

## EMERGENCY MEASURES:

### Early releases to alleviate prison overcrowding

**Makubetse Sekhonyane**  
Institute for Security Studies

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The current overcrowding in South African prisons has necessitated the move away from a strictly retributive approach to offending behaviour, to that of rehabilitation and restoration. Another solution to the overcrowding problem has been the early release of certain categories of offenders. This has not been met with much support. It is however becoming increasingly clear that locking people up does not solve the problem of crime but could even exacerbate it. The result is that even more people are locked away, thus putting a strain on the capacity and effective management of prisons.

The growing prison population is the most important influence on the outputs and budget of the Department of Correctional Services. At least 60% of the budget is spent on incarceration and administration. The department has estimated an increase of 225 600 prisoners by 2004/5, which is likely to have serious budgetary implications. Currently there are 33 000 people employed by the department to manage 176 000 prisoners in cells designed to accommodate 105 000 people (Figure 1).

Figure 1: Number of DCS personnel and prisoners, 1994-2000



Source: Department of Correctional Services

As of early this year a number of prisons were populated by well over 200%. Bizana prison in the Eastern Cape is overpopulated by 587%, Umtata Medium C prison by 338% and Louis Trichardt prison in the Northern Province by 286%. The increase in prison population requires increased capacity and new ways of managing prisoners.

### Long term plans to reduce overcrowding

The department has identified various projects aimed at reducing overcrowding, thereby reducing casualties and communicable diseases and assisting in the rehabilitation of offenders. These include:

- Introducing a restorative justice approach.
- Enhancing rehabilitation strategies.
- Introducing private prisons.
- Improving community corrections.
- Introducing unit management.

Notwithstanding the above, and despite increased capacity in the department, the problem of overcrowding will require more drastic measures. To this end there are other legislative processes that can be utilised. These are however, the responsibility of the justice department and the judiciary in particular.

For instance, overcrowding could be reversed if the courts were more flexible and innovative when attending to cases. There are several offences, such as urinating or drinking in public, that do not necessarily require a sentence of imprisonment. For such offences, and many others, there are a number of statutory provisions that allow magistrates to use alternative punishments in order to reduce the inflow of prisoners. These include:

- Use of non-custodial sentences such as monetary compensation for the victim, community service, and submitting to treatment.
- Correctional supervision.
- Placement of juveniles in the custody of a suitable person (a parent or guardian).
- Suspension of sentences.

- Discharge with a reprimand.

### Releasing prisoners as a solution

The office of the Inspecting Judge and the Department of Correctional Services have undertaken another important development in an attempt to reduce overcrowding.

In September 2000, 8 451 unsentenced prisoners who were liable for a bail amount of R1 000 or less were released to ease overcrowding. During November of the same year the National Council of Correctional Services recommended an advancement of parole to be granted to all prisoners excluding aggressive and sexual offenders. As a result of this recommendation 3 000 prisoners were released.

In February this year 20 000 awaiting trial prisoners were granted bail by the courts. The fact that they were granted bail implies that the courts believe they pose no danger to the community upon their release. It is this category of prisoners that has been identified for early release from prison in order to help reduce overcrowding. This does not mean that their cases are withdrawn, but simply that they need not remain in prison where they exacerbate overcrowding. They will await trial outside as do many other accused who can afford to pay bail.

The office of the Inspecting Judge and the Department of Correctional Services have managed the release of more than 10 000 prisoners since 1999. This year, on application by the head of Pollsmoor maximum prison, 198 awaiting trial prisoners were released in terms of the newly inserted section 63a of the Criminal Procedure Act, 51 of 1977.

