions with the lowest number of remand detainees and all below 10% were Free State and Northern Cape at 2.3% (5) and Limpopo, Mpumalanga and North West at 6.5% (14).
- Within the range of R1 000 only, the regions with the highest number of remand detainees were Western Cape at 25.6% (291), Gauteng at 24.6% (279) and KwaZulu-Natal at 19.9% (226). The regions with the lowest number of remand detainees and all below 10% were Eastern Cape at 7.1% (81) and Free State and Northern Cape at 8.1% (92).
- Within the range of more than R1 000 to R5 000, the regions with the highest number of remand detainees were Gauteng at 32.4% (319) and Western Cape at 25.6% (252). The regions with the lowest number of remand detainees and all below 10% were Free State and Northern Cape at 3.0% (30) and Eastern Cape at 4.2% (41).

- Within the range of R6 000 to R8 000, the region with the highest number of remand detainees was Gauteng at 60.7% (17). The regions with the lowest number of remand detainees and all below 10% were Eastern Cape at 3.6% (1) and Limpopo, Mpumalanga and North West at 7.1% (2). There were no remand detainees in this bail amount for Free State and Northern Cape.
- Within the range of R10 000 to R50 000, the region with the highest number of remand detainees was Gauteng at 59.6% (65). The regions with the lowest number of remand detainees and all below 10% were Free State and Northern Cape at 0.9% (1) and Limpopo, Mpumalanga and North West and Eastern Cape both at 1.8% (2). There were no remand detainees in this bail category in Free State and Northern Cape.
- The lowest amount of bail given to nine remand detainees was R100. Of these remand detainees three were in Free State and Northern Cape, three were in Gauteng, two were in Limpopo, Mpumalanga and North West and one was in KwaZulu-Natal.

6.4.5 FOREIGN NATIONALS

The length of detention report dated 31 March 2021 which is a snapshot analysis includes variables on the nationality of remand detainees and the countries of origin. Table 6.23 provides a summary of the nationality of remand detainees.

Table 6.23: Nationality of remand detainees in terms of regional distribution: 31 March 2021

| Regions | Foreign Nationals | South African | Total | % of Foreign Nationals |
|----------------------------------|--------------------------|----------------------|---------------|-------------------------------|
| Eastern Cape | 43 | 4 391 | 4 434 | 10.0 |
| Free State & Northern Cape | 674 | 4 070 | 4 744 | 14.2 |
| Gauteng | 3 145 | 8 429 | 11 574 | 27.2 |
| KwaZulu-Natal | 219 | 5 140 | 5 359 | 4.1 |
| Limpopo, Mpumalanga & North West | 1 151 | 4 117 | 5 268 | 21.9 |
| Western Cape | 478 | 10 415 | 10 893 | 4.4 |
| Total | 5 710 | 36 562 | 42 272 | 13.5 |
| % | 13.5 | 86.5 | 100 | |

According to Table 6.23 the foreign nationals who were detained in correctional facilities on 31 March 2021 constituted 13.5% (5 710) of the remand detainee population with South Africans dominating at 86.5% (36 562). The region with the highest number of foreign nationals was Gauteng at 27.2% followed by Limpopo, Mpumalanga and North West at 21.9% and Free State and Northern Cape at 14.2%. The region with the lowest number of foreign nationals at less than 1% was Eastern Cape at 10.0%.

Table 6.24 below depicts the foreign nationals who were in detention on 31 March 2021 according to their countries.

Table 6.24: Foreign nationals per country

| Country | EC | FSNC | GP | KZN | LMN | WC | Total | % |
|--------------------|----|------|-------|-----|-----|-----|-------|------|
| 1. Zimbabwe | 12 | 104 | 1 625 | 31 | 415 | 147 | 2 334 | 40.9 |
| 2. Mozambique | 2 | 82 | 610 | 28 | 320 | 19 | 1 061 | 18.6 |
| 3. Lesotho | 7 | 400 | 307 | 26 | 257 | 59 | 1 056 | 18.5 |
| 4. Malawi | 5 | 25 | 231 | 84 | 20 | 32 | 397 | 7.0 |
| 5. Nigeria | 2 | 17 | 81 | 4 | 22 | 35 | 161 | 2.8 |
| 6. Tanzania, | 4 | | 45 | 16 | 3 | 72 | 140 | 2.5 |
| 7. Congo | 1 | 10 | 73 | 12 | 8 | 31 | 135 | 2.4 |
| 8. Swaziland | | 1 | 12 | 6 | 66 | 1 | 86 | 1.5 |
| 9. Uganda | 1 | 6 | 13 | 1 | 8 | 6 | 35 | 0.6 |
| 10. Ethiopia | 2 | 4 | 7 | 1 | 14 | 2 | 30 | 0.5 |
| 11. Bangladesh | | 9 | 4 | | 4 | 9 | 26 | 0.5 |
| 12. Niger | | | 23 | | | | 23 | 0.4 |
| 13. Burundi | | | 6 | 3 | | 10 | 19 | 0.3 |
| 14. Somalia | 1 | | 3 | | 1 | 13 | 18 | 0.3 |
| 15. Cameroon | | 1 | 11 | | | 5 | 17 | 0.3 |
| 16. Namibia | | 4 | 5 | | | 6 | 15 | 0.3 |
| 17. Kenya | | | 5 | 1 | | 6 | 12 | 0.2 |
| 18. Pakistan | 1 | | 7 | | 3 | 1 | 12 | 0.2 |
| 19. Zambia | | | 9 | 1 | 1 | 1 | 12 | 0.2 |
| 20. Botswana | | 3 | 3 | | 3 | | 9 | 0.2 |
| 21. Ghana | | 3 | 5 | | | | 8 | 0.1 |
| 22. Myanmar | | | | | 1 | 6 | 7 | 0.1 |
| 23. United Kingdom | | | 6 | | 1 | | 7 | 0.1 |
| 24. Angola | | 1 | 1 | | | 4 | 6 | 0.1 |

| Country | EC | FSNC | GP | KZN | LMN | WC | Total | % |
|--|----|------|----|-----|-----|----|-------|------|
| 25. Egypt | 1 | 1 | 2 | | | 2 | 6 | 0.1 |
| 26. India | | | 3 | 2 | | | 5 | 0.1 |
| 27. Brazil | | | 4 | | | | 4 | 0.1 |
| 28. Bulgaria | | | | | | 4 | 4 | 0.1 |
| 29. Mali | | | 2 | 1 | | 1 | 4 | 0.1 |
| 30. China | | | 1 | | | 2 | 3 | 0.1 |
| 31. Korea, | | | 3 | | | | 3 | 0.1 |
| 32. Lebanon | | | 2 | | 1 | | 3 | 0.1 |
| 33. Malaysia | | | 3 | | | | 3 | 0.1 |
| 34. Marshall Islands | 1 | | 2 | | | | 3 | 0.1 |
| 35. Mexico | | | 3 | | | | 3 | 0.1 |
| 36. New Zealand | | | 3 | | | | 3 | 0.1 |
| 37. Senegal | | | 2 | | 1 | | 3 | 0.1 |
| 38. Taiwan | | | 3 | | | | 3 | 0.1 |
| 39. Armenia | | | 2 | | | | 2 | 0.0 |
| 40. Poland | | | 1 | | 1 | | 2 | 0.0 |
| 41. Portugal | | 1 | 1 | | | | 2 | 0.0 |
| 42. Afghanistan | | | 1 | | | | 1 | 0.0 |
| 43. American Samoa | | | 1 | | | | 1 | 0.0 |
| 44. Bhutan | | | | | | 1 | 1 | 0.0 |
| 45. Brit. Carribbean Federation | | | | | | 1 | 1 | 0.0 |
| 46. British Indian Ocean Territory | | | 1 | | | | 1 | 0.02 |
| 47. Brunei Darussalam | | | 1 | | | | 1 | 0.0 |
| 48. Côte D'ivoire | | | | 1 | | | 1 | 0.0 |
| 49. Ecuador | | | 1 | | | | 1 | 0.0 |
| 50. El Salvador | | | 1 | | | | 1 | 0.0 |
| 51. France | | | | | | 1 | 1 | 0.0 |
| 52. Georgia | 1 | | | | | | 1 | 0.0 |
| 53. Germany | 1 | | | | | | 1 | 0.0 |
| 54. Guatemala | | | 1 | | | | 1 | 0.0 |
| 55. Guinea | | | 1 | | | | 1 | 0.0 |
| 56. Italy | | | | 1 | | | 1 | 0.0 |
| 57. Japan | | | 1 | | | | 1 | 0.0 |

| Country | EC | FSNC | GP | KZN | LMN | WC | Total | % |
|---------------------------|-----------|------------|--------------|------------|--------------|------------|--------------|-----|
| 58. Kazakhstan | 1 | | | | | | 1 | 0.0 |
| 59. Mauritania | | | 1 | | | | 1 | 0.0 |
| 60. Nauru | | | 1 | | | | 1 | 0.0 |
| 61. Nepal | | | 1 | | | | 1 | 0.0 |
| 62. Peru | | 1 | | | | | 1 | 0.0 |
| 63. Russian Federation | | | 1 | | | | 1 | 0.0 |
| 64. Rwanda | | | 1 | | | | 1 | 0.0 |
| 65. Saint Lucia | | | 1 | | | | 1 | 0.0 |
| 66. Serbia and Montenegro | | | | | | 1 | 1 | 0.0 |
| 67. Singapore | | | 1 | | | | 1 | 0.0 |
| 68. Sri Lanka | | 1 | | | | | 1 | 0.0 |
| 69. Sudan | | | | | 1 | | 1 | 0.0 |
| Total | 43 | 674 | 3 145 | 219 | 1 151 | 478 | 5 710 | |

The foreign nationals are from 69 countries and 5 435 (95.2%) are from the top ten countries appearing in the Table 6.24. The top three countries of origin for the foreign national remand detainees are Zimbabwe (40.9%), Mozambique (18.6%) and Lesotho (18.5%).

Table 6.25 represents the distribution of foreign nationals in twelve facilities that were sampled to participate in the study.

Table 6.25: Nationality of remand detainees in twelve facilities 31 March 2021

| Regions | Correctional Centres | Foreign Nationals | South African | Total | % of foreign nationals against all remand detainees in a centre | % of foreign nationals against all remand detainees in twelve centres |
|--------------|------------------------|-------------------|---------------|---------------|---|---|
| Eastern Cape | East London Medium B | 3 | 933 | 936 | 0.32 | 0.0 |
| | King Williams Town | | 683 | 683 | 0.00 | 0.0 |
| | Queenstown | | 66 | 66 | 0.00 | 0.0 |
| | St Albans Medium A | 12 | 1 123 | 1 135 | 1.06 | 0.1 |
| Gauteng | Johannesburg Medium A | 1 205 | 3 565 | 4 770 | 25.26 | 7.1 |
| | Krugersdorp | 406 | 989 | 1 395 | 29.10 | 2.4 |
| | Modderbee | 258 | 577 | 835 | 30.90 | 1.5 |
| | Kgoši Mampuru II Local | 825 | 1 828 | 2 653 | 31.10 | 4.9 |
| Western Cape | Allandale | 14 | 541 | 555 | 2.52 | 0.1 |
| | George | 18 | 543 | 561 | 3.21 | 0.1 |
| | Pollsmoor RDF | 180 | 2 508 | 2 688 | 6.70 | 1.1 |
| | Worcester Male | 52 | 674 | 726 | 7.16 | 0.3 |
| | Grand Total | 2 973 | 14 030 | 17 003 | 100 | 17.5 |
| | % | 17.5 | 82.5 | 100 | | |

The total number of foreign nationals in twelve facilities was 2 973 (17.5%) as compared to 14 030 (82.5%) South African nationals. The foreign nationals in these centres constituted 52.1% of the foreign national remand detainees that were incarcerated on 31 March 2021. The highest number of foreign nationals as per Table 6.25 were detained in Gauteng facilities with Eastern Cape having the least number of foreign nationals. In Western Cape the centre with the highest number of foreign nationals was Pollsmoor remand detention facility (180) and the centre with the highest percentage was Worcester at 7.2%.

Table 6.26 provides a distribution of foreign nationals in terms of their countries against South Africans, in twelve facilities sampled to participate in the study.

Table 6.26: Countries of origin: Remand detainees in twelve facilities: 31 March 2021

| Countries per Correctional Centres | Non-South African | South African | Total | % Non-Nationals |
|---|--------------------------|----------------------|--------------|------------------------|
| Egypt | 1 | | 1 | 0.2 |
| Lesotho | 1 | | 1 | 0.2 |
| Malawi | 2 | | 2 | 0.4 |
| Zimbabwe | 10 | | 10 | 1.8 |
| Allandale | 14 | 541 | 555 | 2.5 |
| Nigeria | 1 | | 1 | 0.1 |
| Tanzania | 1 | | 1 | 0.1 |
| Zimbabwe | 1 | | 1 | 0.1 |
| East London Med. B | 3 | 933 | 936 | 0.3 |
| Burundi | 4 | | 4 | 0.7 |
| Congo | 1 | | 1 | 0.2 |
| Malawi | 4 | | 4 | 0.7 |
| Nigeria | 3 | | 3 | 0.5 |
| Tanzania | 4 | | 4 | 0.7 |
| Uganda | 1 | | 1 | 0.2 |
| Zimbabwe | 1 | | 1 | 0.2 |
| George | 18 | 543 | 561 | 3.2 |
| American Samoa | 1 | | 1 | 0.0 |
| Armenia | 2 | | 2 | 0.0 |
| Bangladesh | 3 | | 3 | 0.1 |
| Botswana | 2 | | 2 | 0.0 |
| Burundi | 2 | | 2 | 0.0 |
| Cameroon | 4 | | 4 | 0.1 |
| Congo | 18 | | 18 | 0.4 |
| Egypt | 1 | | 1 | 0.0 |
| El Salvador | 1 | | 1 | 0.0 |
| Ethiopia | 3 | | 3 | 0.1 |
| Ghana | 3 | | 3 | 0.1 |
| Guinea | 1 | | 1 | 0.0 |
| Japan | 1 | | 1 | 0.0 |
| Kenya | 2 | | 2 | 0.0 |
| Korea, | 3 | | 3 | 0.1 |
| Lesotho | 94 | | 94 | 2.0 |

| Countries per Correctional Centres | Non-South African | South African | Total | % Non-Nationals |
|---|--------------------------|----------------------|--------------|------------------------|
| Malawi | 117 | | 117 | 2.5 |
| Malaysia | 1 | | 1 | 0.0 |
| Mali | 1 | | 1 | 0.0 |
| Mauritania | 1 | | 1 | 0.0 |
| Mozambique | 138 | | 138 | 2.9 |
| Namibia | 1 | | 1 | 0.0 |
| Nauru | 1 | | 1 | 0.0 |
| New Zealand | 3 | | 3 | 0.1 |
| Niger | 8 | | 8 | 0.2 |
| Nigeria | 43 | | 43 | 0.9 |
| Portugal | 1 | | 1 | 0.0 |
| Russian Federation | 1 | | 1 | 0.0 |
| Rwanda | 1 | | 1 | 0.0 |
| Saint Lucia | 1 | | 1 | 0.0 |
| Senegal | 2 | | 2 | 0.0 |
| Somalia | 3 | | 3 | 0.1 |
| Swaziland | 1 | | 1 | 0.0 |
| Taiwan | 1 | | 1 | 0.0 |
| Tanzania | 23 | | 23 | 0.5 |
| Uganda | 2 | | 2 | 0.0 |
| United Kingdom | 5 | | 5 | 0.1 |
| Zambia | 6 | | 6 | 0.1 |
| Zimbabwe | 703 | | 703 | 14.7 |
| Johannesburg Med A | 1 205 | 3 565 | 4 770 | 25.3 |
| King Williams Town | 0 | 683 | 683 | 0 |
| British Indian Ocean Territory | 1 | | 1 | 0.1 |
| Ethiopia | 2 | | 2 | 0.1 |
| Lebanon | 2 | | 2 | 0.1 |
| Lesotho | 110 | | 110 | 7.9 |
| Malawi | 16 | | 16 | 1.2 |
| Marshall Islands | 1 | | 1 | 0.1 |
| Mozambique | 97 | | 97 | 7.0 |
| Niger | 1 | | 1 | 0.1 |
| Nigeria | 5 | | 5 | 0.4 |
| Swaziland | 1 | | 1 | 0.1 |
| Tanzania | 2 | | 2 | 0.1 |
| Zambia | 1 | | 1 | 0.1 |
| Zimbabwe | 167 | | 167 | 12.0 |

| Countries per Correctional Centres | Non-South African | South African | Total | % Non-Nationals |
|---|--------------------------|----------------------|--------------|------------------------|
| Krugersdorp | 406 | 989 | 1 395 | 29.1 |
| Afghanistan | 1 | | 1 | 0.1 |
| Bangladesh | 1 | | 1 | 0.1 |
| Brazil | 1 | | 1 | 0.1 |
| Congo | 3 | | 3 | 0.4 |
| Ecuador | 1 | | 1 | 0.1 |
| Ghana | 1 | | 1 | 0.1 |
| Guatemala | 1 | | 1 | 0.1 |
| India | 2 | | 2 | 0.2 |
| Lesotho | 19 | | 19 | 2.3 |
| Malawi | 17 | | 17 | 2.0 |
| Malaysia | 1 | | 1 | 0.1 |
| Marshall Islands | 1 | | 1 | 0.1 |
| Mozambique | 80 | | 80 | 9.6 |
| Namibia | 1 | | 1 | 0.1 |
| Niger | 6 | | 6 | 0.7 |
| Nigeria | 7 | | 7 | 0.8 |
| Pakistan | 1 | | 1 | 0.1 |
| Swaziland | 4 | | 4 | 0.5 |
| Taiwan | 2 | | 2 | 0.2 |
| Uganda | 2 | | 2 | 0.2 |
| Zimbabwe | 106 | | 106 | 12.7 |
| Total Modderbee | 258 | 577 | 835 | 30.9 |
| Angola | 4 | | 4 | 0.2 |
| Bhutan | 1 | | 1 | 0.0 |
| British Caribbean Fed | 1 | | 1 | 0.0 |
| Burundi | 5 | | 5 | 0.2 |
| Cameroon | 3 | | 3 | 0.1 |
| China | 2 | | 2 | 0.1 |
| Congo | 16 | | 16 | 0.6 |
| France | 1 | | 1 | 0.0 |
| Kenya | 6 | | 6 | 0.2 |
| Malawi | 9 | | 9 | 0.3 |
| Mali | 1 | | 1 | 0.0 |
| Mozambique | 7 | | 7 | 0.1 |
| Namibia | 2 | | 2 | 0.07 |
| Nigeria | 15 | | 15 | 0.56 |
| Pakistan | 1 | | 1 | 0.04 |
| Somalia | 2 | | 2 | 0.1 |

| Countries per Correctional Centres | Non-South African | South African | Total | % Non-Nationals |
|---|--------------------------|----------------------|--------------|------------------------|
| Swaziland | 1 | | 1 | 0.0 |
| Tanzania | 51 | | 51 | 1.9 |
| Uganda | 3 | | 3 | 0.1 |
| Zimbabwe | 49 | | 49 | 1.8 |
| Pollsmoor RDF | 180 | 2 508 | 2 688 | 6.7 |
| Angola | 1 | | 1 | 0.0 |
| Burundi | 4 | | 4 | 0.2 |
| Cameroon | 3 | | 3 | 0.1 |
| Congo | 49 | | 49 | 1.9 |
| Egypt | 1 | | 1 | 0.0 |
| Ethiopia | 2 | | 2 | 0.1 |
| Ghana | 1 | | 1 | 0.0 |
| India | 1 | | 1 | 0.0 |
| Kenya | 3 | | 3 | 0.1 |
| Lesotho | 41 | | 41 | 1.6 |
| Malawi | 42 | | 42 | 1.6 |
| Malaysia | 1 | | 1 | 0.0 |
| Mali | 1 | | 1 | 0.0 |
| Mexico | 3 | | 3 | 0.1 |
| Mozambique | 155 | | 155 | 5.9 |
| Namibia | 3 | | 3 | 0.1 |
| Nepal | 1 | | 1 | 0.0 |
| Niger | 7 | | 7 | 0.3 |
| Nigeria | 14 | | 14 | 0.5 |
| Pakistan | 4 | | 4 | 0.2 |
| Singapore | 1 | | 1 | 0.0 |
| Swaziland | 3 | | 3 | 0.1 |
| Tanzania | 19 | | 19 | 0.7 |
| Uganda | 6 | | 6 | 0.2 |
| United Kingdom | 1 | | 1 | 0.0 |
| Zambia | 1 | | 1 | 0.0 |
| Zimbabwe | 457 | | 457 | 17.2 |
| Kgoši Mampuru II Local | 825 | 1 828 | 2 653 | 31.0 |
| Queenstown | 0 | 66 | 66 | 0 |
| Germany | 1 | | 1 | 0.1 |
| Kazakhstan | 1 | | 1 | 0.1 |
| Malawi | 3 | | 3 | 0.3 |
| Mozambique | 1 | | 1 | 0.1 |

| Countries per Correctional Centres | Non-South African | South African | Total | % Non-Nationals |
|---|--------------------------|----------------------|---------------|------------------------|
| Nigeria | 1 | | 1 | 0.1 |
| Somalia | 1 | | 1 | 0.1 |
| Tanzania | 3 | | 3 | 0.3 |
| Zimbabwe | 1 | | 1 | 0.1 |
| St Albans Med A | 12 | 1 123 | 1 135 | 1.1 |
| Ethiopia | 1 | | 1 | 0.1 |
| Lesotho | 29 | | 29 | 4.0 |
| Nigeria | 4 | | 4 | 0.6 |
| Somalia | 1 | | 1 | 0.1 |
| Tanzania | 1 | | 1 | 0.1 |
| Uganda | 2 | | 2 | 0.3 |
| Zambia | 1 | | 1 | 0.1 |
| Zimbabwe | 13 | | 13 | 1.8 |
| Worcester Male | 52 | 674 | 726 | 7.2 |
| Total | 2 973 | 14 030 | 17 003 | 17.5 |

The top three countries of origin for the foreign nationals detained in Eastern Cape facilities were Zimbabwe, Malawi and Tanzania and the top three countries for those detained in Gauteng facilities were Zimbabwe, Mozambique and Lesotho. The top three countries for those detained in Western Cape facilities were Zimbabwe, Tanzania and Lesotho. The top three countries for remand detainees in Pollsmoor remand detention facility were Tanzania, Zimbabwe and Congo. The top three countries of origin for remand detainees in Worcester were Zimbabwe, Lesotho and Nigeria. Queenstown and King Williamstown did not have any foreign national remand detainee on 31 March 2021.

6.4.6 COST TO DETAIN REMAND DETAINEES WITH BAIL BASED ON THEIR LENGTH OF DETENTION

The elements utilised in the determination of the per capita cost of inmates including remand detainees are as follows:

- The allocated budget of the department;
- Subtract the expenditure of correctional centres managed under the Public-Private Partnership (PPP);
- Subtract the budget for the social reintegration programme; and

- Divide by the projected average number of inmates with the exclusion of inmates in PPP correctional centres.

The two correctional centres managed under the PPP model are calculated separately using the index fee for the contract.

The estimated cost for detaining remand detainees with bail who were incarcerated in correctional centres on 31 March 2021 appears in Table 6.27 below. The calculation is based on the actual figures of remand detainees and not the projected figures. The latter is normally utilised for determination of the per capita cost. Therefore, this should be regarded as a retrospective calculation.

Table 6.27: The estimated cost per day for detaining remand detainees with bail who were in detention on 31 March 2021

| | |
|---|-----------------|
| Number of remand detainees who were in detention with bail | 4 440 |
| Total number of days spent by 4 440 remand detainees | 363 040 |
| The per capita cost of 2020/2021 financial year based on the allocated budget | R429,24 |
| Total cost of keeping 4 400 remand detainees with bail per day | R155 831 289,60 |

The cost of R155 831 289.60 reflects an estimated amount for detaining 4 440 remand detainees who were in detention with bail on 31 March 2021. The period spent in detention by these remand detainees ranged from less than a day to more than five years. Bail amounts ranged from R100 to R150 000. The process for determination of cost implication is summarised below:

- The total number of remand detainees who were detained with bail on 31 March 2021 was extracted from the length of detention report of 31 March 2021. The list of remand detainees consists of several variables including the period spent by each remand detainee. The period spent is reflected in days and years. However, for the calculation of the daily cost, the number of days is utilised.

- The number of days for all the remand detainees is combined for determination of the total number of days spent by all the remand detainees who were in detention with an option of bail. The total number of days spent by 4 400 remand detainees is 363 040.
- The number of days is multiplied by the per capita cost and in this case R429.24 was utilised.

The cost may not be a correct indicator of the expenses since it is determined by considering the budgetary allocation without due regard to the cost of services which increase on an annual basis. The package of services received by inmates include meals, clothing, bedding, toiletry and health services which are the cost drivers for correctional services.

6.4.7 FEEDER COURTS AND POLICE STATIONS

Remand detainees that are supposed to appear in court on their next court appearance dates as stated in the warrant of detention referred to as J7 are collected from the correctional centres by South African Police Service (SAPS) for each next court appearance. After each court appearance those that should continue with detention are transported back to the correctional centres by SAPS. The pick-up is done for a group of remand detainees as well as for individual remand detainees. The latter is often done by the investigators for serious cases of remand detainees and those that have been requisitioned to appear in court. The requisitions for court appearance may include court appearances for charges where remand detainees were given bail by police officers (police bail).

The term ‘feeder court’ is linked to the pick-up of remand detainees by SAPS as some police stations collect remand detainees for appearing in more than one court. The list of feeder courts does not include all the courts that the remand detainees in sampled facilities are supposed to appeared at. The feeder courts and police stations reported in Annexure G are contributories to the twelve DCS correctional facilities, sampled to participate in this study concerning remand inmate inflow into the correctional system.

The information was sourced from historical records and sent to the regional heads, heads of centres and case management administration personnel for verification and updating of the records where there were changes.

The summary of findings on feeder courts and police stations is as follows:

- The total number of feeder courts for twelve facilities is 166 i.e., 44 for Eastern Cape, 61 for Gauteng and 58 for Western Cape.
- The total number of police stations that pick up and drop off remand detainees in twelve correctional centres is 211 i.e., 68 for Eastern Cape, 88 for Gauteng and 55 for Western Cape.
- The centres with the highest number of feeder courts are Pollsmoor with 34 courts and Kgoši Mampuru II Local with 29 courts. They are followed by Johannesburg Medium and St Albans Medium A with eighteen and seventeen feeder courts respectively.
- The centre with the lowest number of feeder courts is King Williams Town with three courts followed by George and Malmesbury with six feeder court for each facility.
- The centre with the highest number of police stations that drop remand detainees from courts and collects them for court appearance is Kgoši Mampuru II Local with 36 policies stations followed by St Albans Medium A and Johannesburg Medium A with each interacting with 26 police stations.
- The centre with the lowest number of police stations that drop remand detainees from courts and collects them for court appearance is George with nine police stations followed by Malmesbury with eleven police stations and East London Medium B with twelve police stations.
- Kgoši Mampuru II Local remand detention facility situated in Gauteng province detains remand detainees which are referred by the feeder courts located in other provinces such as Limpopo (Belabela, Modimolle and Mokopong), Mpumalanga (KwaMhlanga, Marapyane and Nkangala) and North West (Bethane and Thlabane) besides those in Gauteng.
- Modderbee correctional centre detains remand detainees referred by only one feeder court which lies outside Gauteng province which is Delmas in Mpumalanga province.

- St Albans Medium A correctional centre detains remand detainees referred by only one feeder court which lies outside Eastern Cape province which is Uniondale in Western Cape province.
- Some feeder courts are periodical courts.
- The feeder courts occasionally change based on the functioning of the courts however there will be those that remain constant feeder courts for each correctional centre based on their proximity to the centre.

6.5 CONCLUSION

This chapter provides the analysis of data collected in relation to selected areas which are the focus of the study. These areas are bed space management, trends in occupancy and profile of remand detainees. The next chapter will be the continuation of data analysis with focus on referral of remand detainees to court for bail review and consideration of length of detention and police bail.

CHAPTER SEVEN

DATA ANALYSIS AND PRESENTATION OF FINDINGS: PART II

7.1 INTRODUCTION

In this chapter the data analysis for the study is discussed in line with the objectives on referral of remand detainees to court for bail review, and for consideration of length of detention and police bail.

7.2 IMPLEMENTATION OF THE PROTOCOLS ON REFERRAL OF REMAND DETAINEES TO COURT FOR CONSIDERATION OF THE LENGTH OF DETENTION AND BAIL REVIEW

The criminal justice system protocols implemented for the reduction of the overcrowding of remand detainees include 49G on referral of remand detainees to court for consideration of their length of detention and the bail protocol. The latter entails the referral of remand detainees to court for review of bail in line with section 63A of the Criminal Procedure Act 51 of 1977. The bail protocol is implemented in conjunction with section 63(1) which provides for bail review initiated by either the accused i.e., the remand detainee or the prosecutor. Section 49G is provided for in the Correctional Services Act 111 of 1998. The provision makes it obligatory for the Department of Correctional Services through the heads of the correctional centres to refer remand detainees to court for consideration of their length of detention. The remand detainees qualify for the initial referral on completion of 21 months in detention and annually thereafter i.e., if the court decided that the remand detainee should continue with detention.

Participants were drawn from the twelve correctional centres sampled to participate in the study as appearing in the table below. The questionnaire was developed and distributed electronically to recruited participants and responses were received from Gauteng and Western Cape officials. The questionnaire had a section that deals with case flow management and was completed by officials who participate in criminal justice system structures that deal with case flow issues. Face to face interviews were conducted in Gauteng since the initially received completed questionnaires did not have detailed information.

Historical data was accessed regarding the submission of applications to court and the related outcomes for three periods which are 2018/2019, 2019/2020 and 2020/2021. Furthermore, the length of detention reports for 31 March 2020 and 31 March 2021 which represent the snapshot analysis for the population of remand detainees were utilised as additional sources of historical data. Table 7.1 is a summary representation of the data collection process followed.

Table 7.1: Data collection, responses and historical data

| Regions | Correctional Centre | Number of Officials (9) | Interview Questionnaire | Historical Data |
|----------------|----------------------------|--------------------------------|--------------------------------|------------------------|
| Gauteng | Johannesburg Medium A | 1 | Yes | Accessed |
| | Kgoši Mampuru Local | 2 | Yes | Accessed |
| | Krugersdorp | 1 | Yes | Accessed |
| | Modderbee | 2 | Yes | Accessed |
| Western Cape | Pollsmoor RDF | 2 | Yes | Accessed |
| | Worcester Male | 1 | Yes | Accessed |
| | Allandale | 0 | No response | Accessed |
| | George | 0 | No response | Accessed |
| Eastern Cape | East London Medium B | 0 | No response | Accessed |
| | King Williams Town | 0 | No response | Accessed |
| | Queenstown | 0 | No response | Accessed |
| | St Albans Medium A | 0 | No response | Accessed |

Historical data collected was accessed for all the facilities sampled to participate in the study as appearing in Table 7.2. However, for data collected through the interviews, the participants from Eastern Cape did not respond to the questionnaires. Therefore, the sampled centres for the region are not included in the analysis of interviews for 49G, bail review and case flow management. Table 7.2 is the representation of participants for 49G and bail review court referrals.

Table 7.2: Participants for 49G and Bail Review court referrals

| Regions | Correctional Centre | Participants | Experience: Department of Correctional Services | Experience: Case Management Administration | Age | Qualification |
|-----------------|--|---------------------|--|---|-----------------|----------------------------|
| Gauteng | Johannesburg Med A | 1 | >20 to 30 years | 17 years | >45 to 55 years | Graduate |
| | Kgoši Mampuru Local | 1 | >20 to 30 years | >6 months to 2 years | >45 to 55 years | Diploma |
| | Kgoši Mampuru Local | 1 | >20 to 30 years | >10 years | >45 to 55 years | Diploma |
| | Krugersdorp | 1 | >10 to 20 years | >2years to 5 years | >45 to 55 years | Matric |
| | Modderbee | 1 | >30 years | >10 years | >45 to 55 years | Graduate |
| | Modderbee | 1 | >10 to 20 years | >5 to 10 years | >45 to 55 years | Matric |
| Western Cape | Pollsmoor Remand detention facility | 1 | >20 to 30 years | >6 months to 2 years | >45 to 55 years | Postgraduate |
| | Pollsmoor Remand detention facility | 1 | >30 years | >2years to 5 years | >55 to 60 years | Diploma |
| | Worcester Male CC | 1 | >30 years | Not indicated | >55 to 60 years | National higher diploma |

All the participants that provided responses to 49G and bail review questionnaires have worked in the Department of Correctional Services (DCS) for a period ranging between more than ten years to 39 years. Regarding the qualification of participants, the lowest was matric and the highest was an entry level degree. Of the nine participants, seven had ages that ranged from more than 45 years to 55 years and two participants were closer to retirement as they were older than 58 years.

Table 7.3 reflects participants for case flow questions. These participants attend criminal justice system meetings under the governance structure referred to as District Efficiency Enhancement Committee.

Table 7.3: Participants for case flow questions

| Region | Correctional Centre | Participants | DCS Experience | Section Where Official Works |
|---------------|----------------------------|---------------------|-----------------------|-------------------------------------|
| Gauteng | Johannesburg Medium A | 1 | >20 to 30 years | Case Management Administration |
| | Johannesburg Medium A | 1 | >30 years | Corrections Management |
| | Kgoši Mampuru Local | 1 | >20 to 30 years | Case Management Administration |
| | Krugersdorp | 1 | >20 to 30 years | Management Head of the Centre |
| | Modderbee | 1 | >30 years | Management Corrections |
| Western Cape | Pollsmoor RDF | 1 | >20 to 30 years | Management Head of the Centre |
| | Worcester Male | 1 | >30 years | Management Head of the Centre |

The number of participants that provided responses to case flow management questions were seven and have been working in the DCS for longer than twenty years. Of these participants, three have worked in the DCS for more than 30 years.

7.2.1 IMPLEMENTATION OF THE PROTOCOL ON REFERRAL OF APPLICATIONS TO COURT FOR CONSIDERATION OF THE LENGTH OF DETENTION

The areas covered in this section are the period remand detainees spent incarcerated as per the snapshot analysis of 31 March 2020 and 31 March 2021, applications submitted to court and court outcomes for three financial years, and the process of submitting applications to court including follow up and the challenges experienced.

7.2.1.1 *Remand detainees who were in detention longer than 21 months on 31 March 2020 and 31 March 2021*

Table 7.4 depicts the number of remand detainees who were in detention for 21 months and longer on 31 March 2020 and 31 March 2021. These remand detainees represent the pool for referrals to court for consideration of the length of detention. In each month there will be remand detainees that will reach 21 months in detention and automatically qualify for court referral before completing a period of two years. With subsequent applications all the remand detainees that turn three years after the initial submission and other successive years qualify for referral to court regardless of the previous court responses. The records of applications that were accessed during interviews were for the period ranging between two and three years though some remand detainees were in detention for longer than three years.

The snapshot list for 31 March 2020 did not include Queenstown correctional centre. This may have been an omission when data was pulled from the databank or the server may have been down when data was extracted from the databank.

Table 7.4: Remand detainees (RDs) who have spent 21 months and longer periods: 31 March 2020 and 31 March 2021

| Remand detainees who spent 21 months and longer: 31 March 2020 without Queenstown | | | | | | | | |
|---|---------|--------------|-------------|-------------|-------------|-----------|-------|-------------------------------|
| Correctional Centres | All RDs | 21-24 months | > 2-3 years | > 3-4 years | > 4-5 years | > 5 years | Total | % against all RDs in a centre |
| Allandale | 524 | 21 | 18 | 14 | 1 | 0 | 54 | 10.3 |
| East London Medium B | 937 | 18 | 16 | 8 | 11 | 5 | 58 | 6.2 |

| | | | | | | | | |
|---|--------------------|-------------------------|---------------------------|---------------------------|---------------------------|-------------------------|--------------|--|
| George | 578 | 17 | 26 | 1 | 8 | 3 | 55 | 9.5 |
| Johannesburg Medium A | 5 469 | 113 | 229 | 22 | 12 | 11 | 387 | 7.1 |
| King Williams Town | 642 | 8 | 9 | 8 | 3 | 0 | 28 | 4.4 |
| Krugersdorp | 1 258 | 15 | 38 | 3 | 2 | 3 | 61 | 4.9 |
| Modderbee | 621 | 13 | 28 | 9 | 8 | 1 | 59 | 9.5 |
| Pollsmoor RDF | 2 822 | 42 | 147 | 16 | 18 | 0 | 223 | 7.9 |
| Pretoria Local | 3 257 | 55 | 144 | 42 | 10 | 22 | 273 | 8.4 |
| St. Albans Medium A | 142 | 7 | 14 | 6 | 1 | 0 | 28 | 19.7 |
| Worcester Male | 940 | 18 | 37 | 0 | 0 | 0 | 55 | 5.9 |
| Total | 17 190 | 327 | 706 | 129 | 74 | 45 | 1 281 | 7.5 |
| % | | 25.5 | 55.1 | 10.1 | 5.8 | 3.5 | 100 | |
| Remand detainees who spent 21 months and longer: 31 March 2021 | | | | | | | | |
| Correctional Centres | All RDs | 21-24 months | > 2-3 years | > 3-4 years | > 4-5 years | > 5 years | Total | % against all RDs in a centre |
| Allandale | 555 | 23 | 50 | 14 | 10 | | 97 | 17.5 |
| East London Medium B | 936 | 26 | 47 | 11 | 7 | 15 | 106 | 11.3 |
| George | 561 | 15 | 25 | 14 | 1 | 10 | 65 | 11.6 |
| Johannesburg Medium A | 4 770 | 187 | 347 | 120 | 7 | 9 | 670 | 14.1 |
| King Williams Town | 683 | 13 | 24 | 5 | 5 | 3 | 50 | 7.3 |
| Krugersdorp | 1 395 | 25 | 54 | 7 | 1 | 3 | 90 | 6.5 |
| Modderbee | 835 | 20 | 34 | 11 | 2 | 4 | 71 | 8.5 |
| Pollsmoor RDF | 2 688 | 81 | 188 | 79 | 10 | 14 | 372 | 13.8 |
| Kgoši Mampuru II Local | 2 653 | 68 | 183 | 68 | 25 | 10 | 354 | 13.3 |
| Queenstown | 66 | 7 | 8 | 1 | 0 | 1 | 17 | 25.8 |
| St Albans Med A | 1 135 | 29 | 61 | 26 | 19 | 6 | 141 | 12.4 |
| Worcester Male | 726 | 27 | 24 | 16 | 0 | 0 | 67 | 9.2 |
| Grand Total | 17 003 | 521 | 1 045 | 372 | 87 | 75 | 2 100 | 12.4 |
| % | | 24.8 | 49.8 | 17.7 | 4.1 | 3.6 | 100 | |

The remand detainees that were incarcerated for 21 months and longer on 31 March 2020 in eleven correctional centres sampled for the study were 1 281 excluding Queenstown. For 31 March 2021 the total number of remand detainees for all twelve correctional centres was 2 100. The snapshot of 31 March 2020 further revealed the following:

- Of the 17 190 remand detainees in eleven facilities excluding Queenstown, those detained for 21 months and longer constituted 7.5% (1 281).
- Those detained for longer than two to three years constituted the greatest percentage of 55.1% followed by those detained for 21 months to two years at 25.5%.
- Those detained for longer than five years constituted 3.5%.
- The centres with the highest percentage of those detained for 21 months and longer as compared to the total number of remand detainees in a centre were St Albans (19.7%), Allandale (10.3%), George, (9.5%), Modderbee (9.5%) and Kgoši Mampuru Local (8.4%).
- The centres with the lowest percentage of those detained for 21 months and longer were King Williams Town (4.4%) and Krugersdorp (4.9%).
- Worcester Male did not have remand detainees who were in detention for longer than three years.
- The longest period spent in detention was nine years and four months.

