

**FINAL**

**JOHANNESBURG**

**COMMISSION OF INQUIRY INTO ALLEGED INCIDENTS OF CORRUPTION,  
MALADMINISTRATION, VIOLENCE OR INTIMIDATION IN THE  
DEPARTMENT OF CORRECTIONAL SERVICES APPOINTED BY ORDER OF  
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA IN TERMS OF  
PROCLAMATION NO. 135/2001, AS AMENDED.**

**NINTH INTERIM REPORT**

**JOHANNESBURG MANAGEMENT AREA**

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# **EXECUTIVE SUMMARY**

## **EXECUTIVE SUMMARY**

This report, which has been divided into four (4) Chapters, deals with the unlawful and/or irregular activities that were committed at the prisons within the Johannesburg Management Area:

### **1. CHAPTER ONE : ASSAULT**

1.1 This Chapter examines the assault on a sentenced prisoner by various warders employed at the Johannesburg Prison. The prisoner, Mr Bongani Mpeyi, after he was admitted to Ward G1 at Baragwanath Hospital in Johannesburg, attempted to escape, but was apprehended by members who, thereafter, severely assaulted him. Ten (10) warders are implicated in the assault of the prisoner.

The Chapter will also show that the two (2) warders who were guarding Mr Mpeyi when he attempted to escape, were guilty of negligent performance of their duties in terms of the Department's Regulations read together with the Disciplinary Code.

The chapter will further show that the Acting Area Manager, Mr Le Kay, in charge of the prison administration failed to report this assault to the Head of Prison and other officials. As a result thereof, the members involved in the assault were not disciplined. He is therefore also guilty of negligent in the performance of his duties.

From the evidence it is clear that that it was completely unnecessary for the warders implicated in the allegations of wrongful assault of the prisoner, to assault or use force against the said inmate who was already in their custody. They viciously assaulted the prisoner with leg irons and a bolt cutter. The

assault was merely aimed at punishing the prisoner for his attempt to escape, whilst they had no right to punish the prisoner in such manner and without any proper inquiry.

The Commission found that there is conclusive proof that Mr Mpeyi was assaulted on the 20<sup>th</sup> December 2002 and that the following warders were implicated:-

- 1.1.1 Mr Kevin Tebogo Manganye;
- 1.1.2 Moses Mashebele Ranaka;
- 1.1.3 Bethwell Ntimo Mahlangu;
- 1.1.4 Felix Maudekeni Phakula;
- 1.1.5 Gideon Moketsi Tshabalala;
- 1.1.6 Ntshipi Brian Malaza;
- 1.1.7 Dumisani Saggies Nhlapho;
- 1.1.8 Arnold Sebastian Le Kay;
- 1.1.9 Kgmotso Edward Mahuma;
- 1.1.10 Emmanuel Thabo Ntsoane.

- 1.2 The Commission recommended that the warders, Messrs **Kevin Tebogo Manganye, Moses Mashebele Ranaka, Bethwell Ntimo Mahlangu, Felix Maudekeni Phakula, Gideon Moketsi Tshabalala, Ntshipi Brian Malaza, Dumisani Saggies Nhlapho, Arnold Sebastian Le Kay, Kgmotso Edward Mahuma, and Emmanuel Thabo Ntsoane**, be:-

- 1.2.1 charged with contravening Clause 5.7 (Column A) of the Department's Disciplinary Code in that they assaulted Mr Mpeyi;

1.2.2 suspended immediately pending the finalisation of their disciplinary inquiries.

1.3 It is also recommended that the record of the proceedings implicating these warders be sent to the Director of Public Prosecutions, Gauteng, for consideration of criminal charges against them.

1.4 The Commission further found that there is conclusive proof that Mr Gideon Moketsi Tshabalala was posted at Baragwanath Hospital to guard the prisoner, Mr Mpeyi, on Wednesday, the 18<sup>th</sup> December 2002, when the said prisoner received the bolt cutter and private clothing from his friend and that the conduct of Gideon Moketsi Tshabalala amounts to gross negligence in the execution of his duties.

It is recommended that:-

1.4.1 Mr **Gideon Moketsi Tshabalala** be charged with contravening Clause 2.1 (Column A) of the Department's Disciplinary Code; and

1.4.2 He be suspended from duty immediately pending the finalisation of his disciplinary hearing.

1.5 The Commission found that there is conclusive proof that Messrs Kevin Tebogo Manganye and Gideon Moketsi Tshabalala were on duty guarding a prisoner, Mr Mpeyi, on the 20<sup>th</sup> December 2002, at Baragwanath Hospital when Mr Meyi attempted to escape.

1.6 Evidence also established that at the time Mr Mpeyi cut his leg irons with a bolt cutter and attempted to escape from the hospital, the two warders

were outside under a tree. They thus neglected their duties. Their conduct amounts to gross negligence in the execution of their duties.

