



Africa Criminal Justice Reform
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Liberty not the only loss -

The Socio-Economic Impact of Remand Detention in the Western Cape

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March 2019

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Acknowledgements

The following people are gratefully acknowledged:

- the Department of Correctional Services for their assistance in facilitating the research
- officials of the Department of Correctional Services in the visiting section of Pollsmoor for their assistance
- visitors to Pollsmoor who freely gave of their time to be interviewed
- Southern Hemisphere Consulting for their professional assistance
- Crystal Erskine, Safeeya Mohamed and Kristen Petersen for data collection assistance
- Lukas Muntingh for comments and contributions
- Andre Wiesner for a professional edit.

Executive summary

Socio-economic rights require that states must ‘respect’, ‘protect’ and ‘promote’ them.¹ The intersection of this duty with fair-trial rights implies that a person should be detained on remand before conviction and sentence only when absolutely necessary and for the shortest possible duration. The law on bail, which is a mechanism for release before trial, was significantly tightened in South Africa over the period 1995–2003, leading to an increase in remand detention.

Research conducted in three African countries (Kenya, Mozambique and Zambia) found that detention of an accused person before trial seriously affects his or her socio-economic situation and that of family and dependents.² The aim of this study was to investigate the socio-economic impact of remand detention on accused persons, as well as their families and dependents, held at Pollsmoor Remand Detention Facility (RDF) and Pollsmoor Female, in the Western Cape, South Africa. The study relied on interviews with visitors to detainees, on data relating to inmates and visitors, as well as on Western Cape aggregate remand data.

Serious social and economic consequences were reported by visitors to detainees. The burden of visiting and making up for lost income and other contributions fell predominantly on women. Not only did the detention result in loss of the detainee’s income and contributions of care and support to the household, but the burden of visiting frequently resulted in forfeited work opportunities as well as unplanned expenses in terms of transport and providing for the money, food, clothing, bedding, toiletries and legal needs of the detainee while on remand. Selling of assets, taking out loans, and redirection of funds from food and other household needs were recorded. Serious impacts on children, particularly in the case of female detainees, were recorded, including changes to care arrangements. Harassment, depression, stress, and resort to both healthy and unhealthy coping mechanisms were recorded. There was little or no access to official sources of support.

The court, suburb and police station profile in the visitor data suggests that the poorest suburbs are not as prevalent in the visitor data as might be expected. This suggests the wealthiest are not remanded, while the poorest are remanded and their families unable to afford to visit. These families are likely to bear similar losses, and the detainee is likely to be extremely vulnerable without access to outside resources.

¹ International Covenant on Socio-Economic and Cultural Rights 1966, art 2(1). See also ICSECR, General Comment 3 1991, para 7.

² See Muntingh L & Redpath J ‘The socio-economic impact of pre-trial detention in Kenya, Mozambique and Zambia’ (2018) *Hague Journal on the Rule of Law*, 10: 139–164 available at <<http://dx.doi.org/10.1007/s40803-017-0062-1>>.

The overall Pollsmoor RDF population data suggest that some 60 per cent of admissions are in relation to non-violent offences. In particular, the high rate of admissions for drug possession offences and immigration offences is cause for concern. The number admitted annually to Pollsmoor RDF alone is in excess of 20,000 people, and more than half are detained from only six police stations. This points to targeted and inconsistent policing.

Compared to the rest of the country, the number of people detained on remand in the Western Cape is disproportionately high and on the increase. It is estimated that one in every 50 adult men is admitted to remand detention per year in the Western Cape, bringing with it the attendant social and economic costs.

The evidence in this study suggests that the criminal procedural system metes out a disproportionate 'punishment' in the form of infringement of the socio-economic rights of the families of detainees, regardless of guilt or innocence. The evidence, furthermore, is that such detention is not only for short durations, nor only when absolutely necessary.

The study recommends a number of interventions to seek to ensure that remand detention is used only for short durations or when absolutely necessary, thereby minimising socio-economic harms. First, the legislation on bail should be reviewed. Admission to remand has a cost not only to the state but to families and their communities, and should be treated as the expensive intervention that it is and reserved for where it has the most utility and impact. In particular, the postponement of bail applications for further investigation should be curtailed. The further investigations underlying these postponements and their usual duration should be benchmarked and a new standard set. It is recommended that for prolonged detention, a mandatory review of continued remand detention be legislated at a duration to be benchmarked for each province.

It is also recommended that remand detention be potential violent offenders, such that a different bail regime is considered in relation to those accused of non-violent offences. Models for measuring risk of offending should be developed and should inform bail decisions.

Finally, equality concerns should be addressed. Magistrates should be brought together routinely to share thoughts and approaches and ensure a uniform approach across Cape Town. In particular, the skewed trends in relation to drug possession need to be addressed urgently, especially in the light of the Constitutional Court case on the private adult use of cannabis.³

³ *Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others* [2018] ZACC 30.

1. Introduction

The socio-economic rights embodied in international conventions such as the International Covenant on Economic, Cultural and Social Rights (ICECSR) requires that states must 'respect', 'protect' and 'promote' socio-economic rights. The duty to 'respect' entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and use their resources to satisfy needs.⁴

This duty to respect socio-economic rights intersects with fair-trial rights when states make and enforce criminal procedural and criminal laws. Respect for socio-economic rights by states in the context of pre-trial detention – detaining a person before conviction and sentence – means that criminal procedural laws and practices must be designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons is minimised, by ensuring that detention of an accused only occurs when absolutely necessary and for the shortest possible duration.

Consequently, most countries provide in law for mechanisms of release before trial. Bail and release on warning ('free bail') are the only mechanisms for release before trial in South Africa. It should be added that the Criminal Procedure Act makes provisions for a range of conditions to be part of release on bail or warning, such as regularly reporting to a police station or surrendering one's passport.⁵ Many African countries have the additional mechanisms of bond and surety.

Bail is a mechanism for release before trial in which an accused may be released pending trial on payment of an amount of security. This amount is forfeited if the accused fails to appear in court; it is refunded if the accused returns to court to stand trial. Bail is not a punishment – its sole purpose, where it is granted, is to seek to ensure the attendance of an accused in court, while also ensuring that the accused may continue to work and carry on with his or her life, pending trial. Remand detention is detention before trial is completed⁶ and may occur as the result of a postponed bail application, bail being set at an unaffordable level, the failure to apply for bail, or the denial of bail.

In South Africa, the law on bail was significantly tightened between 1995 and 2003. The import of the amendments was to delay the hearing of a bail application and make the granting of bail less

⁴ ICECSR 1966, art 2(1). See also ICSECR, General Comment 3 1991, para 7.

⁵ Criminal Procedure Act, s 62(f).

⁶ The Department of Correctional Services defines it as detention before the finalisation of trial either by acquittal or sentence. This gives the impression that all remand detainees will actually have a trial ending in acquittal or sentence. Most, however, will be released without trial taking place, owing to the withdrawal of the matter by the prosecution.

likely. Whereas a bail application was formerly treated as a matter of urgency, the law now provides that there is no entitlement to an after-hours bail application⁷ and that the bail hearing itself may be delayed for seven days at a time⁸ – previously a limit of one day for further investigation applied.

The amendments provide that bail is to be denied to persons accused of certain serious offences,⁹ unless the accused adduces evidence which satisfies the court that the interests of justice permit his or her release;¹⁰ where those offences are aggravated, ‘exceptional circumstances’ must be shown.¹¹ For all offences, whereas previously the state had to justify the detention of an accused person, the burden of proof is now on the accused to establish that release from custody is in the interests of justice.¹² Various grounds and sub-factors, such as the shock and outrage of the community, which ordinarily would not be relevant in a question of bail, may now by law be taken into consideration in deciding whether the interests of justice permit release.¹³

Unsurprisingly, the amendments initially led to a tripling, by the year 2000, of the remand population to 60,000 from 20,000 in 1995, and subsequent stabilisation at 40,000–50 000.¹⁴ Ironically, the number of people actually convicted of any crime has decreased since 2003.¹⁵ Thus, decisions to detain before trial, grounded in these amendments, have not translated into convictions.

Research by Africa Criminal Justice Reform (ACJR) in Kenya, Mozambique and Zambia found that the decision to detain an accused person before trial seriously affects his or her socio-economic situation and that of family and dependents.¹⁶ Where detention is not used sparingly, it has the potential to cause unjustifiable harm to the social and economic situation of individuals who are not accused of committing any crime, and to cause disproportionate harm to individuals accused of a crime (but who have not yet, and may never be, found guilty of a crime).

While detention pending trial may be justifiable in certain circumstances, it was found in these studies that the deprivation of liberty almost invariably interferes with the ability of individuals to be

⁷ Criminal Procedure Act, s 50(6)(b).

⁸ Criminal Procedure Act, s 50(6)(d).

⁹ Offences listed in Schedule 5 of the Criminal Procedure Act 51 of 1977, as amended, include treason, forms of murder, attempted murder, rape, and a number of drug- and corruption-related offences.

¹⁰ Criminal Procedure Act 51 of 1977, as amended, s 60(11)(b).

¹¹ Offences listed in Schedule 6 of the Criminal Procedure Act 51 of 1977, as amended, include certain aggravated forms of murder, rape, and robbery.

¹² See *Verwey & Others v S* [2006] JOL 17220 (W) at para 9.

¹³ Section 60(4)–(8) and (8A).

¹⁴ Redpath J ‘Unsustainable and unjust: Criminal justice policy and remand detention since 1994’ (2014) SACQ 48 25–37.

¹⁵ Redpath J (2014).

¹⁶ See Muntingh L & Redpath J (2018).

agents of their own development, thus infringing on the socio-economic rights of individuals and their dependents.¹⁷ This infringement, although justified if it is within the ambit of democratic and rights-respecting laws complying with human rights standards, places an obligation on states to ensure that the deprivation of liberty occurs as a matter of last resort.

The aim of the present study is to investigate the socio-economic impact of remand detention on accused persons, as well as their families and dependents, held at a Pollsmoor Remand Detention Facility (RDF) and Pollsmoor Female. These are the largest remand facilities for men and women, respectively, in the Western Cape. The findings are intended to inform recommendations for the reform of legislation and practice in relation to detention on remand in the Western Cape and in South Africa.

2. Methodology

The original methodology sought to apply the same methodology to South Africa as has been used in the studies in Kenya, Mozambique and Zambia. It involved the following main sources of information: (1) use of correctional facility records to understand offence profiles and duration of detention; (2) perusal of visitors' records to understand visiting trends and thus the extent to which visitor interviews are likely to be representative; (3) interviews with visitors to detainees; (4) where necessary, interviews with traced dependents in relation to detainees who are not visited; and (5) interviews with detainees. The investigation was carried out with regard to both male and female remand detainees.

In this study, data were extracted from visitors' registers to determine the extent to which detainees are visited and whether the profile of visited detainees was sufficiently similar to the profile of all detainees. This revealed that, unlike Mozambique but like Zambia, a significant proportion of detainees are not visited during a three-week period and that there are differences in the profile of visited detainees and the overall profile of remand detainees. The study sought to address this issue through the analysis and interpretation of the results.

In the studies in Kenya and Zambia, it was found that the information on social and economic impact obtained from interviewed detainees (step 5 above) could serve to confirm the information from visitors and traced persons (steps 3 and 4). In the current study, although a series of interviews with

¹⁷ See Muntingh L & Redpath J *The Socio-economic Impact of Pre-Trial Detention in Kenya, Mozambique and Zambia* (2017) Africa Criminal Justice Reform available at <<https://acjr.org.za/resource-centre/socio-economic-impact-web-lowres.pdf>>.

detainees was intended, problems with accessing detainees led to a decision to proceed without seeking the corroborating interview data from detainees (i.e. to omit step 5).

2.1 Data from DCS

For step 1, a complete dataset of detainees and their offence and duration of detention detail was obtained for Pollsmoor RDF, which holds about 2,500 male remand detainees (approximately one-quarter of the remand population in the Western Cape), at two dates, namely, 30 June 2017 and 31 July 2017.

Pollsmoor Management Area consists of five prisons: Pollsmoor RDF, Medium A, Medium B, Medium C, and Female. Pollsmoor RDF is for the exclusive use of remand detainees. Due to a recent court decision compelling the Department of Correctional Services (DCS) to reduce overcrowding at Pollsmoor RDF, Medium A – formerly used for sentenced prisoners – was made available to pre-trial detainees.¹⁸ Medium B and Medium C hold sentenced prisoners. Pollsmoor Female holds sentenced and remand detainees.

The data provided by DCS do not include those remand detainees held in Medium A; it is unclear who is selected for transfer to Pollsmoor Medium A. Furthermore, a similar dataset was unfortunately not made available for Pollsmoor Females, which typically houses about 300 remand detainees. Thus, the remand profile for females relies on alternative sources of data, in particular the aggregated ‘unlock statistics’ regularly provided to stakeholders by DCS in the Western Cape.

2.2 Visitors’ records

For step 2 (which took place before step 1 due to delays in accessing DCS data), a sample of visitors was drawn from the visitors’ books regarding a three-week period in July 2017. These books are not in digital form but are handwritten and kept at the visiting office.

The visitor books indicate 920 male detainees were visited in the three weeks preceding 31 July. The remand population at 31 July 2017 was 2,480. This suggests that 37 per cent of the remand population is visited within a three-week period.

The sampling methodology involved choosing every tenth entry from 31 July backwards to reach 100 observations, thus covering a three-week period. The persons being visited were matched to their

¹⁸ *Sonke Gender Justice v Government of Republic of South Africa and the Head of Centre, Pollsmoor Remand Detention Facility* Case No. 24087/15 Western Cape Division of the High Court.

prison numbers in the large DCS datasets using the VLOOKUP function. Some eight prison numbers could not be matched in either of the large datasets; one number was clearly an error. For four of the remaining seven, it is possible that these detainees entered after 30 June and exited before 31 July – this is surmised from the consecutively numbered prison numbers. However, the prison numbers of the remaining three suggested that these were longer-term prisoners, and it is unclear why their numbers could not be matched. It is possible they were held in Medium A and not in RDF, as explained above.

The profile of those visited was compared to the profile of the entire remand population.

2.3 Visitor interviews

For the visitor interviews (step 3), a standardised questionnaire in English was drawn up. The fieldworkers conducting the interviews ensured they were familiar with the correct translations in the two additional languages used for interview purposes (isiXhosa and Afrikaans).

All of the interviews with visitors to remand detainees took place at Pollsmoor, except for one telephonic interview. The interviews were conducted over the period 30 November 2017 to 22 January 2018. The commencement times of the interviews ranged from 06h27 to 12h00; the interview end times were from 06h55 to 12h38. There were 37 interviews with respondents visiting men, and 36 with respondents visiting women. Some 95 per cent of those visiting men were visiting detainees in Pollsmoor RDF, while 5 per cent were visiting those in Medium A. The responses were recorded in writing during the interviews and transcribed into an electronic dataset.

The dataset was analysed and the results are presented below. The analysis distinguishes between results for visitors visiting men and visitors visiting women: recall that in excess of 96 per cent of detainees are male.

Traced persons and detainees were not interviewed in this study. The current study thus relies on the information provided by or made available from the DCS, a sample of visitor records, information provided by visitors in interviews, and a sample of visitor records.

2.4 Western Cape data

Aggregated 'unlock statistics' regularly provided to stakeholders by the DCS in the Western Cape were amalgamated to provide trends over time. Additional data employed to enrich the analysis include that made available in DCS annual reports and in the annual reports of the Judicial

Inspectorate for Correctional Services (JICS), as well as crime data reported by the South African Police Service (SAPS).