The snapshot of 31 March 2021 further revealed the following:

- Of the 17 003 remand detainees in twelve facilities, those detained for longer than 21 months constituted 12.4% (2 100).
- Those detained for longer than two to three years constituted the greatest percentage at 49.8% followed by those detained for 21 months and longer to two years at 24.8%.
- Those detained for longer than five years constituted 3.6%.
- The centres with the highest percentage of those detained for 21 months and longer as compared to the total number of remand detainees in a centre were Queenstown (25.8%), Allandale (17.5%), Johannesburg, (14.1%), Pollsmoor remand detention facility (13.8%) and Kgoši Mampuru Local (13.3%).

- The centres with the lowest percentage of those detained for 21 months and longer were Krugersdorp (6.45%), King Williams Town (7.3%) and Modderbee (8.5%).
- Allandale did not have remand detainees who were in detention for longer than five years.
- The longest period spent in detention was nine years and seven months.

7.2.1.2 Applications for consideration of length of detention and court outcomes

The correctional centres that detain remand detainees submit applications to court for consideration of their length of detention on a monthly basis. The initial submission commences when the remand detainees complete 21 months and subsequent applications are submitted annually at prescribed periods such as at 33 months, 45 months, 57 months and 69 months, etc. The possible court outcomes upon consideration of the applications are as follows:

- Continuation with detention;
- Giving of bail;
- Reduction of bail if the remand detainee had bail;
- Release and warning to appear in court on dates set by the court;
- Release and placed under supervision by a correctional official; and
- Withdrawal of the case or acquittal.

The two types of releases referred to above are classified as placement under non-custodial system. The court outcomes are categorised as either successful or unsuccessful. Continuity with detention is regarded as unsuccessful court outcome. Other outcomes are categorised as successful with the exclusion of withdrawal of the case or acquittal. The latter are included in the tool since the follow up process with courts would reveal that some of the cases have been either withdrawn or the remand detainees have been acquitted. The exclusion is based on the fact that the court may have considered a multitude of factors and not necessarily the length of detention for arriving at the decision of withdrawal of the case or acquittal. The common reasons for withdrawals or acquittal as per informal communication with the prosecutor that the researcher engages with regarding the length of detention of remand detainees are:

- Insufficient evidence;

- Lack of prospect for a successful prosecution;
- Request by the complainant;
- Difficulties in tracing witnesses; and
- Incomplete investigation including waiting for DNA results.

Historical records accessed for applications submitted to court and court outcomes were the reporting tools provided by each region monthly to head office for three periods which are 2018/2019, 2019/2020 and 2020/2021 financial years. Since the unit of reporting in the tool is the correctional centre, the information on twelve centres sampled for the study was extracted from the regional tool.

Table 7.5 is the summary of the applications that were submitted to court by twelve facilities for consideration of the length of detention as well as court outcomes. The findings are categorised under the performance for all twelve correctional centres and performance for four centres in each region. The reported performance is further analysed in two groupings which are:

- 2018/2019 and 2019/2020 (Pre-Covid period); and
- 2018/2019 and 2020/2021 (comparison of Pre-Covid-19 period and Covid-19 periods).

The differentiation between the two periods has been included since the courts were not actively functioning during 2020/2021 due to temporary closures from time to time which were related to the Covid-19 pandemic.

Table 7.5: 49G court referrals and court outcomes: 2018/19, 2019/2020 and 2020/2021

| Regions and Periods | Correctional Centres | Referrals | | Court Outcomes | | | | | | Successful Applications | | % Continued Detention |
|--|-------------------------|---|-----------------------------|---------------------|------------|--------------|--------------------|--------------------------------|--------------------------|-------------------------|------------|-----------------------|
| | | Qualifying Remand Detainees for the Month | Number of Referred to Court | Continued Detention | Bail Given | Bail Reduced | Release on Warning | 62(f) Placed Under Supervision | Case Withdrawn/Acquitted | Successful Applications | % Success | |
| Eastern Cape April to March 2018/2019 | King William's Town | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | EC East London Medium B | 75 | 75 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Queenstown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | St Albans Medium A | 475 | 475 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Total | 550 | 550 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| Eastern Cape April to March 2019/2020 | King William's Town | 41 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | EC East London Medium B | 67 | 67 | 24 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 35.8 |
| | Queenstown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | St Albans Medium A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Total | 108 | 67 | 24 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 35.8 |
| Eastern | King William's | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |

| Regions and Periods | Correctional Centres | Referrals | | Court Outcomes | | | | | | Successful Applications | | % Continued Detention |
|---|-------------------------|---|-----------------------------|---------------------|------------|--------------|--------------------|--------------------------------|--------------------------|-------------------------|------------|-----------------------|
| | | Qualifying Remand Detainees for the Month | Number of Referred to Court | Continued Detention | Bail Given | Bail Reduced | Release on Warning | 62(f) Placed Under Supervision | Case Withdrawn/Acquitted | Successful Applications | % Success | |
| Cape April to March 2020/2021 | Town | | | | | | | | | | | |
| | EC East London Medium B | 112 | 112 | 35 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 31.25 |
| | Queenstown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | St Albans Medium A | 984 | 984 | 497 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00 | 50.51 |
| | Total | 1 096 | 1 096 | 532 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 48.5 |
| 2018/2019 & 2020/2021 | | 546 | 546 | 532 | 0 | 0 | 0 | 0 | 0 | 0 | | |
| | | 99.3 | 99.3 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | | |
| 2018/2019 & 2019/2020 | | -442 | -483 | 24 | 0 | 0 | 0 | 0 | 0 | 0 | | |
| | | -80.4 | -87.8 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | | |
| Gauteng April to March 2018/2019 | Kgoši Mampuru II Local | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Modderbee | 107 | 107 | 32 | 0 | 0 | 0 | 0 | 1 | 1 | 0.9 | 29.9 |
| | Krugersdorp | 11 | 11 | 10 | 0 | 0 | 1 | 0 | 0 | 1 | 9.1 | 90.9 |
| | Johannesburg Medium A | 751 | 751 | 524 | 0 | 0 | 0 | 0 | 1 | 1 | 0.1 | 69.8 |
| | Total | 869 | 869 | 566 | 0 | 0 | 1 | 0 | 2 | 3 | 0.4 | 65.1 |
| Gauteng | Kgoši Mampuru | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00 | 0.00 |

| Regions and Periods | Correctional Centres | Referrals | | Court Outcomes | | | | | | Successful Applications | | % Continued Detention |
|---|------------------------|---|-----------------------------|---------------------|------------|--------------|--------------------|--------------------------------|--------------------------|-------------------------|------------|-----------------------|
| | | Qualifying Remand Detainees for the Month | Number of Referred to Court | Continued Detention | Bail Given | Bail Reduced | Release on Warning | 62(f) Placed Under Supervision | Case Withdrawn/Acquitted | Successful Applications | % Success | |
| April to March 2019/2020 | II Local | | | | | | | | | | | |
| | Modderbee | 27 | 27 | 17 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 63.0 |
| | Krugersdorp | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Johannesburg Medium A | 806 | 806 | 36 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 4.5 |
| | Total | 833 | 833 | 53 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 6.4 |
| Gauteng April to March 2020/2021 | Kgoši Mampuru II Local | 215 | 215 | 120 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 55.81 |
| | Modderbee | 14 | 14 | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 100.0 |
| | Krugersdorp | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Johannesburg Medium A | 1299 | 1299 | 21 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 1.62 |
| | Total | 1 528 | 1 528 | 155 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 10.1 |
| 2018/2019 & 2020/2021 | | 659 | 659 | -411 | 0 | 0 | -1 | 0 | -2 | -3 | -0.5 | -62.4 |
| | | 75.8 | 75.8 | -72.61 | 0.0 | 0.0 | 0.0 | 0.0 | -100 | -100 | | |
| 2018/2019 & 2019/2020 | | -36 | -36 | -513 | 0 | 0 | -1 | 0 | -2 | -3 | | |
| | | -4.1 | -4.1 | -90.6 | 0.0 | 0.0 | 0.0 | 0.0 | -100 | -100 | | |
| Western Cape | Allandale | 107 | 107 | 70 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 65.4 |
| | George | 75 | 75 | 67 | 0 | 0 | 0 | 0 | 6 | 6 | 8.0 | 89.3 |

| Regions and Periods | Correctional Centres | Referrals | | Court Outcomes | | | | | | Successful Applications | | % Continued Detention |
|---------------------------------------|----------------------|---|-----------------------------|---------------------|------------|--------------|--------------------|--------------------------------|--------------------------|-------------------------|--------------|-----------------------|
| | | Qualifying Remand Detainees for the Month | Number of Referred to Court | Continued Detention | Bail Given | Bail Reduced | Release on Warning | 62(f) Placed Under Supervision | Case Withdrawn/Acquitted | Successful Applications | % Success | |
| April to March 2018/2019 | Worcester Males | 12 | 12 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 91.7 |
| | Pollsmoor RDF | 154 | 154 | 154 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 100.0 |
| | Total | 348 | 348 | 302 | 0 | 0 | 0 | 0 | 6 | 6 | 1.7 | 86.8 |
| Western Cape April to March 2019/2020 | Allandale | 108 | 108 | 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00 | 18.5 |
| | George | 64 | 64 | 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00 | 31.3 |
| | Worcester Males | 51 | 51 | 7 | 0 | 0 | 0 | 3 | 0 | 3 | 5.9 | 13.7 |
| | Pollsmoor RDF | 445 | 445 | 192 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 43.2 |
| | Total | 668 | 668 | 239 | 0 | 0 | 0 | 3 | 0 | 3 | 0.5 | 35.8 |
| Western Cape April to March 2020/2021 | Allandale | 152 | 152 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | George | 80 | 80 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Worcester Males | 97 | 97 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Pollsmoor RDF | 1 127 | 1 127 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| | Total | 1 456 | 1 456 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 | 0.0 |
| 2018/2019 & 2020/2021 | | 1 108 | 1 108 | -302 | 0 | 0 | 0 | 0 | -6 | -6 | -0.5 | -27.3 |
| | | 318.4 | 318.4 | -100 | 0 | 0 | 0 | 0 | -100 | -100 | -31.4 | -31.4 |
| 2018/2019 & | | 320 | 320 | -63 | 0 | 0 | 0 | 3 | -6 | -3 | | |

| Regions and Periods | Correctional Centres | Referrals | | Court Outcomes | | | | | | Successful Applications | | % Continued Detention |
|-----------------------|---------------------------------|---|-----------------------------|---------------------|------------|--------------|--------------------|--------------------------------|--------------------------|-------------------------|-----------|-----------------------|
| | | Qualifying Remand Detainees for the Month | Number of Referred to Court | Continued Detention | Bail Given | Bail Reduced | Release on Warning | 62(f) Placed Under Supervision | Case Withdrawn/Acquitted | Successful Applications | % Success | |
| 2019/2020 | | 91,95 | 91,95 | -20,86 | 0.00 | 0.00 | 0.00 | 0.00 | -100, | -50,00 | | |
| 2018/2019 | All Twelve Correctional Centres | 1 767 | 1 767 | 868 | 0 | 0 | 1 | 0 | 8 | 9 | 0.51 | 49.1 |
| 2019/2020 | All Twelve Correctional Centres | 1 609 | 1 568 | 316 | 0 | 0 | 0 | 3 | 0 | 3 | 0.19 | 20.2 |
| 2020/2021 | All Twelve Correctional Centres | 4 080 | 4 080 | 687 | 0 | 0 | 0 | 0 | 0 | 0 | 0.00 | 16.8 |
| 2018/2019 & 2020/2021 | | 2313 | 2313 | -181 | 0 | 0 | -1 | 0 | -8 | -9 | | |
| | | 130.9 | 130.9 | -20.9 | 0.0 | 0.0 | 0.0 | 0.0 | -100.0 | -100.0 | | |
| 2018/2019 & 2019/2020 | | -158 | -199 | -552 | 0 | 0 | -1 | 3 | -8 | -6 | | |
| | | -8.9 | -11.3 | -63.6 | 0.0 | 0.0 | 0.0 | 0.0 | -100.0 | -66.7 | | |

The analysis for the previously mentioned table on 49G court referrals and outcomes is summarised below. The findings are summarised as follows:

- **Performance by all twelve correctional centres combined**
 - The number of applications submitted from 2018/2019 to 2020/2021 financial year increased from 1 767 to 4 080. The success in the applications submitted for two periods i.e., 2018/2019, 2021/2020 was 0.5% and 0.2% respectively. There was no success recorded for applications submitted in 2020/2021 financial year.
 - Of the applications submitted during 2018/2019, 2019/2020 and 2020/2021, 49.1% (868), 20.2% (316) and 16.8% (687) remand detainees had to continue with detention respectively.
 - There was no recorded outcome for a substantive number of applications i.e., 890 (50.4%) in 2018/2019, 1 249 (79.7%) in 2019/2020 and 3 393 (83.2%) in 2020/2021.
 - The low success rate coupled with inadequate response reflects a lack of effectiveness of 49G in the reduction of overcrowding of remand detainees. This cannot be equated to the Covid-19 since the success rate for 2018/19 and 2019/2020 i.e., before the pandemic were below 1%.

- **Comparison of 2018/2019 and 2019/2020 for all twelve correctional centres combined**
 - A decrease of 11.3% in the submission of applications is noted between the two periods with no significant positive outcome in both years. There were no remand detainees placed under non-custodial system during 2019/2020 while there was only one remand detainee placed under non-custodial system in the form of warning during 2018/2019.
 - There was also a decrease of 63.6% in remand detainees that were given a court outcome of continuation with detention.

- The recorded success for 2018/2019 was 0.5% while 0.2% was documented for 2019/2020.
- **Comparison of 2018/2019 and 2020/2021 for all twelve correctional centres combined**
 - An increase of 130.9% in the submission of applications is noted between the two periods with no significant positive outcome in both years.
 - A reduction of 20.9% was observed in those that had to continue with their detention while an increase in the lack of responses for more than 80% of application was observed during 2020/2021.
 - There was no positive outcome during 2020/2021 financial year i.e., there were no remand detainees that were placed under non-custodial system or given bail in relation to submitted applications despite an increase in the submission of applications.
- **Performance for Eastern Cape correctional centres**
 - The number of applications submitted from 2018/19 to 2020/2021 financial year increased from 550 to 1 096.
 - There is no recorded success for all the three periods reported i.e., there were no remand detainees placed under non-custodial system or given bail.
 - King Williams Town reported 41 qualifying remand detainees in 2019/2020 though there was no application submitted to court.
 - There is lack of commitment in submitting application by some centres such as King Williams Town, and Queenstown did not submit any application in 2018/2019 and 2019/2020 while St Albans did not submit applications in 2019/2020.
- **Eastern Cape correctional centres: Comparison between 2018/2019 and 2019/2020**
 - A decrease of 87.8% in the submission of applications is noted between the two periods with no positive outcome in both years i.e.,

there were no remand detainees placed under non-custodial system or given bail.

- During 2019/2020, 35.8% of remand detainees had a court outcome of continuation with detention.
- Data for the month of June in 2018/2019 financial year could not be accessed.

- **Eastern Cape correctional centres: Comparison between 2018/2019 and 2020/2021**

- An increase of 99.3% in the submission of applications is noted between the two periods with no positive outcome in both years i.e., there were no remand detainees placed under non-custodial system or given bail.
- During 2020/2021, 50.5% of remand detainees had a court outcome of continuation with detention.

- **Performance for Gauteng correctional centres**

- The number of applications submitted from 2018/19 to 2020/2021 financial year increased from 869 to 1 528.
- There is no recorded success for two periods i.e., 2019/2020 and 2020/2021. The minimal success recorded for 2018/2019 was 0.4%. The success came from one correctional i.e., Krugersdorp (9.1%) where one remand detainee was placed under non-custodial system through warning.
- The summary of those with unsuccessful applications presented as continuation with detention is as follows:
 - Of the applications submitted by Modderbee, Krugersdorp and Johannesburg Medium A during 2018/2019, 29.9% (32), 90.9% (10) and 69.8% (524) had to continue with detention respectively.

- Of the applications submitted by Modderbee and Johannesburg Medium A in 2019/2020, 63.0% (17) and 4.5% (36) had to continue with detention respectively.
 - Of the applications submitted by Kgoši Mampuru II Local, Modderbee and Johannesburg Medium A during 2020/2021, 55.8% (120), 100% (14) and 1.6% (21) had to continue with detention respectively.

- **Gauteng correctional centres: Comparison between 2018/2019 and 2019/2020)**
 - A decrease of 4.1% in the submission of applications is noted between the two periods with no positive outcome in both years i.e., there were no remand detainees placed under non-custodial system or given bail.
 - During 2018/2019 and 2019/2020 Kgoši Mampuru II Local did not submit any application for consideration of the length of detention.
 - During 2019/2020 Krugersdorp did not submit any application.

- **Gauteng correctional centres: Comparison between 2018/2019 and 2020/2021)**
 - An increase of 75.8% in the submission of applications is noted between the two periods with no positive outcome in 2020/2021 financial year i.e., there were no remand detainees placed under non-custodial system or given bail.
 - Krugersdorp did not submit any application for 49G during 2020/2021 financial year. Modderbee submitted applications over a period of one month out of twelve months though the snapshot analysis conducted from time to time always reflects a number of remand detainees that qualify for court referral at different time periods.

- **Performance for Western Cape correctional centres**
 - The number of applications submitted from 2018/19 to 2020/2021 financial year increased from 348 to 1 456.

- Success recorded for submitted applications for 2018/2019 and 2019/2020 were 1.72% and 0.5% respectively. There was no success reported for 2020/2021.
 - George is the only correctional centre that recorded a success of 8.0% in 2018/19 which was through the withdrawn cases. This cannot be completely equated to 49G submission as there may be other reasons that led to the withdrawal of cases or acquittal.
 - Worcester Males is the only correctional centre that recorded a success of 5.9% for 2019/2020 through three remand detainees that were placed under correctional supervision.
 - For 2020/2021, there is no recorded success for submitted applications though there was an increase in the submission of applications. There is also no recorded court feedback regarding the continuation with detention.
 - The summary of those with unsuccessful applications in the form of continuation with detention is as follows:
 - For 2018/2019 Pollsmoor reported 100% (154) of continuity with detention while Allandale, George and Worcester reported 65.4% (70), 89.3% (67) and 91.7% (11) respectively.
 - For 2019/2020 Allandale, George, Worcester and Pollsmoor reported 18.5% (20), 31.3% (20), 13.7% (7) and 43.2% (192) respectively.
- **Western Cape correctional centres: Comparison between 2018/2019 and 2019/2020**
 - An increase of 92.0% in the submission of applications is noted between the two periods with positive outcome of 1.7% and 0.5% respectively.
 - During 2018/2019 Worcester Male and Pollsmoor did not submit the applications over a period of nine months and seven months respectively though they may have been remand detainees that qualified for referral at different intervals.
 - Of the submitted applications, 86.8% and 35.8% of remand detainees had a court outcome of continuation with detention during 2018/2019

and 2019/2020 respectively. These remand detainees were detained in all the participating correctional centres.

- **Western Cape correctional centres: Comparison between 2018/2019 and 2020/2021**
 - An increase of more than 300% in the submission of applications is noted between the two periods with no positive outcome i.e., there were no remand detainees placed under non-custodial system or given bail.
 - A reduction of 20.9% was observed in those that had to continue with their detention.

7.2.1.3 Delivering of applications in court and follow up process

The applications are hand delivered by the court officials in courts and the receipt is acknowledged by the clerk of court. In Kgoši Mampuru the applications are also acknowledged by the registrar of court. The follow up process for submitted applications by the six correctional centres is presented in the Table 7.6 below.

Table 7.6: Follow up process on submitted applications

| Participating Centres | Follow up on submitted applications |
|--|---|
| Kgoši Mampuru II Local (Gauteng) | <ul style="list-style-type: none"> • Case flow meetings are utilised to make a follow up on submitted applications. • There is no formal system of monitoring submitted applications. |
| Modderbee (Gauteng) | <ul style="list-style-type: none"> • There is no formal system of monitoring submitted applications. • The informal system entails raising the issue of outstanding 49G referrals in meetings. The response would be that the case is still pending. |
| Krugersdorp (Gauteng) | <ul style="list-style-type: none"> • There is no formal system of monitoring submitted applications. • Informal system used entails: <ul style="list-style-type: none"> ○ Checking the namelist of the previously submitted |

| Participating Centres | Follow up on submitted applications |
|--|---|
| | <p>applications for updating the area of feedback in the records kept at the centre.</p> <ul style="list-style-type: none"> ○ Checking the warrant of detention (J7) for those that have appeared in court after the submission of the application for updating the status in the namelist. ○ Communicating with the clerk of court for an update on submitted applications. |
| Johannesburg Medium A (Gauteng) | <ul style="list-style-type: none"> ● There is no formal system of monitoring submitted applications. ● Informal system used entails the following: <ul style="list-style-type: none"> ○ Sending emails from time to time to request feedback. ○ Sending formal inquiries in the form of memoranda to Chief Magistrates of some courts with the names of remand detainees whose applications were sent to court. ○ Making of verbal inquiries by court officials for previously submitted applications when submitting new applications to court. ● Some courts would inform the court official that applications were considered and court decisions were made. Decisions made include giving of bail, release or continuation with detention. |
| Worcester Male (Western Cape) | <ul style="list-style-type: none"> ● Register is in place to monitor all submissions. |
| Pollsmoor Remand detention Facility (Western Cape) | <ul style="list-style-type: none"> ● No formal system of monitoring the applications. ● Court officials conduct follow up for submitted applications. |

Of the six centres, five claimed that they do not have a formal system and only Worcester Male has a register for recording the follow up made with courts. The informal follow up mechanisms utilised include inquiry during case flow meetings, sending of emails, and regular verbal follow-ups done by the court officials when

dropping new applications. The delivery of applications and the follow up process in 49G is equally applied to bail review applications.

7.2.1.4 Challenges experienced regarding the implementation of 49G protocol

Challenges experienced are summarised in Table 7.7 below. Of the six centres that provided responses, four centres raised the challenge of the inefficient electronic system for determination of qualifying remand detainees which leads to manual filtering for determination of qualifying remand detainees.

Five participants raised the concern of lack of requisitions for submitted applications thus making it difficult for officials to know whether the consideration took place or not. Four officials stated that there is no formal feedback from court hence the use of informal follow up mechanism.

The challenge noted by the researcher was that officials did not know where to capture electronically the submitted reports since there was no user manual to provide required guidance. The issue of training on the use of the system was raised. However, the rotation of personnel which in inevitable leads to loss of skills in processing applications.

Table 7.7: Challenges experienced regarding the implementation of 49G

| Participating Centres | Challenges experienced regarding the implementation of 49G |
|--|---|
| Kgoši Mampuru II Local (Gauteng) | <p>Determination of qualifying remand detainees</p> <ul style="list-style-type: none"> • The participant demonstrated the process of accessing the namelist from the Inmate Integrated Management System (IIMS) and the following challenges were raised: <ul style="list-style-type: none"> ○ The electronic system provides a report with a list of all the names of remand detainees that are detained for 21 months and above and manual filtering is done for determination of qualifying remand detainees. ○ At times the list includes even remand detainees that are no longer in detention. ○ Manual filtering of the list is done against the |

| Participating Centres | Challenges experienced regarding the implementation of 49G |
|------------------------------|---|
| | <p>submitted applications which is a tedious and time consuming.</p> <ul style="list-style-type: none"> ○ The officials have not been trained on capturing the processed applications so that the report may reflect the submitted applications. <p>Processing of application up to delivery in court</p> <ul style="list-style-type: none"> ● Manual processing of applications requires that they be delivered, and this requires transport. ● Delays in delivering applications to courts that are far from the centre. ● Refusal to accept the submitted applications by some courts due to lack of understanding of the 49G processes and the expectation for DCS to provide reasons for submitting applications to court. <p>Feedback from courts including requisitions</p> <ul style="list-style-type: none"> ● The centre does not always receive requisitions for court appearance and feedback on submitted applications. ● There is no system for feedback mechanism that has been established between the centre and the courts. <p>Other challenges</p> <ul style="list-style-type: none"> ● Loss of officials that are trained due to rotation, retirement and horizontal placement. ● Lack of transfer of knowledge and skills by pairing the near retirement officials with those that will be left behind. ● Difficulties in accessing a complete namelist of remand detainees. |
| Modderbee (Gauteng) | <p>Determination of qualifying remand detainees</p> <ul style="list-style-type: none"> ● The participant could not demonstrate the process of accessing the namelist from the IIMS since the system was down at the time of conducting interviews. The following challenges were raised: <ul style="list-style-type: none"> ○ The dashboard report on overdue applications |

| Participating Centres | Challenges experienced regarding the implementation of 49G |
|-----------------------|--|
| | <p>includes the names of remand detainees whose applications were previously submitted to court.</p> <ul style="list-style-type: none"> ○ Manual filtering for determination of qualifying remand detainees for referral of applications to court is tedious and time consuming. ○ The participant was no clear about the process of capturing acknowledged applications after delivering them in courts as well the capturing of court outcomes. ○ Lack of dummy system makes it difficult for the officials to learn and practice the processes which have been built in the IIMS system to prevent errors in capturing in the main system. <p>Processing of applications up to delivery in court</p> <ul style="list-style-type: none"> ● The manual delivery of applications to court has cost implications in relation to transport because of the distance travelled between courts. <p>Feedback from courts including requisitions</p> <ul style="list-style-type: none"> ● There are no requisitions received by the centre for 49G. <p>Other challenges</p> <ul style="list-style-type: none"> ● Some court clerks are not informed of 49G process as such the DCS court official would explain the processes to them. ● The status regarding the remand detainee when making a follow-up with courts is utilised as the outcome of the 49G applications and this is applied to those with withdrawn cases, acquitted, and sentenced. |
| Krugersdorp (Gauteng) | <p>Determination of qualifying remand detainees</p> <ul style="list-style-type: none"> ● The participant could not draw the list from the electronic system though the system was operational at the time of visiting the centre for conducting interviews. ● The official had a list of 49G cases that were drawn for previous months in the files. |

| Participating Centres | Challenges experienced regarding the implementation of 49G |
|-----------------------|---|
| | <ul style="list-style-type: none"> • The researcher navigated the system with the participant based on previous observation during visits to Kgoši Mampuru II Local and Johannesburg Medium A. The following challenges were observed: <ul style="list-style-type: none"> ○ The list of overdue cases which is reflected on the dashboard did not have the case related information and the date of admission as a control for verification of the length of detention. ○ The overdue list does not link up with the automated process of populating the referral forms. ○ The length of detention period is not reflected in the format that would correctly guide the determination of overdue periods in relation to the months of referrals such as 21 months, 33 months and 48 months. ○ The generated report did not have a date i.e., the date when the report was generated from the electronic system. ○ The date of generating the report from the system automatically reflects as the date of referral of applications and this was an anomaly since the report was generated on a Saturday and there are no referrals made to court on this day. ○ The system was able to generate 157 remand detainees for referral to court however the list could not be printed since it was inclusive of remand detainees whose applications were previously submitted to court. ○ The participant did not understand whether there is capturing required after delivering application in court. ○ There was no user manual as reference document for guiding the process of using the system. ○ Manual filtering of the qualifying remand |

| Participating Centres | Challenges experienced regarding the implementation of 49G |
|---------------------------------|--|
| | <p style="text-align: center;">detainees is done since the generated list includes the names of previously submitted applications.</p> <p>Feedback from courts including requisitions</p> <ul style="list-style-type: none"> • Feedback is not always received from court and the reasons for no return from court is not known therefore cannot be automatically linked to the submission of the application for 49G. • There are no requisitions received by the centre for 49G. |
| Johannesburg Medium A (Gauteng) | <p>Determination of qualifying remand detainees</p> <ul style="list-style-type: none"> • The participant demonstrated the process of accessing the namelist from IIMS and the following challenges were raised: <ul style="list-style-type: none"> ○ The system takes a long time to run the list of qualifying remand detainees and this was observed by the researcher. The list of more than 2 000 remand detainees was eventually generated. ○ The list includes all the remand detainees because there is no provision for capturing the submitted applications after the acknowledgement of receipt by courts. ○ The namelist is requested from head office at times and the list requires cleaning as it contains all the remand detainees who appear to qualify even those without case related information. ○ Other observations made include the following: <ul style="list-style-type: none"> ▪ The lack of capturing of submitted applications after acknowledgement by the courts makes it difficult for the system to determine the correct list of qualifying remand detainees in terms of different prescribed time periods hence the system generates the complete list including the previously submitted applications. This makes it difficult to understand the parameters for the determination of overdue |

| Participating Centres | Challenges experienced regarding the implementation of 49G |
|--|---|
| | <p>list which appears in the dashboard.</p> <ul style="list-style-type: none"> ▪ The list of qualifying remand detainees is likely to run into huge figures for bigger centres such a Johannesburg Medium A and this elongates the time for generating the report at any time hence the default is to request for the report from head office. ▪ The absence to user manual makes it difficult for the participants to understand the system since there is no reference document. <p>Feedback from courts including requisitions</p> <ul style="list-style-type: none"> • The centre rarely receives feedback from court on submitted applications. • There are no requisitions received by the centre for 49G. |
| Worcester Male (Western Cape) | <p>Determination of qualifying remand detainees</p> <ul style="list-style-type: none"> • No problem. <p>Processing of applications up to delivery in court</p> <ul style="list-style-type: none"> • No Problem. <p>Feedback from courts including requisitions</p> <ul style="list-style-type: none"> • Some courts do not provide any feedback on cases but follow up with them is made. |
| Pollsmoor Remand detention Facility (Western Cape) | <p>Determination of qualifying remand detainees</p> <ul style="list-style-type: none"> • No problem. <p>Processing of applications up to delivery in court</p> <ul style="list-style-type: none"> • The process is time consuming and requires dedicated officials who are only allocated for that. <p>Feedback from courts including requisitions</p> <ul style="list-style-type: none"> • Some courts do not provide any feedback on cases but a follow up with them is done. • The response takes long and sometimes it is not received. |

| | |
|------------------------------|---|
| Participating Centres | Challenges experienced regarding the implementation of 49G |
| | <ul style="list-style-type: none"> • There are no requisitions received by the centre for 49G. |

The common challenges raised by participants in Gauteng relate to the determination of qualifying remand from the electronic system which requires manual filtering since it provides an extended list. The list includes even applications for remand detainees that were previously submitted to court and the released remand detainees. The generation of the extended list may be equated to the lack of capturing of previously submitted applications in the system. Furthermore, the concern on the list of backlogs was raised since the list was not regarded as a correct reflection of the outstanding cases. The creation of backlogs was not understood since there is no capturing on submitted applications.

Other challenges were the manual delivery process of applications which has cost implications and lack of feedback from court. The correctional centres from Western Cape provided electronically completed responses as such their responses are brief. Furthermore, the determination of their understanding of the support of the electronic system could not be tested with the participants.

7.3 IMPLEMENTATION OF THE BAIL REVIEW

7.3.1 THE PROCESS OF DETERMINING THE QUALIFYING REMAND DETAINEES

The bail review is one of the strategies implemented to reduce the overcrowding of the remand detainees through submitting applications to court in line with sections 63A and 63(1) of the Criminal Procedure Act 51 of 1977. The criteria for qualifying remand detainees have been explained in chapter 4. The remand detainees that qualify for referral to court under section 63A are those with cases managed by regional and magistrate courts and who have been charged with crimes listed under schedule 7 (attached as Annexure H). For section 63(1), the remand detainees that qualify are those with bail regardless of the schedule of crimes and the provision has been created for utilisation by either the accused or the prosecutor. The referral to court by the Department of Correctional Services officials at the centre level is dependent on the consent by the remand detainee. The possible court outcomes are similar to those applied for 49G applications and include continuation with detention,

reduction of bail, release on warning to appear in court on dates set by the court and release for placement under supervision by a correctional official.

The process of determining qualifying remand detainees for the submission of bail review applications to court is summarised in the Table 7.8 below. Krugersdorp and Johannesburg Medium A did not submit section 63(1) applications while Kgoši Mampuru II Local and Modderbee processed applications without differentiating between 63A and 63(1). Worcester Male and Pollsmoor remand detention facility processed both 63A and 63(1) applications.

All the centres make use of the IIMS system to obtain the list of qualifying remand detainees. Table 7.8 below is a representation of the process applied in the sampled correctional centres to determine the qualifying remand detainees for submitting applications to court.

Table 7.8: Determination of qualifying remand detainees for processing bail review applications

| Participating Centres | Determination of qualifying remand detainees for processing Bail review applications | |
|----------------------------------|--|---|
| | Bail protocol (63A) | 63(1) |
| Kgoši Mampuru II Local (Gauteng) | <ul style="list-style-type: none"> The qualifying remand detainees are generated from the IIMS system. The list of remand detainees that qualify for 63(A) is generated with focus on those with bail of R1 000 and less. The information on the 63(1) list is utilised to complete the application form for 63A application. | <ul style="list-style-type: none"> The process is similar to the one applied for 63A applications. |
| Modderbee (Gauteng) | <ul style="list-style-type: none"> The list of remand detainees with bail is drawn from IIMS every Mondays with focus on remand detainees with bail of R1 000 and less. The list generated from IIMS is compared with the list of | <ul style="list-style-type: none"> Applications for review of bail are submitted without differentiating between the Bail protocol related application and |

| Participating Centres | Determination of qualifying remand detainees for processing Bail review applications | |
|---------------------------------|---|---|
| | Bail protocol (63A) | 63(1) |
| | <p>previous Monday.</p> <ul style="list-style-type: none"> • Another approach: Drawing of the list of all remand detainees with bail over the weekend and filter it for determination of those with bail of R1 000 & less. | 63(1) applications. |
| Krugersdorp (Gauteng) | <ul style="list-style-type: none"> • The report on qualifying remand detainees is obtained from the IIMS system. • The report with remand detainees with bail is printed regardless of the bail amounts. • Remand detainees with bail of R1 000 and less are marked as qualifying remand detainees. • Crimes of qualifying remand detainees are also marked. • The court referral form is manually completed. • The affidavit is attached to the referral form. | <ul style="list-style-type: none"> • 63(1) applications are not processed by the centre. |
| Johannesburg Medium A (Gauteng) | <ul style="list-style-type: none"> • The report on qualifying remand detainees is obtained from the IIMS system. The process is as follows: • The system runs a report of qualifying remand detainees with bail regardless of the bail amounts. • The system provides the namelist. • The list obtained from the system consists of remand detainees who have been previously referred to court and those that | <ul style="list-style-type: none"> • 63(1) applications are not processed by the centre. |

| Participating Centres | Determination of qualifying remand detainees for processing Bail review applications | |
|--|---|---|
| | Bail protocol (63A) | 63(1) |
| | <p>are due for referral.</p> <ul style="list-style-type: none"> • The report is exported in Excel format and saved. • The manual cleaning process is applied by checking the spreadsheet generated from IIMS against the spreadsheet kept for submitted applications. • The system automatically completes the referral form based on the generated list of remand detainees regardless of whether the applications were previously submitted or not. • To save on stationery, the completed referral forms printed are only for those that qualify to be referred. • The list is requested from head office if the system cannot provide the required report. | |
| Worcester Male (Western Cape) | <ul style="list-style-type: none"> • Bail list is drawn daily to check qualifying cases. | <ul style="list-style-type: none"> • The Head of centre submits qualifying cases to the relevant Courts. |
| Pollsmoor Remand Detention Facility (Western Cape) | <ul style="list-style-type: none"> • Interview inmates for determination of affordability to pay bail. • Take telephone numbers of families. • Establish if they can afford to pay bail and the amount. • Motivation is done for reduction. • Recommend for placement under | <ul style="list-style-type: none"> • Generate a namelist monthly and submit to magistrate for consideration. • The Head of the centre completes the applications. |

| Participating Centres | Determination of qualifying remand detainees for processing Bail review applications | |
|-----------------------|---|-------|
| | Bail protocol (63A) | 63(1) |
| | 62(f) [supervision by a correctional official] or 72 [warning]. <ul style="list-style-type: none"> List generated from the system. | |

The summary of findings regarding the process followed to generate the list is as follows:

- Kgoši Mampuru II Local and Modderbee generated the lists with focus on remand detainees with bail of R1 000 and less for 63A applications while other participating centres did not refer to the bail amounts.
- Kgoši Mampuru II Local used the 63(1) list for completion of applications for 63A since the list for 63(A) could not be generated. The participant demonstrated the process followed for generating the list. Applications are submitted from one week of admission.
- All the centres in Gauteng conduct a manual filtering since the list generated is inclusive of previously submitted applications.
- Modderbee draws the list either on Mondays or over the weekend and each list is compared with the previously generated lists. The process of generating the list from the system could not be observed since the system was down at the time of the visit, however, the previously drawn lists were shown by the participant. Applications are submitted on a weekly basis from Tuesdays to Fridays.
- In Krugersdorp the participant did not know how to generate the namelist from the electronic system though there were previous copies of the lists in the files. There was no user manual that could be utilised for providing guidance on how to navigate the system. Based on observing the process followed in Kgoši Mampuru II Local and Johannesburg Medium A, the researcher and the participant navigated the system and were able to access the namelist for 63A and 63(1). The namelist for 63A was not in line with the criteria for qualifying remand detainees as it was inclusive of remand detainees with crimes that fall

out of schedule 7 list of crimes hence the manual filtering process becomes relevant. The 63(1) process is not included under the referrals to court hence it is only utilised to generate the list of remand detainees. The court referral forms are manually completed. The filtering of the generated list focuses on determination of remand detainees with bail of R1 000 and less who were not previously referred to court. Applications are submitted on weekly basis.