1.7 The Commission recommends that Messrs **Kevin Tebogo Manganye** and **Gideon Moketsi Tshabalala** be:-

1.7.1 charged with contravening Clause 2.1 (Column A) of the Department's Disciplinary Code.

1.7.2 be suspended with immediate effect pending the finalisation of their disciplinary inquiries.

1.8. The Commission found that there is conclusive proof that **Arnold Sebastian Le Kay** failed to report the assault on Mr Mpeyi to the Head of Prison and thus members involved were not disciplined. He therefore neglected his duties.

The Commission recommends that **Mr Arnold Sebastian Le Kay** be:

1.8.1 Charged with contravening Clause 2.1 (Column A) of the Department's Disciplinary Code;

1.8.2 Be suspended immediately pending the finalisation of his disciplinary hearing.

1.9 For the reasons stated in the first interim report and further reports already filed, it is recommended that disciplinary inquiries against these officials be dealt with by a **Special Task Team** contemplated by the Commission in the previous interim reports.

## **CHAPTER TWO : THEFT OF SCHEDULED MEDICINES**

This Chapter mainly deals with the unlawful sale of the Schedule Six (6) drug Rohypnol to prisoners at Johannesburg Prison by a member, Mr Reno Johannes Lerm, which drug according to the evidence heard by the Commission, is freely available in Johannesburg Prison.

Expert medical evidence on the drug Rohypnol and its effects was provided to the Commission by Dr Clifford Weinbrenn, a registered specialist psychiatrist, who confirmed that Rohypnol could only be prescribed by a medical practitioner and therefore such drugs cannot be kept in the prison hospital unless prescribed by a doctor and accordingly such drugs should not be freely available at any prison.

In Dr Weinbrenn's expert opinion, Rohypnol can cause confusion in a person if mixed with other drugs. The drug is not as strong as Mandrax and does not cause any euphoria, but rather sedation. An overdose however, may also inhibit the respiratory system, and may also cause depression and skin reaction.

Several inmates from Johannesburg prison testified and confirmed the availability of Rohypnol and other drugs at the Johannesburg Prison. They gave first hand testimony implicating the warder Mr Lerm in the sale of Rohypnol at the prison.

### **Findings & Recommendations**

2.1 The Commission found that there was conclusive proof that, **Mr Reno Johannes Lerm**, possessed and sold Roche Rohypnol tablets Schedule Six (6) drugs to two (2) prisoners, Richard Salmon Nortje and Andre Douglas Vogel contrary to the provisions of Section 22A(1); Section 22A 8 (a) and

(b) of the Medicines Related Substances Control Act 101 of 1965, alternatively, contrary to Sections 4 (a) and (b), and 5 of the Drugs and Drug Trafficking Act 140 of 1992. Accordingly, it is recommended that:-

2.1.1 Mr Lerm be charged both internally and criminally with contravening the provisions of Section 22A(1) and sub-sections 8 (a) and (b) of the Medicines Related Substances Control Act 101 of 1965, alternatively, Sections 4 (a) and (b) and 5 of the Act 140 of 1992;

2.1.2 Mr Lerm be suspended with immediate effect pending the outcome of his disciplinary enquiry.

2.1.3 It is also recommended that the transcript of the record relating to Mr Lerm be sent to the Director of Public Prosecutions, Gauteng, for his perusal and consideration of criminal prosecution;

2.2 The Commission also found that there is conclusive proof that Mr Lerm had pecuniary dealings with two (2) prisoners in that he sold them Rohypnol tablets contrary to the provisions of the Correctional Services Act and in this regard recommended that Mr Lerm be:-

2.2.1 charged both internally and criminally with two (2) counts of contravening Section 118 2(b) of the Correctional Services Act No 111 of 1998;

2.2.2 be suspended from duty with immediate effect pending the outcome of his disciplinary inquiry;

- 2.3 For the reasons set out in the first interim report and further interim reports, it is recommended that the disciplinary enquiry against Mr Lerm be dealt with by a Special Task Team contemplated in these reports.

### **CHAPTER THREE : FRAUDULENT TRANSACTIONS**

- 3.1 This Chapter deals with the conduct of one specific warder, namely Mrs Avril Sims (née Roberts) working at the Johannesburg prison who was involved in corruption in that she extorted money from prisoners under her care.

The warder concerned acted in a well orchestrated and premeditated manner as she particularly targeted prisoners who had committed crimes of fraud and theft and extorted money from them. Her conduct clearly negated any attempt by the authorities to rehabilitate these inmates.

The full extent of her corrupt activities is clearly borne out by the fact that seventeen (17) inmates gave testimony regarding a whole range of corrupt activities in which the warder was involved in.