3. Socio-economic impact of remand detention

The findings on socio-economic impact are drawn from the visitors' interviews. Recall that some 37 per cent of the remand population was visited in a three-week period. This suggests that about two-fifths of remand detainees are regularly visited. These findings on socio-economic impact are thus representative of the two-fifths of detainees who are visited. Direct quotes from the interviews with respondents, translated where necessary, are interspersed in the text in italics.

3.1 Visitor respondent profile

Most visitors interviewed were family of the detainee, with the balance being friends or friends of the family of the detainee.

Relationship to detainee

Wives and husbands as visitors are much scarcer than in the other three countries, possibly because marriage is less common in South Africa. Men aged 20–29 in South Africa, the most common age-group among male detainees, have low rates of marriage; Census 2011 found that only 18 per cent are married.¹⁹ Census data conflates the categories of 'married' and 'living together as husband and wife', so the percentage of the adult population which is formally married is difficult to determine.

'We visit to support him in whatever way we can. He will always be my son.'

In this study, only 3 per cent of visitors to both male and female detainees were wives and husbands, respectively. Combining wives and 'significant others' brings the percentage among visitors to male detainees to 24 per cent; combining husbands and 'significant others' brings the percentage among visitors to female detainees to 17 per cent. The tendency of male detainees to be

¹⁹ Statistics South Africa (2013) *Gender Statistics in South Africa, 2011* available at <<http://www.statssa.gov.za/publications/Report-03-10-05/Report-03-10-052011.pdf>> 5.

more likely than female detainees to be visited by their partners is in line with the findings from other countries.

Table 1: Relationship of visitors to male detainees

Relationship	Frequency	Percent
Mother	10	27.03
Significant other	8	21.62
Sibling	5	13.51
Father	3	8.11
Friend of detainee	3	8.11
Aunt	2	5.41
Cousin	2	5.41
Child (detainee = stepfather)	1	2.70
Friend of the family of the detainee	1	2.70
Other (mother-in-law)	1	2.70
Wife	1	2.70

Mothers (27%) and significant others (22%) were most common among visitors to male detainees (see Table 1 above). Among female detainees, mothers (19%) and siblings (19%) were most prominent (see Table 2 below).

'No one else will visit him, I helped raise him. I love him, he is my brother and I'm worried about him. I believe this isn't the place for him. He's a schizophrenic, so maybe he should rather be in a mental institution.'

Table 2: Relationships of visitors to female detainees

Relationship	Frequency	Percent
Mother	7	19.44
Sibling	7	19.44
Significant other	5	13.89
Friend of detainee	3	8.33

Child	2	5.56
Niece	2	5.56
Sister-in-law	2	5.56
Cousin	1	2.78
Family (grandmother of detainee)	1	2.78
Husband	1	2.78
Husband of detainee	1	2.78
Nephew	1	2.78
Parent (detainee = stepdaughter)	1	2.78
Significant other (fiancé)	1	2.78
Wife	1	2.78

Age and gender of respondents

Most visitors interviewed were middle-aged women. Respondents varied in age from 18 to 72, with the median age almost ten years older than the median age of detainees. The median age for those visiting men was 37 and those visiting women, 39. Most respondents (71%) were female. Among those visiting men, 84 per cent were female; among those visiting women, 58 per cent were female.

'He's my husband and there's a missing place in our house and my life. How do I answer my child when she asks where her dad is?'

Thus, the burden of visiting detainees falls primarily on women, which echoes the findings in the other three studies. This is important because the gendered nature of remand imprisonment, and its impact, is often elided. As is shown below, there are significant financial and non-financial costs associated with pre-trial detention and these fall predominantly on women associated with male detainees.

'I visit because I care – he's my son.'

Language of respondents

In the Cape Town area, some 37 per cent of the population speak isiXhosa at home; 31 per cent, Afrikaans; and 28 per cent, English.²⁰ The predominant language among visitor respondents was indeed isiXhosa, which was spoken by 41 per cent of them, while some 26 per cent spoke English; 22 per cent, Afrikaans; 8 per cent, Afrikaans and English; 1 per cent, Shona; and 1 per cent, isiZulu. Thus, at first glance the language profile was broadly as expected.

However, the language patterns differed strongly by gender of the detainee being visited. Among those visiting men, only 32 per cent were isiXhosa; 30 per cent, English; 24 per cent, Afrikaans; and 14 per cent, both English and Afrikaans. Among those visiting women, 50 per cent were isiXhosa; 22 per cent, English; and 19 per cent, Afrikaans.

This language pattern may relate to visiting patterns, with poorer men from townships less likely to be regularly visited. Alternatively, it could suggest, as was found in Kenya, that males in remand detention over-represent migrants to the urban area, who do not have close family and friends living in their vicinity. This does not explain the high representation of isiXhosa speakers among visitors to women. Although data were not obtained on women being visited, warders suggested that most women are visited, whereas the main data used in this study suggests that a significant proportion of men are not. The language profile of women thus may reflect the full demographic of those detained.

'He is my son and I miss him.'

To the extent that visitors may have the same language profile as detainees, the language profile of visitors to women could suggest that poorer women are more likely to be remanded. Generally, in urban Cape Town, isiXhosa speakers tend to be less wealthy than either coloured or white women speaking English or Afrikaans or both. The profile might also point to the ability of legal aid to represent isiXhosa speakers sufficiently well to secure bail.

Respondents' children and dependents

Most respondents (84%) had children. Some 40 per cent had three or more children. About 55 per cent also had additional dependents; of these respondents, 23 per cent had three or more additional dependents. Respondents who had children were more likely to live with the detainee than those who did not have children.

²⁰ Statistics South Africa *Community Survey 2016*, as presented by Wazimap available at <<https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>>.

'My kids stay at home alone when I visit because I can't afford to bring them with, so I also have to worry if they're safe. My other brother was beaten so he died while in remand, so I worry about that happening again. [The detainee] is very soft, he is not a gangster.'

Given the closeness of the relationship of visitor and detainee, the detention of the detainee is likely to affect a range of both children and dependents. South African law follows the principle that the 'best interests of the child' are paramount, a principle that should also be brought into consideration when decisions are made to detain.²¹ The impact on the detainee's children is pronounced, and is discussed further below.

Disability among respondents

About 16 per cent of those visiting men said they had some sort of disability, compared to 6 per cent in the case of those visiting women. The types of disability included eyesight problems as well as back and limb injuries. It is unclear what underlies the differing gender trend. Furthermore, the rate of reported disability among those visiting men is higher than that found in the other three countries, which may be the result of differing perceptions as to what constitutes a disability. Nevertheless, the relatively high rate suggests the impact of the detention is likely to be felt all the more keenly by those who have a disability.

'I have a spinal cord injury.'

Manner of being informed of detention

Informing family and friends of detention is extremely important, especially where bail has been granted but the detainee needs funds to be raised by family and friends. If there are delays in informing relatives, it may lead to an unnecessary period of detention.

Some 27 per cent of visitors to men were informed of the arrest by a witness present when the detainee was arrested, compared to 14 per cent in the case of those visiting women; only 16 per cent (both genders) were officially informed by the police of the detention, usually by telephone or in person. This is lower than found in the other countries: the majority heard of the detention by word of mouth from friends or neighbours. Most were informed on the same day or the next day. The majority were also informed of the transfer to prison, with 90 per cent of those visiting men

²¹ Constitution of South Africa, s 28(2).

affirming they were informed of the transfer to prison, but only 75 per cent of those visiting women were informed of this.

'His neighbour WhatsApped me.'

3.2 Impact of detention

It was anticipated that, despite all the negative social and economic impacts, it is possible that some respondents would be in favour of the detention of the detainee, particularly if they caused problems at home or were otherwise difficult. Thus, questions were posed as to whether or not respondents felt they were (1) better off or (2) worse off as a result of the detention.

Worse off

The overwhelming majority (75% visiting men and 78% visiting women) were unequivocal that they were worse off as a result of the detention (see quotes).

'I just cannot think of anything positive that has come from the imprisonment.'

The description of the reasons included all the issues already canvassed, but so too fears for the personal safety of the detainee while in detention as well as sadness and longing for a person integral to their lives. Respondents anticipated that the detainee's release would bring them relief and joy, and generally improve their lives.

'I don't want him here, but is it safer here [than at home]? I don't know. When I see him, I will feel better.'

Better off

A minority (16% visiting men and 19% visiting women) said they were better off as a result of the detention. Reasons given included that the respondent felt that the detainee was away from gangs; away from drugs; or safer in prison due to shootings outside in their neighbourhood. In relation to drug use, a number of respondents said long-term rehabilitation would have been better, but in the absence of that, remand detention was at least something. Some were concerned that detainees would still be able to access drugs, but felt this was more difficult to do inside prison than outside.

'This is a shit place to be. I worry about him ... but it was bad in the big cell. The positive is that he's not using drugs here, but you'd be surprised, they say that there's all the drugs in there.'

Among the less altruistic reasons for saying they were better off were that the respondent now had a new, better girlfriend or that, because the detainee was detained, the respondent could see the detainee more regularly through remand visits.

3.3 Loss of the detainee's income and contributions to the household

One of the key reasons why respondents were worse off due to the detention was that the household had lost the detainee's income and other contributions.

Overall financial loss incurred by respondent due to detainee's detention

The majority of respondents said they experienced a direct financial loss as a result of the detention of the detainee. This was as high as 78 per cent among visitors to male detainees and 61 per cent among visitors to female detainees. The kinds of loss they described were the loss of detainees' income; loss of own income; visiting costs, including payments to the detainee's Pollsmoor savings account;²² and legal costs. This is explored in more detail below.

'He used to pay half of everything; now I must pay everything. Also, he used to drop me at work – now I have to pay for transport, and I have to pay for repairs if things break.'

Loss of detainee earnings and contribution to household

According to Statistics South Africa, in the first quarter of 2018 some 44 per cent of adults aged 15–64 are employed in South Africa, with the rate being 38 per cent among women and 49 per cent among men.²³ In Cape Town, Western Cape, the overall rate is 53 per cent (the figure is not disaggregated by sex).

²² The DCS operates a cashless society: each prisoner has an account into which monies can be paid and from which purchases can be made at the prison shop for items such as food, cigarettes and phone cards. However, it is well known that cash is smuggled into prison.

²³ Statistics South Africa *Quarterly Labour Force Survey Quarter 1 2018* (2018) available at <<http://www.statssa.gov.za/publications/P0211/P02111stQuarter2018.pdf>>.

Some 65 per cent of those visiting men said the detainee was earning an income at the time of the detention. This was the case with 42 per cent of female detainees, which suggests that the rate of employment among detainees visited is slightly higher than the national and local figure.

‘When I needed financial support, she assisted, especially because I am unemployed. She helped with money for groceries and electricity. Now that support is gone.’

About 60 per cent of respondents visiting men said the detainee contributed financially to their household, while among those visiting female detainees, this was 40 per cent. This is in line with the findings in the other countries, which showed detainees were more likely than average to bring in an income. Among male detainees who earned an income, some 88 per cent contributed financially to the household – with more than half (54%) contributing ‘all’, ‘most’ or ‘half’ of the household income. Among female detainees who earned, 80 per cent contributed financially to the household – with a third of them contributing ‘half’ or ‘most’ of the household income.

‘Income is less, but there is more to spend on since he is in prison and needs to be supported.’

The findings suggest that male detainees who are visited are more likely than the average person to be employed, if ‘employed’ equates to ‘earning an income’. Median monthly household income in Cape Town is estimated at R4,775 per month.²⁴ According to respondents, male detainees who earned, earned between R1,600 and R8,000 per month, with a median of R6,000 (among those who knew the amount). Female detainees who earned, earned between R380 and R4,000 per month, with a median of R1,600 (among those who knew the amount).²⁵

The income of detainees alluded to above suggests these detainees’ incomes are similar or slightly better off than most. The loss of it is therefore significant. Earnings are lost not only for the duration of detention – if the job is casual or lost due to the detention, earnings may be lost until another job is found. Given the scarcity of jobs, this could be for a significant duration.

Loss of contributions of effort and care

In most instances, the detainee lived with the respondent at the time of the arrest. This was the case amongst 68 per cent of visitors to male detainees and 58 per cent of visitors to female detainees.

²⁴ Statistics South Africa *Community Survey 2016*, as presented by Wazimap available at <<https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>>.

²⁵ Statistics South Africa *Community Survey 2016*, as presented by Wazimap available at <<https://wazimap.co.za/profiles/municipality-CPT-city-of-cape-town/>>.

'She's the pillar of the house. She does everything; now we have to.'

According to respondents, about 58 per cent of female detainees and 38 per cent of male detainees helped to clean and care for the household premises, and 46 per cent of male detainees saw to repairs and maintenance of the household premises. In households with children at the time of the detention, some 53 per cent of female detainees and 32 per cent of male detainees cared for children.

'I'm used to having him around. Something is missing in the house – and he did a lot in the house. Now I have to do it myself, and his mom is stressed because he worked for her, but now she must get someone else.'

Other contributions, listed by one-third of respondents, included cooking, laundry, shopping, gardening, and helping in the family tuck-shop. These contributions were no longer available due to the detention of the detainee.

'She is part of the family, forms part of everything important in my life.'

3.4 Additional costs due to detention

Visiting costs

For detainees, being visited is a lifeline. The author Gear has described how it is only detainees who are visited who have the means to engage with the economy 'inside'; those who are not visited are vulnerable to sexual and other abuse in Pollsmoor, due to their inability to 'buy' protection.²⁶ Thus, visiting is not a luxury but an essential protection mechanism for detainees:

A qualitative study by the South African Centre for the Study of Violence and Reconciliation (CSVSR) showed that the trickery frequently used to subordinate inmates relies on the exchange value that is attributed to sex. Because sex is embedded in the prison economy, those who are poor tend to be amongst the more vulnerable. Prisoners who do not get visitors (an important source of commodities and money) are often economically needy. As one respondent put it, 'money makes prison go round' and prisoners' basic rights – food rations, blankets, beds – become embroiled in this economy.²⁷

²⁶ Gear S & Ngubeni K 'Daai ding: Sex, sexual violence and coercion in men's prisons' (2002) Centre for the Study of Violence and Reconciliation available at <<https://www.csvr.org.za/docs/correctional/daaidingsex.pdf>>.

²⁷ Gear S 'Behind the bars of South African prisons: Gendered roles and vulnerability of male inmates to forced sex' (2005) Centre for the Study of Violence and Reconciliation available at <<https://bit.ly/2DiV5Fa>>.

Thus, a deduction of this study is that those visiting are from among detainees' wealthier family and dependents. The very poor can afford neither to visit nor to bring items to the detainee. Those even poorer may be recent migrants who have no close family or friends willing or able to visit them in detention. Unsupported, their position in detention may be highly precarious indeed.

'He's been here three months already. He'll be shocked to see me, because I have no money to visit him.'

Thus, it is unsurprising that respondents visited between one and eight times per month, with the median being four times a month. Distances travelled ranged between 5 km and 50 km, with a median of about 30 km. Associated travel costs ranged from R0 to R300, with the most commonly mentioned amounts being R50 and R100. Travel time ranged from 10 minutes to 90 minutes. Half of respondents used a minibus taxi to visit; a combination of taxi and train or bus applied to another 20 per cent. Some 28 per cent were transported by friends or had use of a car, with 22 per cent using their own car.

'I visit because he's here and I must bring him food and see how he's doing.'

Cost of items brought to detainee

It can be argued that food, clothes, blankets and other items would be used by the detainee in any event outside detention and hence that they do not represent an 'additional' cost to the respondent. However, many items would be used in a household or family context and not allocated exclusively to the detainee. Items are brought for detainee's exclusive use, and often special items are brought such as cooked meals. Furthermore, the need for some items might be caused by the detention – lotion, for instance, is a popular requirement, due to skin complaints, such as scabies,²⁸ associated with detention.