- In Johannesburg Medium A the process of generating the namelist from the electronic system was demonstrated and the manual cleaning process is applied since the system generates the list which is inclusive of previously submitted applications. The completion of application is automated however the printing is controlled by focusing only on applications for submission to court for preventing wastage on stationery. The list is requested from head office if the system cannot provide the required list. Applications are submitted on monthly basis for qualifying remand detainees.
- The centres in Gauteng do not capture in the system all the applications that were acknowledged for delivery in different courts hence the generated list will always be inclusive of previously submitted applications.
- In Worcester Male the head of the centre submits qualifying applications to the relevant courts.
- In Pollsmoor inmates [remand detainees] are interviewed for determination of affordability to pay bail and amount and motivation for reduction of bail is submitted to court with recommendations for placement under correctional supervision and warning.

7.3.2 APPLICATIONS SUBMITTED TO COURT AND COURT OUTCOMES FOR BAIL REVIEW

Applications submitted for bail review to court and court outcomes for 2018/19, 2019/2020 and 2020/2021 are presented in Table 7.9.

Table 7.9: Bail review applications and court outcome 2018/2019; 2019/2020 and 2020/2021

| Regions and Period | Correctional Centres | Section 63 (1) and Section 63A Referrals to Court | | | RDs Who Paid Bail with no Condition | Court Outcomes | | | | Case Withdrawn | Successful Applications | |
|--|-------------------------|---|--|--|-------------------------------------|-----------------------|--------------------------|----------------------|---|----------------|--|--------------|
| | | Number of S63(1) RDs Referred to Court | Number of S63(A) RDs Referred to Court | Total Number of S63(1) and S63A Referrals to Court | | RDs with Reduced Bail | Correctional Supervision | Section 72 - Warning | Children Placed in Secure Care Facilities | | Successful Application Excluding Withdrawn Cases | % of Success |
| Eastern Cape April to March 2018/2019 | King William's Town | 119 | 5 | 124 | 115 | 0 | 70 | 0 | 0 | 0 | 70 | 56.5 |
| | EC East London Medium B | 55 | 63 | 118 | 38 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Queenstown | 0 | 63 | 63 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | St Albans Medium A | 946 | 1 054 | 2 000 | 0 | 569 | 0 | 335 | 0 | 621 | 904 | 45.2 |
| | Total | 1 120 | 1 185 | 2 305 | 153 | 569 | 70 | 335 | 0 | 621 | 974 | 42.3 |
| Eastern Cape April to March 2019/2020 | King William's Town | 0 | 0 | 0 | 947 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | EC East London Medium B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Queenstown | 24 | 60 | 97 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | St Albans Medium A | 427 | 1 114 | 1 698 | 0 | 609 | 0 | 496 | 0 | 593 | 1 105 | 65.1 |
| | Total | 451 | 1 174 | 1 795 | 947 | 609 | 0 | 496 | 0 | 593 | 1 105 | 61.6 |
| Eastern Cape April to March 2020/2021 | King William's Town | 0 | 132 | 132 | 152 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | EC East London Medium B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Queenstown | 0 | 64 | 64 | 0 | 5 | 4 | 0 | 0 | 0 | 9 | 14.1 |
| | St Albans Medium A | 0 | 1 256 | 1 256 | 0 | 365 | 0 | 490 | 0 | 367 | 855 | 68.1 |
| | Total | 0 | 1 452 | 1 452 | 152 | 370 | 4 | 490 | 0 | 367 | 864 | 59.5 |
| 2018/2019 & 2020/2021 | | -1120 | 267 | -853 | -1 | -199 | -66 | 155 | 0 | -254 | -110 | |
| | | -100 | 22.5 | -37.0 | -0.7 | -35.0 | -94.3 | 46.3 | 0 | -40.9 | -11.3 | |
| 2018/2019 & 2019/2020 | | -669 | -11 | -510 | 794 | 40 | -70 | 161 | 0 | -28 | 131 | |
| | | -59.73 | -0.9 | -22.1 | 519.0 | 7.0 | -100 | 48.1 | 0 | -4.5 | 13.4 | |

| Regions and Period | Correctional Centres | Section 63 (1) and Section 63A Referrals to Court | | | RDs Who Paid Bail with no Condition | Court Outcomes | | | | Case Withdrawn | Successful Applications | |
|---|------------------------|---|--|--|-------------------------------------|-----------------------|--------------------------|----------------------|---|----------------|--|--------------|
| | | Number of S63(1) RDs Referred to Court | Number of S63(A) RDs Referred to Court | Total Number of S63(1) and S63A Referrals to Court | | RDs with Reduced Bail | Correctional Supervision | Section 72 - Warning | Children Placed in Secure Care Facilities | | Successful Application Excluding Withdrawn Cases | % of Success |
| Gauteng April to March 2018/2019 | Kgoši Mampuru II Local | 0 | 146 | 146 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Modderbee | 0 | 123 | 123 | 0 | 0 | 0 | 15 | 0 | 32 | 15 | 12.2 |
| | Krugersdorp | 0 | 1 031 | 1 031 | 0 | 139 | 0 | 373 | 0 | 0 | 512 | 49.7 |
| | Johannesburg Medium A | 0 | 3 087 | 3 087 | 1485 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Total | 0 | 4 387 | 4 387 | 1 485 | 139 | 0 | 388 | 0 | 32 | 527 | 12.0 |
| Gauteng April to March 2019/2020 | Kgoši Mampuru II Local | 53 | 237 | 290 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Modderbee | 0 | 114 | 114 | 0 | 0 | 0 | 20 | 0 | 0 | 20 | 17.5 |
| | Krugersdorp | 0 | 1 216 | 1 216 | 0 | 281 | 0 | 338 | 0 | 0 | 619 | 50.9 |
| | Johannesburg Medium A | 0 | 790 | 790 | 1721 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Total | 53 | 2 357 | 2 410 | 1 721 | 281 | 0 | 358 | 0 | 0 | 639 | 26.5 |
| Gauteng April to March 2020/2021 | Kgoši Mampuru II Local | 8 | 121 | 129 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| | Modderbee | 20 | 75 | 95 | 0 | 3 | 0 | 33 | 0 | 0 | 36 | 37.9 |
| | Krugersdorp | 0 | 764 | 764 | 0 | 3 | 0 | 51 | 0 | 0 | 54 | 7.1 |
| | Johannesburg Medium A | 0 | 690 | 690 | 129 | 2 | 1 | 0 | 0 | 0 | 3 | 0.4 |
| | Total | 28 | 1 650 | 1 678 | 129 | 8 | 1 | 84 | 0 | 0 | 93 | 5.5 |
| 2018/2019 & 2020/2021 | | 28 | -2 737 | -2 709 | -1 356 | -131 | 1 | -304 | 0 | -32 | -434 | |
| | | 0 | -62.4 | -61.8 | -91.3 | -94.2 | 0 | -78.4 | 0 | -100 | -82.5 | |
| 2018/2019 & 2019/2020 | | 53 | -2 030 | -1 977 | 236 | 142 | 0 | -30 | 0 | -32 | 112 | |
| | | 0 | -46.3 | -45.1 | 15.9 | 102.2 | 0 | -7.7 | 0 | -100 | 21.3 | |
| Western Cape | Allandale | 172 | 379 | 551 | 45 | 117 | 0 | 87 | 0 | 0 | 204 | 37.0 |

| Regions and Period | Correctional Centres | Section 63 (1) and Section 63A Referrals to Court | | | RDs Who Paid Bail with no Condition | Court Outcomes | | | | Case Withdrawn | Successful Applications | |
|--|-------------------------|---|--|--|-------------------------------------|-----------------------|--------------------------|----------------------|---|----------------|--|--------------|
| | | Number of S63(1) RDs Referred to Court | Number of S63(A) RDs Referred to Court | Total Number of S63(1) and S63A Referrals to Court | | RDs with Reduced Bail | Correctional Supervision | Section 72 - Warning | Children Placed in Secure Care Facilities | | Successful Application Excluding Withdrawn Cases | % of Success |
| April to March 2018/2019 | George | 118 | 0 | 118 | 0 | 3 | 92 | 1 | 0 | 0 | 96 | 81.4 |
| | Worcester Males | 148 | 0 | 148 | 1 | 0 | 85 | 0 | 0 | 0 | 85 | 57.4 |
| | Pollsmoor RDF | 1 713 | 141 | 1 854 | 250 | 71 | 55 | 514 | 6 | 119 | 646 | 34.8 |
| | Total | 2 151 | 520 | 2 671 | 296 | 191 | 232 | 602 | 6 | 119 | 1 031 | 38.6 |
| Western Cape April to March 2019/2020 | Allandale | 286 | 335 | 621 | 74 | 0 | 13 | 95 | 0 | 0 | 108 | 17.4 |
| | George | 83 | 0 | 83 | 0 | 1 | 48 | 0 | 0 | 1 | 49 | 59.0 |
| | Worcester Males | 137 | 0 | 137 | 0 | 0 | 90 | 2 | 0 | 0 | 92 | 67.2 |
| | Pollsmoor RDF | 1 507 | 0 | 1 507 | 102 | 37 | 50 | 496 | 0 | 56 | 583 | 38.7 |
| | Total | 2 013 | 335 | 2 348 | 176 | 38 | 201 | 593 | 0 | 57 | 832 | 35.4 |
| Western Cape April to March 2020/2021 | Allandale | 37 | 39 | 76 | 1 | 0 | 0 | 16 | 0 | 0 | 16 | 21.1 |
| | George | 54 | 0 | 54 | 1 | 1 | 44 | 7 | 0 | 0 | 52 | 96.3 |
| | Worcester Males | 85 | 0 | 85 | 3 | 0 | 31 | 0 | 0 | 0 | 31 | 36.5 |
| | Pollsmoor RDF | 435 | 20 | 455 | 15 | 11 | 2 | 79 | 0 | 15 | 92 | 20.2 |
| | Total | 611 | 59 | 670 | 20 | 12 | 77 | 102 | 0 | 15 | 191 | 28.5 |
| 2018/2019 & 2020/2021 | | -1 540 | -461 | -2 001 | -276 | -179 | -155 | -500 | -6 | -104 | -840 | |
| | | -71.6 | -88.7 | -74.9 | -93.2 | -93.7 | -66.8 | -83.1 | -100 | -87.4 | -81.5 | |
| 2018/2019 & 2019/2020 | | -138 | -185 | -323 | -120 | -153 | -31 | -9 | -6 | -62 | -199 | |
| | | -6.4 | -35.6 | -12.1 | -40.54 | -80.1 | -13.4 | -1.5 | -100 | -52.1 | -19.3 | |
| 2018/2019 | All twelve Correctional | 3 271 | 6 092 | 9 363 | 1 934 | 899 | 302 | 1 325 | 6 | 772 | 2 532 | 27.0 |

| Regions and Period | Correctional Centres | Section 63 (1) and Section 63A Referrals to Court | | | RDs Who Paid Bail with no Condition | Court Outcomes | | | | Case Withdrawn | Successful Applications | |
|-----------------------|---------------------------------|---|--|--|-------------------------------------|-----------------------|--------------------------|----------------------|---|----------------|--|--------------|
| | | Number of S63(1) RDs Referred to Court | Number of S63(A) RDs Referred to Court | Total Number of S63(1) and S63A Referrals to Court | | RDs with Reduced Bail | Correctional Supervision | Section 72 - Warning | Children Placed in Secure Care Facilities | | Successful Application Excluding Withdrawn Cases | % of Success |
| | Centres | | | | | | | | | | | |
| 2019/2020 | All twelve Correctional Centres | 2 517 | 3 866 | 6 553 | 2 844 | 928 | 201 | 1 447 | 0 | 650 | 2 576 | 39.3 |
| 2020/2021 | All twelve Correctional Centres | 639 | 3 161 | 3 800 | 301 | 390 | 82 | 676 | 0 | 382 | 1 148 | 30.2 |
| 2018/2019 & 2020/2021 | | -2 632 | -2 931 | -5 563 | -1 633 | -509 | -220 | -649 | -6 | -390 | -1 384 | |
| | | -80.5 | -48.1 | -59.4 | -84.4 | -56.6 | -72.9 | -49.0 | -100.0 | -50.5 | -54.7 | |
| 2018/2019 & 2019/2020 | | -754 | -2 226 | -2 810 | 910 | 29 | -101 | 122 | -6 | -122 | 44 | |
| | | -23.1 | -36.5 | -30.0 | 47.1 | 3.2 | -33.4 | 9.2 | -100.0 | -15.8 | 1.7 | |

The findings are categorised under the performance for all twelve correctional centres and performance for four centres in each region. The reported performance is further analysed in two groupings of 2018/2019 and 2019/2020 (pre-Covid-19 period) and 2018/2019 and 2020/2021 (pre-Covid-19 period and Covid-19 periods).

- **Performance by all twelve correctional centres combined regarding the submission of bail review applications**

- The number of applications submitted for 2018/19, 2019/2020 and 2020/2021 financial year were 9 363, 6 553 and 3 800 respectively and this reflects a gradual decline in the submission of applications.
- The court outcomes which constitute success are bail reduction, placement under supervision by a correctional official and release with placement on warning. The withdrawal of cases and payment of bail are not regarded as variables that relate to successful applications; however, payment of bail reflects the remand detainees who are released after payment of bail and withdrawal of cases may be due to factors that are unrelated to the submission of application for review by correctional services.
- The success in applications submitted for the three periods i.e., 2018/2019, 20219/2020 and 2020/2021 was 27.0%, 39.3% and 30.2% respectively and excludes withdrawn cases. The total number of successful applications for the three periods from 2018/2019 to 2020/2021 are 2 532, 2 576 and 1 148 respectively.
- The court outcome with the highest percentage for the three periods i.e., 2018/2019, 20219/2020 and 2020/2021 was placement on warning with the 52.3%, 56.2% and 58.9% respectively. Reduction in bail followed with the range of between 34.0% and 35.4% and placement under supervision by the correctional official attracted the least court outcomes at the range of between 7.1% and 11.9%.
- An erratic pattern of success is noted with an increase of 3.3% from 2018/19 to 20219/2020 and a decrease of 56.1% from 2019/2020 to 2020/2021. The reduction in the success rate from 2018/2019 to 2020/2021 may be equated to the reduction in the submission of applications by 59.4%.

- The minimal success rate of an average of 25.7% over the period of three years that led to the placement of remand detainees under the non-custodial system cannot be discounted. The success of an average of 25.8% gained through bail reduction cannot be equated to the decrease in remand population since the real positive success is dependent on the payment of bail by the remand detainees. The success reported emanates mainly from section 63A applications with an average submission of 66.5% over the period of three years.
 - The influence of Covid-19 pandemic may have contributed to the decrease in the submission of applications during 2020/2021 due to the intermittent functioning of the courts. However, the link to the court outcomes could not be established.
- **Comparison of 2018/2019 and 2019/2020 for all twelve correctional centres combined**
 - A decrease of 30.0% in the submission of applications is noted between the two periods with subsequent reduction in certain court outcomes. The submission for 63(1) applications reduced by 23.1% while the submission for 63(A) declined by 36.5%.
 - There was an increase of 47.1% in remand detainees who paid bail without any condition.
 - Remand detainees with reduced bail increased by 3.2%, placement under correctional supervision reduced by 33.4%, warning with placement under non-custodial system increased by 9.2%.
 - The success in applications recorded is 1.7% and this may be regarded as insignificant to contribute meaningfully to the reduction in the overcrowding of remand detainees.

- **Comparison of 2018/2019 and 2020/2021 for all twelve correctional centres combined**

- A decrease of 59.4% in the submission of applications is noted between the two periods with subsequent reduction in all court outcomes. The submission for 63(1) dropped by 80.5% and 63A reduced by 48.1%.
- There is a decrease of 84.4% in remand detainees who paid bail without any condition.
- Remand detainees with reduced bail decreased by 56.6%, placement under correctional supervision declined by 72.8%, warning with placement under non-custodial system declined by 49.0%.
- There was no success recorded for the two above-mentioned periods as the net outcome was -54.7%. The reduction in submission of applications in 2020/2021 by more than 50% led to the cancellation of the success observed in 2018/2019.

- **Performance for Eastern Cape correctional centres**

- The number of applications submitted in the three periods i.e., 2018/19, 2019/2020 and 2020/2021 financial years recorded 2 305, 1 795 and 1 452 for the respective years. The success recorded for the respective three periods was 42.3%, 61.55% and 59.5% respectively. There were no 63(1) applications submitted during 2020/2021 financial year. The centres that submitted (631) applications during 2018/2019 were King Williams Town, East London Medium B and St Albans Medium A. The centres that submitted applications for 2019/2020 were Queenstown and St Albans Medium A.
- King Williams Town submitted applications over a period of four months and two months during 2018/2019 and 2020/2021 and did not submit any application in 2019/2020.
- East London Medium B submitted applications over a period of six months during 2018/2019 and no applications were submitted for other financial years.
- Queenstown submitted applications over a period of five months, six months and four months for the 2018/19, 2019/2020 and 2020/2021 financial years.

St Albans is the only centre that submitted applications monthly except for June 2018/2019 where data could not be found for all the four centres.

- East London Medium B did not record any success for the reported periods. Queenstown did not experience any success during 2018/2019 and 2019/2020. For King Williams Town there was evidence of success during 2019/2020 and 2020/2021.
 - The centre that recorded the highest percentage in successful applications was St Albans Medium A with the range of between 45.2% and 68.1% however did not record any placement under correctional supervision.
 - King Williams Town recorded success of 56.5% for 2018/2019.
 - Queenstown recorded success of 14.1% for 2020/2021 financial year.
 - Of the successes reported the following were observed:
 - King Williams Town recorded 100% achievement in placement under correctional supervision in 2018/2019 which was the only success area reported.
 - Queenstown recorded 55.6% and 44.4% in reduced bail and correctional supervision respectively for 2020/2021.
 - St Albans Medium A recorded all its achievement in reduced bail at a range of between 42.7% and 62.9% and placement on warning at a range of between 37.1 and 57.3%.
- **Eastern Cape correctional centres: Comparison between 2018/2019 and 2019/2020**
 - A decrease of 22.1% in the submission of applications is noted between the two periods with subsequent reduction in placement under correctional supervision. The submission for 63(1) and 63A application reflect a decline of 59.7% and 0.9% respectively.
 - There is an increase of more than 500% in remand detainees who paid bail without any condition.

- Remand detainees with reduced bail increased by 7.0%, placement under supervision by a correctional official declined by 100% and warning with placement under non-custodial system increased by 48.1%.
 - The success in applications increased by 17.5%.
- **Eastern Cape correctional centres: Comparison between 2018/2019 and 2020/2021**
 - A decrease of 37.0% in the submission of applications is noted between the two periods with subsequent reduction in certain court outcomes. There was no submission of 63(1) applications for 2021 financial year.
 - There is a decrease of 0.7% in remand detainees who paid bail without any condition.
 - Remand detainees with reduced bail decreased by 35.0%, placement under correctional supervision declined by 94.3%, and warning with placement under non-custodial system increased by 46.3%.
 - There was no success recorded as the net outcome for the two periods was -11.3%.
- **Performance for Gauteng correctional centres**
 - The number of applications submitted in the three periods i.e., 2018/19, 2019/2020 and 2020/2021 financial years recorded 4 387, 2 410 and 1 678 for the respective years. The success recorded for the respective three periods was 12.0%, 26.5% and 5.5% respectively. All the centres submitted 63(A) applications and 63(1) applications were not submitted during 2018/2019. The centres that submitted 63(1) applications were Kgoši Mampuru II Local in 2019/2020 and 2020/2021 and Modderbee in 2020/2021.
 - Kgoši Mampuru II Local submitted applications over a period of six months and ten months during 2018/2019 and 2020/2021. For 2019/2020 applications were submitted for all the twelve months.

- Modderbee submitted applications over a period of eight months during 2020/2021 financial year while for the other years the applications were submitted for all the twelve months.
 - Krugersdorp submitted applications over a period of eleven months during 2020/2021 financial year while for the other years the applications were submitted for all the twelve months.
 - Johannesburg Medium A submitted applications over a period of eleven months for 2018/2019 and nine months for 2019/202 and 2020/2021 financial years.
 - Kgoši Mampuru II Local did not record any success for all the period, while Johannesburg Medium A only registered a minimal success of 0.4% for 2020/2021 financial year.
 - The centre that recorded the highest percentage in successful applications in 2018/19 and 2019/2020 was Krugersdorp at 49.7% and 50.9% respectively. The centre recorded 7.1% success for 2020/2021.
 - Modderbee recorded 12.2%, 17.5% and 37.9% for the 2018/19, 2019/2020 and 2020/2021 respectively.
 - Of the reported successful applications, the following was observed:
 - Modderbee achieved success of 100% on cases placed on warning as they were the only reported area of success in 2018/2019.
 - Krugersdorp reported success in the reduction of bail with the percentage range of between 5.6% in 2020/2021 and 45.4% in 2019/2020 and placement of warning with the range of between 54.6% in 2019/2020 and 94.4% in 2020/2021.
- **Gauteng correctional centres: Comparison between 2018/2019 and 2019/2020**
 - A decrease of 45.1% in the submission of applications is noted between the two periods with subsequent reduction of 7.7% in placement on warning and more than 100% increase in bail reduction.
 - There was no placement on correctional supervision for the two periods. There was a decrease of 46.3% in the submission of 63(A) applications while there were no 63(1) applications submitted during 2018/2019.

- The success in applications recorded was 21.3%.
- **Gauteng correctional centres: Comparison between 2018/2019 and 2020/2021**
 - A decrease of 61.8% in the submission of applications is noted between the two periods with subsequent reduction in all court outcomes. The submission of 63A applications dropped by 62.4%.
 - Regarding the court outcomes, there is a decrease of 91.3% in remand detainees who paid bail without any condition while remand detainees with reduced bail decreased by 94.2%. Those placed on warning under non-custodial system decreased by 78.4%.
 - There was no success recorded as the net outcome for the two period was -82.4%.
- **Performance for Western Cape correctional centres**
 - The number of applications submitted in the three periods i.e., 2018/19, 2019/2020 and 2020/2021 financial years recorded 2 671, 2 348 and 670 for the respective years. The success recorded for the respective three periods was 38.6%, 35.4% and 28.5% respectively.
 - All the centres submitted 63(1) applications. George and Worcester Male did not submit 63(A) applications for all the periods while Pollsmoor RDF did not submit only for 2019/2020.
 - Allandale submitted applications over a period of eleven months and eight months during 2019/2020 and 2020/2021. For 2018/2019 applications were submitted for all the twelve months.
 - George submitted applications over a period of twelve months for all the periods.
 - Worcester Male submitted applications over a period of eleven months during 2018/2019 and for all the twelve months for 2019/2020 and 2020/2021.
 - All the centres reported successes. The centre that reported the highest success in 2018/2019 was George at 81.4% followed by Worcester Male at 57.4% and

Allandale at 37.0%. The centre with the least success was Pollsmoor RDF at 34.8%.

- The centre that reported the highest success in 2019/2020 was Worcester Male at 67.15% followed by George at 59.0% and Pollsmoor RDF at 38.7% with Allandale recording the lowest success at 17.4%.
- The centre that reported the highest success in 2020/2021 was George at 96.3% followed by Worcester Male at 36.5% and Allandale at 21.05% with Pollsmoor RDF recording the lowest success at 20.2%.
- Of the successes reported by centres in Western Cape, the following were observed:
 - Allandale reported success rate in the reduction of bail and placement on warning for 2018/19 with the respective performance of 57.4% and 42.7%. For 2019/2020 and 2020/2021 the success area reported was placement on warning with the respective percentage of 88.0% and 100%.
 - George reported success in the reduction of bail which ranged from 1.9% (2020/2021) to 3.1% (2018/2019) as well as in the category of placement on warning with the percentage range of 1.0% (2018/2019) and 13.5% (2020/2021).
 - Worcester Male recorded a success of 100% for correctional supervision for 2018/2019 and 2020/2021, which were the only areas of success reported. For 2019/2020 the centre reported the success of 97.8% for correctional supervision and 2.2% for placement on warning.
 - Pollsmoor RDF reported success in all the three outcome areas with placement on warning leading at 85.9% for 2020/2021 followed by 85.1% achievement in 2019/2020 and 79.6% in 2018/2019. The highest success for placement under supervision was 8.6% for 2019/2020 followed by 8.4% for 2018/2019 and 2.17% for 2020/2021. The reduction of bail category had a success rate of 11.0%, 6.4% and 12.0% for the respective years i.e., 2018/2019, 2019/2020 and 2020/2021.

- **Western Cape correctional centres: Comparison between 2018/2019 and 2019/2020**

- A decrease of 12.1% in the submission of applications is noted between the two periods with subsequent reduction in all court outcomes.
- The submission for 63(1) dropped by 6.4% and 63A dropped by 35.6%.
- Remand detainees with reduced bail decreased by 80.1%, placement under supervision by a correctional official declined by 13.4% and warning with placement under non-custodial system decreased by 1.5%.
- Remand detainees who paid bail with no condition reduced by 40.5%.
- There was no success recorded as the net outcome for the two period was -19.3%.

- **Western Cape correctional centres: Comparison between 2018/2019 and 2020/2021**

- A decrease of 74.9% in the submission of applications is noted between the two periods with subsequent reduction in all court outcomes. The submission of 63(1) and 63A applications dropped by 71.6% and 88.7% respectively.
- Regarding the court outcomes, there is a decrease of 93.2% in remand detainees who paid bail without any condition while remand detainees with reduced bail declined by 93.7% and those placed under supervision decreased by 66.8%. Those placed on warning decreased by 83.1%.
- There was no success recorded as the net outcome for the two period was -81.5%.

7.3.3 CHALLENGES EXPERIENCED REGARDING THE IMPLEMENTATION OF BAIL REVIEW

The challenges experienced by the six centres are summarised in the table below.

Table 7.10: Challenges experienced regarding the implementation of bail review

| Participating Centres | Challenges experienced regarding the implementation of Bail review |
|----------------------------------|---|
| Kgoši Mampuru II Local (Gauteng) | <ul style="list-style-type: none"> • The 63(1) list is utilised to process 63A applications. • The 63A list could not be retrieved from the system at the |

| Participating Centres | Challenges experienced regarding the implementation of Bail review |
|---------------------------------|--|
| | <p>time of the interview though there were variables appearing as headings in different columns.</p> <ul style="list-style-type: none"> • There is no feedback received most of the time. • There are no requisitions received for bail review court appearance. |
| Modderbee (Gauteng) | <ul style="list-style-type: none"> • Lengthy process of determining the qualifying remand detainees • The certification document which is a response from the senior prosecutor is utilised as feedback with the belief that the court would take the decision as per proposal made by the prosecutor. |
| Krugersdorp (Gauteng) | <ul style="list-style-type: none"> • Manual filtering of the qualifying remand detainees since the generated list includes the names of previously submitted applications. • Process is slow for getting feedback. • Feedback received is not relatable to the submitted application such as non-return from court is not supported by any reason. • Requisitions are not received by the correctional centre. |
| Johannesburg Medium A (Gauteng) | <ul style="list-style-type: none"> • The system takes a long time to run the list of qualifying remand detainees. The list includes all the remand detainees because there is no provision for capturing the submitted applications after the acknowledgement of receipt by courts. • Feedback from courts is rarely received. • No requisitions are received by the correctional centre. |
| Worcester Male (Western Cape) | <ul style="list-style-type: none"> • Some courts do not provide feedback. • The head of the centre handles the matter at the case flow meetings. |
| Pollsmoor RDF (Western Cape) | <ul style="list-style-type: none"> • There is no turnaround time for feedback and sometimes the centre waits too long to receive feedback. • There are no formal responses regarding the submitted applications. • Requisitions are seldom received. |

The common challenges experienced by sampled correctional centres in Gauteng region in implementing bail review are the inadequacy of the electronic support system to determine qualifying remand detainees and the lack of feedback from courts. The system generated list for 63A applications is not aligned with the legislative requirements which entails the exclusion of the remand detainees charged with schedule 7 crimes. Furthermore, the participants focused on submission of applications for remand detainees with bail of R1 000 and below and this conflicts with the prescribed requirements. The exclusion which is aligned with bail amounts applies to the following crimes as outlined in the Criminal Procedure Act 51 of 1977:

- Robbery, other than a robbery with aggravating circumstances, if the amount involved in the offence does not exceed R20 000,00;
- Theft, if the amount involved in the offence does not exceed R20 000,00; and
- Any offence relating to extortion, fraud, forgery or uttering if the amount of value involved in the offence does not exceed R20 000,00 (Republic of South Africa, 1977:307-308).

The above-mentioned amounts are not reflected in the warrant of detention therefore all the remand detainees that are charged with these crimes, are supposed to be referred to court through the relevant prosecutors. The latter verifies the charges including the amounts of bail for determination of the qualifying remand detainees so that only the applications of qualifying remand detainees are submitted for consideration by the relevant courts.

The participants in Gauteng did not understand the qualifying criteria for 63(1) applications and the developed solution does not provide adequate support as it did not reflect 63(1) under court referrals. The analysis of the tool for the sampled centres in Gauteng revealed the lack of submission of 63(1) applications in 2018/2019 and Johannesburg and Krugersdorp did not submit any 63(1) applications from 2018/2019 to 2020/2021. The researcher discovered that from the five participants that process court applications, only one had formal training. The previously trained officials had left due to several factors such as retirement, promotion, and horizontal transfers. The latter form part of the rotation of employees to different core business areas within the correctional centre and the management area. At the end of each interview with the officials the correct process was discussed with the participants and clarity was provided to questions they posed. Furthermore, the participants were provided with the

presentation on bail review and the relevant protocol which were emailed to them to improve their understanding of the policy.

7.4 LOCAL CASE FLOW STRUCTURES

The local case flow structures are the judicial led committees referred to as District Efficiency Enhancement Committees. They are established to operate as a monitoring mechanism for court cases by including all the relevant role players such as representatives from the National Prosecuting Authority, SAPS, Legal Aid South Africa, Correctional Services, Department of Health and the Department of Social Development. The Department of Correctional Services is represented by officials from correctional centres.

The questions on case flow issues were included in the questionnaire on 49G and bail review.

7.4.1 Summary of local case flow structures and attendance by the Department of Correctional Services

The local case flow structures are aligned with the district model. Table 6.39 represents the summary of cluster structures and the representatives from the DCS that attend the case flow meetings. The Centre Coordinator of Corrections and the Divisional Head Case Management Administration from Kgoši Mampuru II Local attend meetings organised by six case flow committees.

The Manager of Corrections and the Court Officials from Modderbee attend the main cluster meetings which constitute representatives from the sub-cluster committees as well the six sub-cluster meetings.

The Head of the Correctional Centre and the Area Commissioner of Krugersdorp attend meetings organised by the West Rand cluster. The Head of the Correctional Centre, the Centre Coordinator Corrections and the Divisional Head of Case Management Administration from Johannesburg Medium A attend meetings organised by four clusters.

The Area Coordinator of Corrections from Worcester Male attends meetings organised by one cluster structure referred to as Worcester Efficiency and Enhancement Committee. The Head of the Correctional Centre and the Centre Coordinator Corrections from Pollsmoor remand detention facility attend meetings organised by seven clusters.

Table 7.11: Local case flow structures and attendees from the Department of Correctional Services

| Participating Centres | Local case flow structure meeting attended by the representatives of DCS at the centre level | Officials that attend the meetings |
|--|---|---|
| Kgoši Mampuru II Local (Gauteng) | <ul style="list-style-type: none"> • Mamelodi cluster • Pretoria Regional Court Cluster • Pretoria North Cluster • Atteridgeville cluster • Cullinan Cluster • Soshanguve cluster | <ul style="list-style-type: none"> • Centre Coordinator Corrections • Divisional Head Case Management Administration |
| Modderbee (Gauteng) | <p>Main Cluster:</p> <ul style="list-style-type: none"> • Ekurhuleni <p>Subclusters:</p> <ul style="list-style-type: none"> • Springs • Delmas • Daveyton • Benoni • Thembisa • Kempton Park | <ul style="list-style-type: none"> • Manager Corrections • Court Official |
| Krugersdorp (Gauteng) | <ul style="list-style-type: none"> • West Rand case flow | <ul style="list-style-type: none"> • Head of the correctional centre • Area Commissioner |
| Johannesburg Medium A (Gauteng) | <ul style="list-style-type: none"> • Soweto Cluster • Johannesburg Cluster • Randburg Cluster • Division High Court Cluster | <ul style="list-style-type: none"> • Head of the correctional centre • Centre Coordinator Corrections • Divisional Head Case Management Administration |
| Worcester Male (Western Cape) | <ul style="list-style-type: none"> • Efficiency Enhancement Committee (District) | <ul style="list-style-type: none"> • Area Coordinator Corrections |
| Pollsmoor Remand Detention Facility (Western Cape) | <ul style="list-style-type: none"> • Worcester cluster • Ceres cluster • Wolseley cluster | <ul style="list-style-type: none"> • Head of the correctional centre • Centre Coordinator |

| Participating Centres | Local case flow structure meeting attended by the representatives of DCS at the centre level | Officials that attend the meetings |
|------------------------------|--|---|
| | <ul style="list-style-type: none"> • Laingsburg cluster • Robertson cluster • Bonnievale cluster • Montagu cluster | Corrections |

Findings relating to the meetings at the local case flow structures are presented below:

- Meetings attended by officials from Kgoši Mampuru II Local are held monthly except for the Pretoria Regional Court Cluster that held its meetings bi-monthly.
- Meetings attended by officials from Modderbee are held monthly for each sub-cluster and one monthly meeting for the main cluster.
- The West Rand cluster hold its meeting on a quarterly basis.
- Cluster meeting attended by Johannesburg officials are held monthly except for the high court cluster which hold its meeting on a quarterly basis.
- The Worcester Efficiency Enhancement Committee holds its meetings on a quarterly basis.
- Meetings attended by Pollsmoor remand detention facility officials are held either bi-monthly or quarterly.
- Most local cluster structures could not hold meetings during 2020/2021 financial year because of adherence to Covid-19 pandemic restrictions. In the absence of the cluster meetings, issues were handled by communicating with courts telephonically and through WhatsApp and emails, and this was equated to benefits for participating in cluster structures by participants from Modderbee.
- Benefits cited by Kgoši Mampuru II Local include:
 - The creation of the platform for informal discussion with prosecutors in relation to several issues such as factors that contribute to delays in finalising cases e.g., delays in getting DNA evidence and changing of lawyers by remand detainees and clarity on the prescribed process for submitting 49G applications. The latter helped in dealing with the expectation that the correctional centre

should submit a formal application which had to be presented and not a one-page application form.

- Where a representative of the DCS attends case flow meetings there is better cooperation between the centre and the court and problems are resolved quickly and informally. Some problems are handled telephonically therefore one does not need to wait for a formal case flow meeting.
- Some issues are discussed telephonically such as remand detainees not brought to court, verification of the warrant of liberation, reminder of the court to take note of the further charges where the centre omitted to attach the G344 in the release list handed to the SAPS official. The G344 is a form created by the DCS to inform the court that remand detainee has further charge(s) with case related information including the next court dates.
- Cluster participation allows for sharing of information on reasons for delay causes in cases of remand detainees whose applications for 49G were submitted to court. Pretoria Central court provides Kgoši Mampuru II Local with such information. Some of the reasons extracted from the records received by the centre are as follows:
 - Unavailability of witnesses in court;
 - Lack of court attendance by all co-accused on different dates set by the court;
 - Changing of lawyers among co-accused;
 - Requirement for further evidence;
 - Delays in securing legal representation for some co-accused;
 - Temporary closure of court due to implementation of Covid-19 containment measures following reporting of a positive case from any of the stakeholders' side;
 - Lack of readiness on the side of the legal representatives;
 - Late arrival in court;
 - Absence by various stakeholders such as the accused, presiding officer, legal representatives, prosecutor and interpreter for various reasons such as sickness, writing examinations, accused with multiple court appearances, clash in scheduling court appearance dates and accused not brought from the correctional centre;

- Changing of lawyers leading to creation of a period for transferring of transcript to the new lawyer;
 - Death of any of the relevant stakeholders such as the legal representative and the co-accused; and
 - Request for separation of trials.
- The researcher shared the policy documents on bail review and 49G processes with participants for empowering them since they were not so much informed of the process. They were further advised to share these documents at local case flow structures with relevant stakeholders for developing a common understanding on processes to follow.