#### **Recommendations**

- 3.2 The Commission found a prima facie case of corruption against Mrs Sims in respect of all charges and recommends that she should be suspended immediately and that she be charged as set out hereunder relating to the offences committed in respect of the matters dealt with in detail in the report, namely:

### **3.2.1 Appeal**

- 3.2.1.1 Fraud alternatively contravening Section 121(d) of the Correctional Services Act No 111 of 1998; and
- 3.2.1.2 Contravening Clause 4.7 (Column A) of the Departmental Disciplinary Code in that she received money from a prisoner.

### **3.2.2 Illegal Smuggling of Goods**

- 3.2.2.1 Five (5) counts of contravening Section 1(b) of the Corruption Act No. 94 of 1992, alternatively she be charged with five (5) counts of contravening Section 118 (1)(a) of the Correctional Services Act No. 111 of 1998; and
- 3.2.2.2 She should be charged internally with five (5) counts of contravening Clause 5.10 (Column A) of the Disciplinary Code in that she breached the prison's internal security arrangements by illegally smuggling goods into the prison; and,
- 3.2.2.3 She should be charged internally with five (5) counts of contravening Clause 4.7 (Column A) of the Disciplinary Code in that she received monies from prisoners.

### **3.2.3 Depositing of Monies**

- 3.2.3.1 She should be charged with thirteen (13) counts of contravening Section 118 (2) (b) of the Correctional

Services Act in that she received monies from prisoners and/or their relatives, and

3.2.3.2 She should be charged with thirteen (13) counts of transgressing Clause 4.7 (Column A) of the Departmental Disciplinary Code in that she received monies from prisoners of their relatives.

### **3.2.4 Timber**

3.2.4.1 Charged criminally with two (2) counts of contravening Section 121 (d) of the Correctional Services Act, No. 111 of 1998 in that she received benefits from a prisoner which she was not entitled to; and

3.2.4.2 Charged internally with two (2) counts of transgressing Clause 4.7 (Column A) of the Disciplinary Code in that she received rewards from a prisoner or a family member of such prisoner.

### **3.2.5 Unauthorised Visits**

3.2.5.1 Contravening Section 1 (b) of the Corruption Act, No. 94 of 1992; alternatively that she be charged with contravening Section 118 (2)(b) of the Correctional Services Act, No. 111 of 1998; and

3.2.5.2 Charged internally with transgressing Clause 4.1(Column A) of the Departmental Code in that she received a bribe to

allow the prisoner to receive a contact visit when such prisoner was not entitled to such visit.

#### **CHAPTER FOUR : CORRUPT PRIVILEGE ABUSES**

4.1 This Chapter deals with incidents at Johannesburg Prison where a extremely intelligent but cunning and deceptive inmate manipulated the prison system and managed hoodwink numerous members of the Department and a financial advisor outside prison to involve themselves in improper and corrupt activities. The said corrupt activities resulted in the inmate receiving numerous gifts and privileges to which she was not entitled.

Several warders allowed themselves to become party to an elaborate scam whereby the financial advisor outside prison paid for visits, on the pretext of paying for the studies of the warders. They received money which, in fact, was nothing more than a bribe for such warders turning a blind eye to the inmate receiving visits and gifts to which she was not entitled.

4.2 The Commission made the following recommendations in respect of the warders who were implicated in these improper actions:-

##### **4.2.1 Mrs Avril Sims**

4.2.1.1 She should be suspended immediately;

4.2.1.2 She should be charged with the following transgressions:

4.2.1.2.1 Provision, receipt or claiming of money or other reward from a prisoner Clause 4.7 (Column A) of the Disciplinary Code; and

4.2.1.2.2 Gross negligence in the execution of her duties  
Clause 2.1 (Column A) of the Disciplinary Code.

4.2.1.3 She should be criminally charged for defeating the ends of justice, in that she assisted a prisoner to escape liability by hiding evidence from the Scorpions when they were conducting a search of the prisoner's cell.

**4.2.2 Mrs A Janse Van Vuuren and Mrs L Westenberg**

4.2.2.1 Both members should be suspended immediately;

4.2.2.2 They should be charged with:-

4.2.2.2.1 Provision, receipt or claiming of money or other reward from a prisoner Clause 4.7 (Column A) of the Disciplinary Code.

Mrs Janse van Vuuren should be charged with four (4) counts of transgressing the said clause and Mrs Westenberg with one (1) count.

4.2.2.2.2 Mrs Janse Van Vuuren be criminally charged with four (4) counts of contravening Section 118(1)(b) of the Correctional Services Act No 111 of 1998.

4.2.2.2.3 Mrs Westenberg should be charged with one (1) count of contravening Section 45 of (Old) Correctional Services Act 8 of 1959.