Visitors are also commonly asked to bring items that should be provided by the DCS but are often not available due to overcrowding. Moreover, if items have been 'used up' in the 'prison economy' described above, then they have to be replaced by visitors.

'I'm bringing clothes, food, whatever he needs – and feedback on what the lawyer said.'

Most respondents brought cash, ranging from R50 to R1,500 per time. Detainees are not supposed to hold cash, and such money must be deposited into the detainee's Pollsmoor savings account. Some 83 per cent of those visiting male detainees brought cash, with the most common amounts being R50, R100 and R200 (21% each). The median number of times was twice. Cash plays an

²⁸ Scabies is a skin infestation caused by a mite known as *Sarcoptes scabiei*.

important role in being able to buy safety in the detention environment, as well as other resources such as additional food. Apart from buying protection, cash may be used for bribes. It can be surmised that respondents would be reluctant make direct mention of bringing a bribe; nevertheless, at least one respondent said he or she had twice brought a bribe of R200.

'He's my son. He needs food and money. That's all he asks for – food.'

All the respondents brought food, with the cost ranging from R30 to R400. The most commonly mentioned cost amounts were R50 (23%) and R100 (25%). Chicken cooked at home, or chicken from commercial outlets, featured strongly in the food description.

'We miss him and we are concerned about him. We bring him decent food as the food inside isn't good.'

At the time of the interviews, respondents had already brought food between one and 156 times; one time (19%), three times (12%) and four times (18%) were the most commonly mentioned number of times. Some 27 per cent had already brought food ten times or more.

Detainees are supposed to be fed by the DCS. The Correctional Services Act provides that food must be served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast.²⁹ Meals usually consist of mealie rice and bread, with meat a traded commodity.

'I love her and bring food. I am pretty much her support system.'

Since 2015, orange remand uniforms are meant to be provided by the DCS to all pre-trial detainees, yet half of all respondents had brought clothes for detainees between one and eight times. The cost of clothes ranged between 0 and R10,000. The most commonly mentioned amounts were R200 (14%) and R500 (11%). This was frequently for court appearances.

Some 12 per cent had brought sheets, costing between R80 and R140. All of the sheets were brought for male detainees. Some 15 per cent had brought blankets, costing from R100 to R200. Almost all blankets (78%) were brought for male detainees. Complaints are often raised that blankets are not clean and have lice. Some 7 per cent brought towels, all of which were for male detainees. Towels cost between R25 and R150.

'I visit to bring food and toiletries and to see him. I miss him and it lifts his spirits when I come – gives him hope.'

²⁹ Correctional Services Act, s 8(5).

Toiletries were a much more commonly brought item for male detainees than for female. This could suggest these are rarely provided for male detainees.

For male detainees:

- 80 per cent of respondents brought soap: median six times; cost between R10 and R30.
- 27 per cent brought toothpaste, between one and 48 times: median three times; cost between R10 and R38: median R14.
- 22 per cent brought mouthwash, between one and 36 times: median twice; cost between R35 and R90: median R48.
- 55 per cent brought lotion, between 1 and 48 times: median 4 times; cost between R15 and R70.
- 22 per cent brought washing powder or Sunlight soap, between 1 and 48 times: median 3 times; cost between R5 and R2.
- 6 per cent brought deodorant, between 4 and 6 times; cost between R30 and R55.
- 19 per cent brought razors, between 1 and 14 times: median 3 times; cost between R3 and R50.

Neither medication nor toilet paper was brought for male detainees.

For female detainees:

- 27 per cent of respondents brought soap, between 1 and 42 times: median twice; cost between R5 and R45.
- 22 per cent brought toothpaste, between 1 and 3 times: median once; cost between R10 and R40: median R20.
- 14 per cent brought mouthwash, between 1 and 4 times: median twice; cost between R30 and R55: median R40.
- 38 per cent brought lotion, between 1 and 42 times: median once; cost between R15 and R60
- 3 per cent brought washing powder, costing R44, twice.
- 3 per cent brought toilet paper, costing R10, once.
- 11 per cent brought sanitary items, between 1 and 4 times: median twice; cost between R14 and R80.
- 5 per cent brought deodorant, costing R20-R40, twice.
- 3 per cent brought chronic medication, costing R70.

Legal assistance costs

Some 74 per cent of respondents said the detainee had received some form of legal assistance. Of these, 44 per cent referred to Legal Aid South Africa (LASA) and 11 per cent to a 'state lawyer'. As many as 44 per cent of those with legal assistance had secured a private lawyer. Use of private lawyers was more common among those who said the detainee had been earning an income at the time of the detention. Some 45 per cent of respondents said they or the detainee had already paid amounts for legal assistance, ranging from R1,000 to R200,000; the most common amounts amongst those mentioned were R1,500 (5%) and R5,000(5%); the median was R5,000. This suggests that significant amounts of money are spent on legal assistance by detainees and their families.

3.5 Associated losses

Taking out loans

Almost half of respondents had taken out loans to cover the above and other costs. Some 46 per cent of respondents visiting men and 42 per cent visiting women had taken out a loan. However, only 1 per cent of respondents took out the loan formally at a bank. About 27 per cent of those visiting men and 22 per cent of those visiting women borrowed from other family members. Some 19 per cent of those visiting men and 22 per cent of those visiting women had borrowed from friends.

'All the stress and worrying about him – how is he? Also the money that we have to borrow. It is stressful to think about this too. I feel down because I cannot put anything on his property [bring cash for purchases in prison].'

Most had loose arrangements for paying back, or had already paid back the loan. None had borrowed from employers, nor had any borrowed from 'micro lenders'. This echoes the findings in the other countries, where reliance is mainly made on friends and family for loans to cover losses and additional costs. However, some 5 per cent of those visiting men said they had been compelled to get a loan from a 'loan shark'. About 3 per cent of all respondents were burdened with payback amounts of R2,000 to R4,000 monthly.

Sale of household assets

The forced sale of household items was more common in those visiting male detainees than those visiting female detainees: some 14 per cent of those visiting men had sold an asset. In 6 per cent of cases, the first item sold was a car, while a phone, TV and Sony PlayStation 2 accounted for 8 per

cent. The difference between the asking and selling price was high: in the case of the cars, it was from R150 to R10,000 and R14,000, suggesting a loss was incurred in the sale itself. Other items sold included a welder, compressor, and a home movie player. Only 6 per cent of those visiting female detainees said they were forced to sell assets. The items sold in relation to female detainees included a car and a phone, sold at asking price.

3.6 Additional impacts

Some 92 per cent of those visiting men and 97 per cent of those visiting women said they had experienced additional impacts.

Less food, more work, less safety in the household

Some 43 per cent of those visiting men said they had less food in the household, while 32 per cent said there was more work to do in the household; 44 per cent said they felt less safe without the detainee. Thus, while a detainee is detained, his family becomes more at risk. Among those visiting women, 36 per cent said they had less food, and 50 per cent said they had more work, but only 3 per cent felt their safety was affected.

'We cannot afford the same quantity of food as before.'

Change in child care and behavioural problems

Impact on children ranged from change in care to redirection of resources that should be used for children. The impact on children's care was more pronounced in relation to female detainees. Some 14 per cent of respondents in relation to female detainees said the children of the detainee had had to move as a result of the detention, and 17 per cent said their care arrangements had had to change.

'I visit because her baby misses her. Her baby lives with me now. I bring the baby to see her mother.'

These were informal arrangements and children were neither institutionalised nor formally fostered. In addition, some 26 per cent said the children were 'acting out' as a result of the detention; some 6 per cent said children were missing school; and 3 per cent said the children were having problems at school as a result of the detention. This shows the significant impact on children of the detention of a parent, where the parent is female.

'I visit because she is my children's mother and I love her very much.'

In relation to male detainees, some 8 per cent of respondents said children had to move and 14 per cent said the care arrangements had to change. Some 27 per cent said the children were acting out as a result of the detention. Some 14 per cent said the children were having problems at school as a result of the detention.

'I have to look after the children and pay for their needs; it is expensive and stressful for me.'

Thus, while residence and care arrangements were more likely to change where the detainee-parent is female, behavioural problems appeared more likely if the male parent is detained.

'He did not earn anything, but I have lost the money that I have to spend now to come here and bring food. I have to use the child's grant money to come here.'

Relationships affected

Among those visiting men, only 16 per cent said relationships with immediate family, and 16 per cent with extended family, were negatively affected. Some 8 per cent said relationships with neighbours were affected, while 16 per cent said relationships with friends were negatively affected. Some 11 per cent said their relationship with their boss was negatively affected, mostly due to the burden of visiting.

Among those visiting women, some 28 per cent said the relationship with immediate family was negatively affected, and 11 per cent in relation to extended family. Some 8 per cent said neighbours were affected, and 8 per cent said friends were affected. Relationships with employers were not mentioned among those visiting women.

Impact on employment

For some, the detention resulted in their working less; for others, it forced them to work more; a third group mentioned a change in either direction. Some 14 per cent of those visiting men and 22 per cent of those visiting women said they were working less as a result of the detention of the detainee, due to factors such as the need to visit the detainee during working hours or having to care for the detainee's children.

'My days off from work mean that I lose income. I cannot say that I am at the doctor, so it goes as unpaid leave. I lose a day every week because I am here visiting him.'

'Every Tuesday and Thursday I come here, so I cannot book any work because I never know what time I will leave.'

Visiting hours are during weekdays during the working day from 9 am to 2 pm. Visitors queue from the early hours of the morning to be able to visit. Some 19 per cent visiting men and 14 per cent visiting women said that, as a result, they were earning less than before the detention.

'Last week the transport money I used was supposed to be for food money; the money I spent this week is supposed to be for the bread and electricity, and also for my husband's work travel fare.'

'I have to take off work to come to court and to visit, leading to loss of income as I am self-employed.'

Some 14 per cent visiting men and 6 per cent visiting women said they were forced to work more than previously as a result of the detention, in order to generate income to assist the detainee and to make up for the lost income. An additional 3 per cent of those visiting both men and women said they had previously not been working and had to return to work in order to help with the loss of income.

Harassment

Some 8 per cent of those visiting male detainees said they now experienced sexual harassment as a result of the detention of the detainee, as the respondents were perceived not to have a boyfriend or to be without protection. Some 3 per cent said they experienced other kinds of harassment. Although those visiting women did not mention sexual harassment, some 6 per cent experienced other sorts of harassment as a result of the detention.

Depression and stress

'The whole thing is leading to emotional strain. I am not handling it well.'

Some 57 per cent of those visiting men and 56 per cent visiting women said they were experiencing depression as a result of the detention; 43 per cent visiting men and 47 per cent visiting women said they had become ill as a result, noting headaches, heart palpitations, high blood pressure, eczema and sleeplessness.

'My health has deteriorated; I am very stressed about finances; I feel older, more kranklik [sickly]; I worry all the time.'

Some 68 per cent visiting men and 50 per cent visiting women said their quality of life had decreased, due to sadness, trauma, extra financial responsibility, and extra child care, amongst other things. About 62 per cent visiting men and 42 per cent visiting women said there were other impacts not already mentioned, with one saying, 'It has affected everything in my life.'

'We worry about her constantly; we are always thinking about her and worrying about her safety.'

3.7 Support

Coping and support measures

Some 67 per cent of those visiting men and 50 per cent visiting women said they had adopted some form of coping measure, including praying, keeping busy, and talking to family and friends. Less healthy measures such as smoking and drinking were also mentioned. About 62 per cent visiting men and 57 per cent visiting women said they had some sort of support, with 46 per cent of those visiting men and 44 per cent visiting women referring to their family. Some 11 per cent visiting men said they got support from the church, but none visiting women said so.

Some 21 per cent visiting men and 22 per cent visiting women referred to other forms of support, including counselling at work and support from friends. None referred to support from any NGOs, while 3 per cent visiting men referred to support from a government social worker, compared to none visiting women.

This echoes the findings in other countries where there is overwhelming reliance on family and friends for support.

Further detention

Some 42 per cent of those visiting both male and female detainees were unsure of the duration of further detention of the detainee. The uncertainty adds to the stress. However, about 22 per cent visiting men thought it would be between 1–10 days and hoped for bail thereafter, some 22 per cent thought it would be a further 1–7 weeks, while 19 per cent anticipated 1–5 months and then trial. Some 30 per cent visiting women thought it would be between 1– 8 days, some 16 per cent anticipated 1–2 weeks, and 25 per cent thought it would be between 1–5 months before trial.

3.8 Conclusion from visitor interviews

The majority of respondents experienced serious financial consequences and additional costs as a result of the detention of the detainee. Additional impacts on children are also apparent. Mental health impacts were strongly noted. It is evident that an additional burden is borne by the detainee's family and friends as they all contribute to meeting the costs and losses associated with the detention, and experience stress and anxiety.

There are strong indications in the data (considered in the following section) that it is the better off who are represented in the data. Those who are not visited at all are likely to be from households in even worse positions and who will bear all the impacts, save the costs of visiting. Lack of visiting, however, places the detainee in an even more vulnerable position.

4. Visited detainee profile

The question arises as to whether the previous findings are representative of all remand detainees at Pollsmoor, and if not, in what way the sample might be skewed and what the implications are for the interpretation of the findings. To this end, an exercise was carried out to determine the extent to which visitors to male remand at Pollsmoor were visiting a representative cross-section of detainees and thus the extent to which the sample might be skewed. As indicated in the chapter above, approximately two-fifths of detainees are visited. This section explores the extent to which those two-fifths are representative of all remand detainees.

4.1 Findings

Proportion of detainees visited

The sample of 100 with relevant variables represents 920 male detainees who were visited in the three weeks preceding 31 July. The remand population at 31 July was 2017 was 2,480. This suggests that around 37 per cent or fewer of the male remand population was visited within a 20-day period and thus that approximately 60 per cent of the remand population was not visited over a 20-day period.

This illustrates the reliance of the majority of the remand population on the state for their daily needs and does not bode well for the reintegration of detainees on release. It strongly suggests that male detainees being visited are a large minority. It remains to be understood in what way detainees being visited are different from those not being visited. In this regard, the analysis is limited to the variables recorded by the DCS.

Age profile comparison

A comparison of the profile of visited male detainees with those of all detainees suggests that visited detainees may be somewhat younger than all detainees. This is in line with mothers being common visitors.

Table 1: Age profile of visited detainees and remand population (July 2017)

	Min	10th	25th	Median	75th	90th	95th	Max
Visited	21	23	24	27	34	39	42	59
Remand	20	23	26	30	36	42	47	69

Alleged offence profile comparison

Visited detainees are likely to be accused of more serious offences. In particular, murder comprises 18 per cent of the offences with which visited detainees are charged, and aggravated robbery, 28 per cent. By comparison, amongst the general population on 31 July 2017, murder comprised 15 per cent and aggravated robbery, 24 per cent.

By contrast, drug offences are underrepresented among the visited: while drug offences comprised just more than 10 per cent of the alleged offences in relation to the general population, they comprised only 2 per cent of the offences among visited detainees. This suggests that those detained on drug offences may have fewer support structures, or that family and friends are not made aware of their detention.

Police station in which charged profile comparison

Visited detainees are more likely to be charged at police stations on the Cape Flats. In particular, Manenberg is very prominent among the visited, at 11 per cent compared to only 5 per cent among the general remand population; similarly, Philippi is 7 per cent, compared to 4 per cent among the general population. Kirstenhof, which is arguably geographically closest to Pollsmoor, is over-represented.