7.4.2 HANDLING THE CHALLENGE OF OVERCROWDING AT THE LOCAL CASE FLOW STRUCTURES

The participants were requested to share information on how the challenge of overcrowding is handled at the local case flow structures and the summary on provided responses appears in Table 7.12 below:

Table 7.12: Handling of overcrowding at the local case flow structures

| Participating Centres | Handling of overcrowding at the local case flow structures |
|----------------------------------|--|
| Kgoši Mampuru II Local (Gauteng) | <ul style="list-style-type: none"> • Discussion is more on applications submitted by the centre to courts for 49G and bail review. • Other areas discussed are times for bringing remand detainees back to the centre, issues relating to late arrival in court and late pick-up from the centre, remand detainees with further charges and those detained for longer than three months and overcrowding to a lesser extent. |
| Modderbee (Gauteng) | <ul style="list-style-type: none"> • The DCS areas are included in the standardised agenda and these are overcrowding, 63A referrals, 49G referrals and Audio-Visual Remand. |
| Krugersdorp (Gauteng) | <ul style="list-style-type: none"> • Courts report on submissions received from the DCS on 49G and 63 applications. • The centre representative prepares notes on challenges relating to overcrowding, 63 applications and 49Gs. |

| Participating Centres | Handling of overcrowding at the local case flow structures |
|--|--|
| Johannesburg Medium A (Gauteng) | <ul style="list-style-type: none"> • There is no specific focus on overcrowding, it is indirectly discussed through focusing on 49G, Bail protocol and section 105 (plea bargain cases). • 49G and 63A statistics are shared. • Overcrowding is not given a priority since the courts are not measured on the indicator. |
| Worcester Male (Western Cape) | <ul style="list-style-type: none"> • The discussion is on strategies for handling overcrowding such as 63A and 49G. • The challenge often raised by the DCS representatives is the lack of providing feedback on cases referred for 49G and 63A. • Overcrowding at the cluster meetings for the Magistrates' court, is not given proper consideration as the court is not measured on this given issue. |
| Pollsmoor Remand detention Facility (Western Cape) | <ul style="list-style-type: none"> • The head of centre provides detail report to magistrate and other role players about overcrowding totals including bail lists and list with the number of court appearances. • Other areas discussed are section 49G cases, section 63(1) and sec 62(f) placements. |

The findings on handling of overcrowding at the local case flow structures reveal that 'overcrowding' is not directly discussed, however the strategies for reducing overcrowding are discussed by sharing information on applications submitted by the correctional centres in relation to 49G and bail review. The discussion on statistics is in line with the areas for inclusion in case flow meetings as outlined in the document titled "A Practical guide: Court and case flow management for Regional and District criminal courts" (Department of Justice and Constitutional Development, 2010:11). Since case flow management is supposed to contribute to the reduction of the remand detainees, the discussion of statistics on awaiting trials and case backlogs including related issues form part of the areas for discussion at case flow management meetings.

7.4.3 FOCUS GROUP WITH HEADS OF CENTRES

The focus group session was held with six head of centres from Gauteng region for validation of the responses provided by the participants regarding bail review and 49G applications as well as bed space related issues. The heads of centres conceded that they are informed of the challenges raised by the participants especially the lack of feedback regarding submitted applications. They stated that since they attend the local case flow meetings, they also raised the concerns at the meetings; however, the issues are not given priority attention since overcrowding is not the indicator for the courts.

The participant from Kgoši Mampuru II Local remand detention facility shared that there is a good working relationship between the centre and the Pretoria Regional court as such a prosecutor has been assigned to assist with the bail review applications. The centre further provides the court with the namelist of remand detainees who have been in detention from 21 months and longer and the list assists the court to monitor cases.

Regarding the upgrades and renovations which include bed space areas, the concern raised by one of the participants was that when there are disputes regarding contracts the head of the centre is not kept informed of the developments and it takes longer to implement the upgrades thus leading to elongated period of losing bed spaces.

7.5 POLICE BAIL

Police bail falls among the criminal justice system strategies implemented to reduce the overcrowding of remand detainees. It is applied before the accused appears in court and is provided for in section 59 of the Criminal Procedure Act 51 of 1977 (Republic of South Africa, 1977:68). The South African Police Service has an implementation policy referred to as the 'National Instruction 3: Bail and the release of persons' which outlines the processes to be followed regarding placement of arrested and accused persons on police bail (South African Police Service, 2016).

The researcher developed two questionnaires with the aim of determining the police bail process and its effectiveness in reducing the overcrowding of remand detainees. The first questionnaire was sent to the participants who were recruited telephonically, through the emails and WhatsApp messages from the police stations sampled to participate in the study. The questionnaire covered the following areas:

- Guidelines on police bail;

- Criteria and authorisation;
- The role of the investigating officer;
- Process followed regarding the confirmation of address;
- Reasons for denial of bail;
- Trends in giving police bail;
- Cases opened in the last two years;
- Bail conditions given to accused when placed on police bail;
- The interval between granting the police bail and court appearance;
- Common breaches and measures applied;
- Court notification regarding police bail;
- Marketing of police bail; and
- Challenges regarding police bail.

The second questionnaire was utilised for the focus group session which was conducted through face to face interviews with four participants from the Pretoria Central Police Station. All the focus group participants were actively involved in detective services which include conducting investigations.

Police stations were randomly selected from the list of large police stations that implement the police bail policy. The sampled police stations appear in Table 7.13 below.

Table 7.13: Sampled police stations per province

| Province | Police stations | Responded/Not responded |
|-----------------|--------------------------------|--------------------------------|
| Gauteng | Pretoria Central | Responded |
| | Mamelodi East | Did not respond |
| | Johannesburg Central | Responded |
| Eastern Cape | Mount Road (Port Elizabeth) | Did not respond |
| | East London | Did not respond |
| | Mthatha | Did not respond |
| Western Cape | Cape Town Central | Responded |
| | Khayelitsha | Did not respond |
| | Nyanga | Did not respond |

The above-mentioned table reflects that, of the nine sampled police station, responses were only received from three police stations.

Face to face interviews were conducted with two participants from the Pretoria Central police station and Covid-19 containment measures were applied such as wearing masks and adhering to physical distancing principles. The electronically completed questionnaires were received from two participants i.e., Johannesburg Central and Cape Town Central police stations. An additional participant was recruited from the head office, i.e., the visible policing unit of SAPS for validation of certain findings since the unit is responsible for policies relating to police bail. The background of the participants is presented in Table 7.14 below.

Table 7.14: Police Bail: Background of participants

| Police Stations | Position Held and Age Category | Period Spent in the Detective Section | Experience in SAPS |
|------------------------------|---|--|---------------------------|
| Pretoria Central | Station Commander (Management - Detective Services) >45-55 | >2 years to 5 years | 27 years |
| Pretoria Central | Administration commander (Management- Detective Services) >45 to 55 | >6 months to 2 years | >30 years |
| Johannesburg Central | Detective Services >55 to 60 | >6 months to 2 years | >30 years |
| Cape Town Central | Acting Section Commander (Detectives Services) >55 to 60 | >10 years | >30 years |
| Head Office Visible Policing | Section Commander: Custody Management (Colonel) >55 to 60 | >10 years | >30 years |

All the participants were above the age of 45 years and their experience in detective services ranged from more than six months to more than ten years. The total number of participants was five and of these participants, three have been employed in SAPS for more than 30 years.

7.5.1 GUIDELINES FOR POLICE BAIL AND APPLICABLE OFFENCES

The summary on responses provided by the participants on guidelines on police bail including applicable offences is presented in Table 7.15 below.

Table 7.15: Guidelines and applicable offences

| Police Stations | Are the applicable offences included in the guidelines for police bail? | Comment |
|----------------------|---|--|
| Pretoria Central | Yes | Follow up with head office since there was no list provided |
| Johannesburg Central | Yes | |
| Cape Town Central | Yes | |
| Head Office | Yes | Offences are included in the National Instruction on Police Bail |

Participants from the police stations stated that there are guidelines however they did not specify the offences. The participant from head office confirmed that the applicable offences are included in the National Instruction on police bail though he could not remember all the specific crimes and the schedule. The crimes that qualify for police bail are the schedule 7 crimes i.e., those that are utilised for determination of qualifying remand detainees for processing of bail review applications in correctional centres in line with section 63A of the Criminal Procedure Act of 51 of 1977 (attached as Annexure H).

7.5.2 CRITERIA AND AUTHORISATION FOR GIVING POLICE BAIL

The summary on the criteria for police bail appears in Table 7.16 below.

Table 7.16: Criteria for giving police bail

| Police Stations | Criteria for giving police bail |
|------------------|---|
| Pretoria Central | <ul style="list-style-type: none"> • Profile report of the accused. • Check if the accused is not "wanted". • Good standing. • Charged on two or more cases. • Check outstanding cases. • Interview witnesses for determination of the risk such as |

| Police Stations | Criteria for giving police bail |
|------------------------|---|
| | possibility of interfering with the case. |
| Johannesburg Central | <ul style="list-style-type: none"> • Accused charged with minor offences. • Satisfaction by police that the accused will attend court. |
| Cape Town Central | <ul style="list-style-type: none"> • The accused must have no record. • Crime must not be of a serious nature. |
| Head Office | <ul style="list-style-type: none"> • It depends on the nature of the offence. • Bail amounts differ from district to district. • The National Prosecuting Authority issue guidelines in certain districts for police bail. |
| Focus Group | The question was not discussed. |

The criteria include determination of the profile by conducting a background check, interviewing of the witnesses for establishment of possibility of the risk of interfering with the case, satisfaction that the accused will attend court, nature of crimes i.e., the crimes must not be of a serious nature and the accused must not have criminal record. The nature of offences was cited by three participants.

7.5.3 AUTHORISATION FOR GIVING POLICE BAIL

Table 7.17 provides a summary on responses provided on authorisation for police bail.

Table 7.17: Authorisation for giving police bail

| Police Stations | Authorisation for Police Bail |
|------------------------|--|
| Pretoria Central | <ul style="list-style-type: none"> • Prosecutor on standby and the detective officer communicate and if both parties agree bail is granted. |
| Johannesburg Central | <ul style="list-style-type: none"> • Officer from the rank of Captain. |
| Cape Town Central | <ul style="list-style-type: none"> • The Community Service Centre Commander. |

| Police Stations | Authorisation for Police Bail |
|------------------------|---|
| Head Office | <ul style="list-style-type: none"> Any police official [of] or above the rank of non-commissioned officer. |
| Focus Group | <ul style="list-style-type: none"> Commissioned Officer from the rank of the Captain. |

Regarding the authorisation for police bail, in Pretoria Central the participant stated that the prosecutor and the detective should both reach an agreement. The focus group participants and Johannesburg Central alluded that bail is approved by officers from the rank of the Captain. The head office participant declared that bail is approved by any police official above the rank of non-commissioned officer. In Cape Town Central police station bail is approved by the Community Services Centre Commander who is Sergeant or in a higher position.

In terms of the National Instruction 3, the Sergeant is authorised to consider the granting of police bail before the first court appearance and has an obligation to consult with the investigating officer before deciding to release the accused (South African Police Service, 2016:6). The non-commissioned officer level consists of the Warrant Officer, the Sergeant and the Constable, while the commissioned officer level constitutes the Captain and the Colonel (South African Police Services, 2020). While the National Instruction prescribes that police bail is approved by the non-commissioned officer, the approval by the Captain may still be in line with the policy. The outstanding process may be the alignment of the policy with the revised rank structure.

7.5.4 THE ROLE OF THE INVESTIGATING OFFICER IN POLICE BAIL

When consideration for giving bail is entertained, the commissioned officer who is authorised to give bail at the police station must consult the investigating officer. The latter may oppose bail if he or she believes that release will not be in the interest of justice. The list of interest of justice factors as extracted from the Criminal Procedure Act 51 of 1977 and Criminal Matter Amendment Act 12 of 2021 is included in chapter 4 (table 4.1).

The role of the investigating officer as per responses provided by the three police stations is summarised in Table 7.18.

Table 7.18: The role of the investigating officer in police bail

| Police Stations | The Role of the Investigating Officer in Police Bail |
|------------------------|---|
| Pretoria Central | <ul style="list-style-type: none"> • Ensures that profiling of the accused is done. |
| Johannesburg Central | <ul style="list-style-type: none"> • Completion of the paperwork when the investigating officer is satisfied that the suspect is suitable for bail. |
| Cape Town Central | <ul style="list-style-type: none"> • Must profile the accused before releasing him/her on bail. • Confirm that the accused is not wanted. • Conduct Person Identification Verification Application (PIVA). |

According to a participant from Pretoria Central the investigating officer ensures that profiling of the accused is done while the participant from Cape Town police station stated that the investigating officer profiles the accused before releasing him or her on bail. Additional roles stipulated by the participant from Cape Town Central police station are the confirmation of whether the accused is wanted or not and performance of identity verification known as PIVA. In Johannesburg Central the participant recorded that the investigation officer is responsible for completion of paperwork when he or she is satisfied that the suspect is suitable for bail.

7.5.5 ADDRESS CONFIRMATION

The process of address verification conducted by the three police stations is summarised in Table 7.19 below.

Table 7.19: Address confirmation

| Police Stations | Process of address confirmation |
|------------------------|--|
| Pretoria Central | <ul style="list-style-type: none"> • The Detective books the accused. • Visits the family members to interview them. • Books the accused for further investigation. • Address confirmation is crucial for dealing with abscondment issues and breach of bail conditions. |
| Johannesburg Central | <ul style="list-style-type: none"> • The member verifies the address physically and collects documents that proves that the accused stays at the address. |
| Cape Town Central | <ul style="list-style-type: none"> • The investigating officer verifies accused addresses before released on bail. |
| Head Office | <ul style="list-style-type: none"> • By visiting the suspect or accused person's place of residence and place of work. |

In the Pretoria Central police station, the detective conducts a physical visit for interviewing the family and this was supported by the participant from head office who further added that the place of work can be visited in addition to the residential place. The participant from Johannesburg Central cited that the member verifies the address physically and collects documents that prove that the accused stays at the address. In Cape Town Central police station, the completed interview did not specify the process other than mentioning that investigating officer verifies the addresses of the accused before release on bail.

7.5.6 REASONS FOR REFUSAL OF POLICE BAIL

The participants were requested to provide reasons for refusal of bail and the summary of responses is presented in Table 7.20.

Table 7.20: Reasons for denial of police bail

| Police Stations | Reasons Often Cited When Police Bail is Denied |
|------------------------|--|
| Pretoria Central | <ul style="list-style-type: none"> • Warrant of not appearing in court in previous cases. • No physical address. • Possibility of interference with investigation through contacting witnesses. |
| Johannesburg Central | <ul style="list-style-type: none"> • Certain categories of crimes committed does not permit police bail. • If verification of needed information is not provided. |
| Cape Town Central | <ul style="list-style-type: none"> • Accused has pending cases. • Accused is wanted (warrant of arrest). • Accused has no fixed address. |
| Head Office | <ul style="list-style-type: none"> • If the arrested person released on bail will endanger the safety of the public or any particular person or commit a schedule 1 offence. • If released on bail will attempt to evade his/her trial. • If released on bail will attempt to influence or intimidate witnesses or conceal or destroy evidence. • Will undermine or jeopardize the objectives or the proper functioning of the Criminal Justice System. • Is there a likelihood that the release will disturb public order or undermine the public peace and security? • When an arrested person committed Schedule 1,2,5,6, and 7 offences [schedule 7 crimes qualify for consideration under |

| Police Stations | Reasons Often Cited When Police Bail is Denied |
|-----------------|--|
| | police bail]. |

The participant from the Pretoria Central police station cited three reasons which are the warrant of not appearing in court in previous cases, lack of physical address and the possibility of interference with the investigation. The Johannesburg Central participant recorded two reasons which are the nature of crimes which does not permit police bail and lack of provision of required information through the verification process.

In Cape Town Central police station, the interview record received documented three reasons which are pending cases: accused who is wanted; where the warrant of arrest has been issued; and the lack of fixed address. The head office participant cited several factors including the possibility of endangering the safety of the public; committing schedule 1 crime; the risk relating to influencing or intimidation of the witness; and concealment or destruction of the evidence. Other schedules of crimes cited are 2, 5, 6 and 7. The list of crimes included in schedules 1, 2 and 5 are treason, murder and rape. Schedule 6 includes planned or premeditated murder, rape and the previous history of conviction for crimes listed under schedule 5 and 6.

7.5.7 TREND REGARDING THE GIVING OF POLICE BAIL IN 2019/2020 AND 2020/2021)

The participants were requested to provide information on the number of accused persons that were given bail in the past two years i.e., 2019/2020 and 2020/2021. The participants were further advised to provide information for 2018/2019 if the 2020/2021 information was not available at the time of completing the questionnaire. This information would have been utilised to determine the percentage of giving police bail against the arrests reported under the financial years. Information reflecting trends on giving police bail was only provided by Johannesburg Central police station and for the periods 2018/2019 and 2019/2020. For 2018/2019 and 2019/2020, the number of persons that were given police bail were 846 and 439 respectively. The figures provided by Johannesburg Central police station reflect a reduction of 48.10% in giving police bail from 2018/2019 to 2019/2020.

7.5.8 CASES OPENED IN THE LAST 2 YEARS IN 2019/2020 AND 2020/2021)

The question on cases opened in the last two years was included in the interview guide for determination of the percentage of accused placed on police bail against the cases opened at the police station. Pretoria Central did not provide any information while Johannesburg Central and Cape Town Central reported 28 404 and 28 423 cases respectively. The information provided was not aligned with financial years therefore the percentage of giving police bail could not be determined.

7.5.9 BAIL CONDITIONS APPLIED TO POLICE BAIL CASES

The participants were requested to provide or list bail conditions that are given to the accused placed on bail by police. The summary on bail conditions appears in Table 7.21.

Table 7.21: Bail conditions

| Police Stations | Bail Conditions Given to the Accused Placed on Police Bail |
|------------------------|--|
| Pretoria Central | <ul style="list-style-type: none">• Attendance of court. |
| Johannesburg Central | <ul style="list-style-type: none">• To attend court on the next court date and if there any reasons not to attend, it must be said to the officer. |
| Cape Town Central | <ul style="list-style-type: none">• To report to court on an agreed court date. |
| Focus Group | <ul style="list-style-type: none">• Report for example 3 times per week at the police station closest to the residential place of the suspect. |

Participants from the three police stations cited court attendance as the bail condition while the focus group mentioned the reporting at police station closest to the residential place of the accused at specified times. According to the National Instruction (South African Police Services, 2016:7), no bail conditions may be imposed other than the details pertaining to court appearance such as date, time and place.

7.5.10 INTERVAL BETWEEN THE GRANTING OF POLICE BAIL AND COURT APPEARANCE

The participants were requested to provide information on the interval between the granting of police bail and court appearance. This was for determination of the boundaries for police bail before and after court appearance.

The summary of responses provided by all the participants from the police stations and the focus group appear in Table 7.22.

Table 7.22: The interval between the granting of police bail and court appearance

| Police Stations | The Interval Between the Granting of Police Bail and Court Appearance |
|------------------------|---|
| Pretoria Central | <ul style="list-style-type: none"> • Depends on the charges. • The accused must appear in court within 14 days. |
| Johannesburg Central | <ul style="list-style-type: none"> • Less than a month. |
| Cape Town Central | <ul style="list-style-type: none"> • 1 to 3 months. |
| Focus Group | <ul style="list-style-type: none"> • Obligation to appear in court within 48 hours is critical when giving police bail. This may not apply over weekends (Friday arrests). |

The participant from the Pretoria Central police station indicated that the interval depends on charges and the accused must appear in court within 14 days. The participant from Cape Town Central cited the interval that ranges between one and three months while Johannesburg Central police station recorded an interval of less than a month. The focus group participants argued that it is obligatory to appear in court within 48 hours when giving police bail except when the arrest occurs on Fridays and over weekends. In terms of the National Instruction (South African Police Service, 2016:8) police bail remains in force until the accused appears in court and if there are no amendments on bail set by police the police bail will remain in force.

7.5.11 COMMON BREACHES AND MEASURES APPLIED

Participants were requested to provide the common breaches for those placed on bail. Breaches of bail condition may include those set by the courts since police bail is only limited to setting conditions on court appearance information in terms of date, time and place. Table 7.23 represents the summary of common breaches and measures applied when set conditions have not been adhered to.

Table 7.23: Common breaches and measures applied

| Police Stations | Common Breaches for Those Placed on Bail | Measures Apply if the Police Bail Conditions Are Breached |
|------------------------|---|--|
| | | |

| | | |
|----------------------|--|--|
| Pretoria Central | <ul style="list-style-type: none"> • Non-attendance of court by the accused on the date stipulated in the SAP 496 [warning to appear in court]. | <ul style="list-style-type: none"> • Issuing of the warrant of arrest. • SAPS applies to court for the warrant of arrest (J50) to be issued by the magistrate. • The J50 is completed by the police officials, the prosecutor and the magistrate. |
| Johannesburg Central | <ul style="list-style-type: none"> • Non-attendance. • Medical reasons. | <ul style="list-style-type: none"> • A warrant for arrest of the suspect is then asked from court. |
| Cape Town Central | <ul style="list-style-type: none"> • Do not come to court. | <ul style="list-style-type: none"> • There is no condition for police bail. • The accused must be at court on a certain date. |
| Focus Group | <ul style="list-style-type: none"> • Failure to appear in court • Interference with investigation through offering bribes, intimidation and threats to the families. | <ul style="list-style-type: none"> • The question was not discussed. |

All the participants cited the non-attendance of court as the common breach. The measure applied in Pretoria Central and Cape Town police stations is the issuing of the warrant of arrest through following a prescribed process. The process was not outlined. According to Cape Town Central police station, there is no bail condition associated with police bail since the accused is expected to be in court on a specified date.

7.5.12 COURT NOTIFICATION OF POLICE BAIL

The release of accused persons on police bail entails providing them with information relating to court appearance. The accused persons are issued with receipts referred to as J398 upon payment of bail and these receipts have details on court appearance. The participants were requested to give information on how the court is notified of the police bail.

The court notification processes implemented as per responses provided by the participants appear in Table 7.24.

Table 7.24: Court notification

| Police Stations | Court Notification of the Police Bail |
|------------------------|--|
| Pretoria Central | <ul style="list-style-type: none"> • Use of docket. • The detective takes the docket to court for first court appearance. |
| Johannesburg Central | <ul style="list-style-type: none"> • A standby prosecutor is notified and the control prosecutor will be informed of the next court date. |
| Cape Town Central | <ul style="list-style-type: none"> • A prescribed form is utilised. |
| Focus Group | <ul style="list-style-type: none"> • Register is given to the clerk of court. |

The participant from the Pretoria Central police station stated that the docket is taken by the detective to court for first court appearance. Johannesburg Central police station recorded that a standby prosecutor is notified and the control prosecutor is informed of the next court date. The participant from Cape Town Central contended that a prescribed form is utilised while the focus group participants declared that the register is given to the clerk of court.

7.5.13 MARKETING OF POLICE BAIL

The participants were requested to respond on how police bail is marketed. Table 7.25 represents the responses provided by the participants regarding the marketing of police bail.

Table 7.25: Marketing of police bail

| Police Stations | Marketing of Police Bail |
|------------------------|---|
| Pretoria Central | <ul style="list-style-type: none"> • Not marketed. |
| Johannesburg Central | <ul style="list-style-type: none"> • It is not marketed but during the process of giving constitutional rights a suspect is informed that he/she can apply for bail at any time. |
| Cape Town Central | <ul style="list-style-type: none"> • There is no marketing done. • Bail is granted according to the Criminal Procedure Act 51 of 1977. |
| Focus Group | <ul style="list-style-type: none"> • No marketing of the police bail. |
| Head Office | <ul style="list-style-type: none"> • Not marketed. |

All the participants declared that police bail is not marketed, however, the Johannesburg participant recorded that the suspect is informed that he or she can apply for bail at any time. While police bail is one of the options available for the accused who is arrested and charged

for schedule 7 crimes, the lack of marketing information on the option may lead to the increase in the number of accused persons that are sent to detention after the first court appearance. The lack of reporting on police bail makes it difficult to determine trends on its use though it is cited as one of the strategies to reduce overcrowding of remand detainees.

7.5.14 CHALLENGES REGARDING POLICE BAIL

The participants including the focus group raised several challenges regarding police bail. Of the challenges raised, those that contribute to denial of police bail and subsequent imprisonment and overcrowding in correctional centres after the first court appearance are as follows:

- Difficulties in verifying and confirming address given by the suspects;
- Lack of a fixed address;
- Inability to pay bail by the accused; and
- Failure to come to court by the accused.

The verification of address by the investigating officer must be done for determination of the correctness of the information provided by the accused including the identification information such as the names and surname (South African Police Service, 2016:6-7). Some accused were found not to have fixed addresses therefore could not be placed on bail since it would be difficult to trace them when they do not honour the court appearance.

Inability to pay bail by the accused is related to unemployment since some of the accused are not in any formal employment which provides them income. Failure to come to court by the accused who are placed on police bail leads to invoking of the request for issuing of the warrant of arrest by the court and this leads to increased administration on the side of the investigating officers. Table 7.26 reflects all the challenges that were reported by the participants and for Pretoria Central the challenges were discussed in the focus group with four participants.

Table 7.26: Challenges regarding police bail

| Police Stations | Challenges Faced Regarding the Giving of Police Bail |
|------------------------|--|
| Pretoria Central | <ul style="list-style-type: none"> • Addressed in the focus group. |
| Johannesburg Central | <ul style="list-style-type: none"> • Non-attendance by suspects. • Wrong information given by suspects during arrest i.e., |

| Police Stations | Challenges Faced Regarding the Giving of Police Bail |
|----------------------|--|
| | names, date of birth, address give. |
| Cape Town Central | <ul style="list-style-type: none"> • Accused cannot pay the bail. • Accused do not have a fixed address. • Accused do not come to court on the court date. |
| Focus Group | <p>During arrest</p> <ul style="list-style-type: none"> • Difficulties in verifying and confirming addresses given by the suspects. <p>Court appearance</p> <ul style="list-style-type: none"> • Failure to appear in court by the suspect. • Interfering with investigation through offering bribes, intimidation and threats to the families. <p>Examples of threats: "I know where your family stays"; or sending a picture of bullets to the witness.</p> <p>Others</p> <ul style="list-style-type: none"> • Failure by witnesses to appear in court due to intimidation. • "Witness would verbalise what they saw happened but do not want to be involved for their safety". • Suspects do not have trust in the police. • Failure to return the suspects to correctional services when the case that the accused appeared for in court is withdrawn. • Difficulties in determination of further charges since the systems in courts are not integrated including those that fall under one magisterial district such as Pretoria courts. • Non-return to DCS facilities of remand detainees that appeared in court for further charges relating to police bail released through the court requisition. |

The challenges reported by the participant from Johannesburg Central were non-attendance [of court] by participants, and wrong information provided by suspects. Three challenges recorded by Cape Town Central were inability to pay bail by the accused, lack of fixed address and failure to come to court. The focus group participants cited several challenges which include the following:

- Failure to appear in court by the suspects and witnesses;
- Interference with investigation through offering bribes;
- Intimidation and threats to families;
- Failure to return the suspect to the correctional facilities when the case that the accused appeared for in court is withdrawn;
- Difficulties in establishing further charges due to lack of integration of systems in one court; and
- Failure to return the accused with police bail who was released from correctional facilities through the court requisition.

The electronic systems utilised for capturing of case related information are not integrated, therefore it becomes difficult for the investigators to have a complete profile of the accused especially regarding the active cases or further charges.

The non-return to correctional centres of remand detainees that appeared in court for further charges including police bail was raised as a serious concern by the focus group participants. The challenge was further discussed by the researcher with the participant from head office who alluded that this may occur due to detectives not communicating with one another and may be regarded as wrongful release. He further suggested that a session should be held between SAPS and officials from correctional services for discussing the challenge further to develop a management strategy.

While the non-return of suspects to correctional centres i.e., remand detainees with further charges for which they have been given police bail, was raised as a critical challenge in the focus group, officials from the correctional centres are not informed of police bail cases for the remand detainees. All the charges inferred by the court to the remand detainees are reflected in the warrant of detention i.e., the J7. If the remand detainee has more than one case, he or she will have multiple J7s. Each J7 communicates the case related information including the next court appearance dates and all these cases are captured in the electronic system. The police bail cases are not included in J7 therefore will never be recorded in the correctional centres. When the remand detainee who has additional cases is released for court appearance, the South African Police Service official is given a notification of further charge (G344) so that the detainee can be brought back to the correctional centre after appearing in court.

7.6 CONCLUSION

This chapter provides analysis of data collected in relation to the areas which are the focus of the study. These areas are referral of remand detainees to court for bail review and consideration of length of detention and police bail. The next chapter will represent the discussion of findings, conclusions, limitations and recommendations.

CHAPTER EIGHT

DISCUSSION OF FINDINGS, CONCLUSIONS, LIMITATIONS AND RECOMMENDATIONS

8.1 INTRODUCTION

The previous two chapters i.e., Chapter 6 and Chapter 7 discussed the analysis of data in relation to the criminal justice system strategies for reduction of remand detainees which have been selected to be the focus of the study. This chapter summarises the discussion of findings with focus on bed space management, determination of trends in occupancy, profile of remand detainees, referral of remand detainees to court for bail review, referral of remand detainees to court for consideration of length of detention, and police bail. The chapter will reflect integration and interpretation of findings and also include conclusions, limitations of the study and recommendations. The recommendations include the suggestions proposed by Judge Fagan in his article on ‘Prison Overcrowding’ (Fagan, 2002:18).

8.2 SUMMARY OF FINDINGS

8.2.1 BED SPACE MANAGEMENT

The objective on exploration of the process of creating and maintaining bed spaces has been aligned with the reporting of findings that relate to the following:

- Bed space calculation at the centre level;
- Factors that influence the availability of bed spaces at the centre level;
- Maintenance of bed spaces;
- Model for upgrading existing and new facilities;
- Trends in creating bed spaces in the last ten years;
- Bed space and occupancy for three dates: 31 March 2020, 31 March 2021 and 31 March 2022; and
- Challenges faced by the DCS in creation and maintenance of bed spaces.

8.2.1.1 Findings on calculation of bed spaces at the centre level

The computerised determination system procedure manual developed for automation of bed spaces disregarded the prescribed measurements for bed spaces by excluding the hospital sections in the computation thus leading to reduction in bed spaces. These measurements are well articulated in the revised strategy on reduction of overcrowding and the guideline on bed

space management. The prescribed measurements have been in existence in the policies of the department for longer than twenty years. The exclusion of the measurements for the hospital sections in all the correctional centres that have hospital beds will result in the reduction of bed spaces.

The bed space report discussed in this study, which is the outcome of the revised computerised system does not cater for the needs of the business as per analysis presented in Table 5.1. Furthermore, the report does not delineate between the different types of bed spaces. The recording of different types of bed spaces allows for close monitoring of the changing statuses including the audit trail, determination of rated capacity and activation of the maintenance plan for lost bed spaces. The three types of bed spaces that require clear delineation are approved, which are the design bed space capacity, functional bed space capacity, and unusable bed space capacity.

The tolerance level for overcrowding is dependent on the determination of the rated capacity, which is referred to as any or all of the operational capacity, modified capacity, or maximum capacity. The G309(B) report does not reflect the rated capacity, though it has been set at 150% in line with the Saldanah judgement. The determination of maximum capacity assists with avoidance of excessive levels of overcrowding, as cited by several authors (Bleich, 1989:1140; Council of Europe, 1999:1–3; Council of Europe, 2006:47; Government of Western Australia, 2016:4; Morgan 2010:58).

Lack of uniformity in reporting lost bed spaces due to renovations, including inaccurate reporting of inactive cells, influences the determination of bed spaces and reporting of occupancy and subsequent overcrowding. This observation is reflected in the daily unlock report of 08 July 2021 where two centres i.e., Boksburg and Johannesburg Medium A lost bed spaces but the approved bed spaces for Boksburg remains unchanged, thus leading to false reporting of occupancy and subsequent overcrowding. Bed spaces for Johannesburg Medium A reflect a reduction though it is not a correct reflection of lost bed spaces since the inactive cells were not all reflected in the G309(B) report. The misrepresentation of bed spaces leads to errors in calculating occupancy and subsequent overcrowding. The worse scenario is the activation of the transfer plan as a strategy for sharing overcrowding, which can lead to refusal

to admit inmates by heads of centres of overcrowded facilities thus leading to fruitless expenditure.

The model utilised for determination of bed spaces does not cater for security classification and number of inmates per cell when comparing to the model utilised in the United States of America (Greenfiled, 1992:8). The standards for determination of inmate living space set by the European Council offer more square metres than the minimum requirements determined by the DCS with a difference of 0.5 square metres. However, it should be noted that the standards do not constitute obligatory prescriptions. A number of factors are considered for arriving at the conclusion that the detention conditions are inhumane and these include inadequate ventilation, poor hygiene, inadequate number of beds, absence of sanitation within the cell, and the use of the bucket system (Council of Europe, 1999:1–3; Council of Europe, 2015:1 & 5; DCS, 2021:10).

8.2.1.2 Findings on factors that influence the availability of bed space at the centre level

The top six factors found to influence the availability of bed spaces are:

- Categories of detained inmates that cannot be mixed with other inmates;
- Structural defect which poses security risk;
- Transfers for even distribution of inmates;
- Minor plumbing repairs that are underway in some of the cells and delays in implementing upgrades or renovations;
- Special parole dispensation and special remission; and
- Inadequate water supply.

Three factors that have a direct impact on reducing the number of bed spaces were not considered as critical factors by more than 60% of the participants. These factors are:

- Partial closure for repairs, renovations and upgrading;
- Natural disaster where the centre or portion of the centre is blown by the storm; and
- Repurposing of the cells by converting them into schools and laundries.

Factors cited are all associated with inadequate infrastructure that has a direct link to overcrowding due to aging buildings, faster dilapidation and overutilisation of accommodation

with subsequent breakages. These factors have been raised by other authors as referred to in Chapter 3 and Chapter 4 (UNODC, 2013:34).

8.2.1.3 Findings on the model utilised for upgrading existing, and building new facilities and maintenance of bed spaces

The DCS has a maintenance model with two dimensions, which are planned and unplanned maintenance. Various types of maintenance required in any infrastructure have been contextualised and integrated to cater for the infrastructure needs of the department, including bed space management with planned maintenance and day-to-day maintenance falling under the responsibility of the National Department of Public Works. Furthermore, the DCS enters into contractual agreements with such implementing agencies as Independent Development Trust and the Development Bank of Southern Africa.

The governance structures that constitute the National Building Committee and six Regional Building Committees are responsible for overseeing the national and regional infrastructure needs. The needs include prioritisation with focus on establishment of new correctional centres, upgrading, refurbishment and replacement of infrastructure as well as maintenance of security systems and related infrastructure. The need for a strong infrastructure governance to ensure good investments and prevention of wastage and losses is emphasised by Schwartz, Fouad, Hansen & Verdier (2020:1–7) and they further contend that infrastructure governance is intrinsically linked to efficiency of public investment.

8.2.1.4 Findings on trends regarding the creation of bed space in the last 10 years with focus on building of new correctional centres and upgrading of facilities

The number of bed spaces created from establishing six new generation centres from 2012 to 2020 were 4 666. All the new centres were for detaining sentenced offenders in three regions in the form of two centres per region, which are KwaZulu-Natal, Limpopo Mpumalanga and North West, and Western Cape.

There are 26 centres that have been prioritised for maintenance in six regions ranging from upgrading for repairs, renovation and expansion, as well as building new facilities. Of the 26 projects, nine have a project output of the design for either building a new correctional centre or upgrading and expanding the existing correctional centre. The period stipulated for the designs is three years commencing at different periods for staggering the projects. This

implies that there will be no bed spaces created during this phase. Of the nine facilities, six will have designs for new facilities and three will have designs for upgrade and expansion.

The focus on staggering the development of the designs for a number of facilities over a period of eight years implies that there will be delays in the creation of additional bed spaces especially in the form of new facilities. The situation is likely to be worsened by the delays in the renovations of facilities that have already lost some bed spaces.

Some renovations take longer than four years and this leads to loss of bed spaces over longer periods than expected. Emthonjeni juvenile correctional centre, a new generation centre completed in 1997, has been under renovation for more than four years i.e., since 2017 and has not been completed by April 2022. This has resulted in a loss of 448 bed spaces.

The slow growth in the number of bed spaces may be considered to be the contributory factor to the overcrowding of inmates including the remand detainees.

8.2.1.5 Findings on bed spaces and occupancy for three dates: 31 March 2020, 31 March 2021 and 31 March 2022

The interval of one year for the regional bed spaces determined at three periods which are 31 March 2020, 31 March 2021 and 31 March 2022 reflects changes in bed spaces and these changes have an impact on occupancy and overcrowding. Furthermore, the number of findings presented below clearly delineate the direct relationship between the number of bed spaces and the number of inmates in influencing the occupancy level utilised for determination of the percentage of overcrowding.

The gradual decline in the number of bed spaces and the increase in the number of inmates have contributed to the high levels of occupancy and subsequent overcrowding that ranged between 47.6% and 60.0% in the Eastern Cape region for 31 March 2021 and 31 March 2022. The overcrowding level was beyond the tolerance level of 150%.

In the Gauteng region, the increase in occupancy especially for 31 March 2022 was found to be related to the reduction in bed spaces and the increase in the number of inmates. The occupancy rate was below the tolerance level as it ranged from 131.0% and 145.6%.

In the KwaZulu-Natal region, the high occupancy was observed on 31 March 2022 due to the higher decrease in the number of bed spaces than the reduction of inmates. The occupancy rate ranged from 105.0% to 123.9%.

In the Limpopo, Mpumalanga and North West region, the reduction in the number of bed spaces and the increase in the number of inmates contributed to the increase in occupancy levels and subsequent overcrowding for 31 March 2022. The occupancy rate ranged from 115.0% to 138.6%.

The Free State and Northern Cape region recorded the occupancy of below 100% for all the dates. However, an increase in occupancy was observed on 31 March 2022 due to the reduction in bed spaces though the number of inmates also demonstrated a decline. The occupancy rate ranged from 89.1% to 98.7%.

In the Western Cape region, the reduction in the number of bed spaces and the increase in the number of inmates contributed to the increase in occupancy levels and subsequent overcrowding for 31 March 2022. The occupancy rate ranged from 123.7% to 148.6%.

8.2.1.6 Findings on challenges faced by the Department of Correctional Services at the centre level and nationally regarding the creation and maintenance of bed spaces

Several challenges shared by the heads of correctional centres are directly related to the use of the bed spaces. These challenges include, but are not limited to:

- Delays in appointing contractors due to lengthy supply chain processes;
- Lack of established maintenance teams for dealing with day-to-day breakages for preventing unnecessary closure of cells;
- Delays in finalising investigation in situations where the cells were burned thus leading to deferral of renovations;
- Closure for renovations taking longer than anticipated;
- Full or partial closure of the facility due to dilapidation associated with constant breakages and extensive use of ablution facilities; and
- Repurposing of cells for providing accommodation for rehabilitation of inmates as well as laundry services and office administration.