#### **4.2.3 Correctional Services Officers Sekgopane, Phetlane (Mrs Senyakoe), Radebe and van der Merwe**

- 4.2.3.1 They be suspended immediately;
- 4.2.3.2 They should be charged with the following transgressions:
  - 4.2.3.2.1 Provision, receipt or claiming of money or other reward from a prisoner Clause 4.7 (Column A) of the Disciplinary Code;
  - 4.2.3.2.1 Bribery or corruption in that they received money to neglect their duties Clause 4.1 (Column A) of the Disciplinary Code.
- 4.2.3.3 In the case of warrant officer Radebe she should be charged with a further transgression of receiving or claiming of money or other reward from a prisoner or someone related to the prisoner Clause 4.7 (Column A) of the Disciplinary Code;
- 4.2.3.4 They should be charged criminally with contravening Section 1 of the Corruption Act 94 of 1992 alternatively with contravening Section 118(1)(b) of the Correctional Services Act No 111 of 1998.

#### **4.2.4 Captain Tlobatla**

It is recommended that a copy of this report be submitted to the Director of Public Prosecutions Gauteng, and that it be considered that criminal charges be preferred against Captain Tlobatla. The member is no longer employed by the Department but she had committed serious offences whilst employed and should not escape liability in this matter.

# REPORT

## 1. INTRODUCTION

The Commission of Inquiry was appointed by the State President of the Republic of South Africa in terms of Proclamation 135/2001<sup>1</sup> to investigate and report on incidents of corruption, maladministration, dishonest practices and illicit relationships between employees and prisoners leading to unlawful activities, violence and intimidation within the Department of Correctional Services.<sup>2</sup>

The terms of reference directed the Commission to generally investigate the Department of Correctional Services with the focus on the Pietermaritzburg, Durban/Westville, Ncome, Johannesburg, Pollsmoor, Pretoria, St Albans and Leeuwkop Management Areas. During July 2002, the State President, at the request of the Commission, extended the Commission's terms of reference to include Bloemfontein Management Area.<sup>3</sup>

The Commission has conducted its investigations into the Durban/Westville, Pietermaritzburg, Bloemfontein, St Albans, Pollsmoor, Leeuwkop, Johannesburg and Pretoria Management Areas. Interim Reports in respect of some of the abovementioned management areas have been filed with the State President and the Minister of Correctional Services.<sup>4</sup>

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<sup>1</sup> See Government Gazette No. 22718 dated 27<sup>th</sup> September 2001.

<sup>2</sup> Hereinafter referred to as "the Department".

<sup>3</sup> See Government Gazette No 23558 dated 27<sup>th</sup> July 2002.

<sup>4</sup> Durban/Westville Management Area – First, Second and Third Interim Reports.  
Pietermaritzburg Management Area – Fourth Interim Report.  
Bloemfontein Management Area – Fifth Interim Report.  
St Albans Management Area – Sixth Interim Report.

## 2. **THIS REPORT**

This report, which has been divided into four (4) Chapters, deals with the unlawful and/or irregular activities which were committed at the various prisons within the Johannesburg Management Area;

### ▪ **CHAPTER ONE : ASSAULT**

This Chapter mainly deals with the assault on a sentenced prisoner by various warders employed at the Johannesburg Prison. The prisoner, Mr Bongani Mpeyi, testified before the Commission that whilst he was admitted to Ward G1 at Baragwanath Hospital in Johannesburg he attempted to escape, but was thereafter apprehended by members who thereafter severely assaulted him.

This Chapter will also show that the two (2) warders guarding Mr Mpeyi when he attempted to escape, were guilty of negligent performance of their duties in terms of the Department's Internal Regulations read together with the Department's Disciplinary Code.

From the evidence it is clear that that it was completely unnecessary for the warders implicated in the allegations of wrongful assault of the prisoner to assault or use force against the said inmate who was already in their custody. They viciously assaulted the prisoner with leg irons and a bolt cutter. The assault was merely aimed at punishing the prisoner for his attempt to escape, whilst they had no right to punish the prisoner in this manner and without a proper inquiry.

▪ **CHAPTER TWO : THEFT OF SCHEDULED MEDICINES**

This Chapter mainly deals with the unlawful sale of the Schedule Six (6) drug Rohypnol to prisoners at Johannesburg Prison by a member, Mr Reno Johannes Lerm, which drug according to the evidence heard by the Commission, is freely available in Johannesburg Prison.

Expert medical evidence on the drug Rohypnol and its effects was provided to the Commission by Dr Clifford Weinbrenn, a registered specialist psychiatrist, who confirmed that Rohypnol could only be prescribed by a medical practitioner and therefore such drugs cannot be kept in the prison hospital unless prescribed by a doctor. Accordingly such drugs should not be freely available at any prison.

In Dr Weinbrenn's expert opinion, Rohypnol can cause confusion in a person if mixed with other drugs. The drug is not as strong as Mandrax and does not cause any euphoria, but rather sedation. An overdose however, may also inhibit the respiratory system, and may also cause depression and skin reaction.

Several inmates from Johannesburg prison testified and confirmed the availability of Rohypnol and other drugs at the Johannesburg Prison. They gave first hand testimony implicating the warder Mr Lerm in the sale of Rohypnol at the prison.