By contrast, while 16 per cent of the remand population were charged in Cape Town, only 9 per cent of those being visited were charged in Cape Town. This is related to the preponderance of drug charges coming from Cape Town. Some in the general remand population were charged in places outside of greater Cape Town (Atlantis 85 km, Ceres 151 km, Grabouw 69 km, Mooresburg 119 km, Vredenburg 161 km, and Wellington 88 km); among these, only those charged in Ceres were visited.

Court hearing profile comparison

Magistrates' Courts Athlone (18%) and Wynberg (18%), and Regional Court Cape Town (12%) are overrepresented among visited detainees, compared to the general remand population (11%, 14% and 9%, respectively), while Magistrates Court Cape Town is underrepresented (22% versus 33%).

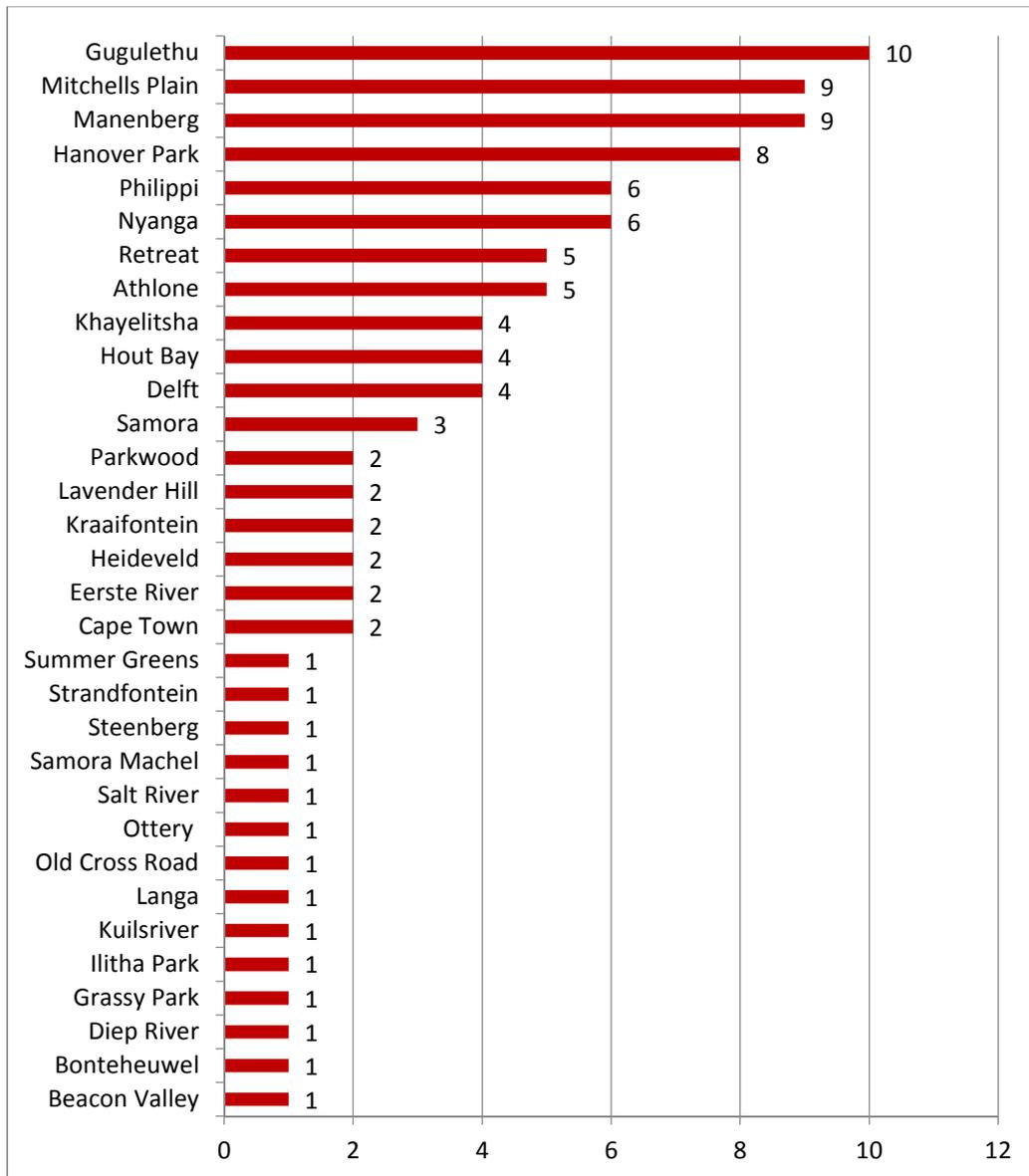
Length of detention profile comparison

There does not appear to be an association with being visited and length of detention: the length of detention of visited detainees is not markedly different from that of the general remand population, except that the 1 per cent serving the longest time periods are absent from the visited sample. This suggests that length of detention is not a factor affecting visiting, save in cases of extremely long detention.

Visitor residence area

The address area of visitors provides insight into the areas in which visited detainees may live or in which their families and dependents live. See Figure 2 below. The suburbs indicated suggest that the poorest areas, although well-represented, are a minority, with only 26 per cent hailing from Guguletu, Philippi, Nyanga and Khayelitsha even though these areas comprise a large proportion of the population of the West Metro from which Pollsmoor draws its own population.

Figure 2: Suburb of visitors to detainees (frequency)



Together with the police station arrest area, this suggests that visitors in fact may be drawn from relatively less deprived areas than those not visited. This accords with other research which suggests that prisoners who are visited are relatively better off inside and outside the prison facility.

4.2 Conclusion from the visited detainee profile

Visited detainees are more likely to be detained on more serious offences and less likely to be detained on theft and drug offences; however, there is no relationship with custody duration at the time of data collection. The court, suburb and police station profile indicates that the poorest

suburbs are not as prevalent in the data as might be expected; the wealthiest suburbs are all but absent.

This suggests that the wealthiest are not remanded, while the poorest are indeed remanded, for less serious offences such as drug offences, and that their families unable to afford to visit; nonetheless, further research is necessary to understand the situation of the majority of detainees who are not visited more frequently than once in 20 days.

5. Profile of remand detention at Pollsmoor

This section explores the profile of remand detainees; it also explores the extent to which ordinary persons in the Western Cape may be exposed to remand and thus to the social and economic impacts described previously.

Pollsmoor RDF is notorious for over-occupancy and is the largest remand facility in the Western Cape. It has approved accommodation for 1,619 detainees and ‘maximum sleeping space’ for 2,355 detainees in August 2017.³⁰ In December 2016, Pollsmoor was holding roughly 4,080 detainees. This excessive occupancy, which is in excess of 250% of approved accommodation, was the subject of litigation in the Western Cape High Court that found the conditions at Pollsmoor to be in breach of the right to dignity.³¹ The state was ordered to reduce occupancy at Pollsmoor to no more than 120% of its approved capacity – unless it could show good cause as to why not, by 21 December 2016.

As a result of the court order, detainees were transferred from Pollsmoor RDF to other facilities, including Pollsmoor Medium A. However, Pollsmoor still holds more remand prisoners than any other prison in the Western Cape. On 16 July 2018, Pollsmoor RDF held 2,426 adult remand detainees, with overflow of another 1,485 held in Pollsmoor Medium A (excluding those facing further charges). This total of 3,911 represents 35 per cent of the remand detainees held in the Western Cape.

Pollsmoor Female held 408 adult female detainees on remand on the same date. There are only two other female facilities in the Western Cape: Oudtshoorn Medium B (Female) and Worcester Female,

³⁰ Department of Correctional Services, *Western Cape Unlock Statistics 28 August 2017*. The approved accommodation rose to 1,786 by 16 July 2018.

³¹ *Sonke Gender Justice v Government of Republic of South Africa and the Head of Centre, Pollsmoor Remand Detention Facility* Case No. 24087/15 Western Cape Division of the High Court.

which held 30 and 54 adult female remand prisoners, respectively. Pollsmoor Female thus held 83 per cent of female remand detainees in the Western Cape on that date. Thus, Pollsmoor holds 35 per cent of male remand detainees in the province and 83 per cent of female remand detainees in the province. Consequently, the trends in terms of social and economic impact at Pollsmoor are highly likely to inform the trends for the province as a whole, particularly in relation to female detainees.

5.1 Findings

The remand population at 31 July 2017 in Pollsmoor RDF was 2,480, according to the dataset provided by the DCS, which excludes names but includes a limited number of variables (age, gender, date of admission, SAPS police station, court name and alleged offence). A similar dataset was provided for 30 June 2017, on which date the remand population in Pollsmoor RDF was 2,356. The average for the two dates was 2,418.

Analysis of these datasets by the main variables forms the basis of the findings here. 'Unlock data' for 31 August 2017 was 2,446, and for August 2018, 2,426. The population is therefore relatively stable. Yearly trends suggest that the July and August populations for the Western Cape are somewhat lower than for the rest of the year. Unlock data for August 2017 was used to provide some additional information to assist in understanding the main aspects of the research.

Age profile

South Africa and the three countries previously studied comply with international law in relation to children in conflict with the law and do not hold children in adult facilities on remand, save in exceptional circumstances (some countries such as Kenya make use of Children's Remand Homes). Consequently, it is anticipated that the data will show very few children (persons younger than 18 years) in adult remand facilities.

Age of male remand detainees

It is often presumed that most detainees are in their early twenties. The data indicates, however, that remand detainees are slightly older than the median age of South Africans. The median age of the South African population is 26 years. In Pollsmoor RDF, the median age is 30 and the maximum age is 69. This is partly because Pollsmoor RDF does not generally hold children (17 and younger),

nor does it hold ‘juveniles’ (18–20-year-olds),³² thus the RDF age profile begins at age 20. However, if one adds the approximately 500 juveniles held in Medium A to the ‘unlock’ figures, then the age profile changes accordingly (only three children were held in Medium A in August).

The resultant median age of 28 years for remand detention is in line with the age findings in the other three countries and is suggestive of persons of income-earning age.

Table 3: Percentile age profile of male remand detainees (30 June 2017 and 31 July 2017)

Percentiles	Min	10 th	25 th	Median	75 th	90 th	95 th	Max
RDF only on 30 June 2017	18	23	26	30	36	43	48	70
RDF only on 31 July 2017	20	23	26	30	36	42	47	69
RDF 31 July and Medium A	18	-	23	28	35	41	46	69

A broad age profile for remand for the whole of the Western Cape can also be inferred from the unlock data, which is reproduced below. This data accords with Pollsmoor RDF data suggesting that the median age is older than 26. Some 34 per cent of detainees are aged under 25, according to this data. Given that in the Western Cape the proportion of the population aged 15 and older, that is, 15–24, is only 21 per cent, this suggests that younger men are over-represented. However, men aged 26 and older comprised 66 per cent of the remand population. Thus, while young men are over-represented, adult men 26 and older are by far the majority group in remand detention.

Table 4: Category age profile of Western Cape male remand detainees (7 August 2017)

Remand	Children (17-)	Juveniles (18–20)	Youth (21–25)	Adults (26+)	Total
Western Cape	6	843	2462	6322	9633
Western Cape (%)	0.06%	8.75%	25.56%	65.63%	100%

Age of female remand detainees

In the absence of a full dataset, a broad profile for female detainees can be inferred from the unlock data, which is reproduced below in Table 5. This table suggests that the median age of female

³² Government Gazette 8023 *Correctional Services Act Regulations* (30 July 2004) regulation 3(2)(h) provides that prisoners between the ages of 18 and 21 years must be detained separately from prisoners who are over the age of 21.

remand detainees in the Western Cape is also 26 or older. Like men, some 35 per cent of women on remand are 25 or younger.

Table 5: Category age profile of Western Cape female remand detainees (7 August 2017)

Remand	Children (17-)	Juveniles (18–20)	Youth (21–25)	Adults (26+)	Total
Pollsmoor	0	18	49	214	281
Oudtshoorn	0	2	4	14	20
Worcester	0	8	15	40	63
Western Cape	0	28 (8%)	97 (27%)	268 (74%)	364

Gender profile

The issue of transgender persons is not reflected in the data, and a court case relating to a transgender woman detained in a male facility is currently before the courts.³³ However, for the purposes of this study it is assumed that the gender of detainees accords with the gender of the facility in which they are held.

The data above show that in the Western Cape 9,633 remand detainees are male and 364 females in August 2017. This means that 3.6 per cent of the remand population is female. However, only 3.1 per cent (550 of the sentenced population of 17,638) is female. This suggests that more women are held on remand than would be predicted by their sentenced population, which suggests they may be slightly more likely than men to be remanded, but not convicted.

It is also a slightly higher overall incarceration percentage than reported for South Africa as a whole, which in 2017 reported only 2.6 per cent of all inmates to be female.³⁴ In other words, women are incarcerated at a higher rate in the Western Cape than the rest of the country.

Duration of detention

Two factors affect the remand population: the number of admissions and their duration of remand. There is wide variation in the duration of detention on remand for each detainee. As discussed

³³ Collison C “‘I didn’t want to die’ – queers battle prison system’ *Mail & Guardian* (18 January 2018) available at <<https://mg.co.za/article/2018-01-18-i-didnt-want-to-die-queers-battle-prison-wardens>>.

³⁴ International Centre for Prison Studies ‘World Prison Brief: South Africa’ available at <<http://www.prisonstudies.org/country/south-africa>>.

above, South African law permits the postponement of a bail application for up to seven days at a time on first appearance in court, which postponement may be extended. Thus, it is possible for a person to be remanded without their bail application having been heard. This means someone could spend two weeks in detention on remand before a bail application is heard.

There is no upper time limit on detention on remand in South African law, although the court is mandated to investigate reasons for delay when the two-year mark is reached;³⁵ ‘unreasonable delays’ must also be interrogated.³⁶ A new bail application may be brought at any time, and it has been argued that the onus on the state to show that further detention is in the interests of justice increases the longer the accused has remained in custody.³⁷ The National Prosecuting Authority is required to submit to Parliament twice a year a list of all those in custody on remand who have been in custody for a continuous period of more than one year, and the reasons for the delay.³⁸

By comparison, Malawi law does provide for various pre-trial detention limits, including a limit of 30 days before trial for matters heard in the lower courts.³⁹ If the time limit is exceeded, the accused is entitled to be released from detention, with or without conditions, while the case proceeds. An overall limit of one year also applies to the completion of cases in the lower courts. A limit of 90 days, which may be extended, applies to remand in relation to higher court matters.

Mozambique has a more complicated series of processes in its civil system, but the overall time limit for remand amounts to less than a year.⁴⁰ England and Wales have custody time limits of 56 and 182 days, with various extensions possible.⁴¹

The duration of detention can be calculated from the Pollsmoor RDF data by using the admission date and the date of data collection. This data indicate the duration of detention up to the date the data was drawn, calculated from the date of admission. In other words, it provides a ‘snapshot’ of the length of remand detention already served by detainees as at the time of data collection. This

³⁵ Section 49G of the Correctional Services Act provides that the period of incarceration of a remand detainee must not exceed two years from the initial date of admission into the remand detention facility without such matter having been brought to the attention of the court concerned by the head of the remand detention facility.

³⁶ Section 342A of the Criminal Procedure Act provides that a court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the state or a witness.

³⁷ See Ballard *C Remand Detention in South Africa: Current Law and Proposals for Reform* (2011) Lawyers for Human Rights.

³⁸ Criminal Procedure Code, s 342A(7).

³⁹ Criminal Procedure and Evidence Code (Malawi), s 161A.

⁴⁰ Criminal Procedure Code (Mozambique), art 308–309.