Challenges articulated by the personnel from facilities management link directly to the creation of bed spaces required by the heads of correctional centres. These challenges include:

- Ineffective governance structures which prevail in the form of lack of meetings;
- Delays in finalising the prioritisation of projects thus hampering the allocation of funding;
- Long preplanning phase which leads to reallocation of budgets to other priority projects;
- Delays in completing projects due to several factors such as cash flow challenges;
- Ineffective project management and escalation of costs;
- Litigation cases that take too long and consequently leading to deferral of the maintenance project; and
- Poor performance by certain contractors thus leading to extended periods for upgrades and renovation, and lengthy periods of losing bed spaces.

Challenges experienced are regarded by Schwartz et al (2020) as systemic and a package of poor-quality projects that create losses and waste in infrastructure spending. Schwartz et al (2020:5, 10 & 182) further contend that inefficient infrastructure governance is linked to cost overruns and a multitude of other challenges such as the following:

- Inadequate preparation for projects which may lead to the review of specification for private gain;
- Weak interagency coordination; and
- Failure to develop a risk mitigation plan that caters for fiscal risks associated with inadequate project design, costing techniques and risk sharing arrangements.

8.2.2 DETERMINATION OF TRENDS IN OCCUPANCY

8.2.2.1 Findings on trends in occupancy level

Trends in occupancy levels constantly fluctuates since they are directly influenced by the number of inmates and bed spaces. These factors are fluid with the number of inmates beyond the control of the DCS as the institution responsible for detention of inmates. Occupancy remains high even when the number of inmates is reduced. This is due to continuity in losing

bed spaces at a higher rate than the reduction of inmates. This pattern is noted in all regions when analysing the daily unlock of 31 March 2022 against the daily unlock reports of 31 March 2020 and 31 March 2021.

Trends in occupancy vary from region to region with the Eastern Cape having the highest occupancy range of between 140% and 160.0%. The Free State and Northern Cape have the lowest occupancy range of below 100%. The regions with the highest number of overcrowded facilities as per the daily unlock for the three dates which are 31 January 2020, 01 April 2021 and 31 March 2022 are the Eastern Cape and the Western Cape. These regions also have facilities with occupancy of more than 280% for 31 January 2020 and 31 March 2022. Furthermore, the bed spaces for Eastern Cape range from the average of 41 to 1 419, while the Western Cape had bed spaces that ranged from the average of 41 to 2 003.

The regions with overcrowded facilities with some bed spaces of more than 2 000 per facility as per the daily unlock of three dates referred to previously are Gauteng and KwaZulu-Natal. Western Cape lost some bed spaces to the level below 2 000 as reflected in the daily unlock analysis of 31 March 2022.

The Eastern Cape region has the highest average number of overcrowded facilities (9) in the list of top twenty most overcrowded facilities, followed by the Western Cape (6) for three previously mentioned dates.

The occupancy for the top twenty most overcrowded facilities for the three respective dates of 31 January 2020, 01 April 2021 and 31 March 2022 ranges from 189.5% to 287.2%; 177.18% to 304% and 208% to 329.2% respectively.

The number of facilities with occupancy above 100% reflects an erratic pattern, with 164 facilities on 31 January 2020, 135 facilities on 31 March 2021, and 168 facilities on 30 April 2022.

8.2.3 FINDINGS ON CATEGORISATION OF INMATES AND FACILITIES

Inmates in the DCS are categorised in terms of four security classification levels ranging from medium to super maximum. The latter is reserved for inmates that pose a major security risk

that cannot be provided for in minimum, medium and maximum classified correctional centres.

The classification of inmates is aligned with the categorisation of facilities for proper allocation of inmates in different housing units. Inmates are further categorised as either sentenced and unsentenced for accommodating them in separate facilities or separate housing units or separate cells depending on the sizes of the facilities. Furthermore, inmates are categorised in terms of different age groupings starting from children with an age range of fourteen to seventeen years, juveniles with an age range of eighteen to twenty, and youth and adults i.e., those above the age of twenty. The elderly category consists of those above the age of 60 years.

These different categories have an influence on overcrowding. Some children and juvenile areas may be under-occupied and have some bed space available, but because of age restrictions inmates that fall outside of the age group may not be occupied there. These situations cause overcrowding in other areas, even though the overall bed space situation may show positive figures (or available bed spaces). Therefore, accommodation of inmates according to age groups complicate crowding and contribute to situational overcrowding.

8.2.4 PROFILE OF REMAND DETAINEES

The findings are reported under several areas which are:

- Trends regarding the remand detainees in the last three years i.e., from 2018/2019 to 2021/2022;
- Facilities that detain remand detainees;
- Length of time spent by remand detainees based on the snapshot analysis for 31 March 2021;
- Feeder courts and police stations that collect remand detainees for court appearance;
- Remand detainees with and without bail;
- Remand detainees who are foreign nationals; and
- The cost for detaining remand detainees with bail.

8.2.4.1 Findings on trends in remand detainees from 2018/2019 to 2020/2021

The national trend reflects an erratic pattern in the population of remand detainees with an increase of less than 1.5% between 2018/2019 and 2021/2022 and a decrease of almost 9.3% between 2020/2021 and 2021/2022. The lowest annual average of 45 127 was observed in 2021/2022 and the highest annual average of 49 735 was noted in 2020/2021.

The national trend reflects an erratic pattern in the population of remand detainees with an increase of less than 1.5% between 2018/2019 and 2021/2022 and a decrease of almost 9.3% between 2020/2021 and 2021/2022. The lowest annual average of 45 127 was observed in 2021/2022 and the highest annual average of 49 735 was noted in 2020/2021. The Covid-19 pandemic may be equated to the increase in the average population of remand detainees during 2020/2021 since the normal court operations were interrupted due to the intermittent closures that were implemented. These closures led to amendments in court appearance dates of those remand detainees who could not appear in court. Furthermore, the population of remand detainees increased by more than 15% in three regions from 01 April to 05 May 2020. These regions are Gauteng (16.9%), Free State and Northern Cape (16.2%), and KwaZulu-Natal (15.1%).

The regions with the highest annual average number of remand detainees i.e., above 10 000 are Gauteng and Western Cape. The region with the lowest average number of remand detainees i.e., below 5 000 is Free State and Northern Cape, even though the latter constitutes an amalgamation of two provinces. The region that experienced the highest increase in the average number of remand detainees of almost 20.0% between 2018/19 and 2021/2022 is Gauteng. The increase may be connected to Covid-19 pandemic during 2020 since Gauteng observed the highest increase of more than 16.5% from 01 April to 05 May 2020 as compared to other regions.

All the regions reflected a decrease in the remand detainee population between 2020/2021 and 2021/2022 with the exception of Free State and Northern Cape that observed an insignificant increase of less than 0.2%. The reduction may be equated to the resumption of court operations with no interruptions mainly during 2021/2022 as compared to 2020/2021.

8.2.4.2 Findings on facilities that detain remand detainees

The number of facilities that detain inmates fluctuates due to partial or complete closures for effecting maintenance requirements in the form of renovation, upgrade and replacement. The average number of facilities that detained remand detainees for the three dates which are 31 January 2020, 01 April 2021 and 31 March 2022 was 126 and they constituted 52.2% of all the facilities for detaining inmates in the DCS.

The regions with the highest average number of facilities that detained remand detainees for the three dates which are 31 January 2020, 01 April 2021 and 31 March 2022, were Free State, Northern Cape and Western Cape. The facilities constituted 72.9% and 67.7% respectively of the total average number of the facilities in each region. The average number for the Free State and Northern Cape region was 47 and for the Western Cape region, the average number was 42.

8.2.4.3 Findings on the period spent in detention by remand detainees

The period spent by remand detainees in detention ranged from less than a day to ten years, with almost 42% spending a period that ranged from less than a day to three months as per one day snapshot analysis of 31 March 2021. Those detained for longer than three months to one year constituted almost 32.65% while those detained for longer than a year to two years were 17.7%.

Those detained for longer than two years constituted less than 10% of the remand detainee population and the remand detainees in twelve centres sampled for the study. Those detained for longer than five years accounted for less than 0.5% of the national population of remand detainees as well as for the sampled twelve facilities.

Some countries have prescribed custody limits, however the lack of monitoring of the set limits has not been found to benefit remand detainees in some countries (Martufi, & Peristeridou, 2020:157; Msiska, Mhango & Redpath, 2013:6).

8.2.4.4 Findings on feeder courts and police stations

The number of feeder courts that are linked to the collection of remand detainees by SAPS for court appearance do not reflect the number of courts that are associated with the cases of remand detainees, since some police stations collect remand detainees for more than one court.

The number of feeder courts is influenced by the size of the correctional centres with large correctional centres that detain more than 1 000 remand detainees having more feeder courts than the smaller centres.

The whole process of dropping off and picking up remand detainees by SAPS for court appearance creates regular and continuous interaction among the role players such as SAPS, DCS and the courts. The DCS further uses this interaction for communicating information on remand detainees with further charge(s) to courts via a document which is provided to SAPS.

Some feeder courts are located outside of the province where the correctional centre that detains remand detainees is located thus creating longer travelling distance for SAPS in terms of picking up and dropping off of remand detainees. This may cause undue delays and postponement of cases that influence incarceration periods negatively.

8.2.4.5 Findings on remand detainees with and without bail

The population of remand detainees consists of those with bail and those without bail. The latter constitute almost 90.0% of those that were in detention on 31 March 2021. Furthermore, those without bail compose of three categories, which are those who have not commenced with the bail application process, those in the bail application phase, and those who have been denied bail. Of the categories that are detained without an option of bail, there may be remand detainees who breached the bail conditions when placed under the non-custodial system, in the form of correctional supervision by the correctional official, or warning, including reporting at the police station. The DCS is never informed of the history of previous breaches.

Of the remand detainees that were in detention on 31 March 2021 with an option of bail, the lowest amount was R100 and the highest amount was R150 000. The latter was given to only one remand detainee. The bail amount with the highest number of remand detainees was R500 with almost 33% of remand detainees.

The regions with the highest percentage of remand detainees with bail above the national percentage of almost 11% were Eastern Cape at 14.1% and KwaZulu-Natal at 12.2%. Of the remand detainees with bail, almost 75% have bail amounts ranging from R100 to R1 000. Gauteng had the highest percentage of remand detainees with bail of more than R1 000 on 31 March 2021 (37.7%). Within the range of R10 000 to R50 000 the region with the highest number of remand detainees at almost 60% was the Gauteng region.

Tightening of bail is one of the strategies utilised by the courts to respond to increases in violent crimes and concerns raised by communities where courts are found to be too lenient in granting bail in cases of violent crimes. The other factor that is associated with the tightening of bail is the risk of failure to appear in court thus leading to the use of detention for promoting court appearance. This factor has been alluded to by authors such as Bartels, Gelb, Spiranovic, Sarre, & Dodd (2018) and Kim, Chauhan, Lu, Patten, & Smith, (2018:17-18).

While money bail is regarded as unjust, expensive and unconstitutional (Hopkins, Bains & Doyle, 2018:679), there are factors that are taken into consideration for placing a person under the non-custodial system or release on own recognisance. These include the seriousness of the crime, previous offences, criminal records, history of appearing in court, employment history, family ties to the community, the flight risk, and the likelihood to abscond (About bail, 2020; Bartels et al, 2018:94; Centre for Access to Justice, 2017). Lebitse (2019) contends that denial of bail contributes to overcrowded facilities in the DCS.

8.2.4.6 Findings on foreign nationals

Foreign nationals constituted 13.5% of the remand detainees that were in detention on 31 March 2021, while remand detainees who are South Africans dominated at more than 80%. When comparing the distribution of remand detainees who are foreign nationals against those that are South African nationals, the region with the highest percentage is Gauteng (27.2%) followed by the Limpopo, Mpumalanga and North West (21.9%). The region with the lowest number of foreign nationals at less than 1% was the Eastern Cape. The analysis on the distribution of foreign national as articulated by Penal Reform International (2021:125) and Statista (2021), reflects that the number of foreign nationals differ from country to country and region to region. The population of foreign nationals in some countries constitute 2% while others detain more foreign nationals than the locals i.e., at the level as high as more than 70%.

The top five countries of origin for the foreign nationals in a descending order are Zimbabwe at 40.9%, Mozambique at 18.6%, Lesotho at 18.5%, Malawi at 7.0% and Nigeria at 2.8%.

The percentage of foreign nationals in twelve combined facilities that were sampled for the study constitutes more than the national percentage of 13.5% at 17.5%. Of the sampled facilities, King Williams Town and Queenstown did not have any foreign nationals.

Of the twelve correctional centres sampled to participate in the study, the top three centres with the highest percentage of foreign nationals as compared to the inmate population at the correctional centre, were Kgoši Mampuru Local at 31.1%, followed by Krugersdorp at 29.1%, and Johannesburg Medium A at 25.3%.

The top three countries of origin for the foreign national remand detainees kept in the above-mentioned centres are included in the top five national list with the exception of Pretoria Local, which has the Republic of Congo, in addition to Zimbabwe and Mozambique.

8.2.4.7 Findings on cost to detain remand detainees with bail based on their length of detention

The cost for detaining 4 440 remand detainees with bail who were in detention on 31 March 2021 was estimated at R155 831 289-60, based on 363 040 days they spent that ranged from one week to seven years. This is a retrospective calculation based on the actual number of remand detainees and not a projected figure as per the formula used for calculating the per capita cost. The cost should not be regarded as a determinate figure, since it is influenced by budgetary allocation not the actual spending linked to provided services. The cost of incarceration including overcrowding and the provision of the required services is not the only cost for calculating the economic value of imprisonment, however; governments tend to focus on the total aggregate of direct spending and computation of the average cost per inmate.

Marginal costs are recommended, though complicated, as they would include several elements that are critical in determining the cost of incarceration such as the cost of building the infrastructure and the social cost which extends to families, court fees, visits and other communication that take place between families and inmates. There is however no conclusive

formula for determining recommended marginal costs. For remand detainees the cost of imprisonment includes investigations and judicial processes (Leslie & Pope, 2017:555; UNODC, 2013:118).

8.2.5 REFERRAL OF REMAND DETAINEES TO COURT FOR CONSIDERATION OF THEIR LENGTH OF DETENTION

8.2.5.1 Findings on submission of application to court and court outcomes

There has not been consistency in the submission of applications for consideration of the length of detention of remand detainees and this is reflected in the analysis of the regional tools for 2018/2019; 2019/2020 and 2020/2021 presented in Chapter 6, paragraph 6.5.1.2. Some centres, from the sampled twelve facilities did not submit applications for the whole year, while others did not submit applications for selective months.

The analysis of the length of detention report for 31 March 2020 and 31 March 2021 as presented in Chapter 6 paragraph 6.5.1.1 reflects the number of remand detainees that have been in detention for more than 21 months and this is a pool for determination of qualifying remand detainees for submission of court applications. The lack of submission of applications constitutes a breach of section 49G of the Correctional Services Act 111 of 1998 (Republic of South Africa, 1998:43-44), since the submission of the applications as delegated to the head of the correctional centre is obligatory.

The analysis of the outcome of applications for twelve facilities combined as presented in Chapter 6 paragraph 7.2.1.2 does not present a favourable picture and the success rate reported for 2018/2019 and 2019/2020 was less than 1% with no success recorded for 2020/2021 financial year. Four centres combined for Eastern Cape region did not record any success for all the three periods while the centres in Gauteng combined recorded a success rate of less than 0.4% in 2018/2019 with no recorded success for other two periods.

Four centres combined in the Western Cape region recorded a minimal success of less than 1.8% in 2018/2019 and 2019/2020 with no success recorded in 2020/2021. The submission of applications by the DCS does not appear to contribute to the reduction in the population of remand detainees and this view is also upheld by the Judicial Inspectorate of Correctional Services (2019:26). Furthermore, Muntingh (2016: 37 & 38) concedes that the referral through the use of 49G does not regulate the criminal justice system process.

Of the possible court outcomes for submitted applications which may include giving of bail or reduction of bail, releases on warning or release for placement under supervision by the correctional official, and continuation with detention attracted the highest percentage. The court outcome for 49G should be understood against the background that there is no parallel clause in the Criminal Procedure Act 51 of 1977 (RSA, 1977) hence the protocol has clearly aligned the possible court outcomes with the bail review outcomes provided for in section 63A of the Criminal Procedure Act.

The deterioration in receiving feedback though there has been a considerable increase of more than 100% in the submission of applications especially for 2020/2021 financial year may be equated to the Covid-19 pandemic. The courts were not fully functioning because of interruptions caused by partial closures for effecting decontamination following positive contacts that may come from various circles of the role players. The partial closures were in line with directions issued by Minister of Justice and Correctional Services to address, prevent and combat the spread of Covid-19 in courts, court precincts, correctional services and remand detention facilities (Department of Co-operative Governance and Traditional Affairs, 2020:5-6; RSA, 2020:1).

The informal process of obtaining feedback from court has not contributed to the increase in the rate of providing feedback for submitted applications hence withdrawal of cases and acquittal have been used as the outcome for some of the applications. These outcomes though have been excluded in the percentage of successful outcomes as they could not be linked to section 49G and 63 applications.

8.2.5.2 Findings on challenges experienced

Challenges experienced have been categorised under three dimensions which are determination of qualifying remand detainees, processing of applications including the delivery in courts, and feedback from courts.

Regarding the determination of qualifying remand detainees, manual cleansing of the list generated from the electronic system was found to be tedious and time consuming since the list is inclusive of the names of the remand detainees whose applications were previously submitted to court and those with no case related information.

Regarding the processing of applications, the hand delivery approach has implications for transport cost since some centres have to deliver applications to several courts which are far apart.

Regarding feedback, the centres do not receive requisitions for court appearance in relation to submitted applications as such it is difficult to determine whether the applications were considered or not. The court processes for considering 49G applications have been aligned with the review process for 63A applications as outlined in Article 7 of the bail protocol, therefore the application may be considered in chambers or in the presence of the remand detainee (DoJ&CD, 2012:11–13).

There is continuous loss of trained officials due to retirement, rotation and horizontal placement and this leads to loss of skills and a need for continuous training which can be very costly for the department.

8.2.6 REFERRAL OF REMAND DETAINEES TO COURT FOR BAIL REVIEW

8.2.6.1 Findings on bail review

The bail review applications represent two categories which are 63(1) and 63A of which the latter is referred to as bail protocol. There has been a gradual decline in the submission of bail review applications by the twelve centres for all the three years i.e., 2018/2019, 2019/2020 and 2020/2021 and the decline constitutes 59.4%. The submission of 63(1) applications dropped by 23% while 63A lowered by almost 37% and this is reflected in the extensive analysis presented in Chapter 6 paragraph 6.5.2.2.

The pattern noted in the submission of 49G applications was also observed with bail review where there was no consistency in submission with some centres not submitting applications for the whole year while others submitted over selected months. There were centres that submitted applications in all the twelve months of the selected financial years.

The centres that consistently submitted applications under Eastern Cape and Gauteng regions focused on 63A submissions. There were no 63(1) applications submitted by Eastern Cape and Gauteng centres in 2020/2021 and 2018/2019 respectively. Furthermore, some centres in

Gauteng did not submit 63(1) applications at all. The Western Cape centres submitted applications mainly for 63(1) with some centres not submitting 63A applications at all.

The success rate for all the twelve centres for the three years remained below 40% with the lowest success rate of 27.0% recorded for the 2018/2019 financial year. Of the successful applications, placement on warning had the highest success rate of more than 50% for all the three periods while placement under supervision attracted the lowest success rate with an average of 9.2% for the three periods.

The success rate from 2018/2019 and 2019/2020 financial years which has been categorised as the pre-Covid-19 period, recorded less than 3.3% for the twelve centres and this may be equated to the reduction of 30.01% in the submission of applications. Eastern Cape and Gauteng recorded a positive success rate of almost 18% and 21.3% respectively while Western Cape recorded a negative success rate due to a huge decline in the submission of applications i.e., from 2 671 in 2018/2019 to 670 in 2020/2021 financial year.

The success rate from 2018/2019 and 2020.2021 which is a comparison of pre-Covid-19 and the Covid-19 periods recorded -54.7% which reflects a serious drop in the success of bail review. This may be equated to the decline of 59.4% in the submission of bail review applications in general with 80.5% and 48.1% drop in submission of 63(1) and 63A applications respectively.

The success in the bail review is dependent on many factors which are beyond the control of the DCS. The process for review of application is inclusive of the consideration of several interest of justice factors by the courts i.e., the judiciary, and these factors are outlined in Chapter 4 paragraph 4.3.2.3 and summarised in Table 4.1 as extracted from the Criminal Procedure Act (RSA, 1977:69–75; RSA, 2020:6–7).

8.2.6.2 Challenges on bail review

There is a lack of understanding of the criteria for 63(A) applications as some centres focused on submitting applications to court for those with bail of R1 000 and less and this conflicts with the criteria set in the Criminal Procedure Act 51 of 1977 and the related policy documents and training presentations. The imposition of monetary limits when submitting

applications for bail review i.e., bail protocol, was found to be unlawful (State v Thekiso, 2011:20).

The lack of differentiation between 63A and 63(1) may be exacerbated by the fact that the list of remand detainees that qualify for 63A has not always been accessible in the electronic system and the default has been to use the list for 63(1) applications. Even when the list was eventually accessed from the system it included remand detainees who did not qualify since they were charged for crimes that were not classified as schedule 7 crimes. The criteria for 63A applications as outlined below, is clearly articulated in the Criminal Procedure Act 51 of 1977 (RSA, 1977:78–79) and the presentation developed for functional training on bail review which includes 63(1) processes (DCS, 2014:6–9 & 48–51):

- Satisfaction that the prison [correctional centre or remand detention facility] population of a particular prison [centre or facility] has reached such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused;
- The accused must have been charged with schedule 7 crimes or offences for which a police official may grant bail in terms of section 59;
- The accused must have been granted bail by the lower court i.e., the magistrate or the regional court and unable to pay the amount of bail set by the court; and
- The accused must not be in detention for other crimes that are not classified as schedule 7 crimes.

There was confusion in understanding 63(1) applications as distinct from 63A applications by certain participants in terms of the applicable criteria for determination of qualifying remand detainees. Furthermore, applications are submitted on a weekly and monthly basis without due consideration for the period spent since the date of admission as such the provision that the application must be submitted on the third month is not applied. These challenges may be attributed to several factors such as:

- Failure to include 63(1) court referrals in the electronic support system;
- Failure to build in the electronic support system the criteria that would generate the correct list of qualifying remand detainees without having to resort to manual filtering;

- Lack of continuity with training and on-job coaching since some of the officials interviewed were newly placed in the section that deals with applications; and
- Failure to manage the process of handover by ensuring that the skilled officials that are about to leave the system due to retirement are paired with those that will take over for ensuring continuity.

Findings relating to the delivery of applications and court feedback including requisitions have already been addressed in paragraph 7.5.2 and they equally apply to both 49G and bail review applications.

8.2.7 CASE FLOW MANAGEMENT

There is no uniformity in the attendance of case flow structures as such meetings are attended by various functionaries from the management areas ranging from the court official to manager of corrections and correctional centre managers at the correctional centre level as well as managers from the management area office. This may be due to the fact that local case flow structures are aligned to the district model and some are further aligned to the types of courts i.e., magistrate versus high courts. Bigger centres therefore require a bigger pool for assigning various officials to attend meetings and to ensure consistency in attendance of meetings.

The participation in cluster structures allows for sharing of information on delays in finalising cases and this has assisted officials in some correctional centres to develop insight in understanding the multitude of factors that contribute to or impede the speedy finalisation of cases. The practice of sharing detailed information on factors that contribute to delays in cases through giving an account for each court appearance is not widely applied as it was shared by only one centre which received it from only one court. The reasons for causes of delay in some cases of remand detainees which should be regarded as factors that influence the length of period of detention include:

- Unavailability of witnesses;
- Lack of attendance of court by all the co-accused on dates set by the court;
- Changing of legal representation among the co-accused;
- Temporary closure of court due to the implementation of Covid-19 containment measures;

- The absence in court by various stakeholders such as the accused, legal representatives, prosecutor, and interpreter due to various reasons including sickness, writing of examinations and accused not brought in court from the correctional centre; and
- Late arrival in court.

The unavailability of witnesses has been cited by authors such as *Hartley v Others* (2015:2), *Gopaul* (2015:79), and *Mathews* (2009:108). The failure to bring remand detainees from correctional centres has been alluded to by *Obiokoye* (2005:96).

Overcrowding of inmates as the challenge experienced by the DCS is indirectly discussed in the cluster meetings through referring to 49G and bail review applications. Furthermore, the DCS does not provide a detailed report which reflects occupancy with subsequent overcrowding of the centres within the management areas in the local case flow structure meetings.

The benefits of participating in the local case flow structures include creation of the platform for informal discussions with a myriad of role players such as SAPS, prosecutors and courts, as well as handling of challenges informally and speedily. In the absence of meeting during 2020/2021 due to the Covid-19 pandemic, the challenges were addressed informally through the use of telephones, WhatsApp messages and emails.

The objectives of the case flow management as cited by the Department of Justice and Constitutional Development (2010:4) include the development of custom practices which are less tolerant of delays in criminal justice, ensuring that every court appearance creates an opportunity for finalising the matters and contribution to the reduction of the number of remand detainees awaiting trial. The absence of discussions that focus on overcrowding as well the sharing of the report which elevates overcrowding levels in the case flow structures make it difficult to prioritise overcrowding.

8.2.8 Police bail

The National Instruction on police bail that is utilised as a national policy includes applicable offences. However, the offences were not specified by the participants and this may be regarded as uncertainty in relation to applicable crimes. The police bail is authorised

differently i.e., by the Commander of the Community Service Centre or and the Commissioned Officer from or above the rank of the Captain. Furthermore, bail may be granted depending on agreement between the standby prosecutor and detective. Barriers to the use of police bail as cited by Ruiters and Hardy (2018:3, 17 & 21) include uncertainty regarding the legal provisions and authority to grant bail.

The criteria for police bail entails profiling of the suspect with focus on the following:

- Determination of whether the suspect is “wanted” or not for other crimes;
- Good standing;
- Determination of the presence of the criminal record;
- Establishment of outstanding cases;
- Analysis of crimes committed since police bail only applies to schedule 7 offences;
- Ascertaining of the risk of interfering with the cases through interviewing witnesses;
and
- Satisfaction by police that the accused will attend court.

The consideration of interest of justice factors that apply to court bail equally apply to police bail and the factor of non-attendance of court proceedings by accused further contributes to backlog of cases (Republic of South Africa, 1977:68; Republic of South Africa, 1996:14).

The role of the investigating officer in police bail entails profiling or ensuring that profiling of the suspect is done, completion of the paperwork for suspects suitable for placement on bail and conducting of the verification of the suspect. The address confirmation is done through visiting the physical address of the accused which can either be the residential place or the place of work, as well as collection of documents for confirmation of address. Conducting address verification is provided for in the National Instruction on police bail (South African Police Service, 2016: 2-8).

The reasons for refusal of bail include:

- Lack of appearing in court in previous cases;
- Absence of the physical address or fixed address;
- Availability of pending case;
- The nature of crimes the accused is charged for;

- The presence of the warrant of arrest or accused that are “wanted”;
- The presence of risks such as the following:
 - The possibility of endangering the safety of the public or disturbance of public order thus undermining public peace and safety;
 - The possibility of an attempt to evade trial;
 - The possibility to influence or intimidate witnesses or conceal or destroy evidence; and
 - The possibility to undermine or jeopardise the objectives or the proper functioning of the criminal justice system.

The reasons for refusal of bail may be linked to the interest of justice factors and verification of information provided by the accused as outlined in the Constitution of the Republic of South Africa and the Criminal Procedure Act 51 of 1977 (Republic of South Africa, 1996:4; Republic of South Africa, 1977:69-75).

Trends regarding the giving of police bail could not be determined since some police stations did not provide any information with the exception of Johannesburg Central police station which provided statistics for 2018/2019 and 2019/2020.

Bail conditions applied include court attendance as well as informing the officer of the reasons for failure to attend court and reporting at the police station closest to the residential place of the accused at specific times. The National Instruction on police bail does not provide for any additional bail condition other than the court appearance information in terms of the date, place and time (South African Police Service, 2016:7). Police bail referred to as pre-charge bail in England and Wales allows police to give bail conditions which may include reporting at the police station on specific days of the week and at specific times, travel restrictions including passport surrender in situation where there is a possibility of flight risk and living and sleeping at a specified address (Policing and Crime Act, 2017:23 & 25).

Various periods were cited as intervals between the granting of bail and court appearance and these include appearance in court within 14 days, less than a month and from one to three months. The obligation to appear in court within 48 hours was regarded as critical though the stipulated period could not be met with arrests made on Fridays. The National Instruction on police bail (South African Police Service, 2016) and the Criminal Procedure Act 51 of 1977

(RSA, 1977) do not prescribe any interval between giving of police bail and first court appearance while the Constitution provides that everyone arrested for allegedly committing a crime has the right to be brought before the court as soon as reasonably possible but not later than 48 hours of arrest (RSA, 1996:14).

Common breaches include non-attendance of court and interference with investigation through offering bribes, intimidation and threatening of the families. The breaches are dealt with through processing applications by the detective to court for the issue of the warrant of arrest. The breach of police bail in the form of non-court attendance is managed through the processes provided in section 67 of the Criminal Procedure Act 51 of 1977 (RSA, 1977:82-83).

The court notification of police bail is done through completing the prescribed form, taking the docket to court for the first court appearance, submission of the register to the clerk of court and informing the standby and the control prosecutors of the next court date. According to the National Instruction on police bail (South African Police Service, 2016:7) court notification may also be done through providing the clerk of court with the bail receipt (J398) since it includes court appearance information.

Police bail is not marketed in the police stations and there is no provision on its marketing in the National Instruction.

Challenges experienced regarding police bail are as follows:

- Non-attendance of court by the accused;
- Incorrect identification information provided by the suspects during arrest in relation to their names, date of birth and address;
- Difficulties in conducting address verification;
- Inability of the accused to pay police bail;
- Interfering with investigations through offering bribes, intimidation and threatening of the families. The latter may include sending a picture of bullets to the witness as well as informing the witness that where his or her family stays in known;
- Non-attendance by witnesses due to intimidation;

- Lack of trust of police by the suspects;
- Non-return of accused with multiple cases to correctional centres when the case that he or she appeared for in court has been withdrawn;
- Difficulties in determining further charges by the detectives in situations where the accused has multiple cases that are heard by different courts within the magisterial district such as the magistrate court, regional court and high court including specialised courts due to lack of system integration; and
- Non-return of remand detainees to the correctional centres that were released for appearing in court for charges relating to police bail since they are released through the court requisition.

The risk of failure to appear in court is one of the factors that contribute to denial of bail in many countries such as United States, Australia and New South Wales (Bartels, Gelb, Spiranovic, Sarre, & Dodd, 2018; Kim, Chauhan, Lu, Patten, & Smith, 2018:17-18; Koepke & Robinson, 2018:1728; Rempel & Pooler, 2020:3-4; Van Nostrand & Keebler, 2009:3).

Difficulties in conducting address verification can be equated to the lack street addresses which is phenomenon that is prevalent in informal settlements (Leslie, 2012:13; Omar, 2016:30; Madi & Mabhenxa, 2018: 19).

Inability of the accused to pay police bail links closely with bail affordability which is one of the factors that contribute to detention of remand detainees in correctional centres while having an option of bail (DCS, 2016:4 & 21).

Interfering with investigations through offering bribes, intimidation and threatening of the families constitutes obstruction of justice therefore qualifies to be included under the interest of justice factors that the detective can cite as the recommendation for opposing bail (Anderson, 2014:2; South African Police Service, 2016:6; State of Connecticut, 2017).

8.3 CONCLUSIONS CONCERNING FINDINGS

The study has revealed that management of overcrowding in correctional centres especially in relation to the remand detainees cannot be regarded as the responsibility of the DCS only since some strategies implemented such 49G and bail review give DCS only the authority to process a court referral application. Furthermore, overcrowding in the corrections environment should

be approached as a wicked problem since it does not have a stopping rule and is a symptom of another problem. It arises as a consequence of managing another complex wicked problem referred to as “crime” and therefore requires collaboration, cooperation and commitment from all the role players in the criminal justice value chain (Head & Alford, 2015:715 & 725; Rittel & Webber, 1973:162, 163-164).

With regard to bed space management, the study has contributed by elevating the factors that contribute to the availability of bed spaces in correctional centres which are:

- Minor plumbing repairs that are underway in some of the cells;
- Cells that are not conducive to accommodate inmates;
- The state of dilapidation which is not favourable for humane detention;
- Closure for repairs, renovations and upgrading;
- Structural defects which pose security risk;
- The centre [or the section of the centre] is used for accommodating Covid-19 cases for isolation and quarantine;
- Natural disaster where the centre or portion of the centre was blown by the storm; and
- Delays in implementing upgrades or renovations.

The study further revealed that national trends in occupancy are not a true reflection of actual occupancy since they are a computation of aggregated occupancy reported by different centres with some centres underpopulated while others are overpopulated.

Furthermore, the study disclosed that the automation system developed for accounting for bed spaces contributes to the technical reduction of bed spaces due to failure to adhere to prescribed measurements of including the hospital sections in all the correctional centres that have hospital beds.

The study further revealed that if the reduction of bed spaces occurs at a higher level than the number of inmates, the occupancy levels will remain high. Additionally, in the absence of the system for monitoring of bed spaces that provides an audit trail for changing bed spaces it becomes difficult to account for lost bed spaces due to the implementation of the maintenance projects for repairs, renovation and expansion.

The study revealed that while the DCS has developed an accounting system for reporting the length of period spent in detention by remand detainees, the department is not in a position to project the period that the remand detainees are likely to spend regardless of the time they have already spent since each court appearance may generate a non-return to correctional services.

With regard to the submission of applications for bail review and consideration of the length of detention by courts, the research has revealed the lack of consistency in the submission of applications. Furthermore, the research did not reflect considerable success from the implementation of 49G and bail review. However, there is no evidence to suggest that regular submission of applications would have yielded better results. This position is held due to the fact that the court in its consideration of applications has to focus on several case related factors as well as applicable caselaw and not necessarily the administrative process of submitting the applications. Even with the applications submitted, the outcomes were not favourable especially in the area of considering the length of detention i.e., “49G submission”. The reduction in the population of remand detainees cannot be equated to the effectiveness of the 49G and bail review.

With regard to police bail, the profile report which reflects a background check of the accused, the nature of crimes the accused has been charged for and the address confirmation provides guidance for determination on whether the accused will be given police bail or not. When profiling suspects, it is difficult for the detectives to have detailed picture regarding the active cases that the suspects have been charged for because of the use of false identity referred to as “aliases” by some suspects and the lack of integration of systems and lack of access to systems for verification of active cases.

The lack of reporting on police bail in the form of accessible statistics in several published reports including the annual reports of the SAPS makes it difficult to determine trends in giving police bail. Of the remand detainees incarcerated in correctional centres, some have further charges that they have been given police bail for. However, the DCS is not positioned to determine them since their release for court appearance is done through the court requisition that specifies the case related information without referring to police bail. At times these remand detainees are not brought back to DCS after court appearance for police bail related cases and failure to return them while they have active cases which resulted in their detention through the J7 warrant may be regarded as assisted escape.

Though overcrowding is experienced by the DCS through its front and back-end participation in criminal justice system processes, the problem itself will remain a shared responsibility which requires cooperation amongst various role players in the criminal justice system.

8.4 LIMITATIONS OF THE STUDY

The researcher opted for the mixed method approach because of the complex nature of the phenomenon under inquiry and the key limitations for noting are summarised below.

8.4.1 Sampling strategy and data collection

The multi-stage design applied commenced with the analysis for determination of the most overcrowded facilities for selection of the relevant participants for the study. Some participants opted not to participate in the study and the persuasion efforts could not yield positive results and their decisions were respected. Since data was sourced from multiple sources, the historical data and records were able to provide rich data source that assisted in creative extensive analysis for reaching at factual conclusions. Therefore, data that could not be sourced from interviews does not have serious impact on the findings and conclusions.

With regard to police bail the plan was to collect data from nine police stations and only three police stations responded. The researcher opted to include head office component responsible for police bail as the participation from the unit will also assist with the validation of findings for making informed conclusions.

The multi-stage sampling design at the planning stage included recruitment of participants from courts i.e., the clerks of court since they process applications submitted by the DCS in relation to bail review and 49G. With the delay in obtaining response from the Department of Justice and Constitutional Development, the participants were excluded from the study though their participation would have enriched information on challenges shared by the participants that process court applications. Nevertheless, the focus group session with the heads of centres supported the existence of challenges as they form part of the case flow meetings presided by the judiciary and attended by various criminal justice system role players. The lack of participation by the clerks of courts does not have impact on the findings and conclusions in the area of cooperation between the courts and the DCS.

In the light of Covid-19 pandemic, the initial plan was to conduct interviews through the emails and multi-user audio communication. The analysis of feedback received from the participants that chose to respond revealed inadequacy of data which was presented as brief summaries with no detailed explanation. The researcher took advantage of the relaxed Covid-19 containment measures and conducted face to face interviews with participants in Gauteng with regard to bail review and 49G. The interviews were able to generate richer and more detailed information which assisted in generation of detailed findings and conclusions.

The ethical dilemma that the researcher faced was with regard to the protection of data collected through the interviews especially the voice recorded information. The researcher initially planned to record the interviews, however knowing that the interviews were not fully protected since the researcher is a victim of interception, the researcher decided to take notes. The video recordings that were taken only focused on the electronic support system utilised for generating the list of qualifying remand detainees for submitting applications to court in relation to bail review and 49G. Alase (2017:14) emphasises the importance of providing adequate security for the safekeeping of data as well as the protection of the rights, dignities and privacies of the participants.

8.4.2 External and internal validity

External validity refers to generalisability and transferability of the results while internal validity relates to whether results can be transferable, have- theoretical generalizability, empirical applicability, practical usefulness and contextual and constructive generalizability.

The study focused on four distinct areas which are all related to one phenomenon i.e., overcrowding and its reduction. These areas are bed space management, referral of remand detainees to court for bail review, referral of remand detainees to court for consideration of their length of detention and police bail. Other areas are the determination of trends in occupancy and the profile of remand detainees.

The results of the study are transferable to other correctional centres since they all implement similar policies regarding the management of overcrowding. The computerised Bedspace Determination System (BDS) that guides the process of measuring of the cells and the computation which gives the final output in the form of a report referred to as the G309(B) is

utilised in all the correctional centres. Furthermore, the verification of the measurements is conducted by the personnel from the regional and the national offices.