▪ **CHAPTER THREE : FRAUDULENT PRACTICES**

3.1 This Chapter deals with the conduct of one specific warder, namely Mrs Avril Sims (née Roberts) working at the Johannesburg prison who was

involved in corrupt activities in that she extorted money from prisoners under her care.

The warder concerned acted in a well orchestrated and devious manner as she particularly targeted prisoners who had committed crimes of fraud and theft and extorted money for them. Her conduct clearly negated any attempt by the authorities to rehabilitate these inmates.

The full extent of her corrupt activities is clearly borne out by the fact that seventeen (17) inmates gave testimony regarding a whole range of corrupt activities in which the warder was involved.

▪ **CHAPTER FOUR : CORRUPT PRIVILEGE ABUSES**

4.1 This Chapter deals with incidents at Johannesburg Prison where an extremely intelligent but cunning and deceptive inmate manipulated the prison system and managed to hoodwink numerous members of the Department and a financial advisor outside prison to involve themselves in improper and corrupt activities. The said corrupt activities resulted in the inmate receiving numerous gifts and privileges to which she was not entitled.

Several warders allowed themselves to become party to an elaborate scam whereby the financial advisor outside prison paid them, on the pretext of paying for their studies. They received the money which, in fact, was nothing more than a bribe for such warders turning a blind eye to the inmate receiving visits and gifts to which she was not entitled.

# **CHAPTER ONE**

## **ASSAULT**

## **1. INTRODUCTION**

This Chapter mainly deals with the assault on a sentenced prisoner by various warders employed at the Johannesburg Prison. The prisoner, Mr Bongani Mpeyi, testified before the Commission that whilst he was admitted to Ward G1 at Baragwanath Hospital in Johannesburg he attempted to escape, but was apprehended by members who, thereafter, severely assaulted him.

This Chapter will also show that the two (2) warders guarding Mr Mpeyi when he attempted to escape, were guilty of negligent performance of their duties in terms of the Department's Disciplinary Code. The chapter finally deals with the Acting Area Manager, who negligently failed to report the assault to the Head of Prison.

The warders implicated in the aforesaid assault are the following:

- 1.1 Bethwell Ntimo Mahlangu;
- 1.2 Felix Maudekani Phakula;
- 1.3 Gideon Moeketsi Tshabalala;
- 1.4 Ntshipi Brian Malaza;
- 1.5 Dumisani Saggies Nhlapho;
- 1.6 Arnold Sebastian Le Kay
- 1.7 Kgomotso Edward Mahuma;
- 1.8 Emmanuel Thabo Ntsoane;
- 1.9 Kevin Tebogo Manganye;
- 1.10 Moses Ranaka.

## **2. EVIDENCE LED**

The evidence of the various people who testified before the Commission regarding the assault which forms the subject matter of this chapter will now be dealt with and evaluated:-

### **2.1 Mr Bongani Mpeyi**

**Mr Bongani Mpeyi** is a 32 year old sentenced prisoner who was sentenced in the year 2000 to life imprisonment for armed robbery and murder. He is presently serving his sentence at the Johannesburg Prison.

In November 2002, he was initially referred to the hospital section of Johannesburg Prison with a swollen body and feet but he was later transferred to Baragwanath Hospital where he was admitted to Ward G1. He was guarded by two (2) warders, namely, Mr Tshabalala and Mr Manganye. These two warders were present in Court during the hearing and were positively identified by Mr Mpeyi.

During December 2002, whilst still in Baragwanath Hospital he contacted a friend outside prison to bring him private clothes and a bolt cutter. The bolt cutter was exhibited in Court and is made of a heavy metal of more than one (1) metre in length. He planned to escape from the hospital on a Friday and these items were brought to him by his friend on the Wednesday of the same week he attempted to escape. The bolt cutter was hidden under his bed together with the private clothes given to him by his friend. When these items were brought to him, no one was guarding him, though at the time his leg was shackled to his bed.

On Friday, the 20th December 2002, at approximately 14h00, after noticing that the two (2) warders guarding him were outside the ward, he used the opportunity to cut through the leg irons shackled to his bed with a bolt cutter and thereafter went to the bathroom to change into his private clothes, and attempted to escape. However, whilst walking outside the ward, he was recognized and apprehended by the two (2) warders, namely Messrs Manganye and Tshabalala after Mr Manganye had drawn his firearm and pointed it at him.