⁴¹ Prosecution of Offences Act 1985 (England and Wales), s 22.

snapshot is informative because it suggests the actual durations of detention. If a facility is comprised only of persons who have been detained for two weeks or fewer, then it is highly likely that detainees do not spend longer than two weeks in detention, since instances of such occurrences would be present in the data. The maximum thus provides the potential longest duration.

The median provides an indication of the likely duration for half of detainees, i.e. half of detainees can expect to be detained for the median or less, and half for the median or longer.

The minimum provides an indication of how frequent intake is to the facility concerned. If the minimum is seven days, it suggests that detainees are admitted only every seven days. If the minimum is 0 or 1 day, it suggests that persons are admitted daily.

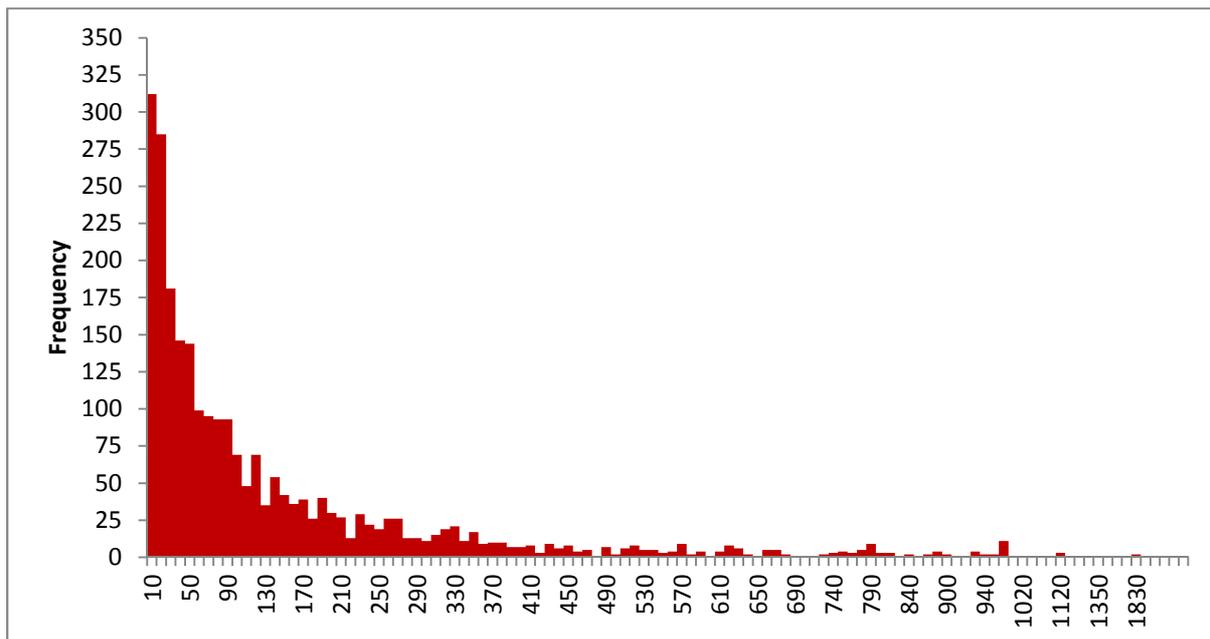
Table 6: Duration of detention for remand detainees (31 July 2017)

Percentiles	Min	10 th	25 th	Median	75 th	90 th	95 th	99 th	Max	Average
Pollsmoor RDF 30 June (days)	0	4	22	70	192	378	638	924	3048	146
Pollsmoor RDF 31 July (days)	0	6	21	69	175	364	574	955	3079	150

The minimum at Pollsmoor RDF on both days is 0 days, suggesting that detainees are admitted daily. The 31st of July 2017 was a Monday and 30 January 2017, a Tuesday. Some 3.5 per cent of the total population had just been admitted. If 3.5 per cent are admitted daily and no one released, the facility would reach its current occupancy in only 28 days.

Clearly, detainees are admitted and released daily, as appears from the histogram below, which shows the frequencies of various durations of detention. The shorter durations are more common than the longer durations, i.e. the distribution is skewed. This is in line with trends in the other countries studied, where the majority move through the facility relatively quickly, with a minority remaining for long periods.

Figure 3: Histogram of duration of remand detention in Pollsmoor (31 July 2017)



The exceptionally long durations for some detainees make the median a better indicator of ‘usual’ detention – the distribution is skewed, and thus the average duration is a less useful indicator of the central tendency of the data.

The mode in this dataset – namely, the most frequently occurring duration – is 0 days, with the second most common duration being 14 days. The data suggest a quarter of detainees may enter and exit Pollsmoor within three weeks. It is evident from the histogram that the median of 70 days or 2.5 months better represents the central tendency of the data.

This means that half of detainees can expect to spend 2.5 months or less in remand, while half can expect to spend 70 days or more. In Mozambique (2015) and Kenya (2016), pre-trial audits found a median duration of 66 and 142 days, respectively, suggesting that the usual remand durations in Mozambique (*Cadeia Centrale*) are somewhat shorter than at Pollsmoor, but in Kenya (Nairobi Remand) they are twice as long as at Pollsmoor. Mozambique has legislated time limits for various parts of the criminal justice process, while Kenya does not. This would suggest that time limits can have an ameliorating impact on the duration of pre-trial detention.

Looking at the 31 July 2017 dataset, the 75th percentile was 176 days, suggesting a quarter of all detainees can expect to reach this duration (close to six months) or longer on remand, while three-quarters will reach less than this. The 90th percentile was one year, which suggests that 10 per cent of all detainees had already served a full year or more in remand detention. The maximum was 8.4

years, and some 3.2 per cent had already spent longer than two years – the duration at which the court is mandated to enquire as to the reasons for delay.

Longer remand durations consume more prison space. One detainee who spends a year on remand is, in terms of space, equivalent to 365 detainees who spend only one day on remand. While it may be preferable to keep one demonstrably risky accused on remand, rather than needlessly incarcerate 365 accused on remand for one day if they pose no risk of flight nor harm, long durations of detention are inimical to justice. Long durations are a driver of over-occupancy, which has numerous health and safety implications.

One of the intentions of Video Remand Courts is that cases will be expedited.⁴² Only 5 per cent of cases were making use of a Video Remand Court – a system procured at substantial cost to the taxpayer. The trends suggest that Video Remand Courts omit the durations in excess of a year, but that durations under this level are somewhat longer than usual, i.e. only 10 per cent are less than three weeks. This may be the result of the kind of cases selected for Video Remand: less than 1 per cent were drug possession cases.

Table 7: Duration of detention for Video Remand Courts

Percentiles	Min	10 th	25 th	Median	75 th	90 th	95 th	99 th	Max	Average
Video Remand Courts	0	21	42	74	114	147	167	279	298	84
Pollsmoor RDF 31 July (days)	0	6	21	69	175	364	574	955	3079	146

Estimating admissions to Pollsmoor RDF

In 1995/1996 just more than 230,000 people were admitted on remand in South Africa in one year.⁴³ After changes to bail legislation in 1998 likely to increase the denial or delay of bail, this increased to almost 299,000 by the year 1999/2000 – in other words, 67,000, or 29 per cent, more people were admitted on remand four years' later than in 1995/1996. Another two years later 311,013 were admitted on remand. Subsequently, however, remand admissions dropped to the point where in 2010/11 there were a similar number of admissions to the number in 1995/6.

⁴² Criminal Procedure Amendment Act 65 of 2008.

⁴³ Redpath J 'Unsustainable and unjust: Criminal justice policy and remand detention since 1994' *SA Crime Quarterly* 48 (2014).

Admissions are important because they provide an indication of the extent to which the population is exposed to remand as well as the long-term impacts of such admission to the broader population. Admissions, along with duration, determine the size of the average daily population. If the number of admissions is known, it is possible to determine the extent to which the population suffers those impacts.

Since 2012 the yearly number of admissions to remand in South Africa has not been made available by the DCS. For the purposes of this study, it is possible to estimate the number of admissions to Pollsmoor. The following methods were used:

Analysis of the total number admitted on the single days of 30 June and 31 July suggests 1,820 admissions per month, or about 22,000 per year.⁴⁴

Analysis of the consecutive numbering system used in the DCS' registration numbers suggests that 23,573 were admitted in 2016.⁴⁵

Application of a formula to estimate the total held at Pollsmoor facilities on remand suggests around 20,600 admissions per year.⁴⁶

This suggests the number of admissions lies between 20,000 and 24,000 per year.

Exposure to remand

Given that the adult (over-15) male population of the Western Cape is 2,375,856,⁴⁷ these admission figures suggests that 8 per 1,000 men in the Western Cape, or one in every 125 men, were admitted

⁴⁴ If the number usually admitted on a single day is known, and the number of days of admissions is known, then the number of admissions in a month or year can be estimated. Some 87 detainees were admitted on 31 July and 52 on 30 June. Looking at the dataset, Sundays are absent from admissions. In June 2017, there were four Sundays and 30 days, suggesting a total of 26 admission days. Assuming the 52 recorded on 30 June are representative of a usual day, this suggests 1,352 were admitted in June. In July 2017, there are five Sundays but 31 days. Applying 87 to 26 admission days suggests 2,262 detainees admitted, a far higher monthly number. Monday is not likely to be representative, because it includes the processing of persons arrested over the weekend. Using an average of 70 admissions per day and 26 days per month suggests 1,820 admissions per month, or about 22,000 per year.

⁴⁵ The consecutive prison registration numbers also provide an estimate of admissions. The first three digits of this number refer to the year (209 = 2009, 216 = 2016). The remainder of the digits appear to be consecutively numbered within the year. Taking the first and last numbers in the Pollsmoor 31 July dataset beginning with 216 and subtracting the largest from the smallest suggests at least 23,573 admitted in 2016 (January to December) to Pollsmoor facilities. Applying the same method to the 30 June dataset gives the same result. This is a similar order of magnitude to that obtained above.

⁴⁶ The formula 'daily population = admissions multiplied by usual length of stay' applies. The remand population (RDF and Medium A) is about 3,942 in early August 2017. Using the median of 70 days as a better indicator of usual length of stay, this suggests around 20,600 admissions per year. These estimates are similar to each other and suggest that in excess of 20,000 people are exposed to Pollsmoor remand in a single year. Recall that August populations are lower than the rest of the year. This accounts for the lower estimate than the two estimates calculated above.

to Pollsmoor in a single year. Repeat remand admissions may improve this number; however, such repeats would be suggestive of men being remanded but not convicted and sentenced to a term of imprisonment (which would prevent their being remanded in the same year). These admission figures are far higher than in the other countries studied.

If it is assumed that the duration of 70 days estimated for Pollsmoor also applies to the Western Cape as whole, with 9,633 detainees, this suggests that more than 50,000 detainees were admitted in the year preceding mid-2017, or that one in every 50 adult men was admitted to remand detention in that year in the Western Cape. It means that, over five years, 10 per cent of all men in the province could be admitted to remand. Given the impact quantified by this report, this suggests that the social and economic impacts of remand detention are likely to be felt widely across the Western Cape.

Furthermore, widespread incarceration of persons can be theorised to have a long-term criminogenic effect, not least by bringing less serious offenders and even the innocent into contact with criminal networks. Although this may be ameliorated somewhat by the separation of convicted persons from those held on remand, the very long durations of remand of more than a year endured by some remand detainees is likely to encourage similar criminal networks to those found in the sentenced population.

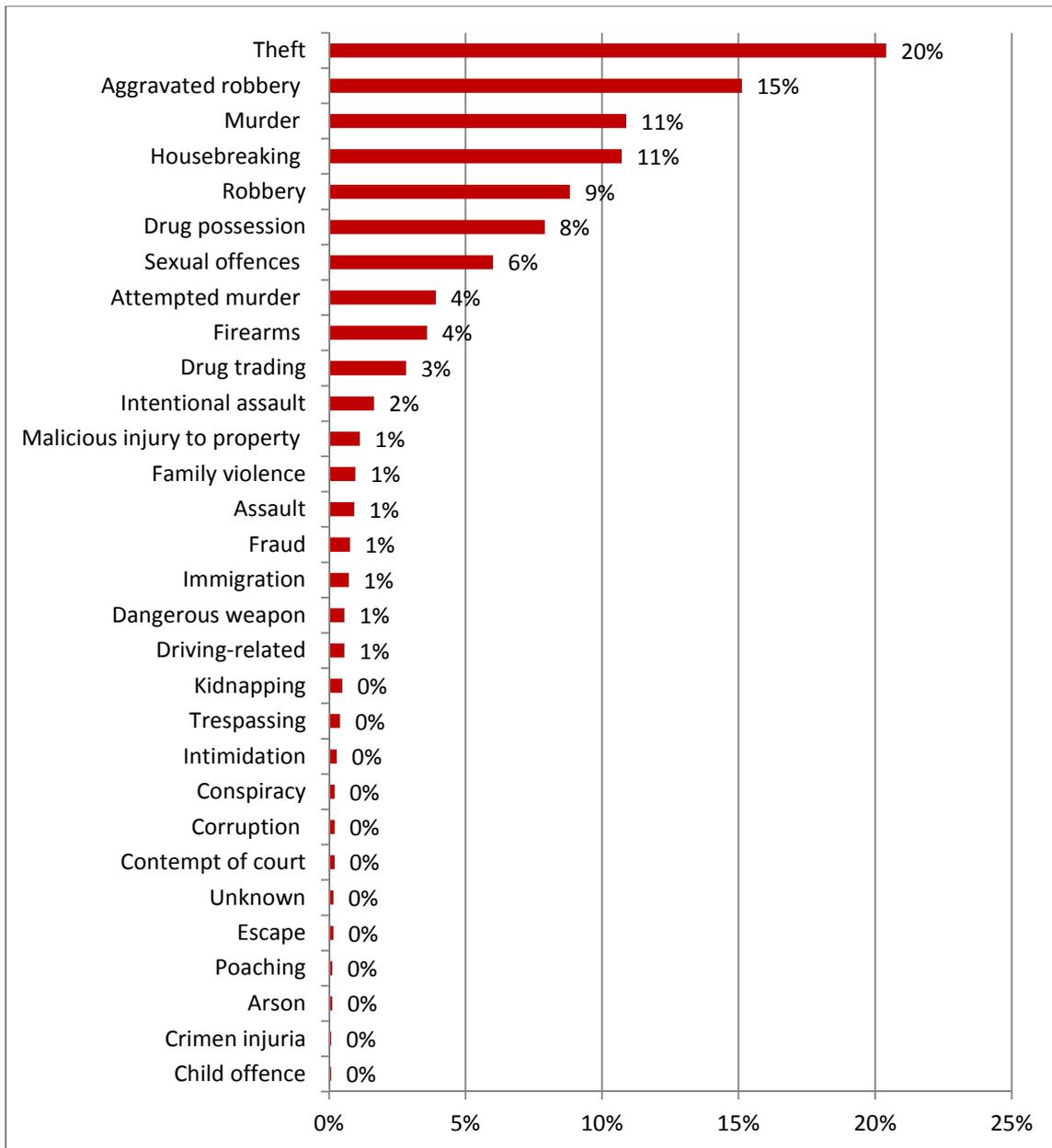
In-custody offence profile compared to admissions offence profile

Despite the seemingly high number of admissions in the Western Cape, the estimated admissions amount to only 16 per cent of the total number of serious reported crimes (17 community-reported crimes and police-action crimes) recorded in 2016/17.

This alerts us to the fact that remand detention is a scarce resource that should be used for those who pose a risk. Is the resource being used appropriately? Is it being used for less serious offences that may be better dealt with in other ways? To investigate these questions, the offence profile – both in terms of admissions and ‘in-custody’ proportions – provides some insight to the use of remand.