The findings that support the direct relationship between the number of bed spaces and the number of inmates in the influencing the occupancy levels and overcrowding may be applied in all correctional settings as long as the criteria for bed space measurement has been determined.

The results have practical usefulness therefore the findings and recommendation should be utilised to bring improvements in the management of overcrowding in the Department of Correctional Services. The findings cannot be universally applied in all correctional settings especially in relation to the applications for bail review and the referral of applications to court for consideration of the length of detention since these provisions may not be legislated in other countries. However, the findings elevate the interdependency in the reduction of overcrowding of remand detainees since the successful implementation of the bail review and the consideration of the length of detention strategies is influenced by the court outcomes.

The findings on police bail cannot be generalised since the sample was inadequate due to poor response rate.

8.5 ASSUMPTIONS RELATING TO THEORIES

The assumption elucidated below is based on the findings of the study and is aligned with the understanding of the theories of punishment as portrayed in chapter 2.

The presumption of innocence which applies to all the accused including certain categories of remand detainees, excluding the convicted category, does not supersede the consideration of interest of justice factors. The latter are considered by the courts when handling application for bail review and referrals for consideration of the period spent in detention in correctional centres and remand detention facilities. This view is supported by the poor success rate of the two strategies referred to in reducing the population of remand detainees. The notion of regarding preventive detention as punishment may therefore be insignificant since the interest of justice factors are regarded as the regulatory mechanism which is enacted in the criminal justice system of the country.

While the understanding of the criminological theories is relevant for the criminal justice system role players, in this study there is no assumption that can be made. However, further research can be conducted with themes extracted from various criminological theories especially the Rational Choice Theory, the social structure theories and the social process theories. Such studies will assist in enriching the profile of the incarcerated inmates including the remand detainees.

8.6 RECOMMENDATIONS

The recommendations presented are aligned with findings and some are not new and therefore are already referred to in Chapter 3. What is critical though is the follow-through in the implementation process as well as monitoring, evaluation and reporting of the effectiveness of the strategies. This can be done by ensuring that there are indicators and means for data collection as well reporting of evidence that can be tracked. Recommendations have been aligned with the four areas which are the focus of the study.

8.6.1 BED SPACE MANAGEMENT

The following recommendations are made:

- Review of the electronic system for measuring bed spaces to ensure that it is aligned with the prescribed measurements to mitigate the loss of bed spaces through the technical error.
 - The review should accommodate expansion in the development for providing extensive reports that focus on three different types of bed spaces which are approved, functional or usable and unusable. The inclusion of the unusable bed spaces in the report will assist in the monitoring of the lost bed spaces through the implementation of the maintenance plan.
 - The determination of maximum capacity levels aligned with the housing units should be informed by the bed space report and should be included in the daily unlock.
 - The Joint Application Development sessions should be utilised by ensuring that all the key stakeholders are identified and participate in the discussion of business requirements and confirmation of the specification. The relevant legislative and policy framework should be utilised in the validation and

confirmation of specification. The core business units that are policy owners and beneficiaries of the support system should be included in the approval for the business requirements before the development of the electronic support system is initiated. Continuous collaboration and engagements should be held for handling areas that require clarity so that all the areas that require synchronisation are fully understood.

- The blueprint for each correctional centre or remand detention facility which reflects all the areas utilised for calculation of bedspaces must be developed so that it can be utilised for verification of the electronic reports generated from the Bedspace Determination System. The blue print should be in the form of hard copy and the electronic copy.
 - The blueprint should be utilised for tracking the statuses of the cells at predetermined intervals. Furthermore, the amendments in the blueprint may be utilised to guide capturing of the changes in the electronic system.
 - The unique identification for each cell should be developed and must be coded to reflect several variables such as the following:
 - The determination of the section where the cell is located;
 - The determination of the floor level i.e., whether the cell is in basement, ground floor or higher levels;
 - The determination of whether the cell is a single or communal cell; and
 - The determination of hospital cells.
-
- Building of new correctional centres for replacement of the outdated and old centres and to increase bed spaces based on trends in occupancy and the crime patterns.
 - Bed space management through upgrading, renovation and expansion forms part of infrastructure investment in corrections environment therefore its success is dependant partly on the effectiveness of the governance structures. The optimal functioning of the National Building Committee and the Regional Building Committees should be promoted including management of inefficiencies associated with infrastructure management and inevitable loss of resources and these are outlined in Chapter 4 paragraph 4.5.1. Establishment of a strong infrastructure governance with proactive approach in managing inherent corruption including transparency in decision making and enforceable accountability in decision making are highly recommended as proposed by Schwartz, Fouad, Hansen, & Verdier (2020:1–5, 194–195).

8.6.2 IMPLEMENTATION OF 49G AND BAIL REVIEW PROTOCOLS

The following recommendations are made:

- The electronic system for 49G should be reviewed.
 - The review should cater for different periods of referrals in months as outlined in the policy as well as capturing of actual dates of referral of applications to court after they have been acknowledged by the courts. This will allow for the determination of the correct list of qualifying remand detainees and the correct list of backlogs.
 - The backlogs must include case related information to facilitate the tracing of the remand detainees as well as to effect the referral with ease.
 - The possible court outcomes as extractable from the policy should be included in the 49G electronic upgrade to facilitate the ease of capturing and to lessen errors associated with capturing of data. Furthermore, this will contribute in reducing the creation of dirty data.
 - The summary of electronic reports on submitted applications and associated court outcomes should be generated from the system.
 - The referral form for 49G which includes the acknowledgement note signed off by the clerk of court should include the period spent in detention in years and months. The latter will assist in highlighting cases that are at the “red flag” stage such as more than five years.
- The electronic system for bail review should be reviewed.
 - Different criteria that apply to 63(A) and 63(1) applications should be accommodated in the upgraded system so that the qualifying remand detainees can be accessed with ease without resorting to manual filtering of generated information.
 - The 63(1) processes should be built under the court referrals.
 - The capturing of dates of referral and the court outcomes should be similar to the one proposed for 49G upgrades taking into consideration that the bail review application is only submitted once.
- The centre officials should be provided with the user guides for the protocols as a reference document for using the electronic system. The guides should also include access to relevant reports.

- The heads of correctional centres and remand detention facilities must on a weekly basis ensure that qualifying remand detainees for 49G are generated and applications are submitted to court in line with the applicable legislative provision.
- The heads of correctional centres and remand detention facilities must ensure that the criteria for bail protocol is correctly applied to avoid excluding remand detainees with bail of more than R1 000. The bail protocol and 63(1) should be marketed to the inmates since the latter requires the consent of the remand detainee.
- The heads of correctional centres and remand detention facilities must ensure the movements of the remand detainees are electronically updated so that the electronic system can generate the correct list of qualifying remand detainees at any stage for both 49G and bail review.
- A formal system of monitoring of applications submitted to court should be developed in consultation with the court managers.
- A system of training and coaching of officials should be developed to avoid the creation of vacuum in knowledge and skills due to inevitable loss of trained officials which is related to promotions, horizontal placements and retirement. Consideration for placement of younger officials at the Case Management Administration for processing court applications and pairing them with older officials for expanding the building of capacity should be given attention.

8.6.3 CASE FLOW MANAGEMENT

The following recommendations are made:

- The representatives from the DCS that attend the local case flow meetings should provide reports on the management of overcrowding which will include levels occupancy in their centres as well as applications submitted to court and court outcomes so that constant feedback is provided on strategies implemented to reduce the overcrowding of inmates especially the remand detainees. Though the provincial case flow structures have not been the focus of this study, the sharing of reports referred to in this paragraph should extend to the Provincial Efficiency Enhancement Committee. The report presents a bird's eye view of the occupancy for the whole region and this will inform the judiciary and other criminal justice system role players of the overcrowding challenges especially when it reaches the "red flag" i.e., intolerable levels.

- The judicial visits which are provided for in section 99 of the Correctional Services Act 111 of 1998 (Republic of South Africa, 1998:74) should be encouraged as they assist in lifting the conditions of detentions through the reports that the visiting judges provide to the executive and administrative leadership of the DCS.

8.6.4 POLICE BAIL

Recommendations regarding police bail are:

- Trends in police bail should be established by creating a system of reporting from police station to provincial and head office levels. The results should be included in published strategic reports.
- An improved system of verification of the identity of the suspects which includes the integration of aliases for creating detailed profile reports should be developed.
- A system for determination and verification of active cases of the accused for access by the detectives for establishment of those with further charges should be developed.
- A formal system for management of the release of remand detainees who have further charges that they were given police bail for through collaboration between the SAPS and the DCS should be established.
- A monitoring system should be developed in consultation with SAPS visible policing, the Hawks, and court stakeholders such as the clerk of court, court manager and prosecutors for accounting for remand detainees that are handed over for court appearance through requisitions.

8.6.5 RECOMMENDATIONS FOR FUTURE RESEARCH

The findings on bed space management, bail review and referral of remand detainees to court for consideration of the length of detention apply to correctional centres that participated in the study. They may be generalised to other correctional centres based on the understanding that policies and strategies that guide the implementation processes are determined at the central point which is the national office of the DCS. The questionnaire on factors that influence the availability of bed spaces can be adapted and utilised at any correctional environment which manages bed spaces for detention of inmates as long as the researcher is acknowledged.

The findings on police bail apply only to the police stations that participated in the study and may not be generalised to other police stations subject to the availability of other findings conducted in other police stations in relation to the use of police bail.

The researcher recommends that replication studies on bed space management, bail review and referral of remand detainees to court for consideration of the length of detention be conducted through the selection of different centres using the structured data collection tools developed by the researcher and any other data collection strategy. A detailed study on police bail should be conducted through the selection of an increased number of police stations.

8.6.6 OTHER RECOMMENDATIONS RELATING TO CRIMINAL JUSTICE SYSTEM STRATEGIES

The summary of other strategies implemented to reduce the inmate population including remand detainees as articulated in the literature review in Chapter 3 appears below. These strategies include those proposed by Fagan in his article on ‘Prison Overcrowding’ (Fagan, 2002:18).

- The use of non-custodial measures in the form of police bail; after hours bail support service; release on warning, giving of affordable bail, placement under supervision by the correctional official and diversion.
- Improvements of pre-trial detention through the establishment of independent judicial authority for determining the necessity to continue with detention.
- Assistance to be provided by the investigating officers that will enable the prosecutors to present adequate information for determining the necessity to detain the accused pending trial.
- The use of plea bargain to be increased in all types of cases.
- Prioritisation of the cases of remand detainees.
- Consideration for withdrawal of cases such as those that are trivial and weak as well as those for remand detainees that have waited for longer periods.
- Communication of regular late arrivals in court to the relevant station commanders and the heads of correctional centres and remand detention facilities by the court managers. This will allow for engagements between the two criminal justice system stakeholders by considering entering into agreements on early release of remand detainees to SAPS in line with the applicable protocol.

- Evaluation of effectiveness of strategies for reducing overcrowding, which includes analysing areas in the criminal justice system value chain such as arrest patterns, use of pre-trial detention, overcrowding levels, trends in imprisonment rate, profiling of inmates, and cost of imprisonment including projections for refurbishments.

8.7 CONTRIBUTIONS OF THE STUDY

The aim of the study was to determine the effectiveness of certain criminal justice system strategies in curbing overcrowding with focus on bed space management, police bail, bail review process initiated by the DCS and the implementation of the protocol on maximum incarceration period. Other areas were the determination of occupancy levels and overcrowding as well as profiling of remand detainees with focus on trends on remand detainees, nationality, bail, period spent in detention, feeder courts and police stations that collect remand detainees for court appearance.

The literature review on international trends will assist in creating a broader understanding of the complexities in the management of remand detainees, strategies for management of overcrowding as well as challenges in managing overcrowding of remand detainees and developments introduced by various countries.

The management of overcrowding in the context of South Africa (and particularly overcrowding amongst remand detainees) with particular reference to the four focus areas of the study will assist in creating a general understanding of the applicable legislative and policy framework.

The analysis of data collected and the findings in the four demarcated areas have revealed challenges in policy implementation that need attention and consideration through the implementation of improvements by various role players in the criminal justice system.

The study further highlights the importance of policy consideration and a clear understanding of the business requirements when developing the electronic support systems in the corrections environment and therefore improvements for effecting corrections, upgrades and replacements where necessary, should be instituted.

Furthermore, the recommendations aligned with specific findings and general recommendations provide a pool of strategies for consideration for effecting improvements in the management of overcrowding.

8.8 CONCLUDING REMARKS

The study was undertaken to determine the effectiveness of various criminal justice systems strategies in reducing overcrowding of remand detainees in the DCS. The focus areas which were bed space management, referral of remand detainees to court for bail review in line with bail protocol, and consideration of the length of detention in line with the protocol on maximum detention and police bail, constitute direct measures for reducing overcrowding. The researcher could not determine any evidence which supports the effectiveness of the strategies referred to in reducing overcrowding. However, the summary of findings in the delineated areas has revealed shortfalls in policy implementation and challenges in the electronic support systems. The recommendations aligned with the findings should be utilised to effect improvements in policy implementation and the related electronic support systems as well as monitoring, reporting and evaluation by various criminal justice system partners.

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LIST OF ANNEXURES

ANNEXURE A: UNISA ETHICS CLEARANCE APPROVAL



UNISA 2020 ETHICS REVIEW COMMITTEE

Date: 2020:12:08

Dear Vuyelwa Christa Mlomo-Ndlovu

ERC Reference No. : ST145-2020

Name : VC Mlomo-Ndlovu

**Decision: Ethics Approval from
2020:12:08 to 2023:12:08**

Researcher: Vuyelwa Christa Mlomo-Ndlovu

Supervisor: Prof W Luyt

**EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING
OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES**

Qualification: DOCTOR OF PHILOSOPHY IN CRIMINAL JUSTICE

Thank you for the application for research ethics clearance by the Unisa 2020 Ethics Review Committee for the above mentioned research. Ethics approval is granted for 3 years.

*The **Low risk application** was **reviewed** by the CLAW Ethics Review Committee on 8 December 2020 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.*

The proposed research may now commence with the provisions that:

- 1. The researcher will ensure that the research project adheres to the relevant guidelines set out in the Unisa Covid-19 position statement on research ethics attached. Provisional authorisation is granted.**



University of South Africa
Preller Street, Muckleneuk Ridge, City of Tshwane
PO Box 392 UNISA 0003 South Africa
Telephone: +27 12 429 3111 Facsimile: +27 12 429 4150
www.unisa.ac.za

2. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.
3. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.
4. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
5. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
6. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
7. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data require additional ethics clearance.
8. No field work activities may continue after the expiry date **2023:12:08**. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

Note:

The reference number ST 145-2020 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.

Yours sincerely,



Prof T Budhram
Chair of CLAW ERC
E-mail: budhrt@unisa.ac.za
Tel: (012) 433-9462



Prof M Basdeo
Executive Dean : CLAW
E-mail: MBasdeo@unisa.ac.za
Tel: (012) 429-8603



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ANNEXURE B: APPROVAL LETTER FROM THE DEPARTMENT OF CORRECTIONAL SERVICES



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

Private Bag X136, PRETORIA, 0001 Poyntons Building, C/O WF Nkomo and Sophie De Bruyn Street, PRETORIA
Tel (012) 307 2770, Fax 086 539 2693

Dear Ms V Mlomo-Ndlovu

RE: THE EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES

It is with pleasure to inform you that your request to conduct research in the Department of Correctional Services on the above topic has been approved.

Your attention is drawn to the following:

- This ethical approval is valid from 15 March 2021 to 15 November 2023
- The relevant Regional and Area Commissioners where the research will be conducted will be informed of your proposed research project.
- Your research guide is CDC M Thobakgale based at Head Office, you are requested to contact him before the commencement of your research.
- It is your responsibility to make arrangements for your interviewing times.
- Comply with COVID-19 safety and hygiene procedures during data collection processes
- Ensure that all participants have been duly screened for Covid19 according to DCS screening protocols
- Your identity document/passport and this approval letter should be in your possession when visiting regional offices/correctional centres.
- You are required to use the terminology used in the White Paper on Corrections in South Africa (February 2005) and Correctional Services Act (No.111 of 1998) e.g. "Offenders" not "Prisoners" and "Correctional Centres" not "Prisons".
- You are not allowed to use photographic or video equipment during your visits, however the audio recorder is allowed.
- You are required to submit your final report to the Department for approval by the Commissioner of Correctional Services before publication (including presentation at workshops, conferences, seminars, etc) of the report.
- Should you have any enquiries regarding this process, please contact the REC Administration for assistance at telephone number (012) 3072894/95

Thank you for your application and interest to conduct research in the Department of Correctional Services.

Yours faithfully

ND MBULI
DC: POLICY COORDINATION & RESEARCH
DATE: 15/03/2021

ANNEXURE C1: REQUEST FOR PERMISSION TO CONDUCT RESEARCH:

SOUTH AFRICAN POLICE SERVICES

Ref: ERC Reference No: ST145-2020 (Ethical Research Clearance)

Enquiries: VC Mlomo-Ndlovu, Tel: 0834340483, Vuyi.Mlomo@icloud.com

General Khehla Sithole

National Commissioner: South African Police Services

Private Bag X 94

PRETORIA

0001

Dear National Commissioner

RESEARCH ON THE EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES: REQUEST FOR PERMISSION TO CONDUCT RESEARCH AND ASSISTANCE WITH THE ALLOCATION OF THE RESEARCH GUIDE

I have registered for a doctoral degree at the University of South Africa and the topic of my research as appearing above is on overcrowding. The aim of the study is to determine the effectiveness of certain criminal justice system strategies in curbing overcrowding with focus on bedspaces, police bail, bail review process initiated by the Department of Correctional Services and the implementation of the protocol on maximum incarceration period. The objectives of the study are as follows:

- (a) To explore the process of creation and maintenance of bedspaces including building of new facilities;
- (b) To profile centres through the use of daily unlock in order to determine occupancy levels and overcrowding at national, regional and centre level;
- (c) To determine profiles of remand detainees based on snapshots obtained from the databank;
- (d) To examine the use of police bail in preventing overcrowding during pretrial phase;
- (e) To explore the implementation of the bail protocol; and
- (f) To critically examine the implementation of the protocol on maximum detention period.

The proposed study will benefit the criminal justice system in several ways i.e.,

- the literature review process will include international strategies on managing overcrowding including litigation incurred by corrections and this will assist the country in understanding the approaches implemented by other countries.
- the evaluation of the effectiveness of the strategies implemented for curbing overcrowding will constitute a formal feedback process for the Department of Correctional Services as the institution that experiences overcrowding and other role players within the criminal justice system value chain who indirectly and directly contribute to overcrowding through the implementation of the criminal justice system policies (South African Police Service, National Prosecuting Authority, Judiciary, Department of Justice and Legal Aid South Africa).

The value of the research as included in the approved proposals is as follows:

- The study will provide an understanding on the system utilised by the Department of Correctional Services to calculate bedspaces at the centre level in order to determine the approved bedspace.

- The study will reflect an in-depth analysis of the national daily unlock and for the selected few facilities which will be the focus of the study. The study will also provide an analysis of population of remand detainees in terms of the period spent in detention and the amount of bail given.
- The study will provide an understanding on the use of police bail which presumably is an area of interest to the South African public.
- The study will assist in determining whether the reduction strategies for remand detainees are effective or not.
- The study will contribute to the field of criminal justice in South Africa as overcrowding is an outcome of criminal justice system processes implemented to deal with a “wicked problem” of crime.

The role of the South African Police Services in the proposed study has been explained in Annexure A which outlines the sampling methodology including various participants.

I have attached the ethical clearance certificate from UNISA, research proposal, proof or registration for 2021 calendar year, interview guide and signed undertaking.

Your consideration of my request will be highly appreciated.

Thank you



Vuyelwa Christa Mlomo-Ndlovu
Acting Deputy Regional Commissioner: Gauteng Region
Department of Correctional Services

31 May 2021

Date

ANNEXURE C2: APPROVAL LETTER SAPS



| | | | |
|-------------------------------|------------------|---------------------|----------------|
| Privaatsak Private Bag X94 | Pretoria 0001 | Faks No. Fax No. | (012) 393 2128 |
|-------------------------------|------------------|---------------------|----------------|

Your reference/U verwysing:

My reference/My verwysing: 3/34/2

Enquiries/Navrae: Lt Col Joubert
AC Thenga
(012) 393 3118
Email: JoubertG@saps.gov.za

THE HEAD: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001

APPROVED

VC Mlomo-Ndlovu
UNIVERSITY OF SOUTH AFRICA

RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES: DOCTORATE DEGREE: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: VC MLOMO-NDLOVU

The above subject matter refers.

You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.

Further arrangements regarding the research study may be made with the following office:

The Provincial Commissioner: Gauteng:

- **Contact Person:** Lt Col Ruthnam
- **Contact Details:** (011) 547 9131
- **Email Address :** RuthnamKeith@saps.gov.za
- **Contact Person:** SAC Mphatse
- **Contact Details:** (011) 547 9129
- **Email Address:** MphatseB@saps.gov.za

The Provincial Commissioner: Eastern Cape:

- **Contact Person:** Capt Bangani
- **Contact Details:** 082 772 9707
- **Email Address :** BanganiP@saps.gov.za

The Provincial Commissioner: Western Cape:

- **Contact Person:** AC Gomo-Bentsile
- **Contact Details:** (021) 417 7520
- **Email Address :** wc.od.research@saps.gov.za

RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: THE RELATIONSHIP BETWEEN TRAUMATIC STRESS, MENTAL-WELLBEING AND WORK ENGAGEMENT IN THE SOUTH AFRICAN POLICE SERVICE: UNIVERSITY OF JOHANNESBURG: MASTERS DEGREE: RESEARCHER: JF IRWIN

Kindly adhere to paragraph 6 of our attached letter signed on the **2021-07-27** with the same above reference number.

APPROVED



MAJOR GENERAL

**THE HEAD: RESEARCH
DR PR VUMA**

DATE: 2021-10-04

ANNEXURE C3: APPROVAL LETTER SAPS (REQUEST TO INCLUDE HEAD OFFICE PARTICIPANT)



| | | | |
|-------------------------------|------------------|---------------------|----------------|
| Privaatsak Private Bag X94 | Pretoria 0001 | Faks No. Fax No. | (012) 393 4333 |
|-------------------------------|------------------|---------------------|----------------|

Your reference/U verwysing:

My reference/My verwysing: 3/34/2

THE HEAD: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001

Enquiries/Navrae: Lt Col (Dr) Smit
AC Thenga
(012) 393 4333
Email: ThengaS@saps.gov.za

APPROVED

VC Mlomo-Ndlovu
UNIVERSITY OF SOUTH AFRICA

**RE: PERMISSION TO CONDUCT RESEARCH IN THE SOUTH AFRICAN POLICE SERVICE:
UNIVERSITY OF SOUTH AFRICA: DOCTORATE DEGREE: EFFECTIVENESS OF THE
CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE
DEPARTMENT OF CORRECTIONAL SERVICES: RESEARCHER: VC MLOMO-NDLOVU**

1. The above subject matter refers.
2. You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 4 of 2022.
3. Further arrangements regarding the research study may be made with the following office:
4. The Divisional Commissioner: Visible Policing and Operations:
 - **Contact Person:** Colonel MJ Ratombo
 - **Contact Details:** (012) 421 8180/072 706 5978
 - **Email Address:** RatomboM@saps.gov.za
5. Kindly adhere to paragraph 8 of our attached letter signed on the 2022-05-04 with the same above reference number.


MAJOR GENERAL
THE HEAD: RESEARCH
DR PR VUMA

Date: 2022-05-18

ANNEXURE D: REQUEST FOR PERMISSION: DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



Ref: ERC Reference No: ST145-2020 (Ethical Research Clearance)
Enquiries: VC Mlomo-Ndlovu, Tel: 0834340483, Yuyi.Mlomo@icloud.com

Adv. D. Mashabane
Deputy Director-General: Department of Justice and Constitutional Development
Private Bag X81
Pretoria
0001

Dear Advocate Mashabane

RESEARCH ON THE EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES: REQUEST FOR PERMISSION TO CONDUCT RESEARCH AND ASSISTANCE WITH THE ALLOCATION OF THE RESEARCH GUIDE

I have registered for a doctoral degree at the University of South Africa and the topic of my research as appearing above is on overcrowding. The aim of the study is to determine the effectiveness of certain criminal justice system strategies in curbing overcrowding with focus on bedspaces, police bail, bail review process initiated by the Department of Correctional Services and the implementation of the protocol on maximum incarceration period. The objectives of the study are as follows:

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- (b) To profile centres through the use of daily unlock in order to determine occupancy levels and overcrowding at national, regional and centre level;
- (c) To determine profiles of remand detainees based on snapshots obtained from the databank;
- (d) To examine the use of police bail in preventing overcrowding during pretrial phase;
- (e) To explore the implementation of the bail protocol; and
- (f) To critically examine the implementation of the protocol on maximum detention period.

The proposed study will benefit the criminal justice system in several ways i.e.,

- the literature review process will include international strategies on managing overcrowding including litigation incurred by corrections and this will assist the country in understanding the approaches implemented by other countries.
- the evaluation of the effectiveness of the strategies implemented for curbing overcrowding will constitute a formal feedback process for the Department of Correctional Services as the institution that experiences overcrowding and other role players within the criminal justice system value chain who indirectly and directly contribute to overcrowding through the implementation of the criminal justice system policies (South African Police Service, National Prosecuting Authority, Judiciary, Department of Justice and Legal Aid South Africa).



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RESEARCH ON THE EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES: REQUEST FOR PERMISSION TO CONDUCT RESEARCH AND ASSISTANCE WITH THE ALLOCATION OF THE RESEARCH GUIDE

The proposed study will benefit the criminal justice system in several ways i.e.,

- the literature review process will include international strategies on managing overcrowding including litigation incurred by corrections and this will assist the country in understanding the approaches implemented by other countries.
- the evaluation of the effectiveness of the strategies implemented for curbing overcrowding will constitute a formal feedback process for the Department of Correctional Services as the institution that experiences overcrowding and other role players within the criminal justice system value chain who indirectly and directly contribute to overcrowding through the implementation of the criminal justice system policies (South African Police Service, National Prosecuting Authority, Judiciary, Department of Justice and Legal Aid South Africa).

The value of the research as included in the approved proposals is as follows:

- The study will provide an understanding on the system utilised by the Department of Correctional Services to calculate bedspaces at the centre level in order to determine the approved bedspace.
- The study will reflect an in-depth analysis of the national daily unlock and for the selected few facilities which will be the focus of the study. The study will also provide an analysis of population of remand detainees in terms of the period spent in detention and the amount of bail given.
- The study will provide an understanding on the use of police bail which presumably is an area of interest to the South African public.
- The study will assist in determining whether the reduction strategies for remand detainees are effective or not.
- The study will contribute to the field of criminal justice in South Africa as overcrowding is an outcome of criminal justice system processes implemented to deal with a “wicked problem” of crime.

The role of the department of justice in the proposed study has been explained in Annexure A which outlines the sampling methodology including various participants.

I have attached the ethical clearance certificate from UNISA and the proof of registration for 2021 calendar year.



**RESEARCH ON THE EFFECTIVENESS OF THE CRIMINAL JUSTICE SYSTEM STRATEGIES IN
CURBING OVERCROWDING IN THE DEPARTMENT OF CORRECTIONAL SERVICES:
REQUEST FOR PERMISSION TO CONDUCT RESEARCH AND ASSISTANCE WITH THE
ALLOCATION OF THE RESEARCH GUIDE**

The role of the department of justice in the proposed study has been explained in Annexure A which outlines the sampling methodology including various participants.

I have attached the ethical clearance certificate from UNISA and the proof of registration for 2021 calendar year.

Your consideration of my request will be highly appreciated.

Thank you



05 April 2021

VC Mlomo-Ndlovu
Acting Deputy Regional Commissioner: Gauteng Region
Department of Correctional Services

Date



ANNEXURE E: CONSENT FORM

Informed Consent Form: Qualitative Research

This is an informed consent for the officials from the Department of Correctional Services, South African Police Service and the Department of Justice and Constitutional Development who are invited to participate in the study on the effectiveness of the criminal justice system strategies in curbing overcrowding of remand detainees in the Department of Correctional Services.

Section A:

I am _____ working in the Department of Correctional Services as the Deputy Commissioner for Remand Operations i.e., management of the categories of inmates previously referred to as awaiting trial detainees. I am conducting the research for a PhD study with the University of South Africa.

You have been selected to participate in this study because of the nature of your work which is the focus of the study.

You are involved in the implementation of the strategies for the reduction of overcrowding of remand detainees which includes any of the following areas:

| | | | |
|---|--|--|--|
| Police bail <i>processing including approval</i> | | Bail Protocol <i>processing of applications either from DCS or courts</i> | |
| Protocol on referral of RDs to court for consideration of the length of detention <i>processing of application either from DCS or courts</i> | | Bed space management directly or indirectly involved in bed space monitoring or creation | |

I have looked at policies with regard to the above-mentioned areas and would like to get a better understanding on the how the implementation process takes place. This will assist in understanding whether the processes that you are implementing are effective or not in reducing the population of remand detainees (either directly or indirectly).

I would like to request you to participate in interviews and or focus groups. I have created a number of questions that I will use to guide the interview process. Feel free to ask questions for clarity and I may ask you to expand on responses provided. The interviews may take a period not longer than two hours. A follow up through telephonic conversation or a video call may be utilised subject to your approval. and your cooperation will be highly appreciated.

I would like to request for your participation in the focus groups which will constitute other officials that work in the area you have selected. The focus group may be conducted through

face to face or through the use of the virtual platform. The discussion will be recorded to assist with the verification process and data analysis

Your participation in the study is voluntary and you may discontinue to participate at any time if you so wish. There is no penalty or loss of benefit for non-participation.

While there will no personal benefit to you by participating in this study, your inputs will benefit the criminal justice system through the knowledge creation which will be shared and published. The results will also be utilised to introduce improvements in the management of overcrowding where necessary.

The information obtained during the interviews including focus group sessions will be utilised for research purpose only. The information about you will not be shared outside of the research. Your name will not be utilised, you will be identified through the number. Your name and your contact details will be kept only for making a follow up when necessary. Anything that you share will not be attributed to your name. Some records may be kept for a period of five years for audit trail where necessary.

The knowledge that I will get from this study will be shared in the form of a research report which will be published by UNISA. There may be shorter publications which can be made from the main research report.

If you have questions, you can ask them now or later.

Section B: Certificate of Consent

I have read the information and been provided with clarity regarding the study. I consent voluntarily to participate in the study.

| | |
|------------------------------|--|
| Name of the Participant | |
| Signature of the Participant | |
| Date | |

I have provided accurate information to the participant and to the best of my ability. I can confirm that the participant was given an opportunity to ask questions about the study.

A copy of this informed consent form was provided to the participant.

| | |
|-----------------------------|--|
| Name of the Researcher | |
| Signature of the Researcher | |
| Date | |

ANNEXURE F1: INTERVIEW GUIDE: 49G, BAIL REVIEW AND CASEFLOW

Introductory Section

I Vuyelwa Mlomo-Ndlovu an employee in the Department of Correctional Services (Deputy Commissioner for Remand Operations) and a PhD student with the University of South Africa would like to request you to participate in the study that I am conducting for my studies.

Will you kindly provide response to a number of questions that I will pose to you and I would like to request that you email some of the required information (telephonic interview / emailed questionnaire because of covid-19).

You have been selected to participate in this study because of the nature of your work which is the focus of the study.

You are involved in the implementation of the strategies for the reduction of overcrowding of remand detainees which includes any of the following areas (tick the relevant area).

| | | | |
|---|--|--|--|
| Police bail <i>processing including approval</i> | | Bail Protocol <i>processing of applications either from DCS or courts</i> | |
| Protocol on referral of RDs to court for consideration of the length of detention <i>processing of application either from DCS or courts</i> | | Bed space management directly or indirectly involved in bed space monitoring or creation | |
| SECTION A: Demographic | | | |
| 1. Name of the centre | | | |
| 2 Name of the Province (specify) | | | |
| 2. Section where the official works (specify such as Case Management Administration) | | | |
| 3. How long have you been working at the section? | | Less than a month | |
| | | >1 month to 6 months | |
| | | >6 month to 2 years | |
| | | >2 years to 5 Years | |
| | | >5 years 10years | |
| 4. How old are you? | | >10 years | |
| | | 18 to 25 | |
| | | >25 to 35 | |
| | | >35 to 45 | |
| | | >45 to 55 | |
| 5. How long have you been working in DCS? | | >55 to 60 | |
| | | >60 | |
| | | < 2 years | |
| | | >2 to 5 years | |
| | | >5 to 10 years | |
| | | >10 to 20 years | |
| | | >20 to 30 years | |
| | | >30 years | |

| | | | | |
|--|--|------------|-----------|-----------------|
| 6 What is your qualification | Matric | | | |
| | Diploma | | | |
| | National Higher Diploma | | | |
| | Graduate | | | |
| | Post-graduate | | | |
| Section B | | | | |
| 7. Has the participant received training on the implementation of the protocols? (49G and Bail protocol) | Yes | No | | |
| 7.1 If yes when was the participant trained? | | | | |
| 7.2 Who provided training? Head office / Regional Trainers / Management Area Trainers | Head office | | | |
| | Regional Trainers | | | |
| | Management Area Trainers | | | |
| 8. Have you received any on job guidance / coaching on the implementation of the protocol (process of submission of application including feedback) at the centre? | Yes | No | | |
| 8.1 If yes, who provided the guidance? | | | | |
| 9. Local Case-flow meeting | | | | |
| 9.1 What is the local case-flow structure that the centre representatives attend? (DEEC – each has a cluster name) | | | | |
| 9.2 Who attends the case-flow meetings? (centre) | | | | |
| 9.3 How often are the meetings held? | | | | |
| 9.4 Is there a report that DCS presents / submit at the local case-flow meeting | | | | |
| 9.5 How is the challenge of overcrowding handled at the local case-flow structures? | | | | |
| 10 List the names of the courts that refer remand detainees to the centre (supply of remand detainees) | | | | |
| 11. Which police stations collect remand detainees for court appearance from this centre? Provide the list | | | | |
| Part B¹: 49G related questions | | | | |
| | Responsibility emanating for the Protocol: Bail Maximum Detention Period (49G) | Yes | No | Comments |
| 1 | Process to monitor the incarceration periods of remand detainees is in place (Electronic & manual system as a backup) | | | |
| 2 | Where the period of detention of any remand detainee has exceeded 21 months from the initial date of admission into a remand detention facility, the Head must complete annexure A with the details of such remand detainee. Submission of initial applications at 21 months 2.1 Are the applications submitted to court at 21months? 2.2 <i>Check whether the applications were processed for the active RDs who had completed 21 months. (copies of applications)</i> | | | |
| 3 | Submission of subsequent applications if the court advised that the RD must continue with detention 3.1 Are subsequent applications submitted to court? 3.2 At what interval are they submitted? 3.3 <i>Check copies of submitted applications the last 2 to</i> | | | |

¹ Part B: reference to the interview and data collection framework

| | | | | |
|--|---|--|--|--|
| | <p>3 years and the current year (2018/2019 & 2019/2020, 2020/21)</p> <p>3.4 Check whether the applications were processed for the current RDs who have been in detention for longer than 3 years (number of applications sent to court for the active RDs who are in detention for longer than 3 years)</p> <p>Assumption: if the RD is detained for 5 years the number of submitted applications are supposed to be 4 including the initial application done at 21 months</p> <p>NB: Control - Check the namelist of active RDs detained longer than 2 years from the databank and arrange them per centre</p> | | | |
| 4 | <p>Process of delivering applications to court</p> <p>4.1 Who sends the DCS applications to court?</p> | | | |
| 4.2 | How are they sent? | | | |
| 4.3 | <p>Is there a process of acknowledgement of receipt by the court?</p> <p>4.3.1 If yes how does it work?</p> | | | |
| 5 | <p>Requisition for court appearance</p> <p>5.1 Does the centre receives requisition for court appearance for submitted applications?</p> <p>5.2 If yes, how do you differentiate the 49G requisition from other requisitions? (check copies of requisitions)</p> <p>5.3 If no, how then do you know whether the RD was considered in terms of 49G by the court?</p> <p>5.4 If the centre has an AVR, are 49G cases attended to through the AVR courts?</p> | | | |
| 6 | <p>Feedback</p> <p>6.1 How does DCS receive feedback from court?</p> | | | |
| 7 | <p>Monitoring system for applications</p> <p>7.1 Is there is system / process of monitoring the applications implemented by the centre?</p> <p>7.2 If yes, describe the system / process</p> | | | |
| 8. | <p>What challenges are you experiencing regarding the implementation of 49G (from the determination of the qualifying RDs to processing the applications and monitoring of court outcomes)</p> <p>8.1 Determination of qualifying RDs</p> <p>8.2 Processing of applications up to delivery in court</p> <p>8.3 Feedback from courts including requisitions</p> <p>8.4 Other challenges</p> | | | |
| 9 | Records kept at the centre with regard to 49G | | | |
| Part C: Bail Review related questions | | | | |

| | Responsibility emanating for the Protocol: Bai Protocol and 63(1) -bail review | Yes | No | Comments |
|---|--|------------|-----------|-----------------|
| 1 | <p>When it appears to a Head that the population of the particular remand detention facility or correctional centre is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of accused, the Head must identify persons to whom the provisions of section 63A of the Criminal Procedure Act may apply. (Determination of RDs who qualify for submission of applications to court in line with section 63A)</p> <p>1.1 Are bail protocol application processed by the centre?</p> <p>1.2 If yes, how are the qualifying cases determined? (Criteria)</p> | | | |
| 2 | <p>The bail protocol is supposed to be implemented in conjunction with section 63(1) of the CPA which provides for the review of bail on submission by the accused or the prosecutor. DCS submits the application on behalf of the accused.</p> <p>2.1 Are section 63(1) applications processed by the centre?</p> <p>2.2 If yes, how is the process done?</p> | | | |
| 3 | <p>The Head must furnish the relevant authorised prosecutor with details relating to accused in respect of whom the Head will apply for release in terms of section 63A of the Criminal Procedure Act.</p> <p>3.1 Do you submit the list of RDs that appear to qualify for bail protocol to the relevant prosecutors in different courts? NB: Provide copies of the lists</p> <p>3.2 After submitting the list to the prosecutor do you get feedback?</p> <p>3.3 What is the nature of feedback provided to DCS?</p> | | | |
| 4 | <p>When a Head applies in terms of section 63A(1) of the Criminal Procedure Act to a court for—the release on warning of an accused who has been charged with a specified offence; or the amendment of the bail conditions imposed by the court on that accused, he or she must, in writing, prepare an affidavit or affirmation.</p> <p>4.1 Do you complete an affidavit when submitting applications for Bail Protocol to court?</p> <p>4.2 If yes, provide copies of the Affidavit?</p> | | | |

| | | | | |
|---|---|--|--|--|
| | <p>4.3 If no, what is the reason?</p> <p>4.4 Does the court accept applications without an affidavit?</p> | | | |
| 5 | <p>Based on consultation with the judiciary, applications are supposed to be submitted on the 3rd month. This period was selected based on monitoring the payments of bail at several centres. (different rules were created for the risk adjusted strategy in order to contain the RD population)</p> <p>5.1 When are applications submitted to court for qualifying RDs –</p> <p>5.2 Check the namelist of RDs detained with the option of bail from the databank, arrange it per centre and check at the centre if the applications were sent to court for the qualifying RDs?</p> <p>5.3 Are there any RDs who have refused that the application be sent to court for bail review?</p> <p>5.4 If yes, what were the reasons cited by the remand detainees?</p> | | | |
| 6 | <p>Prior to an application in terms of section 63A(1) of the Criminal Procedure Act, a Head must ensure that every effort is made to assist an accused in obtaining the money required to pay the bail, including— telephonically contacting relatives, friends, colleagues or the employer of the accused, which contact details may be provided by the accused, his legal representative or other persons able to advance the interests of the accused; and documenting details of the efforts made, including the details of the persons contacted and any amount or amounts as may be available for payment of bail.</p> <p>6.1 Have there been any contact made with relatives, friends and colleagues or employer of the RD to provide assistance for securing bail money?</p> <p>6.2 If yes, are there any records kept?</p> <p>6.3 If no, what would be the reason of not implementing this action?</p> | | | |
| 7 | <p>Process of delivering applications to court</p> <p>7.1 Who sends the DCS applications to court?</p> | | | |
| | <p>7.2 How are applications sent to court?</p> | | | |
| | <p>7.3 Is there a process of acknowledgement of receipt</p> | | | |

| | | | | |
|-----|---|--|--|--|
| | by the court? 7.3.1 If yes how does it work? | | | |
| 8 | <p>Requisition for court appearance</p> <p>8.1 Does the centre receives requisition for court appearance for submitted applications?</p> <p>8.2 If yes, how do you differentiate the bail review requisition from other requisitions? (check copies of requisitions)</p> <p>8.3 If no, how then do you know whether the RD was considered in terms of 49G by the court?</p> <p>8.4 If the centre has an AVR, are 49G cases attended to through the AVR courts?</p> | | | |
| 9 | <p>Feedback</p> <p>9.1 How does DCS receive feedback from court?</p> | | | |
| 10 | <p>Monitoring system for applications</p> <p>10.1 Is there is system / process of monitoring the applications implemented by the centre?</p> <p>10.2 If yes, describe the system / process</p> | | | |
| 11. | <p>What challenges are you experiencing regarding the implementation of bail protocol and 63(1) (from the determination of the qualifying RDs to processing the applications and monitoring of court outcomes)</p> <p>11.1 Determination of qualifying RDs</p> <p>11.2 Processing of applications up to delivery in court</p> <p>11.3 Feedback from courts including requisitions</p> <p>11.4 Other challenges</p> | | | |
| 12 | Data analysis for the past 3 years (use the tool) | | | |
| 13 | Records kept at the centre with regard to Bail review applications (list and check) | | | |

ANNEXURE F2: QUESTIONNAIRE BEDSPACE MANAGEMENT: HEADS OF CORRECTIONAL CENTRES

Introductory Section

I Vuyelwa Mlomo-Ndlovu an employee in the Department of Correctional Services (Deputy Commissioner for Remand Operations) and a PhD student with the University of South Africa would like to request you to participate in the study that I am conducting for my studies.