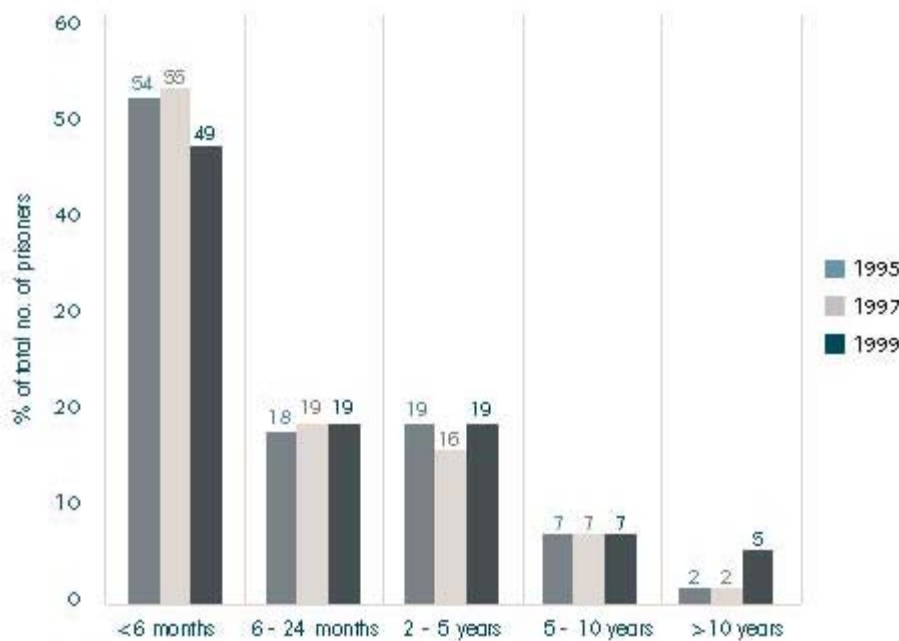
### Is early release a problem?

These early releases triggered a huge outcry among the South African public. The general sentiment seems to be that all people in prison are criminals who deserve lengthy sentences. While it may be true that those who commit crime need to take responsibility for their actions and should be punished in some way, it must be borne in mind that most prisoners do return to the community after spending time in jail.

Despite the minimum sentencing legislation, which provides for lengthy sentences, many people are still given lesser sentences than set out in the statute books. The current parole policy further ensures that people spend less time in prison than the sentence handed down to them may have stipulated.

More importantly, most people currently in prison are serving terms of no more than ten years. The majority of sentences are less than six months, followed by sentences ranging from six months to two years, and sentences of two to five years. Between 1995 and 1999, only 7% of sentences were between five and ten years, while less than 5% of sentences were more than ten years (Figure 2). It is therefore certain that most of those incarcerated will return to the community sooner rather than later.

Figure 2: Duration of prison sentences, 1995-99



Source: Department of Correctional Services

### In search of solutions other than prison

Current prison conditions do not allow for the rehabilitation and reintegration of the offender. This is demonstrated by the high levels of recidivism. Although there is no exact data available on repeat offending, the minister of Correctional Services estimates it to be around 55%. The National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) puts this figure much higher in areas where they have operated, at 80-90%. Either way, these figures indicate a high rate of recidivism.

Thus the smaller the chance to rehabilitate prisoners, the higher the probability of recidivism. It follows that even more people will be incarcerated – which in turn will necessitate the building of more prisons, a solution that has so far proven inadequate. Until such time that our incarceration policy is matched with policies of rehabilitation and restorative justice, there

will never be enough prison space to accommodate offenders.

For example, two private prisons have been built, in Mangaung in the Free State and in Louis Trichardt in the Northern Province. In addition, two new state-owned prisons will be completed by April 2004 to increase prison accommodation. The two private prisons and the two state prisons together will house approximately 12 000 prisoners – yet they will not even provide a quarter of the accommodation that is currently needed.

## **Conclusion**

As the last outpost of the criminal justice system, the prisons have very little control over their intake. The Department of Correctional Services is charged with hosting offenders who have been or are going through the criminal justice system, but decisions regarding sentencing – which determine how long they will be in prison – rest with magistrates and judges. There seems to be little regard by the judiciary for the consequences of their decisions on prisons.

In the final instance the Department of Correctional Services cannot make a significant contribution to crime prevention merely by being reactive. Perhaps this situation can be rectified by enhancing their rehabilitation strategies in partnership with communities and other departments, such as the Departments of Justice and Constitutional Affairs, Education, Labour, and Trade and Industry. The successful rehabilitation of offenders will be measured by the decrease in the rate of repeat offending.

## **Source documents**

Speech by the Minister of Correctional Services at the opening of a Mutshalingana Primary School, Vondwe Village, Thohoyandou, 15 April 2002.

L Muntingh, *After prison: The case for offender reintegration*, ISS monograph No. 53, Pretoria, 2001.

