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ASSESSING THE IMPACT OF THE 'CHECKLIST' TO ADDRESS OVERCROWDING IN GAUTENG PRISONS

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Submitted in 50% requirements for the degree of Master of Management, Wits School of Governance, University of Witwatersrand, (in the field of Security Studies)
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ABSTRACT

Literature shows that overcrowding in prison is a crisis that is exacerbated by challenges associated with court processes and inadequate criminal justice systems. Practical measures have been implemented by the South African government to combat these challenges through the use of an integrated criminal justice system. The National Task Team developed a strategy known as the 'checklist' that is development from internal benchmarks to address addressing overcrowding in South African Prisons. The study focuses on the assessment of the impact of the '7C checklist' a process that is has been adopted to reduce overcrowding in Gauteng prisons as well as the role of the various government role players within the National Task Team. Using a qualitative approach that included document analysis and in-depth interviews, the study examined the impact of the 7C checklist in addressing the issue of overcrowding. This study concludes that there remains the persistence of practical constraints that are associated with the implementation processes required for complying with the 'checklist', as seen through the eyes of those in charge of implementing the strategy. Generally, the 'checklist' is partially implemented, and not following through with the processes negatively impacts on the overall goal of reducing overcrowding in Gauteng Prisons.

DECLARATION

I declare that this Dissertation is my own, unaided work. It is being submitted for the degree of Master of Management at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other University.



Mpapa Jeremia Kanyane
07 October 2022

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ACRONYMS / ABBREVIATIONS

DNA	Deoxyribonucleic Acid
CPA	Criminal Procedure Act
COVID	Coronavirus disease
HIV	Human Immunodeficiency Virus
IFP	Inkatha Freedom Party
IJS	Integrated Justice System
NTTO	National Task Team on Overcrowding
SAPS	South African Police Services
TB	Tuberculosis
UN	United Nations

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CHAPTER 1: BACKGROUND AND CONTEXT OF THE STUDY

1.1 Introduction and Background

The study is geared towards assessing the impact of the 'checklist' to address overcrowding in South African Prisons. The 'checklist' was introduced within the Criminal Justice System as a mechanism to reduce overcrowding at prisons. The cause of overcrowding in the South African prisons can be attributed to several challenges experienced at courts that include the unpreparedness of legal aid attorneys in continuing with cases at hand as well as the unavailability of complainants to back up the case (Atabay, 2013; Ballard, 2011). Ballard, C. (2011) also asserts that most cases are remanded rather than being speedily resolved. Warmsley's (2005) main concern is that overcrowding in prison has a negative impact on health conditions of the incarcerated and urges prisons to adhere to international standards which advocate that accommodation for prisoners should include a recommendable space.

In 1998, the Integrated Justice System (IJS) was set up by the South African government as an attempt to provide a holistic strategy to deal with the myriad problems facing the criminal justice system. Overcrowding in the awaiting trial prison population ranks as an urgent priority on the IJS list. Yet, despite significant efforts, some once-off and some systematic, to reduce the population, the numbers continue to climb (Benatar, 2014; Mayosi & Benator, 2014). In 1999, the IJS formed the National Task Team on Overcrowding (NTTO), co-chaired by the Departments of Justice & Constitutional Development and of Correctional Services. This team consolidated a "checklist" of all the strategies that were intended to deal with overcrowding, primarily by listing all of the efforts of each department, whether real or proposed. The IJS was optimistic that the checklist would combine the departments' varied initiatives and ultimately improve the overcrowding situation. In contrast, statistics revealed the opposite in that prisons have reached a critical level where awaiting trial detainees account for more than

30% of the inmate population (Centre for Applied Legal Studies, 2013). After the South African democratic elections of 1994, it was anticipated that new legislation would guide the size of the prison population and the capacity of the prison system to hold inmates in acceptable conditions. Currently, overcrowding in South African prisons has a bed space of under 120, 000 across the 243 facilities nationwide, which leaves more than 45,000 inmates without proper accommodation. (Masuku, 2017).

In addition, it is reported that since 1996 most prisoners were ranging from the age of 19 to 20. (Department of Correctional Services Annual Report, 2015). This is a clear indication that this age group is over-represented in prisons. The same year 1996 a law was passed to establish reception courts where first appearance offenders could be heard. This law was also intended to reduce the number of children in South African prisons. However, between 1996 and 2001 the number of incarcerated children rose from 1,335 to 3,602 and those of children who were not sentenced increased from 448 to 1,928. Crime was high in the country and government put funds aside to establish the IJS User Board in 1997. (Schönteich, 2002).

The above statement gives a motivation why the Integrated Justice System was established. The end result of overcrowding is poor health conditions and also an opportunity for the emergence of gangs in prisons. The study examined the issue of overcrowding in the awaiting trial population through a systematic inquiry of relevant officials: (police officials, prosecutors, magistrates, and prison officials) on their awareness and knowledge of the consolidated checklist and if so, whether they found any of the strategies useful in their efforts to reduce overcrowding. The study further captured their suggestions on how the strategy could be improved and become relevant in reducing overcrowding in prisons. The ‘checklist’ was agreed upon by the aforementioned three departments.

The consolidated checklist is comprised of proposed strategies that are briefly explained below, and the literature review affirms the problems identified and also the rationale behind the strategy.

1.1.1 Saturday Courts

Towards the end of 1996 the South African government felt the need to strengthen the Criminal Justice System by allocating funds with the view to introduce Saturday Courts that would deal with petty offences. This would enable courts to concentrate on serious crimes during the week and attend to petty offences on Saturdays.

There was a realisation amongst stakeholders in the IJS that a significant number of Awaiting Trial Detainees were held for allegedly committing schedule seven offences which exacerbated the already clogged up court roll (Schönteich, 2002). It is precisely within this context that Saturday Courts were conceived, since their role to reduce the number of petty offences on the court role is necessary.

1.1.2 IJS Court Centres

The IJS Court Centres came into being in 2001 with the specifically assigned objective to monitor the movements of alleged offenders starting from the first encounter with police officials to a potential trial and sentencing and ultimately – possibly – entering the realm of the Department of Correctional Services (Schönteich, 2002)

1.1.3 Courts at Prisons

The conceptualisation of this project started in the late 1990s whereby some senior officials in the Department of Justice then had a discussion with US-based Bureau

of Justice Assistance with the aim of improving the operation of the Criminal Justice System. They were told that poor people who are well grounded in their communities and could not afford bail, could be released before trial. These are the accused who could be trusted and do not pose a flight risk. (Schönteich, 2002)

It was envisaged by the IJS that the opening of courts at prisons would speedily reduce the number of inmates awaiting trial. More specifically, it was hoped that the first appearances of Awaiting Trial Detainees would be dealt with in these courts.

1.1.4 Police cells as holding cells

The IJS has targeted police cells as holding cells to accommodate alleged offenders, with the exception of those who are held under schedule five and six. Police cells are constructed in such a way that all offenders are put in one cell irrespective of the kind of crime they have committed. Those who are held under schedule five and six, are raw criminals who committed crime ranging from murder, rape to robbery. Therefore, it is recommended that they should be separated, and the latter be placed as Awaiting Trial Detainees in prison rather than stay long in the police cells. Police Stations have insufficient space to accommodate Awaiting Trial Detainees and they lack personnel to oversee such cells on a daily basis. This will apply more specifically to situations whereby alleged offenders' cases were remanded after being held up to the maximum of the 48-hour period (Section 50 of ACT 51, 1997) in police cells.

1.1.5 Police and prosecutorial bail

The bail is aimed at the speedy resolution of petty offences without having to lock up an offender in police cells and potentially in prison. These petty offences range from shop lifting, drunkenness in public to common assault etc. The foregoing practice obviously defies the set legal route in that petty offenders should be

addressed by a prosecutor and the relevant police official/s at the particular police station. It is only after these two parties have agreed on a date of appearance in court – which is issued in writing to the alleged offender – that the magistrate, after the necessary courtroom deliberations, would set a bail amount. It must be borne in mind that there is no expectation from police officials and the prosecutors to set a bail amount, let alone to accept money from an alleged petty criminal.

Ownership of this bail – as the name suggests – lies with police officials and prosecutors and its execution demands that the two parties liaise with each other on a particular matter.

The study therefore targeted Gauteng province and sampled respondents from Correctional Services, the Justice Department & Constitutional Development, and South African Police Services. This is precipitated by a high number of awaiting trial detainees in Correctional services around Gauteng (Jules-Macquet, 2014). The study looked at the implementation of the strategy and further probed as to whether the department has the institutional capacity to carry out this important task that would reduce overcrowding in South African prisons with reference to Gauteng Province

1.1.6 Plea bargaining

This is the act where the accused pleads guilty to the charge laid against him/her. The accused will enter into negotiations with the prosecutor in the hope that he/she will get a light sentence, but that will be done in the context of criminal proceedings. The accused admits to the allegations and does not raise any technical objection.

1.1.7 Legal aid board attorneys

The Legal Aid Board was established in 1957 to promote the efficient and effective performance of the state attorneys in South Africa. The Act was amended in 2014

to substitute certain clauses that are outdated (State Attorney Amendment Act, 2014).

These are state attorneys who provide legal services to detainees who cannot afford legal expenses in court. These attorneys are employed by the state and utilise legal insurance specifically meant to protect vulnerable detainees who could not afford private attorneys.

1.1.8 Section 276(1) (i) of the Criminal Procedure Act of 1977

This section provides for an offender to be placed under correctional supervision, at the discretion of the Correctional Supervision and Parole Review Board. It is necessary to point out that correctional supervision can only be imposed after a report by a probation officer, or a correctional official has been placed before the court.

1.2 Problem Statement

The South African criminal justice system has been struggling to reduce overcrowding in the awaiting trial populations at prisons for almost twenty-five years. According to Allister (2015), who states that overcrowding in South Africa is not a recent phenomenon, but rather that it has increased from the previous regime to present, despite numerous and varied efforts, ranging from pilot projects to legislation, to address the problem by the Departments of Justice and Constitutional Development, Correctional Services, and the South African Police Services. Despite all these interventions including the ‘checklist’, the situation appears to be unresolved. There is a wide gap between the intended objectives of the strategy and the reality on the ground, which does not inspire confidence. It is therefore precisely within this context that the study became vital to assess the success and failures of the implementation of the ‘checklist’.

The study tried to answer some questions about the checklist: Who is aware of the checklist? Is it working? What are its strengths and weaknesses? Who has been monitoring it?

Rasool, S. et al. (2002) reported that Cabinet has identified that there is a policy gap in relation to the responsibility for the incarceration of awaiting-trial persons. The report argues that the principles of the Department of Correctional Services (to enforce sentences of the courts, to ensure humane detention and promote social responsibility and human development) are being compromised through the inappropriate use of its resources by housing prisoners who were not sentenced. Cabinet recommends the enactment of a long-term policy which clearly defines the roles of the aforementioned departments and where awaiting trial detainees should be located in prison where they are well cared for, and cases are speedily resolved.

The report quoted the spokesperson for the IFP calling for the minister of Correctional Services to urgently elicit long-term solutions to combat overcrowding in South African prisons. He added that overcrowding is an entrenched problem and that its solutions require careful work and a strong political will. (Rasool, et al. 2002)

1.3 Purpose Statement

The purpose of this research was to assess the extent to which the ‘checklist’ has succeeded in addressing overcrowding in Gauteng prisons.

1.4 Research Question

How does the implementation of the ‘checklist’ attempt to reduce overcrowding in Gauteng prisons?

1.4.1 Sub-questions

1.4.1.1 What are the ethos and philosophies behind the implementation of the 'checklist'?

1.4.1.2 Is there an institutional system in place for the effective management of the 'checklist'?

1.4.1.3 How does the implementation of the 'checklist' impact on the logistical coherence of the project?

1.4.1.4 To what extent is the dissemination of information relevant to stakeholders regarding the 'checklist'?

1.5 Conclusion

The context outlined above necessitates a clear programme for intervention. The situation dictates that the aforementioned departments should introspect and prioritize intervention strategies whereby relevant units would be fortified and strengthened in implementing the said strategy. Therefore, what follows is the literature review that will back-up the problem statement of the study. Subsequent chapters will outline the methodology that was followed in data gathering. The study affords the reader findings and recommendations that point to meaningful interventions.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter presents the literature overview to contextualise and position the study. The chapter will also highlight the model otherwise known as the 'checklist' as follows: Saturday Courts, IJS Court Centres, Courts at Prisons, Police cells as holding cells, Police and Prosecutorial bail, Plea bargaining, Legal aid attorneys, and Section 276(1)(i) of the Criminal Procedure Act of 1977,

The references connected to the above themes were crucial to the formulation of the research question and more generally to the development of the interview schedule. The remainder of the literature assisted broadly with sharpening understanding of matters of methodology, the theoretical framework and more particularly with concepts that have a bearing on the study.

More specifically, this chapter provides a comprehensive literature review regarding materials used in the conceptualisation, development, and implementation of the IJS strategy in reducing overcrowding in South African prisons.

2.2 Literature

The Judicial Inspectorate for Correctional Services, (2020) expresses concern that challenges faced by the awaiting trial detainees are extraordinarily high, leaving more inmates without proper accommodation. The report further states that overcrowding poses serious challenges to inmates regarding privacy, access to medical care, studies, and security risks.

The Judicial Inspectorate for Correctional Services, (2020) makes an important argument for short term solutions to the awaiting trial problem based on the "enormous" financial and social consequences attached to holding prisoners who

were not sentenced. They indicate that the police are arresting people unnecessarily. The report notes specifically that the police are not using their power to release arrestees in terms of the Judicial Matters Amendment Act which came into effect in 2017. The act regulates the prescription of the right to institute prosecution. This should be read together with 'police and prosecutorial bail', which empowers the police officials to institute bail for alleged offenders based on their discretion in liaison with a relevant prosecutor.

The aforementioned document further demonstrates the point of unnecessary arrests and illustrates that about 8 000 people who cannot afford bail are in prison awaiting trial. He observes that they clogged up court rolls and that leads to delays and jam-packed communal cells. While he does not lay the blame on the shoulders of the court or the prosecution, he cautioned that more care should be taken when determining bail, since most Awaiting Trial Detainees are unemployed and ended up in prison on petty offences. He is mindful of South African Prisons that are overcrowded and advocates for more leniency on the side of magistrates.