Mr Mpeyi was, thereafter, assaulted by the two (2) warders who kicked, punched and hit him with clenched fists and open hands. After assaulting him they took him to their office at the hospital where they found another warder, Mr Ranaka whom they then informed about Mr Mpeyi's attempted escape from Baragwanath Hospital. After Mr Ranaka had chained his legs with leg-irons, Mr Mpeyi was further assaulted by these warders who kicked and punched him with their fists and open hands. More members arrived in the office and he was now heavily assaulted by all these arriving warders. The warders who assaulted him in the office were Messrs. Phakula, Manganye, Nhlapho, Le Kay and Malaza. Mr Le Kay assaulted him with a pair of leg-irons all over his body, whilst Mr Nhlapho assaulted him with the bolt cutter all over his body. They also dragged him with a chain, tripped him and stamped over his body. All this time Mr Mpeyi was crying and asking them for forgiveness. He was also at the time still not well as he was still suffering from shortness of breath and his feet were still swollen.

Mr Mpeyi however, did not suffer any open wounds as a result of the assault, instead he suffered a swollen face and his entire body was painful, his mouth was bleeding and his spine was also painful.

After the assault in the office, they took him back in shackles to the ward and forced the doctor to discharge him. His body and face were full of sand and they were still assaulting him on the way back to the ward and he continued to scream.

Mr Mpeyi alleged that Sister Mokoma had tried to stop the doctor from discharging him as he had heard the sister saying that they had to check him again before discharging him but that never happened, instead he was discharged without being given any medication.

He was then taken back to Johannesburg Prison. At the prison he was taken to the isolation cells, which is normally called the “bomb cell”. This cell is in section C of the single cells. According to Mr Mpeyi, prisoners are tortured in these isolation cells. He was forced to sleep on the floor in the single cell , with one (1) small blanket.

The following day he could not wake up and his body was painful. At the time he felt that one side of his body was numb as he could not feel his face and his jaw was twisted. He does not remember what happened thereafter. He, however, found himself again in the prison hospital but could not remember who took him to the prison hospital. He thereafter spent a month in the prison hospital and was again taken to the Baragwanath Hospital where he received medication for his ailment.

Mr Mpeyi also alleged that the warder Mr Ranaka had removed his wallet from his back pocket and took or removed an amount of One Hundred and Twenty Rand (R120,00) and two (2) rings from his wallet. Under cross-examination however he stated that four (4) rings were taken by Mr Ranaka. When he was confronted with the fact that the register at the hospital dated the 12<sup>th</sup> December 2002, indicated that he had no valuables with him, he insisted that an amount of One Hundred and Twenty Rand (R120,00) or One Hundred and Thirty Rand (R130,00) and four (4)

rings were taken from him. He denied that Mr Ranaka had found a bundle of documents when he was searching him and insisted that Mr Ranaka took his money and the rings.

In cross-examination he stated that Mr Baadjies also assaulted him and that he was wearing private clothes. He also stated that he neither got a chance to lay criminal charges against the members who assaulted him nor did he raise the issue of the assault before the Magistrate when he was charged with escaping from lawful custody. He testified that he did not know anything about the Office of the Inspecting Judge or the Independent Prison Visitors. (I.P.V.).

He stated that he had told the lawyer who represented him during the escape and trial, that he had been assaulted and also told his mother and his family about the assault. He, however, does not know why the Attorney who represented him during that trial did not tell the Magistrate in Court that he had been assaulted.

The Commission observed that Mr Mpeyi was paralysed down the left side of his body and was walking with a limp. He also showed the Commission a healed scar where he stated that he was assaulted with the bolt cutter.

## **2.2 Dr Ozoemena Joan Ibeziako**

**Dr Ozoemena Joan Ibeziako**, a medical practitioner at Baragwanath Hospital confirmed that Mr Mpeyi was treated at Baragwanath Hospital having been admitted to the hospital on the 12<sup>th</sup> December 2002. He was examined by her senior colleagues, Dr Roestoff and Dr Mark Hopley. The examination revealed the following:

- 2.2.1 Mr Mpeyi was diagnosed as having bi-ventricular failure precipitated by pneumonia;
- 2.2.2 He did not have a history of any previous illness such as high blood pressure, cardio-vascular disease, diabetes, asthma and had no history of any allergies;
- 2.2.3 He had a thoracotomy inserted in 1996 for an undermining cause;
- 2.2.4 His blood pressure was high i.e. 166/111 instead of 140/90;
- 2.2.5 His legs were swollen;
- 2.2.6 He was in heart failure;
- 2.2.7 He had bilateral end inspiratory crackles on chest examination;
- 2.2.8 Abdomen and central nervous system were essentially normal;
- 2.2.9 The patient walked in and there were no scars documented in his clinical records.

According to her on the 20<sup>th</sup> December 2002, the day of the attempted escape, Mr Mpeyi had sufficiently recovered to the extent that he could have been discharged on that day. As at that date, the patient's condition was considered stable and his blood pressure was under control and was satisfactory. The patient was not discharged as a result of the demands by the Department's officials.

When she received the report of the assault for the first time, the prisoner was on his bed. She observed that the prisoner was suffering from hemiplegia i.e. paralysis of part of his body. She confirmed in cross-examination that when the prisoner was discharged, he was in a stable condition to be discharged. She, however, could not say whether the injuries sustained as a result of the assault could cause a stroke and that in order to determine whether there was a positive link between the stroke and the assault, further investigations will be required.