Will you kindly provide responses to questions appearing in this questionnaire?

You have been selected to participate in this study because of the nature of your work which is the focus of the study. As the Head of the Centre, you are informed of the bedspaces in your facility and related challenges.

You are involved in the implementation of the strategies for the reduction of overcrowding of remand detainees which includes any of the following areas (tick the relevant area).

| | | | |
|---|--|---|---|
| Police bail <i>processing including approval</i> | | Bail Protocol <i>processing of applications either from DCS or courts</i> | |
| Protocol on referral of RDs to court for consideration of the length of detention <i>processing of application either from DCS or courts</i> | | Bedspace management directly or indirectly involved in bed space monitoring or creation | X |

QUESTION 2: WHAT FACTORS INFLUENCE THE AVAILABILITY OF BEDSPACES IN YOUR CENTRE AND OTHER CENTRES IN GENERAL (ALL HEADS OF CENTRES

| Please click the factors that apply to your facility and provide comments | | | |
|--|-----|----|----------|
| Reasons for Low Occupancy or High Occupancy (Factors that influence the availability of bedspaces) | Yes | No | Comments |
| 1. Minor plumbing repairs that are underway in some of the cells | | | |
| 2. Cells are not conducive to accommodate inmates because: (list the causes if you have unoccupied cells in your centre) | | | |
| 3. Transfers for evenly distribution of inmates | | | |
| 4. Clearing of space for transfer of offenders | | | |
| 5. Receipt of offenders that must be processed for transfer to other centres | | | |
| 6. Categories of inmates that are detained which do not allow for mixing of inmates | | | |
| 7. Admission section with low volumes of admissions | | | |
| 8. Admission section with high volumes of admission | | | |
| 9. Low numbers of admissions in general | | | |
| 10. The state of dilapidation is not conducive for humane detention. | | | |
| 11. Closure for repairs, renovations and upgrading (make examples if this known) | | | |
| 12. Partial closure for repairs, renovations and upgrading (make examples if this known) | | | |
| 13. Special Parole Dispensation | | | |
| 14. Structural defect which possess security risk | | | |

| | | | |
|---|--|--|--|
| 15. Conversion of certain cells to accommodate other functional needs such as school, laundry (add other functional areas) | | | |
| 16. Inadequate water supply | | | |
| 17. The Centre is used for accommodating Covid -19 cases (Isolation and Quarantine) (Provide examples if these occur in your centre) | | | |
| 18. Natural disaster: The centre or portion of the centre was blown by the storm | | | |
| 19. Delays in implementing upgrades or renovations (Provide examples if this has occurred in your management area) | | | |
| 20. Any other bedspace related comment | | | |

ANNEXURE F3: BEDSPACE INCREASE PLAN: FOR COMPLETION BY OFFICIALS WORKING IN FACILITIES MANAGEMENT

Introductory Section

I Vuyelwa Mlomo-Ndlovu an employee in the Department of Correctional Services (Deputy Commissioner for Remand Operations) and a PhD student with the University of South Africa would like to request you to participate in the study that I am conducting for my studies.

Will you kindly provide responses / comments on facilities projects aimed at increasing or maintaining bedspaces as one of the measures for reduction of overcrowding in the Department of Correctional Services.

You have been selected to participate in this study because of the nature of your work which is the focus of the study.

You are involved in the implementation of one of the strategies for the reduction of overcrowding of remand detainees which is Bedspace Management. The questionnaire can be populated by more than 1 person for ensuring that there are no gaps in responses provides. The consent form should be completed by all the participants. The approach is in line with Mixed Method Design.

| Area of Work | Mark the relevant response with X | How long have you been working in DCS Facilities | | | |
|---|-----------------------------------|--|---------------|----------------|----------------|
| | | Less than year | 5 to 10 years | 1 to 5 years | Above 10 years |
| Facilities: Head office | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |
| Facilities: Region: Gauteng | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |
| Facilities: Region: Western Cape | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |
| Facilities: Region: Limpopo, Mpumalanga & Northwest | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |
| Facilities: Region: Free State & Northern Cape | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |
| Facilities: Region: Kwa Zulu Natal | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |
| Facilities: Region: Eastern Cape | | Less than year | | 1 to 5 years | |
| | | 5 to 10 years | | Above 10 years | |
| | | | | | |

| Detention Facility | Bedspaces | Number of new Bedspaces | Comments / Progress |
|---|---|--------------------------------|----------------------------|
| 1. Blue Downs: Western Cape | New Facility | 1500 projection | |
| 2. Voorberg: Western Cape | New Facility | Projection 1000 | |
| 3. Lichtenburg: Limpopo, Mpumalanga & Northwest | Upgrade for replacement and expansion | Projection 500 | |
| 4. Zeerust: Limpopo, Mpumalanga & Northwest | New Facility | 500 Projection | |
| 5. Standerton: Limpopo, Mpumalanga & Northwest | Upgrade with Expansion | | |
| 6. Thohoyandou: Limpopo, Mpumalanga & Northwest | New Facility | 1000 projection | |
| 7. Tzaneen – Limpopo, Mpumalanga & Northwest | New Facility for replacement & expansion | | |
| 8. Richards Bay: KwaZulu Natal | New Facility | | |
| 9. Westville: KwaZulu Natal | Upgrade for repairs and renovations) | Revised bedspaces | |
| 10. Maphumulo Heritage: KwaZulu Natal | Upgrade with a relocation | Projection 500 | |
| 11. Newcastle: KwaZulu Natal | Upgrade and expansion) | Projection 500 | |
| 12. Nongoma: KwaZulu Natal | Upgrade and expansion) | Projection 500 | |
| 13. Nigel: Gauteng | New Facility | Projection 1000 | |
| 14. C-Max: Gauteng | upgrade to high security | | |
| 15. Leeuwkop: Gauteng | New Facility | Projection 1000 | |
| 16. Burgersdorp: Eastern Cape | Upgrade for repairs, renovation and expansion | Projection 500 | |
| 17. Johannesburg: Gauteng | Upgrade for repairs and renovation) | | |
| 18. Parys: Free State & Northern Cape | upgrade | | |
| 19. Kirkwood: Eastern Cape | New Facility | Projection 1500 | |
| 20. St Albans Eastern Cape | Upgrade for repairs and renovation | | |
| 21. Glencoe: KwaZulu Nata | Upgrade for replacement and expansion | | |
| 22. Groenpunt Medium – F Free State & Northern Cape | Upgrade for replacement and expansion | | |
| 23. Brandvlei: Western Cape | Upgrade for replacement) | | |
| 24. Emthonjeni: Gauteng | Upgrade | | |
| 25. Escourt: KwaZulu Natal | Upgrade with expansion) | | |
| 26. Boksburg: Gauteng | Upgrade for repairs and renovation | | |

ANNEXURE F4: INTERVIEW GUIDE: POLICE BAIL

Introductory Section

I Vuyelwa Mlomo-Ndlovu an employee in the Department of Correctional Services (Deputy Commissioner for Remand Operations) and a PhD student with the University of South Africa would like to request you to participate in the study that I am conducting for my studies.

Will you kindly provide responses to a number of questions that I will pose to you and would like to request that you email some of the required information (telephonic interview / emailed questionnaire because of covid-19).

You have been selected to participate in this study because of the nature of your work which is the focus of the study.

You are involved in the implementation of one of the strategies for the reduction of overcrowding of remand detainees which is referred to as Police Bail. The questionnaire can be populated by more than 1 person for ensuring that there are no gaps in responses provides. The consent form should be completed by all the participants. The approach is in line with Mixed Method Design.

SECTION A: Demographic

| | | |
|--|--------------------------------|--|
| 1. Name of the Police station | | |
| 2 Name of the Province (specify) | | |
| 2. Section where the official works (specify the section which deals with police bail) | | |
| 3. Position held | | |
| 4. How long have you been working at the section? | Less than a month | |
| | >1 month to 6 months | |
| | >6 months to 2 years | |
| | >2 years to 5 Years | |
| | >5 years 10 years | |
| | >10 years | |
| 5. How old are you? | 18 to 25 | |
| | >25 to 35 | |
| | >35 to 45 | |
| | >45 to 55 | |
| | >55 to 60 | |
| | >60 | |
| 6. How long have you been working in SAPS? | < 2 years | |
| | >2 to 5 years | |
| | >5 to 10 years | |
| | >10 to 20 years | |
| | >20 to 30 years | |
| | >30 years | |
| 7 What is your qualification | Matric | |
| | Diploma | |
| | National Higher Diploma | |
| | Graduate | |
| | Post-graduate | |

| SECTION B | | | | | | | | | | | | | |
|---|------------|-----------|--|-------------------|---|---------------|---|----------------|--|-----------------|--|--------|--|
| 8. Local Case-flow meeting | Yes | | | | | | | | | | | | |
| 8.1 Does the police station participate in the local case-flow structure meetings | No | | | | | | | | | | | | |
| 8.2 If yes, what is the local case-flow structure that the police station representatives attend? (District Efficiency Enhancement Committee – each has a cluster name) | | | | | | | | | | | | | |
| 8.2 Who attends the case-flow meetings? (centre) | | | | | | | | | | | | | |
| 8.3 How often are the meetings held? | | | | | | | | | | | | | |
| 8.4 Is police bail included in the case-flow discussions | | | | | | | | | | | | | |
| Part G: Police Bail | | | | | | | | | | | | | |
| Responsibility: National Instruction and other guidance material | Yes | No | Comments | | | | | | | | | | |
| 1.Are the applicable offences included in the guidelines for police bail? | | | | | | | | | | | | | |
| 2 What is the criterion for giving police bail? | | | | | | | | | | | | | |
| 3.Who authorises the police bail? | | | | | | | | | | | | | |
| 4.What is the role of the investigating officer in police bail? | | | | | | | | | | | | | |
| 5.How is the address confirmation done? | | | | | | | | | | | | | |
| 6.If police bail is not given, are reasons for refusal provided to the accused? | | | | | | | | | | | | | |
| 7.What are the reasons often cited when police bail is denied? | | | | | | | | | | | | | |
| 8.What is the trend regarding the giving of police bail in the last 2 years? How many accused persons were given police bail? 2018/2019: 2019/2020: 2020/2021 (if not available, please provide information for 2018/2019) | | | <table border="1"> <tr> <td>2018/2019</td> <td></td> </tr> <tr> <td>2019/2020</td> <td></td> </tr> <tr> <td>2020/2021</td> <td></td> </tr> </table> | 2018/2019 | | 2019/2020 | | 2020/2021 | | | | | |
| 2018/2019 | | | | | | | | | | | | | |
| 2019/2020 | | | | | | | | | | | | | |
| 2020/2021 | | | | | | | | | | | | | |
| 9.How many cases were opened in the last 2 years? (At the police station) | | | | | | | | | | | | | |
| 10.What bail conditions are given to the accused who are placed on police bail? | | | | | | | | | | | | | |
| 11.What is the interval between the granting of police bail and court appearance? What is the standard policy? | | | <p>Tick the relevant response (May be more than 1 where there is no standard)</p> <table border="1"> <tr> <td>Less than a month</td> <td></td> </tr> <tr> <td>1 to 3 months</td> <td></td> </tr> <tr> <td>>3 to 6 months</td> <td></td> </tr> <tr> <td>>6 to 12 months</td> <td></td> </tr> <tr> <td>>1year</td> <td></td> </tr> </table> | Less than a month | | 1 to 3 months | | >3 to 6 months | | >6 to 12 months | | >1year | |
| Less than a month | | | | | | | | | | | | | |
| 1 to 3 months | | | | | | | | | | | | | |
| >3 to 6 months | | | | | | | | | | | | | |
| >6 to 12 months | | | | | | | | | | | | | |
| >1year | | | | | | | | | | | | | |
| 12.What are the common breaches for those placed on bail? | | | <table border="1"> <tr> <td>List the breaches</td> </tr> <tr> <td>1</td> </tr> <tr> <td>2</td> </tr> <tr> <td>3</td> </tr> </table> | List the breaches | 1 | 2 | 3 | | | | | | |
| List the breaches | | | | | | | | | | | | | |
| 1 | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | |
| 13.What measures apply if the police bail conditions are breached? | | | | | | | | | | | | | |
| 14.How is the court notified of the police bail? | | | | | | | | | | | | | |
| 15.How is the police bail marketed? | | | | | | | | | | | | | |

ANNEXURE F5: INTERVIEW GUIDE POLICE BAIL FOCUS GROUP

Introductory Section

I Vuyelwa Mlomo-Ndlovu an employee in the Department of Correctional Services (Deputy Commissioner for Remand Operations) and a PhD student with the University of South Africa would like to request you to participate in the study that I am conducting for my studies.

I would pose questions which were extracted from the interview process with your management at the police station. Because of Covid-19 the focus group has only been limited to 6 participants and Covid- 19 containment measures will be adhered to.

The researcher would have liked to use the virtual platform; however, it has been found that it is difficult to have all the participants at one time. You are participating in this focus group because of the nature of your work which is the focus of the study.

You are involved in the implementation of one of the strategies for the reduction of overcrowding of remand detainees which is referred to as Police Bail. I have a consent form for you to complete for consenting to participate in this study. It is not compulsory for you to complete the consent form.

Focus group questions with detectives

1. Who authorises the police bail?
2. What bail conditions are given to the accused who are placed on police bail?
3. What is the interval between the granting of bail and court appearance?
4. How is the court notified / informed of the police bail given at the police station?
5. What are the common breaches?
6. What are challenges experienced with regard to Police bail?
 - (a) During arrest
 - (b) Court appearance
 - (c) Others
7. How is police bail marketed?

Annexure G: Feeder courts and police stations

| Eastern Cape Region | | | | | |
|-----------------------------|---|--|-----------------------------|--|---|
| Correctional centres | Courts served by the centre | Police stations that collect and drop RDs in court | Correctional centres | Courts served by the centre | Police stations that collect and drop RDs in court |
| East London Medium B | 1 Bisho 2 Butterworth 3 Dimbaza 4 East London 5 Idutywa 6 King Williams Town 7 Komga and Kei Mouth 8 Mdantsane 9 Nqamakwe 10 Port Alfred 11 Umtata 12 Willowvale 13 Zwelitsha | 1 Bisho 2 Butterworth 3 Dimbaza 4 East London 5 Idutywa 6 Kei Mouth 7 King Williams Town 8 Komga 9 Mdantsane 10 Port Alfred 11 Willowvale 12 Zwelitsha | King William's Town | 1 Bisho 2 Keimouth 3 Stutterheim | 1 Bell 2 Berlin 3 Bisho 4 Debe Nek 5 Hamburg 6 Izele 7 Kei Road 8 Keimouth 9 Kubusi 10 Moyeni 11 Ndevana 12 Punzana 13 Steve Tshwete 14 Stutterheim 15 Tamara 16 Tyefu |

| | | | | | |
|------------|---|--|-----------------|--|--|
| Queenstown | 1 Cala 2 Cathcart 3 Cofimvaba 4 Elliot 5 Ezibeleni 6 Indwe 7 Lady Frere 8 Ntabethemba 9 Queenstown 10 Sterkstroom 11 Tarkastard | 1 Brigde Camp 2 Cala 3 Cathcart 4 Cofimvaba 5 Elliot 6 Ezibeleni 7 Glen Grey 8 Indwe 9 Lady Frere 10 Mlungisi 11 Ntabethemba 12 Queenstown 13 Sterkstroom 14 Tarkastard | St Albans Med.A | 1 Allexandria 2 Gelvandale 3 Grahamstown 4 Hankey, 5 Humansdorp, 6 Joubertina 7 Kareedouw 8 Kirkwood 9 Kwanobuhle 10 Motherwell 11 Nerina House 12 New Brighton 13 Patensie 14 Port Elizabeth New Law Court 15 Port Elizabeth High Court 16 Uitenhage 17 Uniondale | 1 Alexandria 2 Algoa Park 3 Bethelsdorp 4 Cookhouse 5 Gelvandale 6 Grahamstown 7 Hankey 8 Humansdorp 9 Ikamwelihle 10 Jeffreysbay 11 Kabega Park 12 Kamesh 13 Kareedow 14 Kinkelbos 15 Kwadesi 16 Kwazakhele 17 Loerie 18 Motherwell 19 Mount Road 20 New Brighton 21 Patensie 22 Paterson 23 Swartkops 24 Thornhill 25 Uitenhage 26 Walmer |
|------------|---|--|-----------------|--|--|

| Gauteng Region | | | | | |
|-----------------------------|---|--|-----------------------------|--|---|
| Correctional centres | Courts served by the centre | Police stations that collect and drop RDs in court | Correctional centres | Courts served by the centre | Police stations that collect and drop RDs in court |
| Johannesburg Medium A | <ol style="list-style-type: none"> 1. H/C Palm Ridge 2. M/C Germiston 3. M/C Hillbrow 4. M/C Johannesburg 5. M/C Randburg 6. M/C Alexandra 7. M/C Brixton 8. R/C Kliptown 9. R/C Lenasia 10. R/C Newlands 11. R/C Orlando 12. R/C Pretoria 13. R/C Protea 14. R/C Wynberg 15. H/C Johannesburg 16. R/C Kliptown 17. R/C Midrand 18. R/C Tembisa | <ol style="list-style-type: none"> 1. Moroka 2. Naledi 3. Norwood 4. Orlando 5. Parkview 6. Protea Glen 7. Brackendowns 8. Bramley 9. Brixton 10. Cleveland 11. Diepkloof 12. Diepsloot 13. Douglasdale 14. Edenpark 15. Edenvale 16. Johannesburg Central 17. Hillbrow 18. Linden 19. Lenasia 20. Meyerton 21. Mondeor 22. Roodepoort | Kgoši Mampuru II Local | <ol style="list-style-type: none"> 1. Attridgeville; 2. Bela 3. Bethane; 4. Brits 5. Bronkhorspruit; 6. Centurion 7. Court 62 (Court In Kgoši Mampuru Local) 8. Cullinan; 9. District Court; Pretoria North; 10. Garankuwa; 11. Groblersdal 12. Hatfield 13. Kwamhlanga 14. Lyttelton; 15. Mamelodi East & West 16. Marapyane 17. Modimolle; 18. Mokobolo; 19. Mokopong | <ol style="list-style-type: none"> 1. Akasia, 2. Attridgeville 3. Bela; 4. Boschkop; 5. Bronkhorstspuit, 6. Brooklyn; 7. Cullinan; 8. Diepsloot, 9. Dube; 10. Eersterus, 11. Erasmia; 12. Garankuwa; 13. Garsfontein, 14. Hammanskraal; 15. Hercules, 16. Kameeldrift, 17. Laudium, 18. Loate; 19. Lyttelton, 20. Mabopane, 21. Mamelodi East & West, 22. Mooinooi; |

| | | | | | |
|--------------|---|--|-----------|--|--|
| | | <ul style="list-style-type: none"> 23. Sandringham 24. Sandton 25. Sophiatown 26. Soweto | | <ul style="list-style-type: none"> 20. Ndibane; 21. Nkangala 22. Pretoria Commercial Court 23. Pretoria Magistrate Court 24. Pretoria High Court 25. Pretoria Regional 26. Soshanguve 27. Temba 28. Thlabane 29. Welbekend | <ul style="list-style-type: none"> 23. Olievenhoutbosch 24. Pienaarsrivier; 25. Pretoria Central 26. Pretoria North/ West/ East, 27. Pretoria Moot; 28. Rietgat; 29. Silverton 30. Sunnyside; 31. Sinoville, 32. Soshanguve; 33. Temba; 34. Villieria, 35. Wierdabrug; 36. Wonderboompoort |
| 'Krugersdorp | <ul style="list-style-type: none"> 1. Kagiso 2. Krugersdorp 3. Magaliesburg 4. Oberholzer 5. Randfontein 6. Roodepoort 7. Westonaria | <ul style="list-style-type: none"> 1. Bekkersdal 2. Dobsonville 3. Florida 4. Honeydew 5. Kagiso 6. Krugersdorp 7. Magaliesburg 8. Muldersdrift 9. Oberholzer 10. Randfontein 11. Roodepoort 12. Tarlton | Modderbee | <ul style="list-style-type: none"> 1. Benoni 2. Daveyton 3. Delmas, 4. Kempton Park, 5. KwaThema, 6. Tembisa 7. Springs | <ul style="list-style-type: none"> 1. Actonville, 2. Benoni, 3. Botleng, 4. Daveyton, 5. Delmas 6. Etwatwa 7. Kempton Park 8. KwaThema 9. Putfontein, 10. Rabie Ridge) 11. Springs 12. Tembisa |

| | | 13. Westonaria | | 13. Wattville | |
|-------------------------------------|--|--|--------------------------------------|---|--|
| Western Cape Region | | | | | |
| Correctional Centres | Courts served by the centre | Police stations that collect and drop RDs in court | Correctional centres | Courts served by the centre | Police stations that collect and drop RDs in court |
| George | <ol style="list-style-type: none"> 1. Albertinia 2. George 3. Grootbrak 4. Mossel Bay 5. Riversdal 6. Stilbaai | <ol style="list-style-type: none"> 1. Albertinia 2. George 3. Grootbrak 4. Knysna 5. Mossel Bay 6. Oudtshoorn 7. Riversdal 8. Stilbaai 9. Thembalethu | Malmesbury remand detention facility | <ol style="list-style-type: none"> 1 Atlantis 2 Malmesbury 3 Moorreesburg 4 Paarl 5 Riebeeck West 6 Vredenburg | <ol style="list-style-type: none"> 1. Atlantis 2. Citrusdal 3. Darling 4. Hopefield 5. Laiplek 6. Malmesbury 7. Moorreesburg 8. Paarl 9. Piketberg 10. Riebeeck West 11. Vredenburg |
| Pollsmoor remand detention facility | <ol style="list-style-type: none"> 1. Athlone 2. Atlantis 3. Belville 4. Bishop Lavis 5. Blue Downs 6. Caledon 7. Fezeka 8. Franschoek 9. Goodwood 10. Grabouw | <ol style="list-style-type: none"> 1 Athlone 2 Atlantis 3 Blue Downs 4 Bellville 5 Bishop Lavis 6 Cape Town 7 Goodwood 8 Khayelitsha 9 Kuilsriver 10 MitchelsPlain | Worcester Male | <ol style="list-style-type: none"> 1. Bonnievale 2. Ceres 3. De Doorns 4. Laingsburg 5. Montagu 6. Rawsonville 7. Robertson 8. Sutherland 9. Touwsriver 10. Tulbagh | <ol style="list-style-type: none"> 1. Blue downs 2. Bonnievale 3. Caledon 4. Ceres 5. De Doorns 6. Kuilsriver 7. Laingsburg 8. Montagu 9. Rawsonville 10. Robertson |

| | | | |
|--|--|-------------------------------|--|
| 11. Hermanus 12. High Court 13. Khayelitsha 14. Khayelitsha 15. Kuilsrivier 16. Laaipek 17. Laingsburg 18. Malmesbury 19. Mitchells Plain 20. Muizenberg 21. Paarl 22. Parow 23. Phillippi 24. R/C Cape Town 25. M/C Cape Town 26. Simons Town 27. Somerset West 28. Stellenbosch 29. Strand 30. Vredenburg 31. Worcester 32. Wynberg 33. Wynberg 34. Zwelitsha | 11 Muizenberg 12 Paarl 13 Parow 14 Phillippi 15 Somerset West 16 Stellenbosch 17 Strand 18 Simons Town 19 Vredenburg 20 Wynberg | 11. Wolseley 12. Worcester | 11. Sutherland 12. Touwsriver 13. Tulbagh 14. Wolseley 15. Worcester |
| Keys: H/C: High Court M/C: Magistrate Court | | R/C: Regional Court | |

**ANNEXURE G1: OVERCROWDED FACILITIES: MORE THAN 100%
OCCUPANCY: 31 JANUARY 2020 (164)**

| Region | Correctional Centre | Bedspace | RDs | Other Unsentenced | Sentenced | All inmates | Occupancy |
|---------------|----------------------------|-----------------|------------|------------------------------|------------------|--------------------|------------------|
| EC | Lusikisiki | 109 | 64 | 0 | 249 | 313 | 287.2 |
| WC | Pollsmoor Medium B | 437 | 0 | 0 | 1227 | 1227 | 280.8 |
| EC | Burgersdorp | 149 | 282 | 0 | 132 | 414 | 277.9 |
| EC | Bizana | 47 | 115 | 0 | 15 | 130 | 276.6 |
| EC | Queenstown | 125 | 331 | 0 | 4 | 335 | 268.0 |
| LMN | Thohoyandou Medium B | 219 | 575 | 0 | 0 | 575 | 262.6 |
| LMN | Polokwane | 557 | 1048 | 0 | 369 | 1417 | 254.4 |
| EC | Idutywa | 62 | 0 | 0 | 154 | 154 | 248.4 |
| EC | Graaff-Reinet | 63 | 138 | 0 | 9 | 147 | 233.3 |
| WC | Allandale | 336 | 578 | 0 | 197 | 775 | 230.7 |
| EC | St Albans Medium A | 706 | 1537 | 17 | 42 | 1596 | 226.1 |
| WC | Beaufort-West | 76 | 141 | 0 | 29 | 170 | 223.7 |
| EC | Mdantsane | 582 | 0 | 0 | 1273 | 1273 | 218.7 |
| WC | Malmesbury RDF | 178 | 360 | 0 | 22 | 382 | 214.6 |
| GP | Johannesburg Medium A | 2630 | 5484 | 0 | 141 | 5625 | 213.9 |
| LMN | Potchefstroom | 867 | 1621 | 1 | 229 | 1851 | 213.5 |
| EC | Mthatha Medium | 720 | 5 | 0 | 1529 | 1534 | 213.1 |
| WC | Ladismith | 54 | 33 | 0 | 76 | 109 | 201.9 |
| WC | Oudtshoorn Medium A | 300 | 235 | 0 | 341 | 576 | 192.0 |
| KZN | Ncome Med A | 487 | 272 | 2 | 649 | 923 | 189.5 |
| EC | East London Medium B | 543 | 957 | 23 | 40 | 1020 | 187.9 |
| WC | Worcester Males | 573 | 958 | 0 | 113 | 1071 | 186.9 |
| EC | Flagstaff | 37 | 0 | 0 | 69 | 69 | 186.5 |
| LMN | Nelspruit | 828 | 1122 | 5 | 396 | 1523 | 183.9 |
| EC | Mount Fletcher | 86 | 17 | 5 | 136 | 158 | 183.7 |
| EC | Middledrift | 646 | 0 | 0 | 1186 | 1186 | 183.6 |
| KZN | Ladysmith | 344 | 559 | 2 | 69 | 630 | 183.1 |
| WC | Caledon RDF | 215 | 376 | 0 | 11 | 387 | 180.0 |
| EC | Grahamstown | 309 | 294 | 2 | 259 | 555 | 179.6 |
| EC | Sada | 261 | 85 | 0 | 375 | 460 | 176.3 |
| FSNC | Grootvlei A | 896 | 987 | 38 | 553 | 1578 | 176.1 |
| GP | Kgoši Mampuru II Female | 166 | 81 | 0 | 207 | 288 | 173.5 |
| EC | St Albans Medium B | 929 | 0 | 0 | 1608 | 1608 | 173.1 |
| WC | George | 563 | 551 | 0 | 421 | 972 | 172.7 |
| GP | Johannesburg Medium B | 1339 | 0 | 0 | 2291 | 2291 | 171.1 |
| WC | Knysna | 179 | 218 | 0 | 88 | 306 | 171.0 |
| LMN | Makhado | 324 | 341 | 0 | 211 | 552 | 170.4 |
| GP | Krugersdorp | 1625 | 1283 | 0 | 1484 | 2767 | 170.3 |
| WC | Pollsmoor RDF | 1786 | 2923 | 0 | 82 | 3005 | 168.3 |

| Region | Correctional Centre | Bedspace | RDs | Other Unsentenced | Sentenced | All inmates | Occupancy |
|--------|--------------------------|----------|------|-------------------|-----------|-------------|-----------|
| GP | Modderbee | 2492 | 1543 | 4 | 2616 | 4163 | 167.1 |
| WC | Worcester Females | 142 | 56 | 0 | 181 | 237 | 166.9 |
| LMN | Female & Youth | 134 | 105 | 0 | 118 | 223 | 166.4 |
| EC | Mthatha Remand | 634 | 972 | 22 | 52 | 1046 | 165.0 |
| EC | Cradock | 253 | 46 | 0 | 370 | 416 | 164.4 |
| EC | Tabankulu | 64 | 0 | 0 | 105 | 105 | 164.1 |
| FSNC | Odendaalsrus | 453 | 709 | 0 | 23 | 732 | 161.6 |
| EC | East London Medium A | 836 | 1 | 0 | 1328 | 1329 | 159.0 |
| KZN | Bergville | 29 | 0 | | 46 | 46 | 158.6 |
| FSNC | Harrismith | 262 | 238 | 0 | 175 | 413 | 157.6 |
| KZN | Qalakabusha | 1395 | 403 | 3 | 1786 | 2192 | 157.1 |
| WC | Pollsmoor Medium A | 1111 | 1696 | 0 | 42 | 1738 | 156.4 |
| EC | Mount Frere | 32 | 0 | 0 | 50 | 50 | 156.3 |
| KZN | Waterval Medium A | 603 | 0 | | 941 | 941 | 156.1 |
| GP | Kgoši Mampuru II Central | 1635 | 0 | 0 | 2544 | 2544 | 155.6 |
| KZN | Durban Female | 251 | 145 | 1 | 243 | 389 | 155.0 |
| LMN | Rooigrond Medium A | 757 | 179 | 0 | 991 | 1170 | 154.6 |
| LMN | Piet Retief | 261 | 207 | 0 | 196 | 403 | 154.4 |
| EC | Middelburg | 317 | 70 | 0 | 419 | 489 | 154.3 |
| GP | Kgoši Mampuru II Local | 2171 | 3275 | 4 | 62 | 3341 | 153.9 |
| WC | Calvinia | 41 | 45 | 0 | 18 | 63 | 153.7 |
| EC | Mount Ayliff | 85 | 0 | 0 | 130 | 130 | 152.9 |
| LMN | Barberton Medium B | 631 | 0 | 0 | 963 | 963 | 152.6 |
| EC | Dodrecht | 92 | 0 | 0 | 140 | 140 | 152.2 |
| LMN | Barberton Maximum | 845 | 0 | 0 | 1284 | 1284 | 152.0 |
| LMN | Standerton | 314 | 0 | 0 | 474 | 474 | 151.0 |
| LMN | Witbank | 1293 | 476 | 8 | 1452 | 1936 | 149.7 |
| WC | Drakenstein Maximum | 386 | 1 | 0 | 576 | 577 | 149.5 |
| FSNC | Victoria West | 69 | 52 | 0 | 51 | 103 | 149.3 |
| KZN | Kokstad Medium | 340 | 0 | | 507 | 507 | 149.1 |
| KZN | Durban Medium A | 2501 | 3639 | 2 | 83 | 3724 | 148.9 |
| GP | Zonderwater Medium A | 872 | 0 | 0 | 1296 | 1296 | 148.6 |
| WC | Dwarsrivier | 237 | 0 | 0 | 351 | 351 | 148.1 |
| LMN | Bethal | 771 | 423 | 0 | 717 | 1140 | 147.9 |
| KZN | Melmoth | 46 | 0 | | 68 | 68 | 147.8 |
| GP | Leeuwkop Medium C | 701 | 0 | 0 | 1034 | 1034 | 147.5 |
| GP | Baviaanspoort Maximum | 429 | 0 | 0 | 629 | 629 | 146.6 |
| LMN | Rooigrond Medium B | 266 | 0 | 0 | 390 | 390 | 146.6 |
| GP | Johannesburg Female | 613 | 434 | 0 | 463 | 897 | 146.3 |
| GP | Zonderwater Medium B | 773 | 0 | 0 | 1124 | 1124 | 145.4 |
| GP | Baviaanspoort Medium | 759 | 0 | 0 | 1101 | 1101 | 145.1 |
| FSNC | Bethlehem | 180 | 172 | 0 | 88 | 260 | 144.4 |
| GP | Johannesburg Medium C | 345 | 0 | 0 | 496 | 496 | 143.8 |
| WC | Buffeljagsrivier | 245 | 288 | 0 | 64 | 352 | 143.7 |
| WC | Helderstroom Maximum | 589 | 7 | 0 | 839 | 846 | 143.6 |