The problem of unaffordable bail was also recognised by the SA Human Rights Commission as far back as 1997. They urge that the Department of Justice should find solutions to this problem, while noting that it is not the responsibility of the Department of Correctional Services alone. This gave rise to the establishment of the Integrated Justice System as an acknowledgement of the collective efforts of the three departments (South African Police Services, Department of Justice, and the Department of Correctional Services) to deal with the matter at hand. The report holds a view that unsentenced prisoners are primarily the responsibility of the Department of Justice. At the heart of the Integrated Justice System is the need for efficient and effective processing of investigations, prosecution, and punishment for priority crimes and, ultimately rehabilitation of offenders.

Ballard, C. (2011) states that the cause of overcrowding in the South African prisons is the fact that most cases are remanded rather than being speedily resolved. Challenges experienced at courts range from dockets that get lost, unpreparedness of legal aid attorneys in continuing with cases at hand, to the unavailability of complainants to back up the case. He added that this is due to the poor functioning of the criminal justice system. Again, he said that there is gross violation of the UN Standard Minimum Rules for the treatment of prisons known as Mandela's rules. These rules are meant to promote human conditions of imprisonment.

According to Warmsley, (2005) overcrowding in prison has a negative impact on health conditions and he urges prisons to adhere to international standards which advocate that accommodation for prisoners should include a recommendable space. This is corroborated by Singh, S (2004) that overcrowding in prison often spreads communicable diseases among inmates. It therefore negates rehabilitation of offenders and undermines human dignity in prisons.

Currently, COVID-19 has posed similar challenges in South African Prisons. According to Mabasa, (2020) he indicated that on the 20th of April 2020, there were 3 158 confirmed COVID-19 cases and 54 people died of the virus. In addition, an article on the prevention and management of COVID-19 (2020) states that overcrowding increases exposure and transmission of COVID-19 since it spreads via aerosols, droplets, fomites, and faeces. He further indicated that the global South has always faced challenges with overcrowding where a huge group of prisoners' contract diseases like HIV and TB in prison.

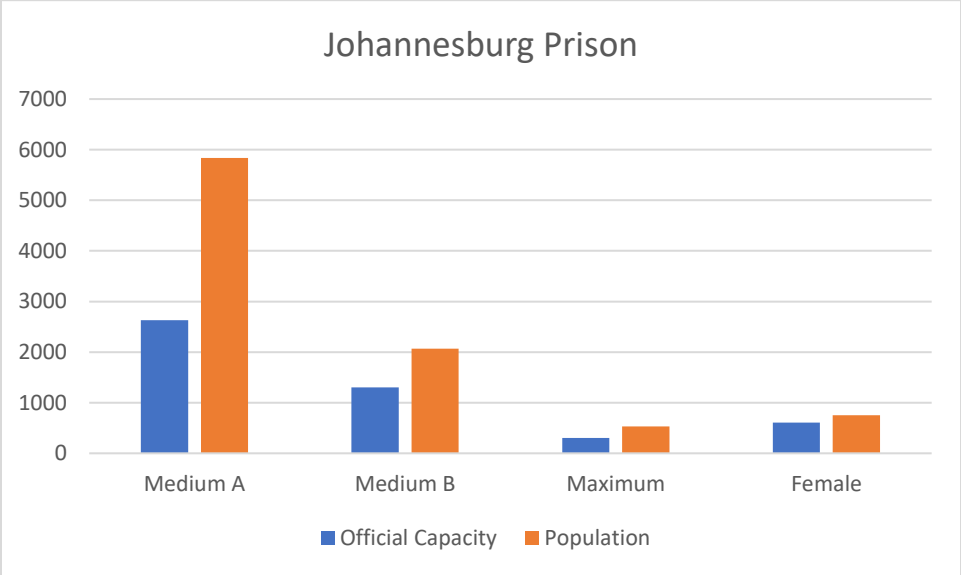
The Centre for Applied Legal Studies, (2013) corroborates this issue in a case that was placed before the Constitutional Court of South Africa where the applicant was diagnosed with TB after three years of incarceration. The High Court ruled in favour of the applicant and the respondent who was the Minister for Correctional Services was declared liable for damages suffered.

Other scholars view overcrowding as an ideological struggle between those who supported the apartheid government and those who opposed the apartheid regime (Pete, 2015). He claimed to have found overcrowding in South African prisons to be partial with racial undertones. He made further claims that most arrests affect Black people regardless of the offence committed. This issue is placed squarely on the functioning of South African courts which are viewed as highly untransformed and incalcitrant.

It should also be borne in mind that the 'checklist' did not take shape out of thin air, but it was a result of sustained pressure exerted by the international community within the Criminal Justice System as a response to inhuman conditions that inmates are subjected to. A case in point is the Vera Legal Institute based in New York that came into play regarding the establishment of the Integrated Justice System in South Africa (Schönteich, 2002).

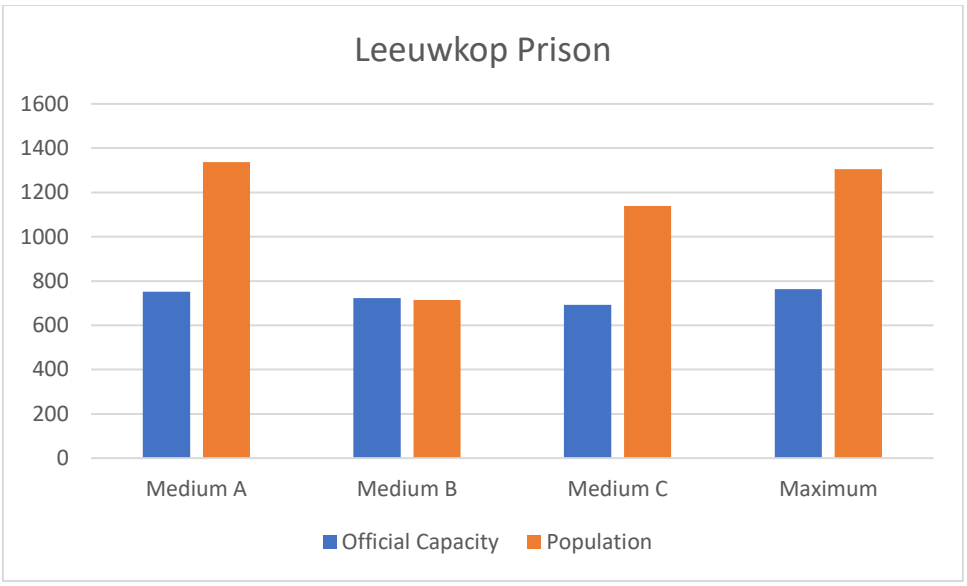
The study also considered the Criminal Justice Assessment Toolkit which is designed to create an enabling environment for UN agencies, organisations engaged in criminal justice reform and relevant government officials to prevent crime as an attempt of dealing with overcrowding in prisons. The Assessment Toolkit comprises of sectors such as policing, access to justice, custodial and non-custodial measures, and cross-cutting issues. (United Nations Office on Drugs and Crime, 2002). The Assessment Toolkit was put under scrutiny with a view to identifying sections that may complement the 'checklist' in reducing overcrowding in prisons. For instance, IJS comprises of senior officials within the three departments, i.e., Department of Correctional Services, Department of Justice & Constitutional Development, and the South African Police Services while the Assessment Toolkit advocates for a wider representation that would include departments, units, stakeholders, etc. It is important to learn from this international experience and also to dissect how it is implemented in ensuring that overcrowding is addressed in a more collaborative and coordinated fashion.

The study focused on the following stations in Gauteng: the Johannesburg prison, the Protea Magistrate's Court, and the Johannesburg Central Police Station. The table below depicts the actual number of inmates and the approved capacity of the prison as of the end of the year 2020. These are, perhaps, the most overcrowded prisons in Gauteng.



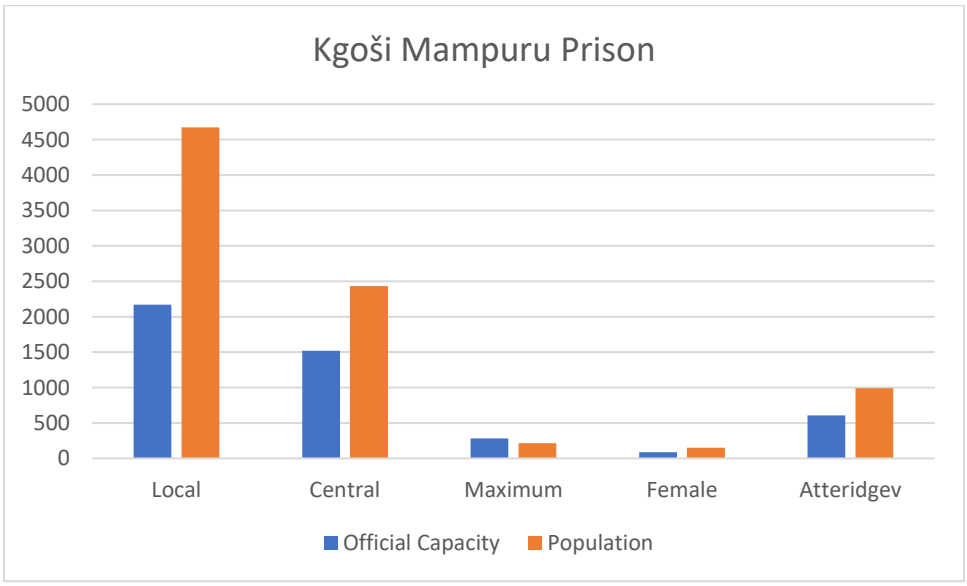
(Department of Correctional Services Annual Report: 2019)

Johannesburg prison comprises of medium A with 5836 inmates and the approved capacity is at 2171. Medium B has 2065 inmates while the capacity of the prison is at 1300. Maximum prison has 528 inmates with the official capacity of 302 and the female prison has 751 inmates with the official capacity of 605.



(Department of Correctional Services Annual Report: 2019)

Medium A has 1337 inmates, and the prison capacity is at 751 while medium B has 714 inmates with the prison capacity of 723. Medium C is 692 prison capacity with 1139 inmates while maximum prison has 1305 inmates with 763 prison capacity.



(Department of Correctional Services Annual Report: 2019)

The prison at Local has 4671 inmates with the prison capacity of 2171 while at Central it has 2432 inmates with the prison capacity of 1519. At Maximum, it has 213 inmates while the prison capacity is at 281. The Female prison capacity is at 89 while the inmates are at 150. Their branch in Atteridgeville has 992 inmates with the prison capacity of 609.

The Johannesburg Prison was therefore selected mainly on the high volume of awaiting trial individuals as compared to other prisons in the province. Suffice to say that the Proteas Magistrate's Court is deemed the most direct feeder Magistrate's Court to Johannesburg Prison. Johannesburg Police Station falls in the same area with the aforementioned institutions.

2.3 Theoretical Framework

The theoretical framework lays the groundwork for all knowledge that is constructed in a research study. This framework provides an anchor for the literature review and, most importantly, for the methods and analysis. As the aim of the study is to assess whether relevant steps in implementing the strategy (checklist) were followed and also to identify gaps that needed consideration such as various interpretations amongst stakeholders regarding the 'checklist', this study is best undertaken with due consideration of the 7C protocol model.

The 7C protocol model for policy implementation in improving service delivery in South Africa, is employed as a theoretical framework. The 7C protocols (content, context, commitment, capacity, clients/coalitions, communication, and coordination) served as a term of reference in executing the methodology of the study. According to Malobela (2019), the 7C protocol model sought to elucidate issues pertaining to policy implementation and the extent to which frictions and tensions are dealt with in the process. The objective, therefore, was to address

questions regarding power relations that exist, how effectively policies are being transmitted and the extent to which consultation on these matters occurs under the circumstances. The sources of data in this regard consisted of police officials, prosecutors, magistrates, and prison warders.

It should be noted that in the early 2000s, scholars like Brynard (2005) introduced the 5C protocol which included content, context, commitment, capacity and clients/ coalitions. This model on policy implementation was applied as from 2000 to the late 2017. The model remained critical within various departments in improving service delivery and improving the lives of the society. It is stated that the 5C model was influenced by knowledge gathered from Netherlands at the Erasmus University Rotterdam. The main aim was to clear misunderstandings and confusion amongst government officials in policy implementation. The 5Cs managed to present a systematic order of implementing policies. There was a felt need for officials to locate a policy within a particular context, have a clear understanding of what the policy is all about regarding the content and also the driving force that compels officials' willingness and commitment to implement that policy. The process also checks the capacity of implementers and where possible they would be subjected to capacity building. The model is also designed in line with the intended beneficiaries for it to have positive outputs. It was in early 2018 when the 7C protocol model was introduced (Cloete, Coning, Wissink & Rabie, 2018). The main focus of the 7C protocol was to accelerate service delivery through rigorous policy implementation. The following paragraphs contain a succinct reflection on what the 7C protocol model entails: content, context, commitment, capacity, clients, communication and co-ordination as explained below.

2.3.1 Content

Naturally, for the strategy (checklist) to be implemented accordingly, role players should have a clear understanding of what the strategy is all about and also its

intention. This compels implementers to understand policy content for them to develop relevant interventions. At the level of policy implementation, policy content is paramount as it challenges the depth of understanding regarding implementation (Edler & Fagerberg, 2017; Mugwagwa, Edwards & de Haan, 2015).

Policy content comprises of either distributive, regulatory, or redistributive. This protocol model is concerned with causality that is tested against observations. It may include disagreement about validity, equity, and responsiveness. The end results thereof would explain in detail the action in a set of logically consistent ways. (Dunn, 2014, p. 23).

Issues of governance and policy implementation cannot be divorced from each other and require an understanding among role players regarding processes between goal setting and activities elicited in achieving intended objectives. The study therefore assessed as to whether there was policy understanding in implementing the strategy using the framework. Again, the study analyzed whether the aforementioned three Departments (SAPS, Justice & Correctional Services) have a common understanding regarding the rationale behind the strategy.

2.3.2 Context

This protocol model advocates for a sense of history and the consideration of ethos and philosophy behind policy development which consequently would lead to policy implementation. It requires that role players should observe the main line of thought in the execution of policy (Brynard, 2005). This is aimed at considering the social, political, economic, and legal circumstances as underpinning principles surrounding policy development and implementation, as well as guarding against a political discord fueled by extraneous, subversive forces bent on derailing the original thinking (Abbas & Asghar, 2010). The study therefore paid attention to some of these areas.