⁴⁷ Statistics South Africa *Mid-year Population Estimates* (2017).

Figure 4: In-custody offence profile, Pollsmoor (31 July 2017)

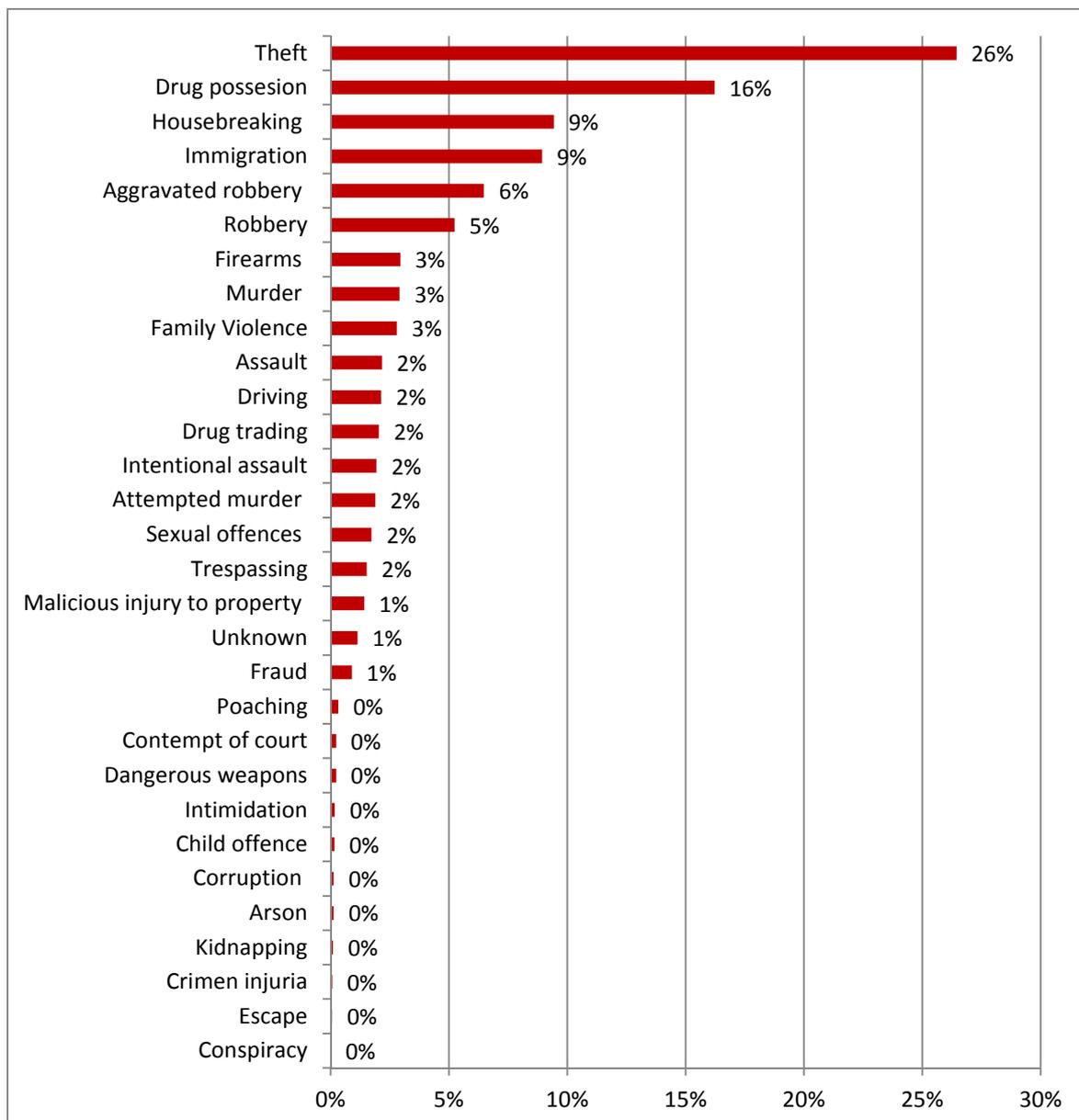


The categories available on the DCS system reveal the racial make-up of victim and alleged offender as well as the racial profile of, for example, residences burgled. These categories have been conflated for the purpose of analysis. Although only 1.57 per cent of detainees in custody were held on more than one charge, where there were two offences, the most serious offence was listed (the three most serious, in the following order, were considered to be murder, rape, robbery).

The admissions profile is estimated using the number in custody and their median durations per offence. This profile is markedly different from the 'in-custody' offence profile. This is because those offences with longer durations in custody will be more apparent in the 'in-custody' data and less apparent in admissions. Because prisons tend to report in 'in-custody' numbers, this provides a

misleading indication of the trends in terms of who is exposed to remand through admissions. In particular, drug possession and immigration offences move into the top-four most numerous offences in terms of the admissions profile.

Figure 5: Derived estimated admissions profile, year preceding 31 July 2017



5.1.1 Theft offences

The most common in-custody offence category was various kinds of theft, accounting for 20.4 per cent of those in custody, or 506 detainees. The median duration in custody, however, was 38 days; this suggests that admission for theft in fact may be in the region of 4,860, or almost 24 per cent of admissions.

Table 8: Theft alleged offences in custody (percent)

Theft offence	Per cent
Theft	10.20
Theft, attempted	0.60
Theft, from motor vehicle	2.42
Theft, motor vehicle	3.59
Theft, stolen goods possession	3.55
Theft, use vehicle no permission	0.04
THEFT TOTAL	20.40

In other words, theft is even more common amongst admissions than the in-custody profile suggests. This is in line with the other three countries, which tended to show theft as the most common offence in the admissions profile collected from admissions registers. Theft compromised 31 per cent of serious reported crimes in 2016/17.

5.1.2 Aggravated robbery offences

The next most common offence category in custody was aggravated robbery (robbery committed with a weapon or with violence), at 15 per cent or 375 in custody. However, the median duration for this offence was 115 days, suggesting that admissions might be about 1,190 per year or only 6 per cent of admissions. This offence has amongst the longest durations of detention.

Table 9: Aggravated robbery alleged offences in custody (percent)

Robbery offence	Per cent
Robbery, aggravating	15.08
Robbery, aggravating; theft	0.04
ROBBERY AGGRAVATED TOTAL	15.12

5.1.3 Murder offences

The third most common offence category in custody was murder, at 10.88 per cent or 367 in custody. The median duration for murder, however, was 441 days; this suggests 301 admissions or 1 per cent of admissions. Murder comprises only 1 per cent of serious community-reported crimes, suggesting admissions for murder are proportional relative to reported offences.

Table 10: Murder alleged offences in custody (percent)

Murder offence	Per cent
Murder	10.12
Murder; assault common	0.04
Murder; housebreaking, theft	0.04
Murder; kidnapping	0.12
Murder; murder attempt	0.20
Murder; robbery	0.04
Murder; robbery aggravating	0.20
Murder; rape	0.04
Murder; rape attempted	0.04
Murder; theft MV	0.04
MURDER TOTAL	10.88

5.1.4 Housebreaking offences

Various forms of housebreaking, amounting to 266 detainees, tied fourth as the most common offence category in custody, at almost 11 per cent. As the median duration is 56 days, this suggests admissions of 1,734 or 8 per cent of admissions

Table 11: Housebreaking alleged offences in custody (percent)

Housebreaking offence	Per cent
Housebreaking	1.61

Housebreaking, attempted	0.12
Housebreaking, theft	6.17
Housebreaking, theft; stolen goods	0.08
Housebreaking, tools	1.53
Housebreaking, unknown	0.20
Housebreaking, w.i.t rob	1.01
HOUSEBREAKING TOTAL	10.72

5.1.5 Drug offences

Also, fourth most common ‘in custody’ were the drug offences, of which mere possession accounted for around 8 per cent of all offences (196 detainees (not dealing)). At first blush this seems a relatively low proportion. However, as the mediation duration for drug possession is only 24 days and there were 196 in detention, it implies that there may have been admissions of 2,981, or that about 16 per cent of all admissions to remand were for drug possession.

Previously, assumptions in terms of the Drugs and Drug Trafficking Act made a drug-dealing charge less difficult than it is now. In the case of cannabis, drug-dealing was presumed if the accused was in possession of more than 115 grams, or within 100 m of school grounds, or found in possession of any other drugs, or ‘conveying’ the substance – in other words, if any of those applied, dealing in drugs was presumed and the person would then have been charged with drug dealing.⁴⁸ The Constitutional Court in various cases has ruled these presumptions unconstitutional.⁴⁹

Thus, it is possible that these mere possession charges are being used instead of drug-dealing charges, given the difficulty of proving the latter now that the presumptions have been removed. It is also possible that drug possession is a proxy charge for other offences more difficult to prove, or for which the police could not obtain evidence. Some 98 per cent of the in-custody drug possession cases come from only four courts: Cape Town, Mitchells Plain, Athlone and Wynberg Magistrates’

⁴⁸ Drugs and Drug Trafficking Act 140 of 1992, s 21(1)(a),(b) and (c)

⁴⁹ In respect of s 21(1)(a), *S v Bhulwana, S v Gwadiso* (CCT12/95, CCT11/95) [1995] ZACC 11; 1996 (1) SA 388; 1995 (12) BCLR 1579 (29 November 1995); in respect of s 21(1)(b), *S v Ntsele* (CCT25/97) [1997] ZACC 14; 1997 (11) BCLR 1543 (14 October 1997); in respect of s 21(1)(c), *S v Manyonyo* (CCT36/99) [1999] ZACC 14; 1999 (12) BCLR 1438 (4 November 1999).

courts. More than half of detainees came from arrests in only two policing areas: Cape Town and Mitchells Plain. This is strongly suggestive of targeted policing and prosecution in those areas.

The impact of the 2018 Constitutional Court judgement effectively decriminalising the use by an adult in private of dagga may or may not have an impact on these trends, depending on how the police choose to apply the judgment in practice.⁵⁰

Drug trading accounted for another 70 in custody, at a median duration of detention of 66 days, suggesting 387 admissions. Thus, the two drug crimes amount to approximately 18 per cent of admissions. Reported drug crimes account for 14 per cent of all serious reported crimes in 2016/17, suggesting that drug crime is relatively over-policed.

Some 33 per cent of those in custody had durations of 14 days or less in custody. This duration of incarceration is suggestive of a delayed bail application rather than denial of bail. In such a scenario, people whom a court eventually decides are entitled to bail are needlessly detained in the most notorious remand facility in South Africa for up to two weeks. For those who suffer from addiction, this has implications in terms of enforced detoxification and associated withdrawal, which in some instances can lead to pain, violence or death. Other health impacts and risks experienced at Pollsmoor have been documented elsewhere.⁵¹

Given that the average duration for drug possession offences is 51 days, at a cost of R380 per day in 2017/18,⁵² the total cost per drug remand detainee is around R20 000 which, depending on the facility, could cover the cost of two to three weeks' private drug rehabilitation. Unfortunately, the 'assumed direct cost' per prisoner per day in the 2012–13 financial year was only R13.86, which includes food, medicines and other items such as basic toiletries and bedding.⁵³ Essentially, in that year, each prisoner cost the department about R390 a month directly, and it is only when warders' salaries and other personnel costs are added that the figure jumps to R9,876.35.⁵⁴ This is why such arguments seldom have traction.

⁵⁰ *Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others* [2018] ZACC 30

⁵¹ Constitutional Court Report: *Pollsmoor Correctional Centre – Remand Centre and Women's Centre* (Judge Cameron) (2015) available at <<https://bit.ly/2W5W0Aj>>.

⁵² Calculation based on Department of Correctional Services Annual Report 2017/18 pp18 and 28.

⁵³ Herrmannsen K 'Bail system penalises the poor' *Mail & Guardian* available at <<https://mg.co.za/article/2013-12-05-bail-system-penalises-the-poor/>>.

⁵⁴ Herrmannsen K 'Bail system penalises the poor' *Mail & Guardian* available at <<https://mg.co.za/article/2013-12-05-bail-system-penalises-the-poor/>>.

While the relevant drug-harm legislation makes provision for convicted drug offenders to be transferred to provincial treatment centres,⁵⁵ it is silent on the situation in relation to remand, where persons are nevertheless detained for significant amounts of time before being convicted of any offence.

The conviction rate for drug crimes (expressed as a percentage of reported crimes) is also much higher than most other crimes, at close to 50 per cent.⁵⁶

5.1.6 Sexual offences

The next largest ‘in-custody’ category is sexual offences, accounting for 6 per cent of the in-custody offence profile, or 146 detainees. As in the case of murder, the durations here are also exceptionally long, with a median of 171 days, suggesting that in terms of admissions the offences comprise 311 or only 1.5 per cent.

Table 12: Sexual offences in custody (per cent)

Sexual offence	Per cent
Rape	5.00
Rape, robbery aggravating	0.04
Rape, attempted	0.12
Rape; assault common	0.04
Rape; assault intentional	0.08
Rape; housebreaking with rape	0.04
Rape; robbery	0.08
Rape; theft	0.04
Sodomy	0.04
Indecent assault	0.52
SEXUAL OFFENCES TOTAL	6.00

⁵⁵ Section 28 Prevention and Treatment of Drug Dependency Act 20 of 1992.

⁵⁶ Redpath J ‘Trends in the exercise of prosecutorial discretion: Armchair discussion on the National Prosecuting Authority’ (22 November 2016) African Criminal Justice Reform available at <<https://acjr.org.za/resource-centre/npa-2016.pdf>>.

5.1.7 Immigration offences

Although immigration offences, at 18 detainees, are not prominent in the in-custody profile, they are prominent in estimated admissions, at 9 per cent of admissions. More than half of these cases emanate from Hout Bay, again indicative of geographically inconsistent policing.

On 29 June 2017 the Constitutional Court ruled that sections of the Immigration Act of 2002 were invalid and unconstitutional, as they allowed for immigrants to be detained without a court hearing.⁵⁷ The Court ordered that all detainees held under the Immigration Act must be brought before a Magistrate within 48 hours, and anyone at the time detained under the Immigration Act must be brought before a court within 48 hours of the judgment.

The median duration of detention was 4 days in the 31 July dataset – with a maximum of 188 days. In the 30 June dataset, at the time of the court ruling, there were 20 detained with a higher median of 10 days and a maximum 226 days. This suggests the Constitutional Court ruling may have had an impact on the durations of detention of immigrants.

The question remains whether Pollsmoor RDF is the appropriate facility for holding those contravening immigration laws. Section 34 of the Immigration Act provides for reasons and procedures related to the detention and deportation of ‘illegal foreigners’. It authorises only immigration officers of the Department of Home Affairs (DHA) to detain illegal foreigners for the purpose of deportation, and provides that such detention shall be at a place ‘under the control or administration’ of the DHA.

Moreover, detainees must be notified in writing that they have been detained for the purposes of deportation, and upon request must be provided with confirmation of a court warrant. If this is not provided within 48 hours, the detainee is to be released immediately. People detained for the purposes of deportation can be held for no longer than 30 days, a period that can be extended for 90 additional days upon issuance of a court warrant stating ‘good and reasonable grounds’ for the extension. Those detained for immigration reasons other than deportation cannot be held for more than 48 hours. Some 28 per cent in the 31 July dataset had been held for more than 30 days, and 30 per cent in the 30 June dataset.