| Region | Correctional Centre | Bedspace | RDs | Other Unsentenced | Sentenced | All inmates | Occupancy |
|--------|---------------------------|----------|------|-------------------|-----------|-------------|-----------|
| KZN | Durban Medium B | 1975 | 0 | | 2822 | 2822 | 142.9 |
| LMN | Mafikeng | 108 | 0 | 0 | 154 | 154 | 142.6 |
| KZN | Sevontein | 836 | | | 1180 | 1180 | 141.2 |
| FSNC | Grootvlei B | 244 | 0 | 0 | 344 | 344 | 141.0 |
| KZN | Ncome Medium B | 753 | 0 | | 1058 | 1058 | 140.5 |
| FSNC | Groenpunt Maximum | 1418 | 0 | 0 | 1985 | 1985 | 140.0 |
| KZN | Waterval Medium B | 627 | 232 | | 645 | 877 | 139.9 |
| GP | Boksburg Juveniles | 274 | 233 | 0 | 148 | 381 | 139.1 |
| LMN | Ermelo | 513 | 274 | 12 | 427 | 713 | 139.0 |
| WC | Goodwood | 2115 | 2254 | 0 | 682 | 2936 | 138.8 |
| GP | Nigel | 333 | 188 | 0 | 272 | 460 | 138.1 |
| KZN | Pietermaritzburg Medium A | 2490 | 1176 | 6 | 2256 | 3438 | 138.1 |
| GP | Leeuwkop Maximum | 785 | 0 | 0 | 1080 | 1080 | 137.6 |
| LMN | Klerksdorp | 1098 | 0 | 0 | 1492 | 1492 | 135.9 |
| EC | Barkly-East | 67 | 32 | 0 | 59 | 91 | 135.8 |
| LMN | Thohoyandou Medium A | 691 | 0 | 0 | 937 | 937 | 135.6 |
| WC | Drakenstein Medium A | 576 | 0 | 0 | 779 | 779 | 135.2 |
| KZN | Umzinto | 477 | 224 | | 421 | 645 | 135.2 |
| LMN | Mogwase | 412 | 201 | 0 | 356 | 557 | 135.2 |
| LMN | Middleburg | 317 | 227 | 1 | 200 | 428 | 135.0 |
| EC | King William's Town | 536 | 681 | 1 | 40 | 722 | 134.7 |
| WC | Oudtshoorn Medium B | 78 | 31 | 0 | 74 | 105 | 134.6 |
| WC | Prince Albert | 52 | 24 | 0 | 46 | 70 | 134.6 |
| WC | Uniondale | 52 | 23 | 0 | 47 | 70 | 134.6 |
| GP | Boksburg Medium A | 2000 | 1321 | 0 | 1351 | 2672 | 133.6 |
| FSNC | Ficksburg | 87 | 88 | 0 | 27 | 115 | 132.2 |
| KZN | Nongoma | 54 | 0 | | 71 | 71 | 131.5 |
| LMN | Barberton Medium A | 137 | 0 | 0 | 180 | 180 | 131.4 |
| LMN | Zeerust | 143 | 0 | 0 | 187 | 187 | 130.8 |
| WC | Staart Van Paardeberg | 261 | 0 | 0 | 341 | 341 | 130.7 |
| EC | Kirkwood | 787 | 0 | 0 | 1024 | 1024 | 130.1 |
| FSNC | Colesberg | 186 | 53 | 1 | 187 | 241 | 129.6 |
| FSNC | De Aar Male | 264 | 114 | 0 | 227 | 341 | 129.2 |
| KZN | New Hanover | 231 | | | 298 | 298 | 129.0 |
| KZN | Vryheid | 273 | 265 | 8 | 79 | 352 | 128.9 |
| EC | St Albans Maximum | 1468 | 0 | 0 | 1885 | 1885 | 128.4 |
| WC | Mosselbaai | 346 | 183 | 0 | 261 | 444 | 128.3 |
| FSNC | Bizza Makhate C | 216 | 44 | 0 | 233 | 277 | 128.2 |
| EC | Nqgeleni | 108 | 0 | 0 | 138 | 138 | 127.8 |
| LMN | Losperfontein | 808 | 0 | 0 | 1024 | 1024 | 126.7 |
| GP | Heidelberg Male | 553 | 142 | 0 | 557 | 699 | 126.4 |
| WC | Helderstroom Medium A | 755 | 0 | 0 | 950 | 950 | 125.8 |
| FSNC | Kimberley | 801 | 650 | 12 | 344 | 1006 | 125.6 |
| WC | Obiqua | 234 | 0 | 0 | 289 | 289 | 123.5 |

| Region | Correctional Centre | Bedspace | RDs | Other Unsentenced | Sentenced | All inmates | Occupancy |
|---------------|------------------------------|-----------------|------------|------------------------------|------------------|--------------------|------------------|
| KZN | Glencoe | 666 | 0 | | 822 | 822 | 123.4 |
| WC | Pollsmoor Females | 485 | 400 | 0 | 198 | 598 | 123.3 |
| KZN | Newcastle | 263 | 246 | | 78 | 324 | 123.2 |
| GP | Odi | 886 | 0 | 0 | 1081 | 1081 | 122.0 |
| LMN | Christiana | 107 | 0 | 0 | 130 | 130 | 121.5 |
| FSNC | Heilbron | 66 | 51 | 0 | 29 | 80 | 121.2 |
| EC | Engcobo | 99 | 0 | 0 | 120 | 120 | 121.2 |
| WC | Drakenstein Medium B | 474 | 0 | 0 | 568 | 568 | 119.8 |
| KZN | Eshowe | 689 | 3 | | 820 | 823 | 119.5 |
| GP | Leeuwkop Medium A | 862 | 0 | 0 | 1010 | 1010 | 117.2 |
| LMN | Rustenburg Medium A | 495 | 154 | 0 | 421 | 575 | 116.2 |
| FSNC | Parys | 87 | 52 | 0 | 49 | 101 | 116.1 |
| LMN | Modomolle | 364 | 0 | 0 | 418 | 418 | 114.8 |
| LMN | Wolmaranstad | 108 | 0 | 0 | 123 | 123 | 113.9 |
| EC | Willowvale | 52 | 0 | 0 | 59 | 59 | 113.5 |
| KZN | Pietermaritzburg Medium B | 356 | | | 401 | 401 | 112.6 |
| WC | Voorberg Medium B | 1560 | 97 | 0 | 1649 | 1746 | 111.9 |
| KZN | Port Shepstone | 150 | 0 | | 167 | 167 | 111.3 |
| FSNC | Goedemoed B | 539 | 0 | 0 | 599 | 599 | 111.1 |
| FSNC | Sasolburg | 380 | 190 | 0 | 232 | 422 | 111.1 |
| EC | Patensie | 353 | 0 | 0 | 392 | 392 | 111.1 |
| FSNC | Kuruman | 413 | 251 | 0 | 203 | 454 | 109.9 |
| FSNC | Vereeniging | 786 | 495 | 0 | 363 | 858 | 109.2 |
| WC | Vanrhynsdorp | 472 | 333 | 0 | 181 | 514 | 108.9 |
| LMN | Barberton Town | 372 | 104 | 0 | 301 | 405 | 108.9 |
| WC | Brandvlei Youth | 348 | 0 | 0 | 376 | 376 | 108.1 |
| LMN | Volkrust | 211 | 86 | 0 | 137 | 223 | 105.7 |
| FSNC | Ladybrand | 54 | 0 | 0 | 57 | 57 | 105.6 |
| KZN | Ixopo | 165 | | | 173 | 173 | 104.9 |
| KZN | Matatiele | 83 | 0 | | 87 | 87 | 104.8 |
| EC | Lady Frere | 46 | 0 | 0 | 48 | 48 | 104.4 |
| WC | Hawequa | 208 | 0 | 0 | 217 | 217 | 104.3 |
| EC | Stutterheim | 50 | 0 | 0 | 52 | 52 | 104.0 |
| WC | Malmesbury Medium A | 1392 | 365 | 0 | 1062 | 1427 | 102.5 |
| LMN | Lydenburg | 81 | 0 | 0 | 83 | 83 | 102.5 |
| GP | Leeuwkop Medium B | 706 | 0 | 0 | 722 | 722 | 102.3 |

**ANNEXURE G2: OVERCROWDED FACILITIES: MORE THAN 100%
OCCUPANCY: 01 APRIL 2021 (135)**

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|--------|-----------------------|----------|------|-------------------|-----------|-------|-----------|
| EC | Queenstown | 125 | 373 | 0 | 7 | 380 | 304.0 |
| EC | Bizana | 47 | 123 | 0 | 12 | 135 | 287.2 |
| WC | Allandale | 319 | 565 | 0 | 276 | 841 | 263.6 |
| EC | Graaff-Reinet | 53 | 117 | 0 | 8 | 125 | 235.9 |
| EC | Burgersdorp | 149 | 237 | 2 | 108 | 347 | 232.9 |
| WC | Stellenbosch | 71 | 114 | 0 | 48 | 162 | 228.2 |
| LMN | Thohoyandou Medium B | 219 | 470 | 0 | 18 | 488 | 222.8 |
| WC | Pollsmoor Medium B | 437 | 1 | 0 | 971 | 972 | 222.4 |
| GP | Johannesburg Medium A | 2630 | 5598 | 0 | 125 | 5723 | 217.6 |
| EC | King William's Town | 338 | 687 | 0 | 41 | 728 | 215.4 |
| EC | Mdantsane | 582 | 0 | 0 | 1223 | 1223 | 210.1 |
| EC | Mthatha Medium | 720 | 0 | 0 | 1502 | 1502 | 208.6 |
| WC | George | 563 | 562 | 0 | 549 | 1111 | 197.3 |
| WC | Beaufort-West | 76 | 118 | 0 | 30 | 148 | 194.7 |
| FSNC | Grootvlei A | 896 | 1160 | 32 | 548 | 1740 | 194.2 |
| EC | Flagstaff | 56 | 0 | 0 | 105 | 105 | 187.5 |
| EC | Mount Frere | 48 | 0 | 0 | 89 | 89 | 185.4 |
| EC | Lusikisiki | 148 | 54 | 1 | 219 | 274 | 185.1 |
| EC | St Albans Medium A | 706 | 1246 | 12 | 43 | 1301 | 184.3 |
| LMN | Polokwane | 561 | 756 | 0 | 238 | 994 | 177.2 |
| EC | East London Medium B | 543 | 938 | 6 | 18 | 962 | 177.2 |
| EC | Butterworth | 141 | 206 | 5 | 35 | 246 | 174.5 |
| WC | Ladismith | 56 | 22 | 0 | 74 | 96 | 171.4 |
| EC | Middledrift | 646 | 0 | 0 | 1101 | 1101 | 170.4 |
| EC | Willowvale | 52 | 0 | 0 | 88 | 88 | 169.2 |
| WC | Worcester Females | 142 | 53 | 0 | 178 | 231 | 162.7 |
| EC | Mthatha Remand | 634 | 973 | 8 | 48 | 1029 | 162.3 |
| WC | Knysna | 194 | 180 | 0 | 133 | 313 | 161.3 |
| EC | Mount Ayliff | 85 | 0 | 0 | 137 | 137 | 161.2 |
| EC | Grahamstown | 307 | 233 | 1 | 256 | 490 | 159.6 |
| WC | Worcester Males | 573 | 728 | 0 | 184 | 912 | 159.2 |
| WC | Oudtshoorn Medium A | 317 | 137 | 0 | 365 | 502 | 158.4 |
| GP | Krugersdorp | 1625 | 1481 | 0 | 1067 | 2548 | 156.8 |
| LMN | Nelspruit | 828 | 828 | 5 | 464 | 1297 | 156.6 |
| EC | East London Medium A | 887 | 3 | 0 | 1381 | 1384 | 156.0 |
| LMN | Makhado | 358 | 309 | 0 | 249 | 558 | 155.9 |
| WC | Mosselbaai | 346 | 231 | 0 | 306 | 537 | 155.2 |
| FSNC | Odendaalsrus | 424 | 632 | 0 | 23 | 655 | 154.5 |
| KZN | Ladysmith | 360 | 506 | 7 | 43 | 556 | 154.4 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|--------|------------------------|----------|------|-------------------|-----------|-------|-----------|
| WC | Pollsmoor RDF | 1786 | 2694 | 0 | 57 | 2751 | 154.0 |
| EC | Middelburg | 318 | 51 | 0 | 435 | 486 | 152.8 |
| LMN | Barberton Medium B | 635 | 0 | 0 | 968 | 968 | 152.4 |
| WC | Dwarsrivier | 232 | 0 | 0 | 353 | 353 | 152.2 |
| WC | Malmesbury RDF | 178 | 227 | 0 | 43 | 270 | 151.7 |
| FSNC | Bethlehem | 194 | 133 | 0 | 160 | 293 | 151.0 |
| EC | Idutywa | 101 | 0 | 0 | 152 | 152 | 150.5 |
| EC | Sada | 261 | 104 | 0 | 286 | 390 | 149.4 |
| WC | Uniondale | 53 | 31 | 0 | 48 | 79 | 149.1 |
| WC | Drakenstein Maximum | 386 | 6 | 0 | 569 | 575 | 149.0 |
| LMN | Rooigrond Medium A | 757 | 164 | 0 | 962 | 1126 | 148.8 |
| WC | Caledon RDF | 232 | 320 | 0 | 25 | 345 | 148.7 |
| EC | Dodrecht | 92 | 0 | 0 | 136 | 136 | 147,8 |
| GP | Johannesburg Medium B | 1339 | 0 | 0 | 1968 | 1968 | 147.0 |
| LMN | Modomolle | 370 | 84 | 0 | 452 | 536 | 144.9 |
| WC | Helderstroom Maximum | 589 | 14 | 0 | 833 | 847 | 143.8 |
| GP | Leeuwkop Medium C | 701 | 0 | 0 | 1006 | 1006 | 143.5 |
| GP | Modderbee | 2479 | 1605 | 2 | 1939 | 3546 | 143.0 |
| LMN | Barberton Maximum | 855 | 0 | 0 | 1218 | 1218 | 142.5 |
| FSNC | Bizza Makhate C | 216 | 56 | 0 | 251 | 307 | 142.1 |
| WC | Buffeljagsrivier | 245 | 231 | 0 | 117 | 348 | 142.0 |
| GP | Zonderwater Medium A | 872 | 0 | 0 | 1237 | 1237 | 141.9 |
| LMN | Female & Youth | 137 | 84 | 0 | 110 | 194 | 141.6 |
| EC | Cradock | 253 | 45 | 0 | 311 | 356 | 140.7 |
| KZN | Vryheid | 273 | 290 | 0 | 93 | 383 | 140.3 |
| LMN | Piet Retief | 261 | 190 | 0 | 174 | 364 | 139.5 |
| WC | Prince Albert | 54 | 36 | 0 | 39 | 75 | 138.9 |
| KZN | Ncome Medium A | 487 | 151 | 0 | 524 | 675 | 138.6 |
| GP | Kgoši Mampuru II Local | 2171 | 2927 | 7 | 72 | 3006 | 138.5 |
| EC | Mount Fletcher | 113 | 0 | 6 | 150 | 156 | 138.1 |
| GP | Leeuwkop Maximum | 785 | 0 | 0 | 1081 | 1081 | 137.7 |
| WC | Robertson | 234 | 180 | 0 | 142 | 322 | 137.6 |
| GP | Baviaanspoort Maximum | 429 | 0 | 0 | 589 | 589 | 137.3 |
| KZN | Durban Medium B | 1975 | 0 | 0 | 2708 | 2708 | 137.1 |
| FSNC | Groenpunt Maximum | 1392 | 0 | 0 | 1905 | 1905 | 136.9 |
| LMN | Mogwase | 412 | 146 | 0 | 412 | 558 | 135.4 |
| LMN | Thohoyandou Medium A | 691 | 109 | 0 | 825 | 934 | 135.2 |
| EC | St Albans Maximum | 1468 | 0 | 0 | 1967 | 1967 | 134.0 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|--------|---------------------------|----------|-------|-------------------|-----------|-------|-----------|
| KZN | Pietermaritzburg Medium A | 2490 | 1 131 | 6 | 2190 | 3327 | 133.6 |
| EC | Engcobo | 101 | 0 | 0 | 134 | 134 | 132.7 |
| GP | Johannesburg Female | 613 | 385 | 0 | 427 | 812 | 132.5 |
| WC | Pollsmoor Medium A | 1111 | 1432 | 0 | 36 | 1468 | 132.1 |
| KZN | Qalakabusha | 1395 | 284 | 0 | 1552 | 1836 | 131.6 |
| FSNC | Vereeniging | 699 | 574 | 0 | 344 | 918 | 131.3 |
| KZN | Durban Medium A | 2501 | 3175 | 1 | 89 | 3265 | 130.6 |
| KZN | Newcastle | 263 | 283 | 0 | 58 | 341 | 129.7 |
| FSNC | Harrismith | 267 | 206 | 0 | 137 | 343 | 128.5 |
| FSNC | Victoria West | 92 | 50 | 0 | 68 | 118 | 128.3 |
| WC | Helderstroom Medium A | 755 | 0 | 0 | 967 | 967 | 128.1 |
| GP | Johannesburg Medium C | 341 | 0 | 0 | 435 | 435 | 127.6 |
| LMN | Witbank | 1278 | 441 | 16 | 1168 | 1625 | 127.2 |
| KZN | Bergville | 26 | 0 | 0 | 33 | 33 | 126.9 |
| KZN | Durban Female | 251 | 101 | 0 | 217 | 318 | 126.7 |
| EC | Lady Frere | 46 | 0 | 0 | 58 | 58 | 126.1 |
| FSNC | Springbok | 82 | 55 | 0 | 48 | 103 | 125.6 |
| WC | Goodwood | 2115 | 1936 | 0 | 719 | 2655 | 125.5 |
| WC | Staart Van Paardeberg | 234 | 0 | 0 | 293 | 293 | 125.2 |
| LMN | Zeerust | 144 | 0 | 0 | 177 | 177 | 122.9 |
| GP | Kgoši Mampuru II Female | 166 | 79 | 0 | 125 | 204 | 122.9 |
| GP | Kgoši Mampuru II Central | 1651 | 0 | 0 | 2026 | 2026 | 122.7 |
| LMN | Wolmaranstad | 108 | 0 | 0 | 132 | 132 | 122.2 |
| FSNC | Kuruman | 316 | 198 | 0 | 187 | 385 | 121.8 |
| KZN | Kokstad Medium | 342 | 0 | 0 | 414 | 414 | 121.1 |
| LMN | Rooigrond Medium B | 266 | 0 | 0 | 322 | 322 | 121.1 |
| LMN | Carolina | 70 | 53 | 0 | 31 | 84 | 120.0 |
| GP | Boksburg Medium A | 2000 | 1208 | 0 | 1182 | 2390 | 119.5 |
| LMN | Belfast | 58 | 0 | 0 | 69 | 69 | 119.0 |
| WC | Oudtshoorn Medium B | 78 | 31 | 0 | 61 | 92 | 118.0 |
| EC | Barkly-East | 67 | 16 | 0 | 63 | 79 | 117.9 |
| WC | Vanrhynsdorp | 472 | 354 | 0 | 201 | 555 | 117.6 |
| LMN | Klerksdorp | 1098 | 332 | 0 | 955 | 1287 | 117.2 |
| GP | Odi | 886 | 0 | 0 | 1027 | 1027 | 115.9 |
| WC | Obiqua | 263 | 0 | 0 | 301 | 301 | 114.5 |
| GP | Baviaanspoort Medium | 759 | 0 | 0 | 867 | 867 | 114.2 |
| GP | Boksburg Juveniles | 278 | 194 | 0 | 122 | 316 | 113.7 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|---------------|----------------------------|-----------------|------------|--------------------------|------------------|--------------|------------------|
| FSNC | Bizza Makhate B | 528 | 351 | 0 | 241 | 592 | 112.1 |
| LMN | Ermelo | 517 | 282 | 4 | 293 | 579 | 112.0 |
| EC | St Albans Medium B | 929 | 0 | 0 | 1036 | 1036 | 111.5 |
| KZN | Waterval Medium A | 619 | 0 | 0 | 689 | 689 | 111.3 |
| WC | Pollsmoor Females | 485 | 315 | 0 | 216 | 531 | 109.5 |
| EC | Mqanduli | 78 | 0 | 0 | 85 | 85 | 109.0 |
| KZN | Durban Medium C | 689 | 0 | 0 | 749 | 749 | 108.7 |
| KZN | Umzinto | 477 | 214 | 0 | 300 | 514 | 107.8 |
| WC | Drakenstein Medium B | 474 | 1 | 0 | 508 | 509 | 107.4 |
| KZN | Dundee | 113 | 0 | 0 | 121 | 121 | 107.1 |
| KZN | Sevontein | 840 | 0 | 0 | 898 | 898 | 106.9 |
| LMN | Losperfontein | 808 | 0 | 0 | 857 | 857 | 106.1 |
| FSNC | De Aar Female | 33 | 1 | 0 | 34 | 35 | 106.1 |
| FSNC | Kimberley | 801 | 665 | 11 | 169 | 845 | 105.5 |
| FSNC | Colesberg | 186 | 46 | 0 | 150 | 196 | 105.4 |
| EC | Kirkwood | 787 | 0 | 0 | 821 | 821 | 104.3 |
| LMN | Christiana | 115 | 0 | 0 | 118 | 118 | 102.6 |
| KZN | Estcourt | 512 | 0 | 0 | 521 | 521 | 101.8 |
| GP | Zonderwater Medium B | 773 | 0 | 0 | 785 | 785 | 101.6 |
| WC | Drakenstein Medium A | 556 | 0 | 0 | 563 | 563 | 101.3 |
| LMN | Rustenburg Medium A | 495 | 98 | 0 | 399 | 497 | 100.4 |

ANNEXURE G3: OVERCROWDED FACILITIES: MORE THAN 100%

OCCUPANCY 31 MARCH 2022 (168)

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|---------------|----------------------------|-----------------|------------|--------------------------|------------------|--------------|------------------|
| EC | Bizana | 48 | 143 | 0 | 15 | 158 | 329.2 |
| WC | Allandale | 292 | 578 | 0 | 272 | 850 | 291.1 |
| EC | Lusikisiki | 122 | 107 | 0 | 246 | 353 | 289.3 |
| EC | King William's Town | 275 | 744 | 6 | 31 | 781 | 284.0 |
| EC | Queenstown | 129 | 343 | 0 | 9 | 352 | 272.9 |
| LMN | Thohoyandou Medium B | 217 | 535 | 0 | 16 | 551 | 253.9 |
| EC | Butterworth | 130 | 276 | 4 | 38 | 318 | 244.6 |
| WC | Worcester Males | 406 | 798 | 0 | 183 | 981 | 241.6 |
| EC | Flagstaff | 54 | 0 | 0 | 130 | 130 | 240.7 |
| EC | Mount Frere | 52 | 0 | 0 | 125 | 125 | 240.4 |
| WC | George | 517 | 550 | 0 | 681 | 1231 | 238.1 |
| WC | Knysna | 167 | 181 | 0 | 207 | 388 | 232.3 |
| EC | Graaff-Reinet | 70 | 148 | 0 | 10 | 158 | 225.7 |
| WC | Oudtshoorn Medium A | 273 | 164 | 0 | 450 | 614 | 224.9 |
| WC | Pollsmoor Medium B | 512 | 0 | 0 | 1126 | 1126 | 219.9 |
| Gauteng | Johannesburg Medium A | 2468 | 5293 | 0 | 117 | 5410 | 219.2 |
| WC | Worcester Females | 112 | 56 | 0 | 181 | 237 | 211.6 |
| EC | Burgersdorp | 220 | 270 | 3 | 191 | 464 | 210.9 |
| WC | Prince Albert | 38 | 34 | 0 | 46 | 80 | 210.5 |
| WC | Beaufort-West | 75 | 115 | 0 | 41 | 156 | 208.0 |
| LMN | Makhado | 303 | 405 | 0 | 225 | 630 | 207.9 |
| KZN | Pietermaritzburg Medium A | 1493 | 1031 | 4 | 2055 | 3090 | 207.0 |
| EC | East London Medium B | 480 | 962 | 2 | 27 | 991 | 206.5 |
| LMN | Polokwane | 480 | 750 | 0 | 230 | 980 | 204.2 |
| WC | Mosselbaai | 313 | 295 | 0 | 334 | 629 | 201.0 |
| WC | Caledon RDF | 192 | 364 | 0 | 21 | 385 | 200.5 |
| WC | Calvinia | 29 | 0 | 0 | 58 | 58 | 200.0 |
| EC | Mount Fletcher | 118 | 20 | 0 | 214 | 234 | 198.3 |
| KZN | Kranskop | 59 | 0 | 0 | 117 | 117 | 198.3 |
| FSNC | Grootvlei A | 806 | 960 | 41 | 588 | 1589 | 197.2 |
| EC | Willowvale | 44 | 0 | 0 | 86 | 86 | 195.5 |
| EC | Mthatha Medium | 672 | 0 | 0 | 1293 | 1293 | 192.4 |
| EC | Mount Ayliff | 72 | 0 | 0 | 138 | 138 | 191.7 |
| KZN | Ladysmith | 307 | 534 | 0 | 52 | 586 | 190.9 |
| WC | Buffeljagsrivier | 215 | 295 | 0 | 114 | 409 | 190.2 |
| WC | Pollsmoor RDF | 1423 | 2628 | 0 | 61 | 2689 | 189.0 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|---------------|--|-----------------|------------|--------------------------|------------------|--------------|------------------|
| WC | Dwarsrivier | 179 | 0 | 0 | 338 | 338 | 188.8 |
| EC | Nqgeleni | 85 | 0 | 0 | 160 | 160 | 188.2 |
| EC | Mdantsane | 697 | 0 | 0 | 1308 | 1308 | 187.7 |
| EC | Middledrift | 590 | 0 | 0 | 1102 | 1102 | 186.8 |
| EC | Engcobo | 75 | 0 | 0 | 140 | 140 | 186.6 |
| EC | Mthatha Remand | 607 | 1075 | 0 | 58 | 1133 | 186.7 |
| EC | St Albans Medium A | 686 | 1240 | 0 | 33 | 1273 | 185.6 |
| WC | Malmesbury RDF | 158 | 241 | 0 | 46 | 287 | 181.7 |
| EC | Idutywa | 82 | 0 | 0 | 147 | 147 | 179.3 |
| EC | Grahamstown | 281 | 239 | 0 | 262 | 501 | 178.3 |
| WC | Oudtshoorn Medium B | 63 | 52 | 0 | 60 | 112 | 177.8 |
| WC | Ladismith | 48 | 18 | 0 | 67 | 85 | 177.1 |
| FSNC | Odendaalsrus | 367 | 626 | 0 | 22 | 648 | 176.6 |
| FSNC | Vereeniging | 739 | 852 | 0 | 450 | 1302 | 176.2 |
| WC | Robertson | 203 | 189 | 0 | 168 | 357 | 175.9 |
| EC | East London Medium A | 780 | 2 | 0 | 1356 | 1358 | 174.1 |
| WC | Brandvlei Medium C (Rooidakkies) (303) | 289 | 0 | 0 | 500 | 500 | 173.0 |
| WC | Stellenbosch | 54 | 54 | 0 | 39 | 93 | 172.2 |
| LMN | Modomolle | 315 | 78 | 0 | 457 | 535 | 169.8 |
| WC | Uniondale | 39 | 19 | 0 | 46 | 65 | 166.7 |
| Gauteng | Johannesburg Medium B | 1499 | 0 | 0 | 2496 | 2496 | 166.5 |
| FSNC | Harrismith | 215 | 239 | 0 | 112 | 351 | 163.3 |
| EC | Barkly-East | 69 | 40 | 0 | 72 | 112 | 162.3 |
| Gauteng | Krugersdorp | 1466 | 1553 | 0 | 826 | 2379 | 162.3 |
| WC | Helderstroom Med A | 615 | 0 | 0 | 998 | 998 | 162.3 |
| KZN | Durban Medium B | 1936 | 0 | 0 | 3126 | 3126 | 161.5 |
| LMN | Barberton Maximum | 795 | 0 | 0 | 1278 | 1278 | 160.8 |
| Gauteng | Kgoši Mampuru II Female | 132 | 94 | 1 | 117 | 212 | 160.6 |
| FSNC | Springbok | 69 | 78 | 0 | 32 | 110 | 159.4 |
| EC | Mqanduli | 70 | 0 | 0 | 111 | 111 | 158.6 |
| KZN | Durban Medium C | 552 | 0 | 0 | 865 | 865 | 156.7 |
| FSNC | Sasolburg | 310 | 284 | 0 | 196 | 480 | 154.8 |
| KZN | Greytown | 57 | 0 | 0 | 88 | 88 | 154.4 |
| EC | Lady Frere | 51 | 0 | 0 | 78 | 78 | 152.9 |
| EC | St Albans Medium B | 861 | 9 | 1 | 1305 | 1315 | 152.7 |
| LMN | Piet Retief | 245 | 160 | 0 | 214 | 374 | 152.7 |
| FSNC | Hopetown | 40 | 26 | 0 | 35 | 61 | 152.5 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|---------------|----------------------------|-----------------|------------|--------------------------|------------------|--------------|------------------|
| Gauteng | Leeuwkop Maximum | 688 | 0 | 0 | 1049 | 1049 | 152.5 |
| WC | Goodwood | 1713 | 1778 | 0 | 826 | 2604 | 152.0 |
| Gauteng | Modderbee | 2309 | 1662 | 2 | 1812 | 3476 | 150.5 |
| EC | St Albans Maximum | 1322 | 0 | 0 | 1986 | 1986 | 150.2 |
| WC | Helderstroom Maximum | 534 | 5 | 0 | 792 | 797 | 149.3 |
| KZN | Kokstad Medium | 345 | 0 | 0 | 512 | 512 | 148.4 |
| Gauteng | Leeuwkop Medium C | 601 | 0 | 0 | 888 | 888 | 147.8 |
| FSNC | Frankfort | 61 | 25 | 0 | 65 | 90 | 147.5 |
| Gauteng | Baviaanspoort Maximum | 360 | 0 | 0 | 528 | 528 | 146.7 |
| WC | Drakenstein Maximum | 375 | 5 | 0 | 541 | 546 | 145.6 |
| EC | Stutterheim | 44 | 0 | 0 | 64 | 64 | 145.5 |
| KZN | Durban Female | 230 | 94 | 0 | 240 | 334 | 145.2 |
| KZN | Ncome Medium A | 534 | 207 | 0 | 566 | 773 | 144.8 |
| WC | Drakenstein Medium A | 501 | 0 | 0 | 725 | 725 | 144.7 |
| LMN | Mogwase | 396 | 153 | 0 | 419 | 572 | 144.4 |
| KZN | Vryheid | 244 | 284 | 0 | 68 | 352 | 144.3 |
| Gauteng | Johannesburg Female | 711 | 458 | 0 | 560 | 1018 | 143.2 |
| WC | Pollsmoor Females | 408 | 298 | 0 | 286 | 584 | 143.1 |
| FSNC | Colesberg | 153 | 46 | 0 | 172 | 218 | 142.5 |
| EC | Middelburg | 351 | 66 | 0 | 430 | 496 | 141.3 |
| WC | Obiqua | 235 | 0 | 0 | 332 | 332 | 141.3 |
| LMN | Rooigrond Medium A | 645 | 177 | 0 | 730 | 907 | 140.6 |
| LMN | Barberton Medium B | 655 | 0 | 0 | 917 | 917 | 140.0 |
| WC | Staart Van Paardeberg | 222 | 0 | 0 | 310 | 310 | 139.6 |
| FSNC | Heilbron | 51 | 38 | 0 | 33 | 71 | 139.2 |
| LMN | Bethal | 765 | 375 | 2 | 677 | 1054 | 137.8 |
| EC | Nqamakwe | 53 | 0 | 0 | 73 | 73 | 137.7 |
| LMN | Nelspruit | 757 | 751 | 6 | 283 | 1040 | 137.4 |
| LMN | Female & Youth | 124 | 65 | 0 | 105 | 170 | 137.1 |
| LMN | Rooigrond Medium B | 249 | 0 | 0 | 341 | 341 | 137.0 |
| EC | Sada | 318 | 79 | 0 | 348 | 427 | 134.3 |
| WC | Malmesbury Medium A | 1105 | 569 | 0 | 905 | 1474 | 133.4 |
| Gauteng | Heidelberg Male | 517 | 157 | 0 | 524 | 681 | 131.7 |
| Gauteng | Kgoši Mampuru II | 1514 | 0 | 0 | 1990 | 1990 | 131.4 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|---------|---------------------------|----------|------|-------------------|-----------|-------|-----------|
| | Central | | | | | | |
| FSNC | Bethlehem | 201 | 154 | 0 | 110 | 264 | 131.3 |
| KZN | Waterval Medium B | 359 | 142 | 0 | 329 | 471 | 131.2 |
| KZN | Newcastle | 254 | 275 | 0 | 58 | 333 | 131.1 |
| LMN | Wolmaranstad | 101 | 0 | 0 | 132 | 132 | 130.7 |
| KZN | Nkandla | 36 | 0 | 0 | 47 | 47 | 130.6 |
| LMN | Potchefstroom | 636 | 728 | 0 | 102 | 830 | 130.5 |
| Gauteng | Atteridgeville | 546 | 0 | 0 | 707 | 707 | 129.5 |
| EC | Somerset-East | 122 | 0 | 0 | 157 | 157 | 128.7 |
| Gauteng | Zonderwater Medium A | 825 | 0 | 0 | 1054 | 1054 | 127.8 |
| Gauteng | Johannesburg Medium C | 307 | 0 | 0 | 392 | 392 | 127.7 |
| KZN | New Hanover | 110 | 0 | 0 | 140 | 140 | 127.3 |
| KZN | Durban Medium A | 2202 | 2692 | 5 | 105 | 2802 | 127.3 |
| WC | Pollsmoor Medium A | 1028 | 1267 | 0 | 40 | 1307 | 127.1 |
| KZN | Eshowe | 459 | 5 | 0 | 576 | 581 | 126.6 |
| KZN | Ncome Medium B | 724 | 0 | 0 | 911 | 911 | 125.8 |
| FSNC | Richmond | 39 | 23 | 0 | 26 | 49 | 125.6 |
| FSNC | Fauresmith | 28 | 5 | 0 | 30 | 35 | 125.0 |
| Gauteng | Baviaanspoort Medium | 649 | 0 | 0 | 811 | 811 | 125.0 |
| Gauteng | Nigel | 310 | 165 | 0 | 221 | 386 | 124.5 |
| KZN | Ixopo | 79 | 0 | 0 | 98 | 98 | 124.1 |
| KZN | Nongoma | 46 | 0 | 0 | 57 | 57 | 123.9 |
| Gauteng | Odi | 861 | 0 | 0 | 1066 | 1066 | 123.8 |
| LMN | Ermelo | 499 | 273 | 3 | 334 | 610 | 122.2 |
| Gauteng | Boksburg Medium A | 2062 | 1160 | 0 | 1356 | 2516 | 122.0 |
| FSNC | Bizza Makhate B | 534 | 421 | 0 | 227 | 648 | 121.4 |
| LMN | Volkruis | 198 | 92 | 0 | 148 | 240 | 121.2 |
| FSNC | Senekal | 106 | 58 | 0 | 70 | 128 | 120.8 |
| KZN | Mtunzini | 84 | 0 | 0 | 100 | 100 | 119.1 |
| Gauteng | Kgoši Mampuru II Local | 2306 | 2662 | 5 | 73 | 2740 | 118.8 |
| EC | Sterkspruit | 64 | 0 | 0 | 76 | 76 | 118.8 |
| LMN | Witbank | 1320 | 412 | 12 | 1139 | 1563 | 118.4 |
| KZN | Melmoth | 44 | 0 | 0 | 52 | 52 | 118.2 |
| Gauteng | Zonderwater Medium B | 770 | 0 | 0 | 909 | 909 | 118.1 |
| LMN | Thohoyandou Medium A | 685 | 73 | 2 | 731 | 806 | 117.7 |
| LMN | Lydenburg | 82 | 0 | 0 | 96 | 96 | 117.1 |
| KZN | Pietermaritzburg Medium B | 328 | 0 | 0 | 381 | 381 | 116.2 |

| Region | Correctional Centre | Bedspace | RDs | Other unsentenced | Sentenced | Total | Occupancy |
|---------------|----------------------------|-----------------|------------|--------------------------|------------------|--------------|------------------|
| FSNC | Groenpunt Maximum | 1531 | 1 | 0 | 1774 | 1775 | 115.94 |
| Gauteng | Boksburg Juveniles | 271 | 202 | 0 | 112 | 314 | 115.9 |
| WC | Vanrhynsdorp | 520 | 399 | 0 | 199 | 598 | 115.0 |
| EC | Dodrecht | 114 | 0 | 0 | 131 | 131 | 114.9 |
| FSNC | Victoria West | 81 | 41 | 0 | 52 | 93 | 114.8 |
| LMN | Klerksdorp | 1136 | 68 | 0 | 1229 | 1297 | 114.2 |
| KZN | Maphumulo | 44 | 0 | 0 | 50 | 50 | 113.6 |
| KZN | Dundee | 82 | 0 | 0 | 92 | 92 | 112.2 |
| FSNC | Bethulie | 42 | 20 | 0 | 27 | 47 | 111.9 |
| EC | Kirkwood | 712 | 0 | 0 | 783 | 783 | 110.0 |
| KZN | Waterval Medium A | 608 | 0 | 0 | 667 | 667 | 109.7 |
| LMN | Middleburg | 287 | 158 | 2 | 154 | 314 | 109.4 |
| EC | Cradock | 319 | 45 | 0 | 301 | 346 | 108.5 |
| KZN | Sevontein | 823 | 0 | 0 | 882 | 882 | 107.2 |
| FSNC | Kuruman | 338 | 193 | 0 | 168 | 361 | 106.8 |
| FSNC | Kimberley | 750 | 567 | 20 | 213 | 800 | 106.7 |
| KZN | Matatiele | 70 | 0 | 0 | 74 | 74 | 105.7 |
| WC | Voorberg Medium B | 1433 | 102 | 0 | 1401 | 1503 | 104.9 |
| KZN | Bergville | 24 | 0 | 0 | 25 | 25 | 104.2 |
| LMN | Zeerust | 140 | 0 | 0 | 145 | 145 | 103.6 |
| FSNC | Upington | 772 | 187 | 3 | 606 | 796 | 103.1 |
| FSNC | Grootvlei B | 237 | 0 | 0 | 242 | 242 | 102.1 |
| LMN | Christiana | 112 | 0 | 0 | 113 | 113 | 100.9 |
| KZN | Qalakabusha | 1638 | 249 | 0 | 1403 | 1652 | 100.9 |
| WC | Voorberg Medium A | 461 | 0 | 0 | 462 | 462 | 100.2 |

ANNEXURE H: SCHEDULE 7 CRIMES

- Public violence.
- Culpable homicide.
- Bestiality as contemplated in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
- Assault, involving the infliction of grievous bodily harm.
- Arson.
- Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.
- Malicious injury to property.
- Robbery, other than a robbery with aggravating circumstances, if the amount involved in the offence does not exceed R20 000,00.
- Theft and any offence referred to in section 264(1)(a), (b) and (c), if the amount involved in the offence does not exceed R20 000,00.
- Any offence in terms of any law relating to the illicit possession of dependence-producing drugs.
- Any offence relating to extortion, fraud, forgery or uttering if the amount of value involved in the offence does not exceed R20 000,00.
- Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule (Republic of South Africa, 1977: 307-308).

**ANNEXURE I: LETTER FROM THE LANGUAGE EDITOR / EDITING
CERTIFICATE**

Professional Language Practitioner

Ms. T. Shongwe
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South Africa
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17 October 2022

TO WHOM IT MAY CONCERN

I hereby certify that I have language-edited the dissertation of
Ms Vuyelwa Christa Mlomo-Ndlovu for her Doctor of Philosophy degree (PhD)
in Criminal Justice with the University of South Africa.

I am satisfied that, provided the changes I have made are effected to the text,
the language is of an acceptable standard, and is fit for publication.



Ms Tumisang Shongwe
BA (UNISA), PGC Editing (UP)
Membership: Professional
Editors' guild (PEG)