2.3.3 Commitment

This protocol model centers around the availability of political, financial, and managerial commitment. It requires dedicated officials or politicians who are committed, responsible and prepared to mobilize resources with the hope of achieving the intended objectives (Stephen, 2010; Najam, 1995). There should be a sense of belonging and ownership in the process of implementation. Commitment does not come on its own, it is influenced by implementers from within (Oyelere, Opute & Akinsowon, 2015). The study probed the trend impact on policy implementation.

2.3.4 Capacity

This protocol model is concerned with problems associated with lack of institutional and human resource capacity across the three spheres of government to implement policies identified. Role players are expected to be efficient, more productive, and better able to respond to challenges that might ensue in the process of policy implementation. The study was therefore geared towards both tangible and intangible resources. Particular attention was placed on appropriate technology and institutional and management capacity. The study measured the outputs mirrored against the inputs to gauge the failure or the success of policy implementation.

2.3.5 Clients and coalitions

This protocol model is aimed at establishing a multi-disciplinary and prescriptive policy science. According to Brynard, (2005), good working relations accelerate service delivery, especially when that is done in partnership. This is corroborated by Rondinelli (1997) who stated that at the center of every policy implementation stands the client. Policy implementation is geared towards client satisfaction. The model provides a platform in assessing the contribution of policy purpose to the overall objectives. It made it possible for the study to assess the effects of the policy, be it positive or negative, expected, or unforeseen. It takes a collective responsibility in ensuring that relevant information regarding policy implementation is disseminated properly with clear interpretation. This might be coupled with

training of relevant personnel and conducting workshops or seminars where possible. This element was therefore central to the study in assessing relationships within policy implementation.

2.3.6 Communication

According to Molobela. (2019), this aspect of the protocol model was neglected in the past since it was not included when they finalized the 5C protocol model and it was only included during the inception of the 7C model. This model is aimed at disseminating information as much as possible to relevant stakeholders and also to ensure that role players are in sync with internal operations. Various media strategies could be explored such as community radio stations, newspapers, flyers, etc. The study assessed the extent to which information is transmitted to relevant parties in policy implementation.

2.3.7 Coordination

This is about organizational coordination with the hope of improving working relations within various departments. It is therefore incumbent upon the study to assess if there is smooth coordination of policies within the IJS components. The concern is for the policy to transcend mere discussions; theory alone is an exercise in futility. Policy should in no way be observed as some a dogmatic exercise, but it should be interpreted correctly, internalized and practicalized.

2.4 Conclusion

The 7C protocol model assisted the study in assessing whether relevant steps in implementing the strategy (checklist) were followed and also identified gaps that needed consideration such as various interpretations amongst stakeholders regarding the ‘checklist’. According to Ngcobo (2007), policy implementation should be able to resolve community needs rather than complicating them. The model therefore served as a guide in ensuring that the study identifies relevant intervention in the improvement of the strategy (checklist).

CHAPTER 3: METHODOLOGY

3.1 Introduction

This chapter focuses on the research approach, research tools, sampling, analysis, limitations, and ethics, inter alia.

3.2 Research approach

The researcher adopted a qualitative approach, which included in–depth interviews. Qualitative research aims to describe and understand human behaviour rather than explain it (Nieuwenhuis, 2007). In-depth interviews are qualitative in nature and allow for a flexible approach to data gathering, which encourages participants' responses (Krefting, 1991). The qualitative approach assessed the institutional and human resource capacity of the Department of Justice & Constitutional Development, the Department of Correctional Services, and the South African Police Services in implementing this strategy and the adequacy of the 'checklist' regarding the means to be used for implementation. It provided a deeper understanding of the issues at hand. The researcher was able to record issues that are pertinent to officials in dealing with the implementation of the Integrated Justice System strategy. This approach yielded a picture of the practical difficulties and challenges involved in complying with the '*checklist*', as seen through the eyes of those affected by them and those in charge of implementing the strategy. The use of the qualitative approach allowed the researcher to probe the perspectives of role-players regarding the challenges of implementation and the actual and desirable extent of involvement of different players in courts and prisons.

The needs of various stakeholders vary considerably and are often not clearly understood using other approaches. However, rich and textured qualitative data provides the fine grain needed for deeper understanding of issues (Smith, 2004).

The researcher chose this approach specifically to establish the feasibility of the strategy and implications thereof.

3.3 Research paradigm

The term paradigm comes from the Greek word “paradigma”, which means pattern, and can be described as a framework of thought that serves as a template that must be followed (Bahramnezhad, Shiri, Asgari & Afshar 2015). A paradigm thus, has reference to a conceptual and structural image of a belief system, which includes ideas and assumptions that will shape and reshape the way a person views the world; hence, it is often referred to as a worldview. According to Creswell (2013), worldviews are general philosophical orientations about the world as well as the nature of the research which a researcher conducts that occur within and across various disciplines.

According to Kuhn (cited in Miller & Brewer 2003:220),when you have page number provide direct quotes a discipline's paradigm directs the views of reality (ontology), knowledge theory (epistemology), and the process of scientific investigation (methodology) that is acceptable. The beliefs systems of researcher’s frame and guide them to adopt specific approaches and methodologies for their research. Consequently, a paradigm forms the perspective from which scientists develop generalisations, theories, and laws about their study (Given 2008).

Research paradigms are categorised into three main philosophical categories: positivism, interpretivism, and critical postmodernism (Thomas 2010:293). Figure 3.1 (below) provides a depiction of how these underlying epistemologies relate to qualitative research.

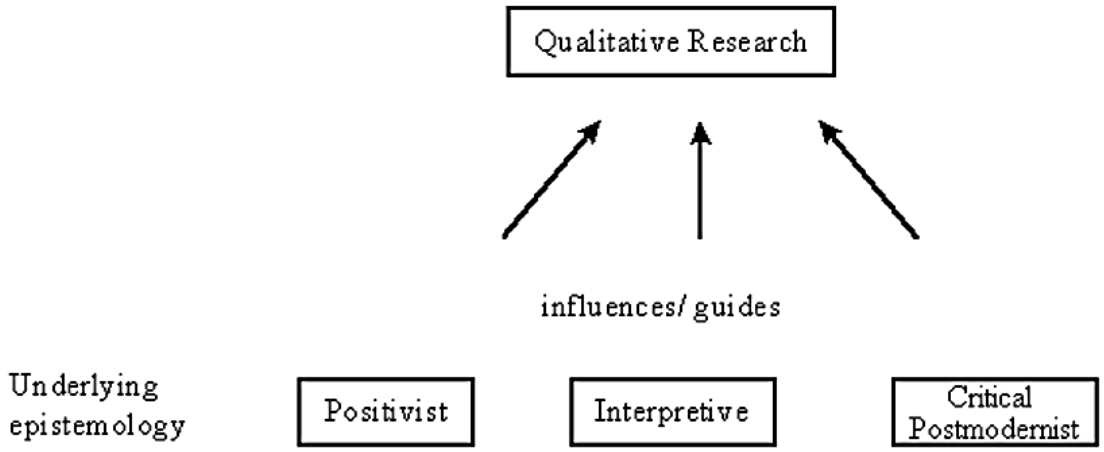


Figure 3.1: Underlying philosophical assumptions of qualitative research

Source: Thomas (2010)

This study is based on an interpretivist paradigm. According to Willis (2007), interpretivists do not hold the view that there is a separate, accurate method or technique to knowledge. Walsham (1993) argues that, in the interpretive practice, there are no accurate or inappropriate theories. Rather, information should be adjudicated according to how thought-provoking it might be to the researcher.

Since the researcher intended to get insights and in-depth information on the extent to which various stakeholders within the IJS implement the various elements of NTTO 'checklist', the interpretive paradigm underpinned this study.

3.4 Research tools and their application

The researcher designed an in-depth interview guideline - one for the police officials, prison officials and magistrates. The in-depth interview guidelines included questions around participants' expectations of the practicality of various strategies outlined in the 'checklist'. Interview guidelines for police officials, magistrates and prison officials among others, assessed their perceptions of the quality of services they are providing in the implementation of the strategy as well as obstacles and challenges that work against their ability to deliver the expected quality of services.

Questions were developed with the aim to elicit responses that could potentially enhance the strategy to adequately address the overcrowding dilemma in Gauteng prisons.

3.5 Sampling

The study was conducted in Gauteng Province to enable the researcher to conduct face to face interviews and also to minimise costs. It was purposive in nature and officials were carefully selected at the Johannesburg prison, the Protea Magistrate's Court, and the Johannesburg Police Station. Therefore, interviews were conducted with five respondents at each station: four police officials and the station commander at the police station, two prosecutors, two magistrates and the chief magistrate at the magistrate's court, and four prison warders and the area commissioner at the selected prison how many officials participated in the study, state here. The sources of data and their corresponding departments and institutions are captured in the table below.

Department	Institution	Participants
Department of Correctional Services	Johannesburg Prison	Area Commissioner 4 Prison Warders
Department of Justice	Protea Magistrate's Court	Chief Magistrate 2 Junior Magistrates 2 Prosecutors
South African Police Services	Johannesburg Police Station	Station Commander 4 Police Officials
Total number of participants in study		15

3.6 Process / Analysis

The process took the following form: development of the interview guidelines, conducting interviews, data analysis and report writing. Statistics (depending on availability) relating to the number of Awaiting Trial Detainees, bail amounts, period in detention, etc. were obtained via the databases of the various department that were visited. The researcher followed the following recommended seven stages of data analysis, that included: transcription, familiarisation with the data, coding, developing a functional framework, applying the analytical framework, and interpreting the data that had been obtained through interviews and primary data (Guba, & Lincoln,. 1994).

3.7 Validity

Krefting (1991) noted that truth-value is indicative of how familiar the researcher is with truth findings, based on the research design, participants and setting. There is acknowledgement by Schurink, et. al., (1998) that truth-value probes whether the researcher has established certainty in the truth of the findings for the

participants and the content in which the research is conducted. Krefting (1991) put forward the idea that a qualitative study is credible when truthful explanations or clarifications of human experience are provided since individuals with shared experiences or perceptions would instantly recognize the descriptions. Truth-value is typically acquired from the unearthing of human experience as they are lived and perceived by participants.

It is the by far the significant principle for the valuation of qualitative research. Moodley (2014) postulates that validity denotes the truth-value of the outcomes. The aims of these are to validate that the research was conducted in such a manner that the participants in the research were explicitly chosen as they were directly involved in the application of the strategy.

Rule & John (2011) observed that validity refers to the coherence of a study and the extent to which the research design and methodology allow for and have expedited the achievement of the study's purpose. Similarly, Collis &Hussey (2003) suggest that credibility validates that the research was undertaken in such a manner that the subject of the enquiry was appropriately recognized. Thus, in this study, the data gathering tool was the same for the various stakeholders.

3.8 Dependability

Dependability refers to the quality of a measurement process that offers precision. Dependability measures are methods that yield reliable responses over time. It also refers to the degree to which scores and tests are free from errors of measurements. It is an evaluative criterion which is judged by external standards (Popham, 2011). In this research, the participants were stakeholders of the IJS; they were experienced and were knowledgeable of the practices on the ground in relation to the NTTO checklist. Masiloane (2008) posits that dependability may be viewed as the extent to which an investigation or method yields identical outcomes under constant circumstances in all scenarios.

3.9 Positionality

The researcher is a member of the Gauteng Provincial Legislature and has no vested interest (from the relevant departments' perspectives) in the outcomes. Be that as it may, the statistics around overcrowding in Gauteng prisons are in the public domain and was the sole impetus for the researcher to undertake the study and allowed the researcher to reduce researcher bias.

3.10 Limitations

In several instances interviews were rescheduled due to the unavailability of some government officials. As a result, the researcher resorted to virtual platforms or conducting additional telephonic in-depth interviews instead, with some participants. Many of the participants cited hostile schedules as the main reason for their unavailability.

3.11 Ethics

Letters of consent have been issued to the relevant authorities as a way of negotiating entry into the Johannesburg Police Station, the Protea Magistrate's Court, the Johannesburg Prison and seeking clearance to interview staff. The researcher was granted formal consent by the relevant authorities prior to conducting interviews.

Ethical clearance was obtained from the university to conduct the study. The Ethics Clearance certificate is attached as an appendix to this study.

3.12 Conclusion

This chapter presents that processes that the researcher embarked on in the research process, that is data collection and analysis and the steps undertaken that the study is valid, dependable and researcher bias was reduced.

CHAPTER 4: FINDINGS

4.1 Introduction

During the period 2001 to 2003 it was reported that a series of meetings, workshops and seminars were conducted nationally with the view of advocating the IJS' strategy on the eradication of overcrowding. The report indicated that these meetings, workshops, and seminars were enthusiastic about the whole exercise. (Naidoo & Mkize. 2012.Oyelere). While the above-mentioned report seemed to be overwhelmingly positive with regards to the espousing of the strategy, an obvious consequence of this will be to assess whether the various participants within the IJS have acquired sufficient knowledge so as to effect the elements of the strategy and finally, to assess whether the desired results have been realized. Therefore, in the sequel, find the information gathered from relevant informants that comprosed: Area Commissioner, Prison Warders, Magistrates, Prosecutors, Station Commander, and Police Officials. The focus areas during the interviews evolve around context, knowledge (content), application (capacity), and results achieved. The findings also captured issues related to Communication, Collaboration and Consultation to satisfy the 7C Protocols as placed at the center of the theoretical framework.

4.2 Saturday Courts

4.2.1 Context

There was a realization amongst stakeholders in the IJS that a significant number of Awaiting Trial Detainees were held for allegedly committing schedule seven offences which exacerbated the already clogged up court roll. It is precisely within this context that Saturday Courts was conceived, since their role was to effect a drastic reduction of petty offences on the court role. This is the information gathered from Chief magistrate and corroborated by the Area Commissioner.

4.2.2 Content

Interviews with magistrates and prosecutors indicated that they were aware of the existence of Saturday Courts. On probing their understanding on the need for Saturday Courts, it was disturbing that several of them failed to elaborate meaningfully on the motivation for the operation of such courts.

Encouraging numbers of Investigating Officers and the Station Commander were aware of the existence of such courts, however there was a minority component who could not really impress on the reasons for Saturday Court to function.