Asylum seekers and refugees, whose status is governed by the 1998 Refugees Act, are not officially subject to detention, and there should be no proceedings against irregular non-citizens if they have

⁵⁷ *Lawyers for Human Rights v Minister of Home Affairs and Others* [2017] ZACC 22.

applied for asylum or are recognised refugees. However, according to Lawyers for Human Rights, immigration officers ‘routinely ignore the provisions of the Refugee Act in favour of the Immigration Act’s less burdensome procedures’, which has resulted in cases of prolonged detention of asylum seekers.⁵⁸

5.1.8 *Crimen injuria*

Crimen injuria, which is the unlawful and intentional violation of the dignity or privacy of another in non-trivial circumstances, usually in the form of the uttering of vulgar abuse (and also be in the form of indecent exposure), still contributes to remand detention, with one detainee having already been detained for 110 days. It is debatable whether ‘non-trivial circumstances’ would be better served by offences such as hate speech, assault or intimidation in South African law or in certain instances should be regarded as civil matters.

5.1.9 Drunken and negligent driving

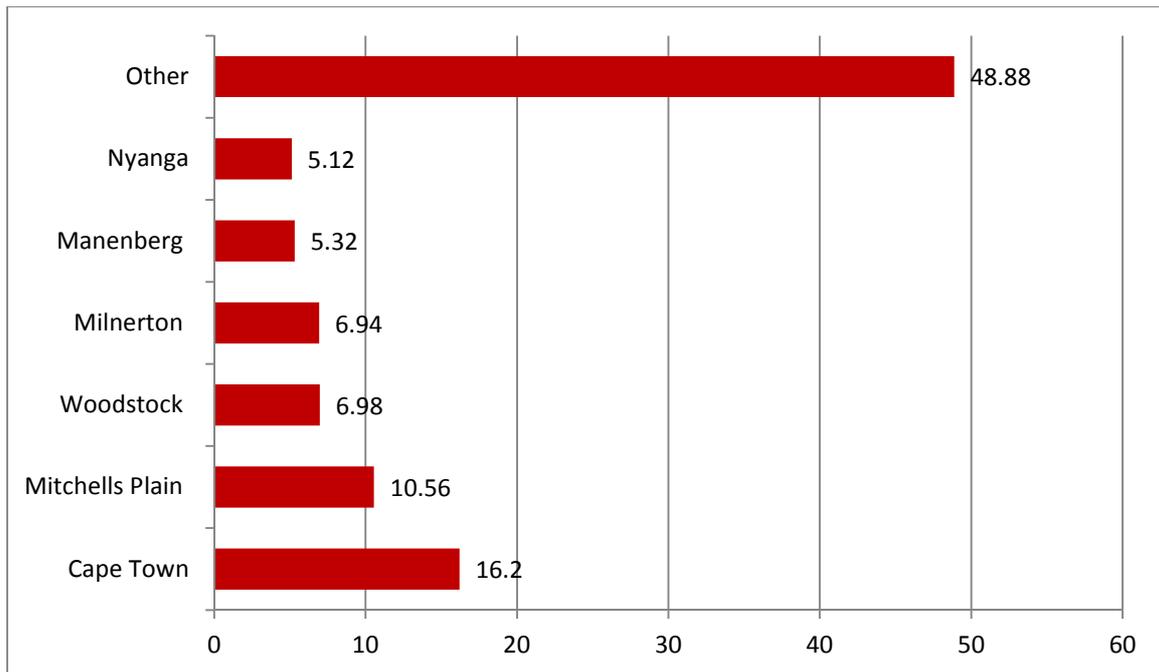
While these are without doubt serious offences, the fact that driving offences are drawn from only seven police stations, along with the availability of so-called ‘prosecutor bail’ in terms of section 72 of the Criminal Procedure Act, suggests that those who are remanded are those without the resources to gain legal representation and the ability to pay a bail amount through section 72. The median duration of detention for these offences is 13 days.

Police station profile

The police station variable indicates where the accused was arrested and processed. Geographically, police stations in the West Metro area of SAPS tend to contribute to Pollsmoor, while the East Metro makes use of the Goodwood Correctional Centre, with some exceptions. While there are 150 police stations in the Western Cape, in the dataset 55 contributed to Pollsmoor at the date of data collection, with more than half (51%) of all remand detainees originating from only six police stations.

⁵⁸ Lawyers for Human Rights (LHR) *Monitoring Immigration Detention in South Africa* (2008) Lawyers for Human Rights 3.

Figure 6: Police station origin of detainee, Pollsmoor (31 July 2017)



The top six contributing police stations are, in descending order, Cape Town, Mitchells Plain, Woodstock, Milnerton, Manenberg and Nyanga. All six of these policing areas are among only 15 policing areas in the Western Cape served by three Community Courts, which are supposed to divert cases from formal justice and resolve cases by way of alternatives. This result suggests a net-widening effect of these courts rather than a diversion of cases from the formal remand system.

The distribution over-represents some areas when compared with their share (expressed as a percentage of all stations contributing to Pollsmoor) of total reported crime, or their share of murder, as an indicator of serious violent crime.

Areas with the most disproportionately high share of remand compared to their share of total crimes were Woodstock, Sea Point, Cape Town, Camps Bay, Wynberg, Hout Bay, Diep River and Kensington, all with at least twice as large a proportion of remand as their share of total crimes. Sea Point and Camps Bay are also Community Court police stations. This suggests that these areas have a higher rate of policing and arrests leading to remand. Woodstock and Cape Town are prominent in both lists, with drug possession comprising 12 per cent and 18 per cent of their alleged offences contributing to remand, respectively. Some 20 per cent of cases from Hout Bay are immigration offences.

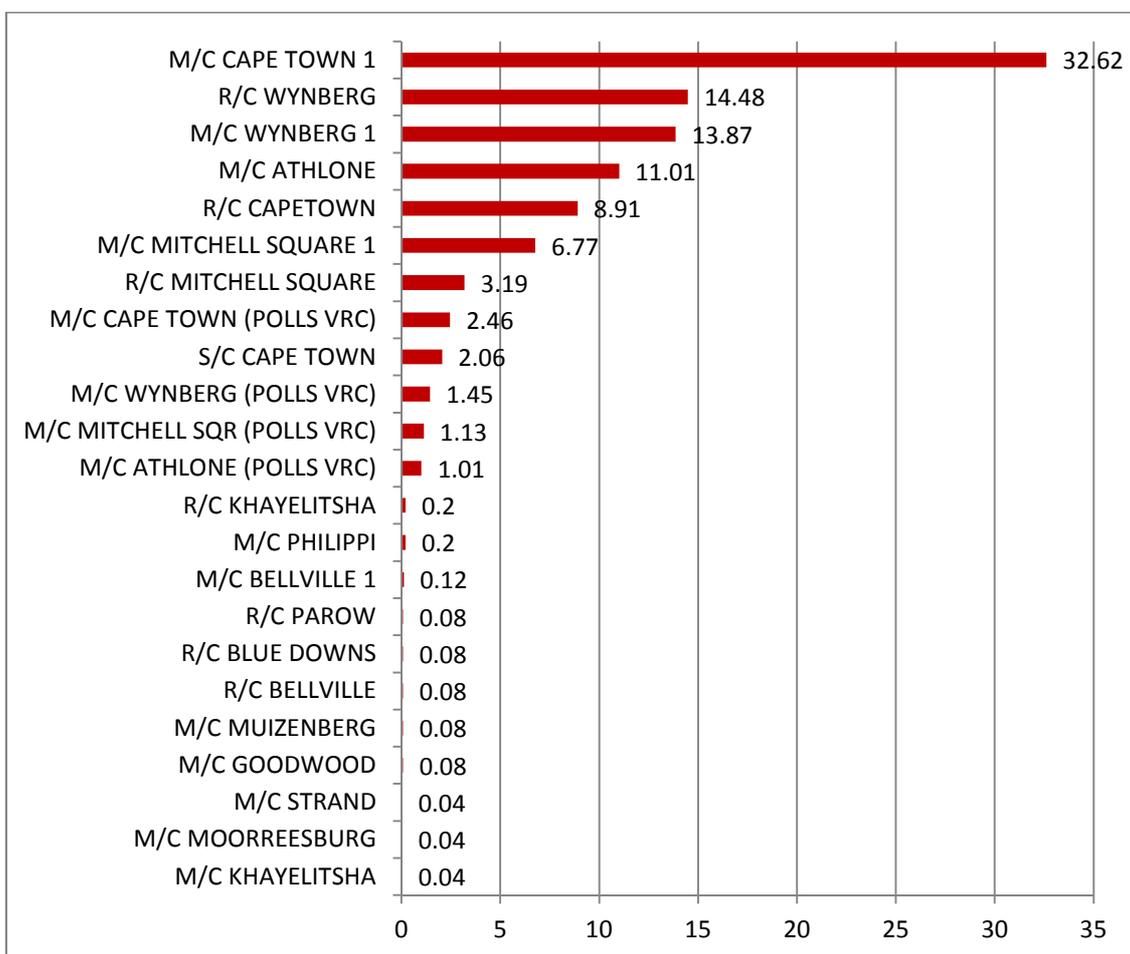
At the other end of the scale, areas severely under-represented on remand despite having very high rates of violent crime include Nyanga, Gugulethu, Philippi-East, and Khayelitsha. These stations appear to remand only serious violent crime cases, and there is no alleged drug possession; even

theft comprises a very small percentage of cases coming from them (<10%). This again points to differential policing over geographical space.

Court profile

Some 71 per cent of detainees in custody are remanded from Magistrates’ Courts, while 27 per cent are remanded from the Regional Courts. Only 2 per cent are remanded from the High Court. Data from the National Prosecuting Authority tell us that less than 1 per cent of convictions come from the High Court, some 9 per cent from the Regional Courts, and 80 per cent from the Magistrates’ Courts.⁵⁹ This suggests that, proportionally, three times more accused are remanded from the Regional Courts than are convicted within one year, and twice as many from the High Court.

Figure 7: Court remanding detainee, percent in custody (31 July 2017 dataset)



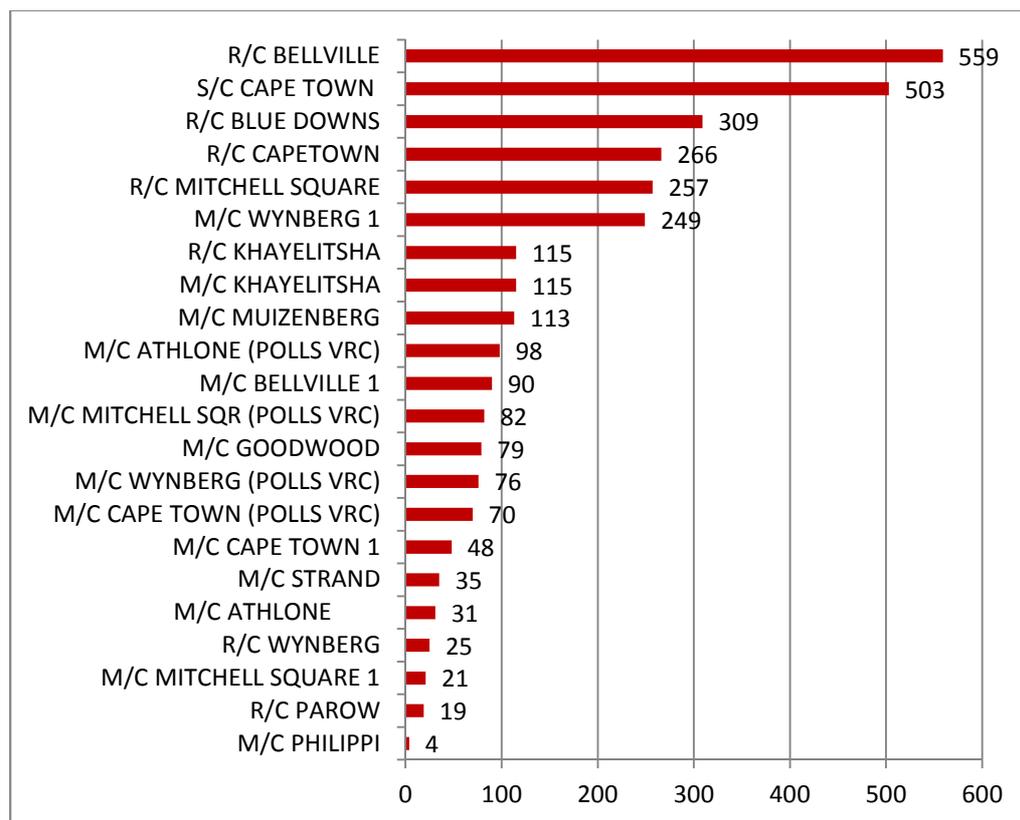
⁵⁹Redpath J ‘Fact sheet: The performance of South Africa’s National Prosecuting Authority’ (November 2018) African Criminal Justice Reform available at < <https://acjr.org.za/resource-centre/npa-performance-nov-2018.pdf/@@download/file/NPA%20PERFORMANCE%20NOV%202018.pdf>>.

Only 5 per cent of detainees in custody are processed through Video Remand Courts (VRC), located at Athlone, Cape Town, Mitchells Plain, and Wynberg. As many as one-third of detainees are remanded from Cape Town Magistrates' Court. Cape Town does have the highest number of reported crimes of all stations in the Western Cape, and the area served by the court includes additional policing areas.

The median durations of detention by court vary widely, which speaks in turn to widely varying practices and trends. The medians range from four days (Philippi Magistrates' Court) to 559 days (Regional Court Bellville) (see Figure 9 below).⁶⁰ Recall that the median duration is the middle duration. Two courts have *median* durations close to two years, and 11 courts have medians of more than 90 days. In view of the fact that average court hours are now in the region of three hours per day, these median durations by court raise concerns about the management of those cases and the extent to which delays are tolerated by judicial officers even while detainees are deprived of their liberty. On the other hand, very short median durations are not necessarily a good sign either, as they could signify a tendency to delay, to set bail at initially unaffordable levels, or to remand and then withdraw without trial.

⁶⁰ The Bellville Regional Court result probably should be ignored as it related to a few cases remanded unusually at Pollsmoor and not another facility.

Figure 8: Court remanding detainee, median duration on remand in custody at Pollsmoor (31 July 2017)⁶¹



5.2 Conclusion from Pollsmoor remand profile

The offence profiles suggest that, unlike Kenya, South Africa is not needlessly detaining large numbers of people on remand in relation to a plethora of ‘victimless’ offences. Nevertheless, the high profile in admissions of drug (18%) and immigration offences (9%) is cause for some concern. Furthermore, some 60 per cent of all admissions are for non-violent offences. Police bail, moreover, is available for a number of offences featuring prominently on the remand list: common assault, theft (such as shoplifting) with a value below R 2,500, crimen injuria, possession of a small amount of dagga, drunken driving, and reckless or negligent driving.⁶²

The drug possession offences emanate from a limited number of policing areas and courts. This strongly points to differential policing and prosecution practices, raising important questions of equality before the law. These detentions contribute significantly to admissions and contribute to over-occupancy.

⁶¹ R/C = Regional Court; S/C = High Court; M/C = Magistrates’ Court.

⁶² Criminal Procedure Act, section 59.

While South Africa does not have so-called ‘non-bailable offences’, the exceptional circumstances required for the granting of bail in relation to Schedule 5 and 6 offences render these effectively non-bailable (unless one is wealthy or famous).⁶³ In such cases there is little incentive for the state to finalise matters expeditiously, and, as in Kenya and Zambia, results in instances where remand is of exceptionally long duration. This contributes to the trend of an increasing population on remand. In instances where the accused is ultimately exonerated, this results in miscarriages of justice warranting large amounts in compensatory damages. South Africa does not have time limits, and there is little preventing exceptionally long durations on remand.