### **2.3 Thandi Jane Mokoma**

**Thandi Jane Mokoma** is a professional nurse employed at Baragwanath Hospital. She recalls the prisoner, Mr Bongani Mpeyi at Baragwanath Hospital. She was on duty on the 20<sup>th</sup> December 2002, at ward G1 as the sister in charge. She confirmed that Mr Bongani Myepi was in her ward on this day. At about midday, she heard the patient Mr Bongani Mpeyi screaming inside ward G1. When she went to investigate, she found the patient standing next to the basin in the first cubicle of ward G1 wearing private clothes and standing with warders. There were many warders and she could not identify them. The warders advised her that they found the patient outside and he was trying to escape. She observed that the patient's clothes were full of dust and he was bleeding from the mouth and one of his toes was also bleeding. He was not wearing any shoes. The patient told her that he had been assaulted when she asked him why his clothes were soiled.

She had advised the warders that the patient still had to be seen by a doctor before he could be discharged. Dr Ibeziako thereafter examined him and signed his discharge letter. According to her, if the patient was not ready to be discharged, the doctor would not have signed a discharge form.

### **2.4 Johan Grootboom**

**Johan Grootboom** is a prisoner serving fifteen (15) years at Johannesburg Prison. He testified that he met Mr Mpeyi in October 2002 in B section of the prison and at the time appeared to be normal. He saw Mr Mpeyi again in the prison hospital on the 24<sup>th</sup> December 2002, when Mr Mpeyi was brought from the single cells to the prison hospital. At the time Mr Grootboom was a cleaner at Medium B prison hospital. He used to help by taking Mr Mpeyi in the wheelchair to the bathroom to bath him, as well as wash him and feed him. He would also give him his medication

after eating his supper. His face was swollen and his mouth was twisted at the time. He saw the marks on his back when he washed him and when he touched him, Mr Mpeyi would scream. According to him, he did not know what was happening and Mr Mpeyi seemed to have lost his mind at the time. Mr Mpeyi's skin on his back had peeled and he had dry blood on this injury. It appeared that this was the only injury which was fresh at the time. Mr Mpeyi told him that he had been assaulted by the warders for attempting to escape. He also assisted him with exercises for a period of about five (5) months.

## **2.5 Pitikoa Molelekoa**

**Pitikoa Molelekoa** is the supervisor of the investigating unit at the Johannesburg Prison. Some of his duties as a supervisor, include obtaining mandates from the Head of the Johannesburg Prison, to investigate matters of alleged misconduct by officials and the inmates.

He testified that he had never received any mandate from Medium B to investigate the escape and the assault of the inmate, Mr Bongani Mpeyi. He only became aware of the inmate's attempted escape after an investigator of the Jali Commission started enquiring about the escape and the assault. The case had not been reported to either his office or the prison administrator's office. No internal investigation was done. According to the records, this matter was reported to Diepkloof Police Station by an official Mr Mahlangu of Medium B.

He explained that the assault on Mr Bongani Mpeyi should have been entered by the clerk in the register. He further explained that the Head of Prison, who at the time was Mr Khuzwayo, should have given the information of the attempted escape and assault of Mr Mpeyi to the clerk to enter it into the register.

Mr Molelekoa testified that the prison administration files were under the control of the Acting Area Manager. Mr Lekay, who at the time was the Acting Area Manager did not tell him about this assault. Accordingly he was not aware of any statement or affidavit made by Mr Mpeyi regarding this assault.

He further denied that no mandate is required to conduct the investigations. According to him Mrs Moloji who allegedly conducted the investigation is a junior official working under him who joined the Department in October 2002. Before this matter was given to Mrs Moloji, it should have been given to him or recorded in the register, but the matter was not registered.

## **2.6 Lucky Hlabisa**

**Lucky Hlabisa** is an investigator with the Jali Commission, who investigated the assault on Mr Mpeyi. He testified that during July 2003, whilst conducting his investigations in the Johannesburg Prison, a sentenced prisoner, Mr Bongani Mpeyi, came to him and told him that he had been assaulted by the warders. Subsequent to that, he interviewed a number of warders regarding the incident.

He obtained a statement from one Kevin Tebogo Manganye, a warder who was present during the assault of Mr Mpeyi and established that Mr Manganye was working at Baragwanath Hospital on the day of the assault. He then took statements from Mr Mpeyi and Mr Manganye, both of whom gave their statements freely and voluntarily.

In his statement Mr Manganye confirms that on the 20<sup>th</sup> December 2002, he was on guard duty at Baragwanath Hospital at ward G1 guarding the prisoner, Bongani Mpeyi. He also confirms that on the day in question, he, Mr Tshabalala and Mr Mahlangu were sitting outside the ward when Bongani Mpeyi attempted to escape.