'I am more than ten years working as a police official, but I never heard of such courts. I attended workshops and no one mentioned the existence of Saturday Courts. We frequent to courts on a daily basis, especially when we transport alleged offenders. However, this is news to me. I understand that other police officials know about them, but I don't understand why I could not know about them. I have heard of this for the first time, and it looks like it was a good intervention in addressing overcrowding at the police cells and at the Magistrate Courts'. Police Official

The Head of Prison displayed a thorough understanding of the intricacies attached to the modus operandi of Saturday Courts.

'Saturday Courts were introduced to assist magistrates to cope with the number of cases they have to attend during the week. This gave them an opportunity to deal with serious crimes during the week and minor offences during the weekend. Saturday Courts also assisted in making sure that alleged offenders have the opportunity to appear in court within the 24 hours as prescribed by the regulation. Most alleged offenders who were arrested on Friday, could only

appear at courts on Monday. This intervention assisted a great deal in reducing the backlog of cases at the Magistrate Courts'. Area Commissioner

4.2.3 Capacity

It is noteworthy that at the time when the study was conducted, these courts were not functional due to – as some magistrates and prosecutors indicated – a lack of funding. The bulk of them stated that they were happy with the outputs achieved, since most cases that could not be finalized during normal courtroom hours were concluded during the Saturday Courts.

There was a recurring view among prosecutors that Saturday Courts were effective for dealing with petty offences, but they felt that the focus of these courts should be more on Awaiting Trial Detainees. The foregoing was substantiated by these respondents who stated that cases of offenders in police cells were more an area of concern rather than the cases of Awaiting Trial Detainees which was more of a serious nature, and which demanded a speedy resolution due to prolonged periods of imprisonment.

Magistrates though, were dissatisfied with the abuse relating to the fact that many obvious cases that could have been concluded during normal courtroom hours, were now deferred to Saturday Courts. Such postponement of cases invariably leads to unnecessary claims for overtime work, which ultimately puts a strain on the budget of the Department of Justice. Magistrates further indicated that it was precisely this undesirable situation that led to the severance of donor funding.

'We welcome the intervention of the introduction of Saturday Courts, but sometimes we take advantage of such an opportunity. Most magistrates refer a bulk of cases to Saturday since working on weekends is viewed as overtime. This makes us work less during the week and put everything for Saturday. There should be proper monitoring on how we execute this initiative. However, if it is

properly implemented one concurs with the view that it will reduce overcrowding especially at the holding cells. Magistrate

At the police station, the station commander and police officials concurred with magistrates and prosecutors with regards to the effectiveness of Saturday Courts. The grievances that police officials raised ranged from the non-payment of overtime incentives as compared to prosecutors, the fact that they had to make use of their own vehicles to round up witnesses without being compensated, to the neglect that their families suffer due to Saturday Courts appearances. The aforementioned respondents were quick to point out that they were not negative with regard to Saturday Courts, in fact, they further pointed out that they appreciated the positive impact of such courts, but they merely felt that they deserved due recognition for their efforts.

Some investigating officers indicated that there needed to be a redirection of the target group of the Saturday Courts. It is precisely within this context that police officials suggested night courts to deal with petty offences rather than burdening the Saturday Courts with such offences.

The Area Commissioner indicated his satisfaction with the implementation of Saturday Courts and that he believed such courts should be resuscitated. Some of them were inclined to ascribe a decline in the number of awaiting Trial Detainees who were held for petty offences, to Saturday Courts.

A police official who indicated that he had no knowledge pertaining to the functioning of such courts, appeared to be alluding to communication channels that were not up to the expected standards.

A serious obstacle to the proper functioning of these courts relates to the disappearance of dockets in that there were instances whereby cases had to be remanded, which ultimately defeats the objectives of the introduction of such courts.

'Disappearance of dockets is a matter that has to be dealt with. Most of the dockets disappear and that renders Saturday Courts useless. Detainees will appear in court and only to find that the docket is missing, and the case got reminded. This happens more often and causes delays in resolving cases. It goes with integrity, honesty, and dedication amongst us. I hope there will be a mechanism on how to arrest these occurrences.' Prosecutor

4.3 IJS Court Centers

4.3.1 Context

The IJS Court Centers came into being in 2001 with the specifically assigned objective to monitor the movements of alleged offenders starting from the first encounter with SAPS personnel to a potential trial and sentencing and ultimately – possibly – entering the realm of the Department of Correctional Services. These IJS Court Centers are essentially a database which contains very specific information pertaining to already sentenced individuals and to Awaiting Trial Detainees. Such information ranges from the nature of offences, the lengths of sentences served, expected dates of release from prison, and the general profiles of sentenced inmates, to the nature of alleged offences, the period served as Awaiting Trial detainees, dates of court appearances and possible remands if ever it was the situation, together with the general profiles of Awaiting Trial Detainees. This information was provided by the Area Commissioner and the Chief Magistrate.

4.3.2 Content

While the majority of police officials were totally off target when required to impress on what IJS Court Centers entail, it was the magistrates and prosecutors among all different stakeholders within the IJS who could correctly reflect on the meaning

and the purpose of the IJS Court Centers. The conspicuous absence of a thorough understanding among police officials suggested that these court centers were an evening court, a mobile court or physical building, housing the various departments within the IJS.

'I heard of the IJS Centers and that refers to mobile courts that are stationed at various informal settlements where there is a lot of crime. This assists the Department of Justice and Constitutional Development to deal with the backlog of the Awaiting Trial Detainees'. Police Official

'IJS Court Centers are not so many in the country. They deal with specific cases of crime involving people occupying a high position in the society. Such courts are held in the evening where less people attend. It is a closed-door court proceedings'. Police Official

4.3.3 Capacity

Amongst the respondents who were able to expand correctly on the purpose of these centers, there was a view that the introduction of this database did not bring about significant changes. They viewed the information contained in this database as obsolete, and some courts proposed that permanent employees were needed to man it.

'These centers were meant to create a well-established database that would include profiles of each detainee including if he /she is the first offender or a raw criminal. These three departments should rely on the system and ensures that there is no duplication of roles and that resources are spent accordingly. The problem is when we find disjointed information and information that is not updated. It therefore, becomes difficult to rely on these types of centers. I would suggest that it be capacitated so that the information is up to date'. Magistrate

4.4 Courts at prison

4.4.1 Context

It was envisaged by the IJS that the opening of courts at prisons would speedily reduce the number of inmates awaiting trial. More specifically, it was hoped that the first appearances of Awaiting Trial Detainees – who normally get remanded – would be dealt with in these courts, but that consequent appearances would take place in the more conventional criminal courts. The information was provided by the Area Commissioner.

4.4. Content

Magistrates and Prosecutors indicated that they have heard of the intent to introduce such courts. Insofar as it being one of the elements of the '*checklist'*; this, they stated was not formally conveyed to them.

These respondents were able to elaborate on the potential eventualities of instituting such courts at prisons. Some negatives and positives possibilities were highlighted by respondents. The positives evolve around the following: reduction in the number of escapes that otherwise occur *en route* to courts distant from prisons, reduction in transport costs, since inmates would not have to be transported to the various courts under whose jurisdiction the alleged committed crimes fall, improved punctuality amongst prisoners since they usually arrive late at courts, and inmates who deliberately refrain from appearing in courts, could immediately be pursued in prison with a view to compel him / her to appear

The negatives evolve around the following: the safety of magistrates, complainants and witnesses was a cause of concern. From the aforementioned, it is evident that the capacity of prisons comes into question, the already pressurized prison officials would be subjected to more adverse pressure in that they would be expected to manage the influx of the public to courts, the issue of jurisdiction would inevitably become a contentious one, and transporting the various witnesses and

complainants to courts at prisons would pose a monumental challenge considering the logistics involved. In addition to this are the unavoidable higher transport costs that would be incurred on taxpayers

Across the spectrum of respondents within the SAPS, it was clear that they were not aware of the conceptualization of such courts, let alone of any current operations of such courts.

4.4.3 Content

Prison Warders reflected on a court that used to operate at prison which they say was highly effective and that there was a need to resuscitate it. Also, there was a magistrate who referred to such courts as operative. Other than that, no information of substance was forthcoming on such courts.

'There are a number of offenders who committed petty crimes and needed to be released under community supervision and such courts are necessary to execute cases of that nature. For some, it is their first offence and they are of good standing in the community. Prisons should have powers to deal with such cases.'

Prison Warder

4.5 Police cells as holding cells

4.5.1 Context

The IJS has targeted police cells as holding cells to accommodate alleged offenders, except for those who are held under schedule five and six. This will apply more specifically to situations whereby alleged offenders' cases were remanded after being held up to the maximum 48-hour period (Section 50 of ACT 51, 1997) in police cells, but instead of a detainee being transferred to prison, he /

she would then be placed back in the police cells. This view was expressed strongly by the station commander at the police station.

4.5.2 Content

Whilst the majority of respondents across the spectrum where knowledgeable of the intentions of the IJS to redefine the functions of the police cells, it was clear that the IJS' intentions did not augur well with them.

Basically, respondents impressed on the limitations of such a venture; these entailed the following: limited holding space at the police stations, insufficient medical facilities and care at the police station, shortage of police personnel to oversee Awaiting Trail Detainees, the lack of expertise of the police to manage the many challenges of diversity inherent in such an environment, the general physical structure of police stations is not tailored to hold alleged offenders of that nature for prolonged periods of time, and existing control measures that exist at police stations make it susceptible to potential frequent escapes

4.5.3 Capacity

Whilst the expectation of the IJS was to see the implementation of the police cells as holding cells, the reality of the situation is that it has been reduced to a mere theory, since there are no indicators on the ground that are suggestive of the pragmatic approach.

In conclusion, the IJS will be advised to take cognizance of the need for additional police personnel, the need for more specialized training of such personnel geared towards effective delivery, the introduction of quality medical facilities and care, the expansion of the physical environment where detainees are kept and finally a re-look at the physical layout and structure of police stations.

> *'We are understaffed. We are not coping with the number of alleged offenders in the police cell. They are crowded with not enough sleeping space, accommodation and*

food. They sit on top of each other and that makes it impossible to control them and maintain order in cells. During Christmas time it becomes worse with cases ranging from drunkenness and theft. I will propose that we have more facilities and enough space to accommodate them. Sometimes we are overpowered and they escape without trace. There should be more police officials to deal with this kind of a challenge'. Police Official

4.6 Plea bargaining

4.6.1 Context

Basically, plea bargaining refers to a submission of a plea of guilty by an accused with the hope that there would be some agreed advantage for him / her, which might involve the reduction in a sentence, or the rescinding of other charges. It is the desire of the IJS that this route of tendering a plea of guilty would be exploited by more and more detainees, which would then ultimately have a positive bearing on the present overcrowding dilemma. Key informants provided this context as practitioners with the IJS.

'Plea bargaining requires honesty from the accused and determination of telling the truth and nothing else. Most of the offenders do not understand the intention of the bail and take chances by further lying to the court. This complicates the case and makes it worse. It is a very good intervention, but it needs someone who is prepared to tell the truth. In that case, the magistrate will consider reducing one's sentence reasonably according to one's situation. Most offenders benefit from this intervention'. Magistrate

'People should be educated about this bargaining. Since its inception, there are few people who opt for this kind of an initiative. There is still a fear that once one tells the truth he or she will be punished rather than when they tell lies and take chances. There should be workshops within communities to explain the importance of telling the truth in court. I regard this as a viable option in ensuring that offenders are pardoned and given a lenient sentence'. Prosecutor

4.6.2 Content

Magistrates and prosecutors interviewed demonstrated a thorough knowledge of what plea-bargaining entails and they perceived attorneys across the board as not doing enough in encouraging Awaiting Trial Detainees to opt for this route. In addition, they stated that this was mainly occurring at the Regional Court level. Prosecutors who could impress meaningfully on the subject deemed plea bargaining as a waste of time since there were too many unnecessary administrative requirements. They further stated that it was totally incompatible with the mind-set of South African Awaiting Trial Detainees and that whoever adopted the model was not in sync with the reality of the appalling material conditions that dominate the lives of the destitute in South Africa.

However, one magistrate was shown to have a vague knowledge of plea bargaining. One's expectation is that magistrates should be well versed on legal matters, but it is clear that the relegation of some to administrative duties has a diminishing effect on their knowledge on contemporary legal developments.

Investigating Officers were not well informed as to what plea bargaining was all about, let alone that it was one of the key elements of the '*checklist'*. A significant number of them displayed some understanding of the concept and even stated that it was occurring on a more regular basis.

I can conclude that most of the Investigating Officers were off target. This clearly demonstrates that the dissemination of information to the SAPS personnel on the ground, leaves much to be desired. A lot of groundwork needs to be done on the police's understanding of plea bargaining as is evident in their responses.

'I heard of plea bargaining, but no one took us through the processes. I don't know what it entails and some of the spinoffs it might have for offenders. Everyone makes an oath in court before any evidence is put out. My assumption is that all of them are prepared to

tell the truth and nothing else. Therefore, plea bargaining is misplaced as it casts suspicion that offenders are telling lies in their testimony. It's confusing! Police Official

The Area Commissioner seemed to be familiar with plea bargaining but stated that it was not happening to the extent it was hoped it would.

On probing the understanding of Prison Warders on this concept, one deduced that it was rudimentary since responses varied. They indicated that the resounding majority view of the Awaiting trial detainees was that they would never consider this as an option, but would rather take a chance in court, than admitting to committing an offence.

The above response – they indicated – was motivated by the regrets of sentenced inmates who felt that they had blundered by opting for plea bargaining. They indicated that detainees felt that they 'got a raw deal' since their attorneys made agreements with the prosecution contrary to what they had agreed on, prior to negotiations.

They said that there were recurring misguided notions that existed amongst detainees as to what the implications of admitting to a crime were, and then retracting one's plea-bargaining. Respondents' overwhelming view was that one's initial plea could be used against one by the prosecution when the case is scheduled to appear before the court.

They also said that there is also a minute proportion of Awaiting Trial Detainees that stated that whilst they might consider this route, they were discouraged because of the possibility that on submission of their plea, they might be 'locked up on the spot'. These respondents viewed Plea Bargaining as a ploy from the authorities to deceive them into serving jail sentences under the pretense of good faith.

Some stated that they found the advancement of detainees' cause by authorities rather spurious since, if one was to consider their time on the awaiting trail list – some had been awaiting trial for over three years – one would be inclined to

deduce that authorities would rather keep them in the cells to prove a point, and Plea Bargaining was the idea bait that would justify detainees' continued incarceration.