Of further concern is the unusual situation in which four days, seven days and 14 days are a common duration on remand in the 31 July dataset (a Monday). This is suggestive of the postponement of bail applications. A country that formerly regarded all bail applications as matters of urgency now apparently thinks little of detaining someone in Pollsmoor without a court actively deciding on whether he or she is entitled to bail. This is inimical to justice and suggests that the matter of liberty is not taken seriously by the criminal justice system. In a day and age of electronic records and systems it should be possible to make all necessary checks with the stroke of a computer key. Instead days and weeks are seemingly required, with a detainee remaining incarcerated all the while – and with all the attendant social and economic impacts, as examined in the findings which follow.

The preponderance of short periods of time may also speak to the time required to raise bail in situations where bail has been granted but the accused does not have enough money at hand. The DCS has noted previously that a significant proportion of detainees are granted bail but unable to secure the funds straight away: in March 2015, Parliament heard that this applied to 15 to 20 per cent of them.⁶⁴ South Africa is unusual in Africa in that cash bail is a requirement. Under South African law, there is no option for sureties or for a person to be bonded for the bail amount – as is common in the rest of sub-Saharan Africa, where it is recognised that indigent accused are unlikely to be able hand over bail in cash.

Short time periods may also speak to a worrying tendency to withdraw. Using court records, a previous study (undertaken as long ago as 2008) found that up to half of cases in three courts in Cape Town were withdrawn after an accused had spent some time on remand.⁶⁵

⁶³ For example, Shrien Dewani, Oscar Pistorius, Jason Rhode and Henri van Breda.

⁶⁴ Justice and Correctional Services Portfolio Committee Meeting 14 April 2015 available at <<https://pmg.org.za/committee-meeting/20659/>>.

⁶⁵ Karth V et al. *Between a Rock and a Hard Place: Bail Decisions in Three South African Courts* (2008) Open Society Foundation: Cape Town.

6. Trends in remand detention in the Western Cape

This section makes use of the aggregated 'unlock statistics' regularly provided to stakeholders by the DCS in the Western Cape. Additional data employed to enrich the analysis include that made available in DCS and JICS annual reports as well as crime data reported by the SAPS.

6.1 Findings

The level of remand detention in the Western Cape is higher than in the rest of the country. The Western Cape population has grown rapidly since 1994, with the result that, according to 2017 population estimates, it is now the third largest province, comprising 11.5 per cent of the national population.⁶⁶ Thus, one would expect that a similar percentage of the remand population would emanate from the province. But in 2016/17 as much as 19 per cent of the total remand population was held in the Western Cape,⁶⁷ i.e. 65 per cent higher than one would expect on the basis of population alone. The figures suggest a remand incarceration rate of around 169 per 100,000 people in the province, compared to the rate for South Africa of 95 per 100,000.⁶⁸

The number of people detained on remand in the Western Cape has always been disproportionately high. This is not explained entirely by its higher crime rate.⁶⁹ This suggests that, all other trends being equal, people in the Western Cape are more likely than those in the rest of the country to be detained on remand.

In addition, the remand population is increasing at an ominous and steady pace. Since 2004 the first-of-the-month remand population in the Western Cape increased at a rate of 20.4 per month, or 244.8 per year. For the period 2004 to July 2018, this implies an overall increase of 3,550 detainees, or a 47 per cent increase, on the first-of-the-month total since 2004. Over the same time period, according to Statistics South Africa, mid-year population estimates showed that the province's

⁶⁶ Statistics South Africa Mid-year Population Estimates 2017.

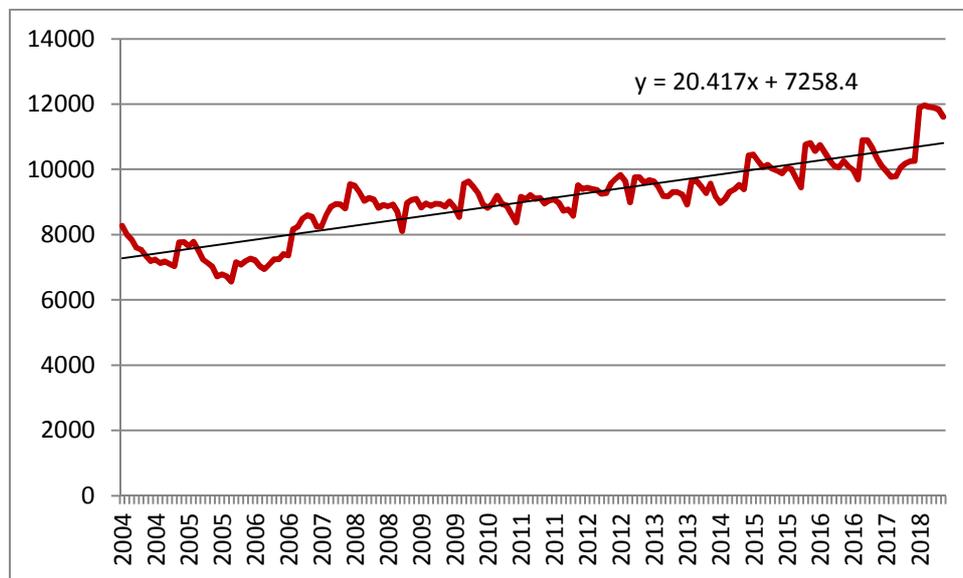
⁶⁷ The 2016/17 DCS annual report suggests an average total figure of 54,114 held on remand, with Western Cape unlock figures in that year of around 10,324.

⁶⁸ Calculated on about 11,000 on remand and a population of 6.5 million, compared to 54,000 and population of 56.6 million.

⁶⁹ It is somewhat in line with reported murder: 17% of the total national incidence emanated from the Western Cape in that year.

population increased by 40 per cent (from 4.65 m to 6.51 m), i.e. the remand increase is higher than predicted by population growth.⁷⁰

Figure 9: Western Cape Unlock remand population, 1st day of the month (1 January 2004 to 1 July 2018)⁷¹



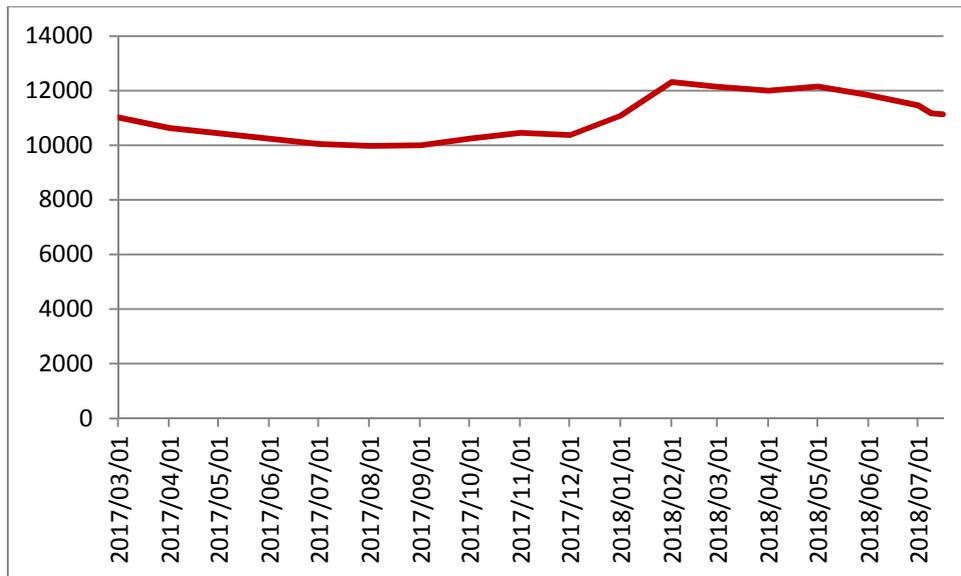
The trend suggests that every decade another facility the size of Pollsmoor Remand would need to be built to accommodate the increase in the remand population in the Western Cape. Thus, it is unsurprising that on 16 July 2018 none of the facilities in the Western Cape holding remand detainees reported less than 100 per cent occupancy. The DCS operates certain facilities for remand only.

The trends also show that the 1 January population is on average 11 per cent higher than the 1 December population. This is worsening: the 1 January 2018 population was 16 per cent higher than the December 2017 population. Magistrates' criminal courts theoretically do not recess in December, but it is the case that there are three public holidays and school summer holidays in that month. Furthermore, the High Court takes six weeks off between the end of the fourth term in December and the start of the first term in January. At least one lower court, the Fezeka Community Court, which tends to divert matters, barely operates in December. The system is not entirely able to catch up with the December backlog, with the result that there is a year-on-year increase in the remand population.

⁷⁰ See Statistics South Africa: Mid-year population estimates for 2004 and 2018.

⁷¹ Source: Department of Correctional Services Western Cape Unlock data (various years).

Figure 10: Western Cape Unlock remand population, 1st day of the month (1 March 2017 to 1 July 2018)



For the purposes of this study, the daily population in the Western Cape has fluctuated over the time of data collection from just under 10,000 to over 12,000, suggesting an average of just more than 11,000 on remand at any time in the Western Cape since March 2017.

Assuming 65 per cent of remand detainees are employed (this applied to those who are visited) and the median earnings of R6,000 per month found above, this suggests that Western Cape communities experienced a total loss of earnings for the duration of detention of about R42.9 million per month, or R514 million per year. This does not take into account the impact of permanent loss of employment and the other associated costs of detention explored above. Given that these losses will be incurred amongst the poorer communities and not the wealthiest, the impact of such significant losses is likely to be higher than the amounts alone suggest.

6.2 Conclusion from Western Cape data

It is clear that the remand population in the Western Cape is disproportionately high, suggestive of poor conversion of remand to sentence, and increasing at a steady pace, largely due to backlogs accumulated in December every year. It follows that any social or economic impact of remand is not only relatively widespread across the province but also increasing in extent.

7. Conclusion

Remand detention is disproportionate and increasing in the Western Cape, such that over five years 10 per cent of adult men can be expected to be remanded. This implies not only that the process is the punishment but that the extent of remand is likely to have a measurable impact on the financial deprivation of communities as a whole. The findings suggest that arrest and remand are applied inconsistently across Cape Town, which raises equality concerns. The results of this study show that the detention on remand of detainees has a measurable impact on the families and households of detainees, reducing incomes, depleting savings, often plunging families into debt, impacting on children, and forcing the sale of assets.

The evidence suggests that the social and economic situation of those not visiting may be poorer than those who do visit. While some detainees may be guilty of crimes, fair-trial rights require that their cases be heard without undue delay and that they be presumed innocent until tried and convicted.

The evidence in this study suggests that the criminal procedural system metes out a disproportionate 'punishment' in the form of infringement of the socio-economic rights of the families of detainees, regardless of guilt or innocence. The evidence, furthermore, is that such detention is neither only for short durations nor only when absolutely necessary.

'The economic and social costs of detention and incarceration can be devastating for persons living in poverty. Detention and incarceration can lead to loss of income and employment and often temporary or permanent withdrawal of social benefits. Their families, particularly their children, are also directly affected.'

UN Special Rapporteur on Poverty and Human Rights, 9 August 2012

The data suggest that tens of thousands of people experience these social and economic costs of remand detention every year in the Western Cape.

8. Recommendations

In the light of impact on social and economic rights, there is an obligation on the state to ensure that detention is a last resort and for the shortest possible duration. As such, the state should:

1. Review legislation and make information on remand detention routinely available:

The legislation on bail has not been reviewed by the South African government, and there has been little public reflection on its impact by the state on the on-going impact of the legislative regime. Indeed, very little data are available on admissions to detention. Even in this study there was a need for calculations to make estimations of admissions. Given that this study indicates admissions to remand have a cost not only to the state but to families and their communities, it should be treated as the expensive intervention that it is and reserved for where it has the most utility and impact. Data on detention should be made routinely available for analysis to determine when detention is most effective so that the law and practice can be informed by the observed trends. Indeed, section 342A(7) of the Criminal Procedure Act requires the National Prosecuting Authority to submit to the Minister, who must submit to Parliament, the details of all those in remand for more than a year. As far as can be ascertained, this is not occurring with any regularity. It is, however, insufficient to cover the wide-scale use of short periods of remand, a practice which should also be tracked and the information made publicly available.

2. Curtail the postponement of bail applications for further investigation:

There is evidence in this study that postponements of bail applications for further investigation for seven days may be used routinely, and often more than once in the same case. Not only does this result in the detention of persons who are later granted bail, but it leads to a general slowing of the system and avoidable detention. That the state should require more than one postponement of seven days is suggestive of inefficient systems and processes. Available technological advancements should have resulted in a reduction of the time needed, not an extension. The kinds of investigations required and their usual duration should be benchmarked and new standard set. The provisions permitting these delays are ripe for constitutional challenge.

3. Introduce routine review of prolonged detention on remand:

In other African countries remand detention warrants must be extended by the court every two weeks. In South Africa, the legislation mandates only an optional review of further remand by the

court after two years of detention.⁷² It is recommended that a mandatory review of further remand be legislated at a much shorter duration. Given that this study suggests 70 days is the current median, this may be an appropriate starting-point, at least in the Western Cape. Given, moreover, that courts are currently sitting for only just over three hours per day⁷³, there is likely to be sufficient court capacity to review further detention after the specified limit.

4. Emphasise violence prevention:

Historically, the issue of whether bail was granted or not was focused entirely on whether the accused would stand trial or interfere with the case if released. The amendments introduced a plethora of considerations, including the likelihood of the accused posing a danger, i.e. committing a violent crime. Yet the preponderance (60%) of non-violent offences in the admissions profile suggests that it is not primarily the likelihood of further violence which is driving admissions. As a first step, a different bail regime should be considered with regard to those accused of non-violent offences, one that emphasises release over detention. As a second step, this time in relation to violent offences, with better data available on individuals it is entirely possible to create models that predict further violence with a high degree of accuracy. (Record-keeping in South African has been undermined by widespread withdrawals and informal mediations.) In the US, for example, it has been found that factors such as arrest for a violent crime, four or more previous arrests, previous incarceration, prior failure to appear in court, and older age, are highly predictive of further offending.⁷⁴ Given the pandemic of violence in the Western Cape, detention should be prioritised for high-risk persons (determined on the basis of South African correlates) accused of violent offences and de-prioritised for low-risk non-violent offenders, in line with the obligation to detain as a measure of last resort.

5. Ensure equality concerns are addressed:

Magistrates should be brought together on a routine basis to share thoughts and approaches and ensure a uniform approach across Cape Town, and sensitising them to socio-economic impact of

⁷² Criminal Procedure Act, s 342A.

⁷³ Redpath J 'Fact sheet: The performance of South Africa's National Prosecuting Authority' (November 2018) African Criminal Justice Reform available at < <https://acjr.org.za/resource-centre/npa-performance-nov-2018.pdf/@download/file/NPA%20PERFORMANCE%20NOV%202018.pdf>>.

⁷⁴ Baughman S 'Costs of pre-trial detention' (2017) *Boston University Law Review* available at <www.bu.edu/bulawreview/files/2017/03/BAUGHMAN.pdf> 25–27.

detention. In particular, the skewed trends in relation to drug possession need to be addressed urgently, particularly in view of the Constitutional Court case on the private adult use of cannabis.⁷⁵

6. Support for detainees and families

South Africa does not have a paralegal network providing support including legal advice and assistance to people detained and those affected by detention. Such support involves tracing of family members of detained people and providing supportive information regarding the legal process to detainees and their families. The evidence showed that families did not receive such support from the state nor from NGOs while most families were not officially informed by the police of the detention. Paralegals provide such assistance in Malawi, Zambia and Kenya. Such a service should be considered for piloting in areas linked to Pollsmoor.

⁷⁵ *Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton and Others* [2018] ZACC 30.