The above elicited responses beg for introspection in justice circles since Plea Bargaining - from their perspective – is seen as one of the vehicles to alleviating the overcrowding dilemma in South Africa.

Furthermore, with liberation in 1994 came the conception of confidence in the justice system. However, the country is facing the challenging task of rebuilding the eroded trust of citizens, which is an inescapable prerequisite for advocacy and education of, amongst other things, Plea Bargaining.

4.6.3 Capacity

Generally, magistrates suggested that many of the Awaiting Trial Detainees were not aware of plea bargaining and that prosecutors were not inclined to use it to its full potential.

The majority of Police Officials were unable to share knowledge on plea bargaining and were therefore not able to constructively input on the extent of implementation of plea bargaining.

'It is difficult to educate people about plea bargaining since I don't have a clue what this initiative is all about. They are talking about plea bargaining at courts and prisons, but we were not put on board to understand the concept. I will propose that a workshop be organized amongst police officials so that we are also empowered'. Police Official

Prison officials indicated that plea bargaining was being marketed in prison. However, the response of prisoners in relation to this was not encouraging.

4.7 Police and prosecutorial bail

4.7.1 Context

This bail is viewed as one of the key mechanisms through which overcrowding in South African prisons can be addressed. Ownership of this bail – as the name suggests – lies with police officials and prosecutors and its execution demands that the two parties liaise with each other on a particular matter. The bail is aimed at the speedy resolution of petty offences without having to lock up an offender in police cells and potentially, in prison. These petty offences range from shoplifting, drunkenness in public to common assault, etc. The Area Commissioner and Chief Magistrate were experts in outlining this strategy.

'We can't have everybody being locked up in the police cells. This is another mechanism of reducing overcrowding in police cells. The police official will liaise with the prosecutor and give the alleged offender bail without him or her being locked up. The police official will himself or herself certify that the alleged offender has a formal address, he or she is a family member, a professional, etc. Such information qualifies the alleged offender to be released under this bail, because the police official is certain that he or she will appear in court on the agreed date. This is something that should be considered'.

Magistrate

4.7.2 Content

Magistrates and prosecutors were aware of the existence of the bail, and whilst magistrates and prosecutors were able to impress accurately in terms of their understanding of the bail, the bulk of respondents from police officials revealed a regrettable lack of knowledge in this regard.

'We are expected to implement the bail, but it is difficult if we do not have proper insight into the bail. Prosecutors do not take us seriously. When it is reported to him or her regarding the matter, he or she feels he or she knows much more. We do not have a good relationship with prosecutors. They regard us as illiterate and empty when coming to legal matters. I do not see this bail being implemented as long as prosecutors maintain this kind of attitude. The bail is about the two of us, therefore we should work together. It is difficult!' Police Official

'I attended training on police and prosecutorial bail, but I always had a problem on how it would be implemented. Prosecutors are operating under the Justice Department, and we are under the South African Police Services. These are two separate departments with different mandates. Again, there is no clear line on how we should co-operate and work together. I don't see us working together on this bail since there is a thick line between us. The government wants to forge co-operation but fails to provide guidelines on how we should work together'. Police Official

4.7.3 Capacity

Prosecutors indicated that police officials were reluctant to consult them on the bail since these officials viewed such consultation as a possible platform for exposing their deficiencies to interpret the bail. Inevitably petty offenders land in the police holding cells and ultimately in prison, if the 48-hour holding period has expired.

Another point that was raised evolved around the failure of police officials to execute their administrative duties related to police bail. This cop-out of theirs has obvious disadvantageous consequences for petty offenders since a stay in the police holding cells is inescapable.

Police officials' inability to categorize various offences posed a serious impediment to the speedy conclusion of a great number of cases. Coupled to this is the notion that the quality of police investigations leaves much to be desired which consequently complicates the discernment of cases.

It was also stated by some prosecutors that the abuse of bail amongst police officials was rife in that some habitual criminals who were on good footing with the police were granted police bail after committing serious offences.

On a more interesting note, some magistrates noted that police officials arrest with a view to investigate, rather than the opposite. Magistrates cited that the potential of police bail would never be fully exploited with the current mindset of such officials.

Both parties stated that police officials were quantity rather than quality driven. They indicated that more arrests by police officials could be effective and better for them in terms of promotions. This precisely – according to them – negates the effective utilization of police and prosecutorial bail.

On probing into police officials' interpretation of the bail, one gathered that a large number of these officials would keep a petty offender in custody in the event that such an individual cannot afford the bail and would then consult with Legal Aid Board attorneys to come to an amicable arrangement that would satisfy the parties involved. This foregoing practice obviously defies the set legal route in that petty offences should be addressed by a prosecutor and the relevant police official/s at the police station. It is only after these two parties have agreed on a date of appearance in court – which is issued in writing to the alleged offender – that the magistrate, after the necessary courtroom deliberations, would set a bail amount. It must be borne in mind that there are no expectations from police officials and the prosecutors to set a bail amount, let alone to accept money from an alleged petty criminal.

There were also recurring instances where certain police officials indicated that they were not certain as how they should set bail amounts for various petty offences. The officials suggested that such practices whereby bail was being set by them were the rule rather than the exception.

4.8 Section 62(F),

4.8.1 Context

In essence, section 62(F) of the Criminal Procedure Act (CPA) is a law that regulates the placement of an accused under the supervision of a probational officer or a correctional official. The prosecutor may apply to the court before which a charge is pending that such placement be considered as an additional condition of bail. It is immaterial whether such bail was granted by the aforementioned court or any other court.

In view of the current overcrowding crisis in prisons, there was a suggestion within the IJS that the conditions pertaining to section 62 be relaxed so that it could be inclusive of accused persons who might not be in a position to pay bail and for which a release on warning may be inappropriate. Such accused persons would then be placed under correctional supervision as an alternative to bail or release on warning. Magistrates and Prosecutors provided clarity on the matter.

'It is not the intention of the courts to put people in prison. The courts assess each case by its merit and makes a determination if the offender should be imprisoned or not. This is an opportunity to pardon those offenders who are remorseful for what they did and have a good track record. It is pointless to incarcerate people who show a sign of repentance and willingness to integrate in communities'. Magistrate

'This provision depends much on the leadership of the prison. Other prisons do not bother applying this venture and fold arms when the prison is overcrowded. There is no law that compels courts to put minor offenders under community supervision – this depends largely on the head of the prison. The department should be firm and strict in ensuring that prisons exercise power in releasing detainees under community supervision'. Prosecutor

4.8.2 Content

The majority of respondents within the legal fraternity did not have a problem when confronted with the question that related to correctional supervision as an alternative to bail. However, there were a sizeable proportion of respondents who stated that '*correctional supervision could never be an alternative to bail*' and that it was '*only relevant once an accused was found guilty*'. From the foregoing, it is evident that there were obvious contrary views within the legal fraternity with regards to their understanding of section 62(F), and this is not an encouraging scenario, especially in the light of new exploratory directions that were being pursued within the IJS to address the overcrowding dilemma. On the other hand, these contradictions might precisely be the result of effective information dissemination by the relevant authorities. The manner in which the group that objected to the usage of the phrase 'correctional *supervision as an alternative to bail*' poses a challenge to the IJS, since one could deduce that such an opinion was never considered in practice. More specifically, accused persons eligible for correctional supervision, who were not in a position to afford bail and to whom a release on warning would have been inappropriate, might have been prejudiced.

Police Officials could not impress meaningfully on section 62(F) and they only divulged rudimentary knowledge as to what correctional supervision entails. As for the Area Commissioner, he seemed to be more knowledgeable than respondents within SAPS, since she was able to impress on the motivations for the relaxation of the conditions of section 62.

'I must be honest that I don't understand section 62. I need time to go through the section and then perhaps I will remember what the section entails. You better ask personnel in the legal fraternity. I heard a magistrate talking about it, but I don't have a clue as to when it is supposed to be applied'. Police Official

'We are utilizing section 62 at the prison to reduce overcrowding. Most of them have committed minor offences and could not afford the bail set by the court. Unemployment in South Africa is too high and some of them cannot afford to pay bail to the tune of R1000. 00. The amount seems to be little, but it is a lot of money to others. We will Therefore, I consider those conditions at the prison and release them under section 62'.
Area Commissioner

4.8.3 Capacity

The Area Commissioner expressed dissatisfaction with the current system of correctional supervision. This stems from the lack of proper control measures, shortage of probation officers and correctional officials, insufficient knowledge, and expertise to conduct constructive counselling. In addition, he raised concerns about the level of commitment of such officials.

In this regard, magistrates generally concurred with the perceptions of the Area Commissioner. They reiterated that the lack of proper control measures was a concern. Some of them admitted that the system was '*decayed*'. There was also a view that people under house arrest were not monitored as was expected.

They indicated that there was an outcry surrounding the unavailability of much needed facilities and human resources, to ensure the successful implementation of this section.

Prison Warders indicated that the majority of the Awaiting Trial Detainees seemed not to be aware of this as an alternative to a release on bail or detention in custody, and even those among them who claimed to know, were not convincing when required to convey their understanding of such supervision.

This is probably indicative of the failure of attorneys and others to effectively transmit such necessary information to detainees.

A number of additional issues were raised by Prison Warders which are food for thought. For example, they indicated that some detainees said that their lack of

money posed as an impediment to their freedom. These detainees cited that they have been enticed on several occasions by police officials who presented their case dockets to them. The officers would propose to detainees to tear their own dockets if they could afford a fee that would satisfy them. They mentioned cases of police officials who were prepared to destroy incriminating evidence against them and to ensure the disappearance of dockets, provided that the value of detainees' belongings at home were enough incentive for them to take that risk. It was disturbing to note that many of these detainees who mentioned such encounters with police were awaiting trial for allegedly committing, or being involved in, schedule 5 & 6 offences. These acts serve as a substitute for plea bargaining and offenders got released in a fraudulent fashion.

'In most cases dockets went missing at the courts and the cases got remanded. This will happen more often until the case is struck off the roll since there would be no evidence to proceed with the case. This happens between the police official and the prosecutor. It is alleged that such incidents happen only if the accused have money to bribe the two officials. Our administrative systems are so disjointed that information disappears very easily. This shows the level of corruption at our courts and it nullifies interventions made by the state to consider various options in releasing deserving offenders. This section is a good intervention and needed to be supported so that offenders can be released properly'. Prosecutor

4.9 Section 71 / 72

Section 71

This section looks at a law that confines itself to juveniles who may be placed in a place of safety or correctional official in lieu of a release on bail or detention in custody. There are currently an unacceptable number of juveniles in custody in prison and it is precisely within this context that the IJS is advocating for stricter adherence to this section as contained in the Criminal Procedure Act.

Section 72

Basically, this law applies to a situation where an accused person may be released on warning instead of bail. The accused person(s) in this case refers to juveniles and adults with section 72(b) of CPA specifically applying to juveniles.

4.9.1 Content on section 71 and 72

All respondents across the IJS displayed a good to thorough understanding of these laws and showed awareness on the importance to effect these options. Again, respondents within the department of Justice and Correctional Services demonstrated a more superior knowledge and diligence as opposed to respondents with the South African Police Services.

'We should appreciate this initiative where the department has considered the release of offenders on warning rather than on bail. Most people do not have money to pay for bail and end up in detention irrespective of the kind of offense they have committed. Giving a warning is a better option especially to the poor. I strongly believe that South African will benefit from this intervention'. Magistrate

4.9.2 Capacity

With regards to section 71, it was stated that juveniles were more and more diverted to programmes of concerned organisations and childcare centers. A great number of them were also put under the care of guardians.

The bulk of the cases that begged for the application of section 72, evolved around offences relating to assault, malicious damage to property and further cases other than those referred to in PART II and PART III of schedule 2.

Whilst the desire of magistrates to effect the different scenarios stated under section 72 is to be applauded, some of them raised the concern that they were sometimes under pressure from various communities where alleged offences

occurred, to maintain the incarceration of alleged wrongdoers. In this regard, some responses were revealing:

'It is very difficult to apply the law rigidly. The interests of the community take precedence over the rights of criminals, sometimes. I am saying this because communities would demonstrate outside court threatening to kill the accused if the court decided to release the offender. The pressure exerted by the community outside the court influences the judgement. The magistrate will consider the level of risk in releasing the accused and ultimately resort to keeping the accused in custody to save his or her life'. Magistrate

4.10 Section 276(1)(i)

This law deals with a person that has been convicted of an offence and consequently sentenced to imprisonment, but instead of being incarcerated, such a person is placed under correctional supervision. This is also viewed as one of the key elements of the '*checklist'* as mentioned earlier, which clearly does not apply to Awaiting Trail Detainees.

A probe into knowledge of respondents revealed that magistrates, prosecutors, and the Area Commissioner were more competent in terms of deliberating on this section. Again, police officials, apart from the Station Commander, could not expand meaningfully on this section.

'This process happens only in prison after the accused has been sentenced. In prison they further scrutinize cases and categorize them into priorities regarding the ones that should be placed under correctional supervision. There is a committee in prison that is designed to deal with such cases. This intervention has contributed largely in reducing overcrowding in prisons. Area Commissioner

'Correctional supervision takes place in prison and not at the South African Police Services. We are not taken on board in as far as its operations are concerned. We do

not have an understanding with regards to the conditions under which this section is applied. However, the way it is explained one gets a sense that it has made a positive impact. Police Official

4.11 Legal aid board attorneys

Some of the Prison Warders stated that they were dissatisfied with the quality of consultation made with awaiting trial detainees from these attorneys, and this they cited, was a crucial flaw on the side of the Legal Aid Board since this does not assist in the vindication of innocent individuals. They indicated that some Awaiting Trial Detainees - although difficult to fathom - were not aware of the existence of the option of such attorneys. The respondents who complained about the standard of legal advice, further motivated their complaints by stating that these attorneys did not spend enough time to listen to the Awaiting Trial Detainees' versions of what occurred in a particular instance – in fact, it was mentioned that they did not care for their inputs.

There were also recurring references across the prison warders to situations whereby consultation occurred on the same day when the court sits. A minority component was highly skeptical of the expertise and bias of these attorneys and cited that if it was not for their financial predicament, they would rather have opted for counsel of their choice.

These respondents also quoted cases where Awaiting Trial Detainees were represented by Legal Aid Board attorneys, with often unfavourable verdicts against the defendants. There seems to be general agreement amongst such sceptics that there was a deliberate attempt from these attorneys to sabotage whatever *modus operandi* that was agreed upon with their clients. To corroborate the aforementioned, these pessimists stated that their cynicism stems from the fact that such attorneys seem to liaise with prosecutors and police without including or informing defendants of their intentions with such liaisons.

Clearly, transparency seems to be a thorny issue to some detainees, and the Legal Aid Board attorneys would be well advised to heed to the concerns raised above if they want to remain credible proponents of 'justice for all'.

Legal Aid Board attorneys were viewed as 'mere novices' by the bulk of prosecutors and magistrates and their inexperience during courtroom deliberations was blamed as one of the factors that exacerbate the current situation in prisons nationally. It was stated by these respondents that cases were being dealt with in a haphazard fashion. In these attorneys' defense, respondents stated that the disproportionate allocation of cases to these Legal Aid Board attorneys, results in some of them being highly overburdened.

'In the first place, state attorneys do not have sufficient time to study the case of the awaiting trial detainee. They meet with the detainee for a few minutes prior to the commencement of the case in court. Obviously, the state attorney will request the magistrate to remand the case for a later date so that he or she has ample time to study the case. More often than not he or she is not the same attorney to represent the detainee in the next court appearance. The detainee will be allocated a new state attorney who will also request for the postponement of the case. This is a waste of time and state resources. The matter should be looked into carefully so that the time allocated is not wasted. Prosecutor

'I doubt whether state attorneys understand what is expected of them, because they sometimes complicate a simple case and make it difficult. Most of them are still fresh from the university and do not have experience in dealing with different cases. I suggest that they should be observers in the first months to acquaint themselves with court proceedings and handling of cases before being given the actual role of defending cases. Their lack of knowledge and understanding is problematic. Magistrate

The lack of knowledge of police officials on fundamental justice procedures, and the levels of expertise of the Legal Aid Board attorneys were also cited as contributors to the overcrowding issue.

4.12 Communication amongst the various stakeholders in the IJS

Before drawing some inferences from the foregoing, a pursuit into the views of the different stakeholders on the ground within the IJS, with regards to the extent to which consultation on the elements of the checklist occurred, and are still occurring, should serve as a further illumination to their responses in the previous section. More pertinently, the extent to which consultation occurred in the conceptualization phase of the checklist and the challenges to collaboration were looked at. The Area Commissioner indicated that information was well disseminated to the relevant stakeholders and workshops were conducted for further clarity regarding the strategy.

'A task team was constituted comprising of the three departments, i.e., the Department of Correctional Services, the Department of Justice and the South African Police Services. They developed the terms of reference and a programme on how overcrowding in South African Prisons could be addressed. Stakeholders were identified and a programme was elicited on disseminating information to those structures. Workshops were conducted at various levels as an attempt to ensure that various groups are abreast with developments regarding the structure and the strategy. Area Commissioner

4.13 Consultation during conceptualization

Whilst the consultative approach at top management level of the three relevant departments was commendable during the conceptualization stage, elicited responses from police officials revealed the contrary. According to the majority of the respondents attached to SAPS, they didn't perceive the processes to have

been consultative, but viewed it merely as an information dissemination session. The expectations from police officials to participate constructively in a consultation process, suffered a rude awakening on being subjected to a barrage of information, instead. They indicated that whatever suggestions that they came up with did not get due consideration but was merely noted and afterwards conveniently discarded. On the other hand, there were a significant proportion of magistrates who were not aware of the existence of the "checklist", let alone of any requests for their inputs during a consultation process. Care should be exercised so as not to deduce that such magistrates were not knowledgeable on the elements of the checklist; in fact, they impressed confidently to nearly all the elements contained therein.

The term 'checklist' seemed to be unfamiliar to the majority of stakeholders in the SAPS, but after further clarification from the researcher on its meaning, some recalled their previous engagements with a delegation that was headed by judge Fagan on these issues. The Station Commander was invited to attend the initial meetings on the IJS' strategy. However, they also raised some concerns regarding their level of involvement in these meetings. Amongst other things, they stated that they were given a minimal platform to air their views on particular matters, and that even then, it seemed as if all meaningful input from the SAPS were not seriously considered for adoption to form part of the strategy.

Whilst their seniors have expressed some dismay with the levels of consultation, the bulk of police officials viewed their seniors not to have been properly briefed on the strategy. The reason for this, they stated, was evident in the way these seniors' transmitted information on the checklist in that when clarity was sought with regard to the technicalities contained therein, they were unable to expand thoroughly. Many of them also indicated that they viewed such exercises pertaining to the strategy as merely '*going through the motions*. In essence the remainder of their complaints evolved around them not having received proper background information from station commanders; information was transferred to them piece meal.

'Our seniors were consulted on the matter, but they did not brief us properly. There are the ones who can express themselves regarding the strategy, but we still lack more information. They should have conducted workshops at our level to put us on par with everybody. Currently we do not understand the strategy the same way – we have different interpretations, yet we work in the same unit'. Police Official

In terms of their knowledge of the checklist, the Area Commissioner indicated that he was familiar with the elements of the strategy of the IJS and that he was duly consulted during the conceptualization phase.

'We were part on the initial process. We took ownership of the entire process and ensured that relevant structures are consulted and input on the strategy that we presented as a draft. Those consultative processes helped a great deal since we were able to produce a document that was commonly agreed upon'. Area Commissioner

4.14 Collaboration

Overall, respondents were more inclined to state that the existing inter-relationships amongst the three partners within the IJS were cordial; however, there was a discouraging proportion of them who had a contrary opinion in this regard. Amongst the legal fraternity there were recurring references to the existing inadequacies of police personnel; in particular, the lack of quality in their investigation of cases, to the fallacious statements that they compile and to their insufficient knowledge on the Criminal Procedure Act.

In turn, police stated that prosecutors were arrogant and that they viewed themselves to be more knowledgeable on matters of joint concern.

'There is this misguided notion within the security cluster that police officials are not educated. In all at our joint cluster meetings we are not taken seriously by other

partners, and they claim to be knowledgeable and having answers to all questions asked. This is a bad orientation that needs to be addressed by the IJS. We are regarded as people with no Matric qualifications, which is just a lie and we are undermined. There should be a respect amongst us if we are to win challenges ahead'. Station Commander

The Area Commissioner assigned some of the blame to magistrates for the overcrowding problem, since he indicated that magistrates were on many occasions fixing too high bail amounts that alleged offenders could often, ill-afford. It was further stated by the Area Commissioner that there were many instances whereby, in their analysis, alleged offenders who were entitled to free bail, were rather being held in detention.

'Magistrates should be considerate when issuing out sentences to offenders. In most cases they will impose heavy sentences on the issue that could be regarded as minor. For example, we have one inmate who is serving a long sentence because he hit his friend who called him a witch with a chair. At prison we have to make the decision to release him under correctional supervision. I urge that our collaboration should be guided by principles. Area Commissioner

Magistrates felt that their judgements were deemed useless on many occasions. They cited cases relating to the release of alleged offenders from prison by the Area Commissioner at prison. Such sentenced individuals are then placed under correctional supervision without the proper channels of liaison having been followed.

'We are not working together with prisons. There are other areas where we do well, but in other areas we oppose each other. For instance, a criminal is given a heavy sentence but within a month the same criminal is found in town, and one starts wondering what happened. Prisons use their own discretion in releasing them under correctional supervision. It does not mean that if someone a first offender they are not dangerous.

This intervention should be reviewed so that the Department of Justice also has a say on conditions surrounding the release of such an offender'. Magistrate

Clearly, the above pose as impediments to the collaborative efforts of the three structures.

A further probe into respondents' views on the current levels of consultation yielded some encouraging responses. They cited that there were regular meetings between IJS partners where information was exchanged and where strategies were suggested to resolve issues of concern. There was also mention of informative conferences that they have attended and ones that were in the process of conception with objectives to further enhance strategies and to conceive fertile mechanisms to address the current dilemma in South African prisons.

4.15 Additional issues

Notwithstanding the above, there were additional recurring issues of concern raised by the respondents that impact directly on the implementation of the 'checklist'. When afforded the opportunity to express their opinions on this topic, one sensed a burning urgency to voice their perspectives on the following: corruption, racism, socio-economic factors and first appearance at the court.

4.15.1 Corruption

It was disconcerting to note that nearly every respondent cited this as the major obstacle in implementing the strategy. It was pointed out that corruption is rife amongst police investigating officers and transcends the south African Police Services into the domain of Correctional Services. Underneath follows prosecutors and magistrates' views with regard to the aforementioned departments' officials involvement in corrupt activities:

4.15.1.1 On Investigating Officers

There were numerous cases in point that were cited when a petty offence was committed, e.g., common assault, but on appearing in court one would find that the charges against one have been severely exaggerated and that they have turned into schedule 6 offences like rape, or possession of an unlicensed firearm, or assault with the intention to cause grievous bodily harm, or a combination of charges. The blame for this, according to prosecutors could be put squarely on 'corrupt' police officials, since they were perceived to be alleged offenders and were operating along punitive lines. One of the prosecutors uttered the following which clearly reflects his frustration with the prevailing corruption.

'One of the accused was arrested for common assault, but when he appeared in court, he was told that he had an unlicensed firearm. He was shocked to be shown a firearm that they alleged he had used to intimidate the complainant. It was clear the investigating officer and the complainant built up the story to strengthen their case. Our justice system is under challenge. Prosecutor

It was further indicated that police officials influenced witnesses at identity parades after it became clear that the arrests of alleged offenders could not sufficiently be substantiated. These arrests, it was stated, usually emanated from previous attempts by police officials to implicate certain individuals for crimes allegedly committed, but after failing to produce sufficient evidence to advance their personal causes, these officials would pursue acquitted individuals by fabricating charges against them and dictating to witnesses as to whom they should identify as the perpetrators of such crimes at these identity parades. With exasperation, one magistrate stated:

'I was told by the awaiting trial detainee that he was forced to admit that he committed rape. The investigating officer came to his room before they paraded in order to check his appearance and the clothes he wore. He said that he saw the lady who claimed to have been raped by him, for the first time in court. It is a pity that once you are in prison,

you are helpless. If he had been outside, he would have been able to seek legal advice and get witnesses to defend his case'. Magistrate

4.15.1.2 On Prosecutors

The area commissioner viewed prosecutors to be conniving with corrupt police officials since prosecutors would not readily authorize the granting of Police and Prosecutorial Bail for minor offences, because they would only entertain police officers' views on a particular incident. It was stated that such prosecutors were only prepared to consider the dropping of charges once an alleged offender was prepared to pay a fee that would satisfy both the police official/s and the prosecutor involved.

'One of the inmates said that if he had money, he wouldn't have been detained. He said that the investigating officer advised him to organize money for bribery. Since he had no money to bribe him at that time, he was ordered to comply with the arrest. His offence was pointing someone with a finger and telling him that he would kill him. He couldn't afford the bail and that is why he is in prison. He said that the investigating officer made it clear to him that there is no way where he couldn't convince the prosecutor to be lenient on the case if there are no incentives'. Area commissioner

4.15.1.3 On Prison Warders

Investigating Officers stated that prison warders would sometimes deliberately prevent detainees from attending their court proceedings and would thereby prolong their incarceration. Instances were also cited where warders failed to inform detainees when charges were withdrawn against them. It was stated that the reasons for such actions by warders ranged from purely financial motivations to the failure of detainees to do certain favours for these warders. Some of detailed responses in this regard are revealing:

'Prison Warders will tell awaiting trial detainees that there are no sufficient vans to transport them to court. They will then select those who have money to bribe them. Appearing at the courts then becomes a privilege of the haves. Station Commander

4.15.2 Racism

Some prosecutors stated that white police officers were inclined to arrest people of colour – in particular Blacks and Coloured for no reason. They cited instances where they caught them merely for loitering outside the premises of some businesses with the hope of securing a job or something to eat, when certain White police officers would approach them in a hostile manner and then proceed to arrest them without stating their reasons for going that route. Fabricated charges against them would be of such a nature that they would not be considered for police bail and after spending the mandatory period of 48 hours in police cells, they would inevitably land in prison.

'The bulk of complaints related to racism were aired by Black and Coloured detainees. They said that white police officials are racists. When they arrest you, you will definitely end up in court and then prison for a minor offence. One indicated that he was looking for a job and they grabbed him for loitering outside the factory. They called him a kaffir and kicked him into the van'. Prosecutor

It should be evident that if prosecutors' allegations were truthful, then an inevitable consequence of this is the amplification of the current crisis in South African Prisons.

4.15.3 Socio-economic factors

A disturbing number of police officials pointed out that the acute poverty in which some of the detainees found themselves, prompted them to commit offences like shoplifting, burglary, theft, and in some drastic instances, armed robbery.

'There are no jobs and some of the detainees had no chance to get education. Many of them have families and are obliged to feed their families, cloth their children and pay for their education. This kind of a situation leaves them with no option but to break the law. It is a difficult situation, and we are compelled to succumb to pressure'. Police Official

There are also disconcerting references to detainees who committed offences with the hope that they may be apprehended and arrested by police, and ultimately incarcerated. Their motivation according to prison warders – was purely to ensure that they have something to eat, and prison is the only place that would offer one a free meal.

'You see, some of these detainees here don't have a choice, but to be here. They don't have a home or shelter and they hardly eat when they are outside. You will find them moving in and out of prison. They get food here at least'. Prison Warder

This route of ensuring sustenance was defended by the station commander who stated that their continued ill-fated attempts of securing employment left them with no other option. Needless to say, the inevitable cumulative effect of the above-mentioned is an exacerbation of the present-day crisis in South African prisons.

4.15.4 First Court Appearance

The prevailing notion among prison warders is one that views such appearances as a waste of time since a case is bound to be remanded anyway. Certain

prosecutors who indicated that a first appearance is synonymous to ‘greeting of the court’ have corroborated the foregoing notion.

‘IJS should put its house in order if they want the strategy to work. Awaiting trial detainees who appear for the first time in court always have their cases remanded. Their files are always not in order and the court finds it difficult to proceed with such cases. This happens all the time when an awaiting trial detainee appears for the first time. The Justice department should pay attention to this phenomenon. It discourages awaiting trial detainees from coming to court. Prison Warder

Linked to this is a perception of awaiting trial detainees that continuous non-attendance of court hearings almost always leads to the withdrawal of the case. This needs education among awaiting trial detainees.

Again, non-appearance of complainants and witnesses in court, unavoidably prolongs the incarceration of awaiting trial detainees.

CHAPTER 5: DISCUSSION OF FINDINGS

5.1 Introduction

It should be apparent from the previous sections that issues raised by the various respondents demand individual dissection. It would therefore only be appropriate to come up with the desired intervention measures aimed at each of the categories of stakeholders, separately. Whilst not claiming to be perspicacious, it is the researcher's sincere hope that what follows below would serve as a guideline for intervention by the IJS to effectively address highlighted concerns from various stakeholders and others.

5.1.1 Intervention at police stations

Police personnel raised the issue of nonpayment for attending Saturday Courts whilst it was still operative. The possibility of the reintroduction of such courts is a real one after the success of such courts at their first launch. To ensure that its momentum is not jeopardized by the potential mass refusal of police officials to attend Saturday court hearings, due incentives are recommended.

Again, the utilization of police cells as holding cells is viewed as one of the cornerstones of the checklist, aimed at addressing overcrowding in prisons. However, the fertile argument advanced by the antagonists of such a venture compel the researcher to suggest a number of things that the IJS has to take cognizance of for this to be realized. The issue of the lack of skilled personnel to oversee detainees, the need to expand the police cells to realistically accommodate the volumes, the introduction and upgrading of medical facilities and care – if ever there is – should be prioritized and finally the need for stricter control measures since the influx of visitors is inevitable. The 7C protocol model advocates the issue of capacity as the cornerstone of driving policy implementation. It is

incumbent upon police officials in ensuring that police cells adequately accommodate offenders.

A further area of priority relates to the application of the police and prosecutorial bail. Based on the interaction with informants whilst conducting the study, it was evident that training of police officials on the application of the bail is of utmost importance. The researcher's core motivation for suggesting training relates to, amongst other things, the erroneous discernment of cases eligible for the bail. Again, the 7C protocol model emphasized the understanding of the content and the ability to contextualize theory into practice. Therefore, police official should familiarize themselves with bail before implementation. This link with the research question probing the capacity and understanding of the strategy at hand.

There are still a disconcerting number of case dockets that disappear without ever being retrieved and to worsen the situation, the databases do not seem to be up to standard in terms of them being updated regularly. Consequently, this leads to the remanding of cases and to a deepening of overcrowding question. It is incumbent upon the IJS to advise stakeholders to come up with and enforce tighter control measures to eliminate such negligence or deliberate practices. The regular updating of the various databases needs to be addressed as a matter of priority so that it can effectively assist in the process of tracking the movements of offenders or alleged offenders in the system. This implies the introduction of additional manpower to update the databases. This notion is corroborated by (Ballard, C. 2011) who highlights dockets that timeously got lost at police stations. He further alluded the fact that some police officials are quest with accumulation rather than perfecting work outputs.

The pursuit of innocent individuals by corrupt police officials, it was mentioned, is commonplace. Instances whereby such officials influence fabricated witnesses to

implicate ‘suspects’ at identity parades can possibly be countered by the introduction of tighter control measures.

It was established during the interviews that Black detainees implicate White and Indian police officials as being racists in their interaction with Black offenders. In this regard, the IJS may recommend a series of diversity workshops that would rejuvenate the consciousness or awareness – if ever it existed, prior – of such police officials

5.1.2 Intervention at Courts

In Justice Circles a concern was raised that Legal Aid Attorneys were not up to standard to defend detainees adequately. They linked this to a lack of experience on the side of these attorneys and to a disproportionate allocation of the workloads. This inevitably impacts on the quality of service that was being rendered to the Awaiting Trial Detainees. It is on this basis that one suggests that they be afforded legal training of a more pragmatic nature and that the IJS should advise them on a more balanced distribution of the workload. Lack of capacity amongst Legal Aid Attorneys poses challenges with the Justice System. (Judicial Matters Amendment Act, 2017), states that there are almost 8 000 awaiting trial detainees in a month that cannot afford bail. These awaiting trail detainees expect legal Aid Attorneys to represent them in court for justice to take its course. Therefore, in the absence of proper representation, cases unnecessarily populate the court roll.

With regards to Plea bargaining, the successful marketing of this concept demands more groundwork, since this idea does not seem to enjoy the levels of popularity that was hoped it would attract amongst the Awaiting Trial Detainees. The IJS should ensure that attorneys in general are imparted with sufficient expertise to secure the buying in of detainees to the concept. This is a clear illustration of lack

of dissemination of information to the citizen, thus conforms with the 7C protocol model regarding communication and coordination.

Saturday Courts was overall viewed as a successful venture and the IJS would be well advised to advocate for funding of such courts, so that it could be reintroduced. However, tighter control measures need to be in place to ensure that abuse of overtime – which is an inevitable consequence by the very nature of such courts – should be eliminated.

With regards to the introduction of a less stringent version of Section 62(F) of the CPA as one of the vehicles to attack the overcrowding problem, it was noted that there were some contradictions within the legal fraternity. The practice in some courts suggests that Correctional Supervision was not considered in situations where an accused was not in a position to pay bail and a release on warning was inappropriate. Such accused persons are rather referred back to incarceration – and this occurred regardless of whether such accused was eligible for placement under a probation officer or not. The IJS should ensure that such discrepancies are eliminated by accessing a much larger audience and by enlightening them on contemporary developments in the legal arena.

Another contentious issue that should come under scrutiny is the need for the decentralization of the function that relates to DNA and forensic analyses. Current facilities are centralized to Pretoria, which seriously delays cases whose outcomes rely heavily on such DNA and forensic testing. This ultimately further negatively impacts on the overcrowding dilemma. The challenge for the IJS is such that it demands the advancement of a sustainable argument that will compel the State to accede to the need for the further expansion of such facilities beyond the borders of Pretoria. Surely, such an argument can be corroborated by statistics which can tell the tales of the plights of many detainees prejudiced by such centralization.

The issue of race was highlighted by some prison warders that White Magistrates tended not to grant bail to Black Awaiting Trial Detainees. This, they stated, was the case most of the times whenever the complainant was White. In contrast to this, such detainees felt that if an alleged offender was White, chances were that such an offender was more likely to be given the option of bail, and this even though the transgression occurred under circumstances that were comparable to those under which offences that alleged Black offenders allegedly committed, occurred. We should not be stupefied by the foregoing expressed views since this is an inescapable inheritance from the recent past. Hence, the IJS should seriously entertain the idea of advising the introduction of monitoring systems at courts that would ensure that fair practice prevails.

5.1.2 Intervention at prisons

Protea Magistrate Court made recurring references to situations whereby the Area Commissioner or other prison officials would ultimately decide on the release of detainees, and in doing so, undermine magistrates' authority. In view of this, the IJS should urge prison officials to liaise with relevant feeder courts before releasing a detainee from prison to be placed under correctional supervision or whatever conditions.

It is alleged that certain veteran detainees are zealous proponents of the notion that constant non-appearance in court will ultimately ensure the rescinding of a charge or charges. This idea seems to enjoy huge popularity amongst detainees who are relatively new in the prison milieu. Surely, this misguided notion needs to be eradicated by a concerted effort from the IJS to educate Awaiting Trial Detainees on the importance of compliance to the set legal discourse.

Further exacerbation of non-appearance of detainees in courts relates to the fact that there are insufficient sleeping facilities in prisons. A large number of detainees don't appear in courts since, as indicated by prison warders, they were uncertain as to whether they would be able to secure beds due to intense competition for such resources. This non-appearance in courts delays cases and ultimately worsens the already critical overcrowding situation. Clearly this situation calls for a speedy reversal and the IJS should advise the relevant institutions which experience such shortages, to invest in such facilities.

Another matter that needs attention relates to the constant late arrivals at courts of Awaiting Trial Detainees. It was stated that the lack of transport facilities to move prisoners from prisons to courts, has a direct bearing on this. Consequently, cases get remanded more often than not. Again, the IJS should encourage affected institutions to address this as a matter of urgency.

Needless to say, HIV and AIDS is a sensitive issue in our modern-day society. Interactions with prison warders and observation of prison life have led the researcher to conclude that these correctional facilities represent institutions where certain fate lingers, since when entering these domains, it is highly probable for an individual to suffer infection by the dreaded virus. Therefore, it should be proposed that the non-disclosure clause pertaining to the HIV status of current inmates and potential inmates be revisited and that those who are terminal be released to medical institutions which have the needed care and facilities. Furthermore, the criteria to admit HIV and AIDS positive individuals to prisons or to release them from prisons should maybe evolve around their levels of CD count. Mabasa, (2020) for privacy amongst detainees, especially during sickness. This contributes to the spread of diseases amongst inmates.

5.2 Relationship between the literature overview, methodology and theoretical framework

The approach of the study was qualitative in essence. To understand compliance to the 'checklist' by respective departments within the Integrated Justice System, and to have a knowledge of sources and all related issues with regards to overcrowding in prisons, institutional capacity, risk taken in implementing the strategy, technical documents such as feasibility studies, work plans and reports on the 'checklist', deemed an extensive study of relevant literature and inescapable imperative. These documents familiarized the researcher with functions of the National Task Team on overcrowding and the Integrated Justice System.
The researcher reviewed almost all relevant documents to identify some important issues that needed to be considered when designing interviews' schedule. The researcher reviewed a range of documents, including: The National Task Team Strategy – 'checklist', The database of Awaiting Trial Detainees in South Africa, Nedbank ISS – Crime Index, and South African Journal of Criminal Justice.

In-depth interviews were conducted with key informants. These interviews provided detailed information about perceptions with regards to the implementation of the 'checklist'. They served as an effective means of generating comprehensive, yet nuanced information about issues under discussion. Participants were able to share their experiences, discuss problem areas and make suggestions for possible solutions. Furthermore, these discussions allowed for complicated and contradictory responses, thereby providing a rich and textured understanding of important issues.

These discussions yielded a picture of the practical difficulties and challenges involved in complying with the 'checklist', as seen through the eyes of those affected by them and those in charge of implementing the strategy.

Specifically, with regard to police and prosecutorial bail, section 62 (F) and section 71 / 72 and community corrections, the study examined the extent to which the authority to effect these clauses were clearly understood, and to what extent these sections were being implemented. In addition, it examined whether role players were in agreement on the definitions and the meaning of certain clauses or sections, the circumstances under which powers can be exercised effectively, and the obstacles to their being implemented successfully. In focusing on encountered obstacles, the study sought to identify whether it was rooted in the application of the general policy to local circumstances, or in the policy itself and to offer suggestions on how to deal with the situation accordingly.

The use of in-depth interviews allowed interviews to probe the perspectives of role-players regarding the challenges of implementation and the actual and desirable extent of involvement of different players in courts and prisons.

During the discussions, participants were expected to divulge their knowledge with regards to plea bargaining, the legal aid board and correctional supervision. The motivation for enquiring about their knowledge of plea bargaining was to assess whether awaiting trial detainees were exposed to this vehicle which has the objective of the speedy resolution of cases and to check whether they were aware of the advantages that this option has for an accused. Pertaining to the Legal Aid Board, ours was merely a probe to establish whether awaiting trial detainees were granted the right to fair legal representation. With regards to correctional supervision, the researcher wanted to gather as to whether awaiting trial detainees were aware of this option vis-à-vis a release on bail or detention in custody. In addition, their understanding of a release on warning in lieu of bail was checked.

In its theoretical framework, the study uses the 7C protocols to assess the processes that were followed prior to the adoption of the strategy and also in the implementation phase. In particular, stakeholder involvement through the conception and implementation phases was under scrutiny. The identification of

targeted areas, setting up of monitoring tools and so forth, were under the spotlight. Questions related to consultation, coordination and communication became imperative. One of the intended outcomes of National Task Team was to develop an evaluation model and tool that can be used to measure the impact of the strategy being implemented in the future. In order to do this, it was necessary for NTTO to work in a collaborative manner with other partners for them to be able to build capacity within the Integrated Justice System so that the ultimate implementation and administration of the strategy is effected. Other elements of the 7C are the context, content and capabilities. Therefore, the study looked at how efficiently the strategy has operated within the context of the institutional and human resources available to implement the programme. The study attempted to give a holistic perspective of the long-term sustainability prospects for the strategy. The element of conceptual understanding and the capacity to carry out the task, therefore became the focal point. The study assessed the extent to which role-players have contributed towards the purpose of the strategy, and whether it has contributed to the alleviation of the plight of awaiting trial detainees.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

The interviews have revealed a mixed picture of the activities and impact of the 'checklist'. On the other hand, the area commissioner, and the station commander express satisfaction with the implementation of the strategy and felt that it is fairly well known and successful. On the other hand, magistrates offer critical input and raise questions about some aspects of the strategy. Police officials seem to be having a vague idea about the checklist. For example, most of the police officials could not impress much on issues relating to Plea Bargaining, Section 276 of Criminal Procedure Act, IJS Court centers, etc., while magistrates were familiar with most concepts enshrined in the 'checklist'.

It is obvious from the different responses that the spread of the strategy is uneven and that the opinions about its impact vary a great deal. Coordination was therefore not well arranged, and information dissemination was done in an erratic fashion. The issue of follow-up, support and capacity building was a source of concern. This was raised by police officials who feel they were neglected in the process of implementing the strategy. They added that there was a once-off training on the strategy and since then, there was no follow-up in monitoring the implementation process. This indicates that they were not capacitated and failed to contextualize the concept which impacted negatively in their commitment to the course. They emphasized lack of capacity as a contributing factor towards the demise of the programme. They advocated for an on-going support system, which will ensure sustainability of the entire programme.

Participants agreed that the strategy could reduce overcrowding in prisons if it was implemented meticulously as planned. Saturday courts were discontinued and this was viewed as unfortunate. The intervention assisted in reducing backlog of cases in that petty offences were deferred to weekends and serious cases were dealt with during the week. Prosecutors indicated that due to lack of knowledge and confidence, police officials could not institute police and prosecutorial bail. State

Attorneys are regarded as less informed in dealing with cases and that challenges their capacity to perform their role effectively.

It was however reported that IJS Court Centers are operational and Section 62(f), 71 and 72 were being implemented at prisons. The recent example is the release of the former South African President Jacob Zuma on medical parole in September 2021but in December, the high court set aside the parole decision and ordered him to return to jail. (Acharya, B. Reuters, October. 2022). However, had he complied with his conditions for medical parole as set out during his placement, he would have benefited from this intervention, serving his sentence under community corrections.

Taking into consideration the concerns listed above, the following recommendations can be made for the strategy. IJS may have moved in this direction already, but it needs to do it in a systematic manner.

6.1 Orientation

It goes without saying that various personnel within the IJS should have a common ground and approach around issues pertaining to the 'checklist'. In light of this, it is recommended that workshops dealing with the strategy developed should be organised to empower staff members at different levels. This should orientate the leadership and personnel sufficiently and deepen their understanding of the rationale behind the strategy. Furthermore, there should be weekly meetings at the upper echelons to evaluate whether fellow staff members are in sync on matters pertaining to the strategy and to assess the extent to which variables in the balance of forces have shifted in the context at that particular stage, especially in light of the current popular strategy. The focus of the strategy was to make stringent laws palatable to offenders and services reach the intended beneficiaries without any favour or anyone's standing in the community. Implementers should grasp content, context and have the capacity to drive the strategy at ease.

Currently, the study has identified a gap between the intended objectives of the strategy and the level of understanding of some of the participants. This shows that these three departments paid less attention in orientating their staff members regarding deeper understanding of the 'checklist'. They lack the contextual understanding of the 'checklist' and failed to master the content of the 'checklist' as prescribed by the 7C model on policy implementation.

6.2 Lobbying

It is an irrefutable fact that differences exist in and amongst role players on the level of understanding and the rationale behind the strategy. Consequently, it compels various departments within the IJS to disseminate information about the strategy and visit centres with the view to gather the positions, fears and concerns. This information should inform strategies employed by the departments which would then attempt to allay those fears and concerns. However, it should be borne in mind that the overriding motivation for embarking on the visitations is to popularise the strategy. This fit squarely on the 7C model regarding communication and coordination. The gap that exists is lack of communication and coordination of the strategy.

6.3 Mobilization

Various units dealing with the 'checklist' should be mobilised to support the implementation. According to a number of the respondents, the strategy is gathering dust and needs speedy intervention. The society cannot afford to see numbers of awaiting trial detainees going up daily without anyone raising his or her voice in protest. IJS should form partnerships through coalitions as suggested by the 7C Procol model. Various relevant sectors would be mobilised in ensuring that the strategy is implemented with the view to reduce overcrowding in prisons.

References:

Abbas, W. & Asghar, I. 2010. The Role of Leadership in Organizational Change Relating the Successful Organizational Change to Visionary and Innovative Leadership.

Algotsson, E., & Klaaren, J. (2018). Policing migration: immigration enforcement and human rights in South Africa.

Allister, P. S. (2015). Like a bad Penny: *the problem of chronic overcrowding in the prisons of colonial Natal: 1845 to 1910.* UNISA Press.

Atabay, T., United Nations Office on Drugs and Crime., & International Committee of the Red Cross. (2013). *Handbook on strategies to reduce overcrowding in prisons*. Vienna: United Nations Office on Drugs and Crime.

Ballard, C. (2011). The situation of children in prison after the implementation of the Child Justice Act: has anything changed? *Article 40*, *13*(1), 1-4.Cape Town

Benatar, S. (2014). The state of our prisons and what this reveals about our society. *South African Medical Journal*. South African Medical Association. https://doi.org/10.7196/SAMJ.8608

Brynard, P.A. 2005. Policy Implementation: Lessons for service delivery. The 27thAAPAM annual roundtable conference, Zambezi sun hotel, Livingstone, Zambia 5th-9th December 2005.

Centre for Applied Legal Studies. (2013). *Research report on Remand Detention in South Africa.* Open Society Foundation for South Africa (OFS-SA).

Cloete, F., De Coning, C., Wissink, H. & Rabie, B. *Improving Public Policy for Good Governance, 4th Edition.* 2018. Van Schaik Publishers: Pretoria.

Creswell, J.W. 2013. *Qualitative Inquiry and research design: Choosing among five traditions,* 3rd Ed. Thousand Oaks, California: SAGE Publications.

Collis, J. & Hussey, R. 2003. *Business research. A practical guide for undergraduate and postgraduate students*, 2nd Ed. New York: Palgrave Macmillan.

Criminal Procedure Act 51, (1997).

Department of Correctional Services Annual Report. (2015). 2015 /2016 Financial Year. Vote No. 18. Communications: Pretoria.

Department of Correctional Services Annual Report. (2019). 2019/2020 Financial Year). Vote No. 18. Communications: Pretoria.

Dunn, W. N. (2014). The process of policy analysis. *In public policy analysis* Harlow: Pearson

Edler, J. & Fagerberg, J. 2017. Innovation policy: what, why, and how. *Oxford Review of Economic Policy*, 33(1):2-23.

Given, L. M. (2008). The sage encyclopaedia of qualitative research methods. Thousand Oaks, CA. Scientific Research Publishing Inc. Pretoria.

Guba, E. L., & Lincoln, Y. (1994). Y.(1994). Competing paradigms in qualitative research. *Handbook of qualitative research. California: Sage*, 105-117.

Johann, F., Herbig, W., & Hesselink, A. E. (2012). SEEING THE PERSON , NOT JUST THE African prisons. *South African Crime Quarterly*, *September*(41), 29–37. Retrieved from http://www.ajol.info/index.php/sacq/article/view/101407

Judicial Inspectorate for Correctional Services Annual Report for 2015/2016 Financial Year. Communications – Pretoria.

Judicial Inspectorate for Correctional Services Annual Report for 2019 / 2020 Financial Year. Communications – Pretoria.

Judicial Matters Amendment Act, 2017. Communications - Pretoria

Jules-Macquet, R. (2014). The state of South African Prisons. *NICRO Public Education Series*, *1*(1), 1–22. Retrieved from http://www.nicro.org.za/wp-content/uploads/2014/04/Public-Education-Paper-The-State-of-South-African-Prisons-2014.pdf

Kheswa, J. G., & Lobi, T. (2014). An investigation of effectiveness of rehabilitation in the correctional centre, Eastern Cape. A phenomenological study. *Mediterranean Journal of Social Sciences*, *5*(14), 610.

Krefting, L. 1991. Rigor in qualitative research: the assessment of trustworthiness.

The *Journal of Occupational Therapy*, 45(3), 214-224.

Kuhn, M., Melanic, R., & Steven, A. (2003). Fluency: *A Review of Developmental and Remedial Practices.* Institute of Educational Sciences. Pretoria.

Mabasa, N. (2020). If you think lockdown is bad, spare a thought for South African prisons. Wits Justice Project (WJP).

Masiloane, T.E. 2008. *A comparison of qualitative and quantitative research similarities and differences: A discussion of the different sampling methods and their place in nursing research: a literature review on sexually transmitted infections: stating an appropriate problem for research* (Doctoral dissertation). University of the Free State.

Masuku, S. (2017). Prevention is better than cure: *Addressing violent crime in South Africa.* Institute for Security Studies. Pretoria.

Mayosi, B. M., & Benatar, S. R. (2014). Health and health care in South Africa—20 years after Mandela. *New England Journal of Medicine*, *371*(14), 1344-1353.

Molobela, J. T. (2019). The assessment of the 7C protocols for policy implementation in improving service delivery in South African Municipalities. University of Limpopo. South Africa.

Mugwagwa, J., Edwards, D. & de Haan, S. Assessing the implementation and influence of policies that support research and innovation systems for health: the cases of Mozambique, Senegal, and Tanzania. Health Research Policy and Systems: 1-7. Available at: https://health-policy-systems.biomedcen tral.com/track/pdf/10.1186/s12961-015-0010-2. Accessed 3 March 2018.

Naidoo, S., & Mkize, D. L. (2012). Prevalence of mental disorders in a prison population in Durban, South Africa. *African Journal of Psychiatry (South Africa)*, *15*(1), 30–35. https://doi.org/10.4314/ajpsy.v15i1.4

Najam, A. 1995. Learning from the Literature on Policy Implementation: A synthesis Perspective. Available at: https://pdfs. semanticscholar.org/ff14/e06e82e37125ea880ce8d8efb8a 1c21eec78.pdf. Accessed 24 July 2019.

Ngcobo, M. 2007. Language planning, policy implementation in South Africa. Available at: https://www.researchgate.net/ publication/215896353_Language_planning_policy_and_ implementation_in_South_Africa. Accessed 2 December 2018.

Nieuwenhuis, F. J. (2007) *Introducing qualitative research. In J. Maree (ed.) First Steps in Research*. Pretoria: Van Schaik, pp. 47 -66

Pete, S. A. (2015). Holding up a mirror to apartheid South Africa: public discourse on the issue of overcrowding in South African prisons 1980 to 1984-part 2. *Obiter*, *36*(1), 17-40.

Popham, W. 2011. *Classroom assessment: What teachers need to know*, 6th Ed. Boston: Pearson Education.

Oyelere, M., Opute, J. & Akinsowon, P. 2015. Organisational Commitment among Employees. A Developing Nation Perspective: The Case of the Nigeria's Public Sector. *Regent's Working Papers in Business & Management, RWPBM* 1507. Available at: https://www.regents.ac.uk/sites/default/files/ 2018-11/oyelere-m-opute-j-akinsowon-p.pdf. Accessed 5 June 2019.

Rasool, S. et al. (2002). Violence Against Women: a national study, Institute For Security Studies. Pretoria.

Rondinelli, D.A. Policy and management requirements for privatization. *Business Forum,* 19(2):5-20.

Sifunda, S., Reddy, P. S., Braithwaite, R., Stephens, T., Ruiter, R. A., & van den Borne, B. (2006). Access point analysis on the state of health care services in South African prisons: A qualitative exploration of correctional health care workers' and inmates' perspectives in Kwazulu-Natal and Mpumalanga. *Social Science and Medicine*, *63*(9), 2301–2309. https://doi.org/10.1016/j.socscimed.2006.06.010

Rule, P., & John V. 2011. *Your guide to case study research.* Pretoria: van Schaik Publishers.

Schurink, W.J., Schurink, E.M. & Poggenpoel, M. 1998. Focus group interviewing and audiovisual methodology in qualitative research. In De Vos, A.S. (Ed.), *Research at grass roots. A primer for the caring professions*. Pretoria: Van Schaik.

Schönteich, M. (2002). Making Courts Work: *A Review of the IJS Court Centre in Port Elizabeth,* Institute for Security Studies, Pretoria.

Smith, J. A. (2004) 'Reflecting on the development of interpretative phenomenological analysis and its contribution to qualitative research in psychology'. *Qualitative Research in Psychology, 1 (1), 39 -54*

Singh, S. (2004). *Prison overcrowding: A Penological perspective* (Doctoral dissertation).

Stephen, M. 2010. Are We There Yet? What's next for Hr. Available at: https://michiganross.umich.edu/sites/default/files/uploads/RTIA/pdfs/dulrich_wp_arewethereyet.pdf. Accessed 11 June 2018.

Thomas, G. (2009). Teachers' use of Educational Technology in U.S public schools. National Centre for Education Statistics.

Walsham, G. 1993. *Interpreting information systems in organizations.* Chichester: John Wiley & Sons, Inc.

Warmsley, R. (2005). Prison health care and the extent of prison overcrowding. *International Journal of Prisoner Health*, *1*(1), 3-12.

Willis, J.W. 2007. *Foundations of qualitative research: Interpretive and critical approaches*. London: Sage.

United Nations Office on Drugs and Crime. (2002). Country Profile in Drugs and Crime: UNODC; Pretoria. South Africa.

APPENDIX ONE: Interview Guide for key informants

IN-DEPTH INTERVIEW GUIDELINES

Name	
Gender	
Area	
Division	

Section A: Atmosphere / ethos

1. In relation to the checklist and operational plans, what has been implemented thus far, what is your experience, the strengths, case examples of new practice within the department and implications for policy implementation

2. How well are your holding cells / prison visited by officials from Head Office

3. To what extent are you satisfied that awaiting trial detainees / prisoners are safe inside the holding cells / prison?

4. To what extent are you satisfied that awaiting trail detainees / prisoners are well-behaved and disciplined in the holding cells / prison?

5. To what extent are the following occurring within your station / court / prison?
    - Monitor the length of stay of awaiting trial detainees in order to keep this period as short as possible

- Monitor the number of detainees in each correctional facility in order to manage overcrowding more effectively

- Speed up the processing of court cases

- Use a range of alternative to imprisonment options

Section B: Checklist Implementation

6. What is your opinion on the following strategies within the checklist?

- Integrated Justice System Court Centers

- Plea bargaining

- Police and prosecutorial bail

- Correctional supervision in lieu of bail

- Release of juvenile offenders

- Saturday Courts

- Courts at prisons

- Use of police cells as holding cells

Section C: Logistics / Physical / Resources

7. What are the main problems facing this department?

8. What are the things you like most about this department?

9. What are the things you would like to improve at this department?

10. Is your department adequately staffed? Please explain

11. Are there staffing needs at your department? Elaborate

12. Are you happy with the way your offices are equipped for the effective execution of duties? Please explain your answer

Thank you very much for taking part in this interview

APPENDIX TWO: Ethics Clearance Letter

Research Office:
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Research Ethics Chair:
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03 December 2021

Dear Mpapa Kanyane,

Title: Assessing the impact of the 'checklist' to address overcrowding in Gauteng prisons

Student Number: 1655431
Degree: Master in Management in the field of Governance

Ethics Clearance Number: *WSG-2021-58*

All candidates must satisfy the University's ethical standards for research. Your ethics application has been received and reviewed by the Wits School of Governance Human Research Ethics Committee.

Your ethical clearance has been approved subject to you getting permission to conduct research from all sites where research is conducted. The letter(s) of permission to undertake research must be submitted to the WSG Research Office and kept on file with your final proposal and other ethics documents.

You may commence your data collection under the guidance of your supervisor. In the event that the scope, methodology or nature of the research changes, you are required to submit another ethics application reflecting the changes.

The onus is on you as the candidate, with support from your supervisor, to ensure your research complies with university human research ethics policies and protocols at all stages of the research process.

It is recommended that you keep this letter in a safe place as you are responsible for ensuring you have proof of ethics clearance and have lodged the ethics clearance / protocol number with Faculty before final submission of your research report. If you do not have an ethics clearance number, you are not permitted to graduate.

Please do not hesitate to contact me if you have any queries.

Yours sincerely,

Rekgotsofetse Chikane

Rekgotsofetse Chikane
Research Ethics Chair