He confirms that he, Mr Mahlangu, and Mr Tshabalala assaulted Bongani Mpeyi with open hands, fists and kicked him. Mr Manganye further implicated the following members, who also participated in the assault:

- (a) Dumisani Saggies Nhlapho;
- (b) Ntshipi Brian Malaza;
- (c) Moses Ranaka;
- (d) Felix Maudekani Phakula;
- (e) Emmanuel Kediarabeste Tlhabane; and
- (f) Thabo Mohlale and others.

According to Mr Manganye, these warders assaulted Mr Mpeyi after he was apprehended. In his statement Mr Manganye emphasizes that he did not assault Mr Bongani Mpeyi at the office but only assaulted him outside ward G1, at Baragwanath Hospital.

Mr Hlabisa testified that he had also consulted with others implicated and had taken statements from the following warders:

- 1. Moses Moshabele Ranaka;
- 2. Bethwell Ntimo Mahlangu;
- 3. Felix Maudekeni Phakula;
- 4. Gideon Moeketsi Tshabalala;
- 5. Ntshipi Malaza;
- 6. Dumisani Saggies Nhlapho;
- 7. Emmanuel Kediarabetse Tlhabane;
- 8. Arnold Sebastian Le Kay;
- 9. Kgomotso Edward Mahuma ;
- 10. Emmanuel Thabo Ntsoane;

11. Sheila Ntombentle Sibiyi.

He also contacted a certain Dr Geary to find out the cause of the stroke in respect of Mr Mpeyi and the doctor undertook to report on that by the 6<sup>th</sup> October 2003. This information was still not available at the time of writing this chapter.

Mr Ranaka was in charge of the register of people who were working at Baragwanath on the day in question. A close examination of this register reveals that page 70, a page with the names of the members who were working at Baragwanath on the day in question, is suspiciously missing from the register.

He also checked the isolation cell register and the name of Mr Mpeyi does appear on that particular register.

In respect of Mr Phakula, he conceded that there was an error in his affidavit in that he was at Baragwanath Hospital when the affidavit was commissioned and not at the Rosebank. He, however, denied that he said he would rectify anything in respect of the affidavit of Mr Nhlapho. He also stated that the affidavit in respect of all these warders were taken freely and voluntarily and that the warders were advised of their rights. He denied that he promised Mr Manganye anything before he took his statement.

Save for Mr Manganye's admission of assault in his affidavit, all the other warders denied the assault on the prisoner, Mr Mpeyi. Mr Bethwell Mahlangu, Mr Manganye and Mr Tshabalala place themselves at the scene of the assault on the day in question in their statements.

Messrs Brian Malaza, Nhlapho and Tlhabane also place themselves at the scene of the assault but also denies the assault. Messrs Lekay, Mahuma, Ntsoane were also present at the scene at Baragwanath Hospital on the day in question.

At the conclusion of evidence led on behalf of the Commission the implicated warders were given an opportunity to either give evidence or to call witnesses. Save for Mr Tsimane, they all declined to give evidence and elected to exercise their right to remain silent.

## **2.7 Salathiel Mokoto Tsimane**

**Salathiel Mokoto Tsimane** testified that he is presently employed by the Department since 1993 and presently holds the rank of Senior Correctional Officer. He is the Deputy Head at the hospital at Medium B. Before joining the Department, he worked as a nurse at Baragwanath Hospital from 1989.

He testified that he only saw Mr Bongani Mpeyi at the Medium B prison hospital after he was discharged from Baragwanath Hospital, but could not recall when. At the time Mr Bongani Mpeyi was treated by Sister Sibiya and he himself did not work at the hospital at the time. Mr Mpeyi however already had the paralysis of the left side of his body.

Mr Tsimane took issue with the conduct and the evidence given by Mr Hlabisa, the Commission investigator. He stated that when he consulted with Mr Hlabisa, he did not discuss with him the word “injury”. What they discussed was assault as it was not an injury as the investigator testified during the proceedings before the Commission. He stated that Mr Hlabisa of the Commission said that he would re-write Mr Tsimane’s statement, which was Exhibit ‘TT12’, into an affidavit and that he may re-phrase some of the sentences. Subsequent to that he returned his typed

version of the statement. He then queried the word “assault”, which was included in the affidavit. He then took the first typed document and changed it. He had told him that he would take the statement and re-write it in affidavit form. According to him, it was not just the word assault but it was a series of words which had to be changed. He did not use the word “injury” in paragraph 4 of his statement. The word injury came on the day when Mr Hlabisa was giving evidence. The last sentence of paragraph 4 of his affidavit, Exhibit ‘TT13’ reads as follows:

*“The cause of, which is not known to me.”*

The word injury has not been included in this affidavit. He also denied the contents of paragraph 5 of the affidavit, which reads as follows:

*“Bongani Mpeyi is now being kept at the prison hospital, due to his injuries.”*

He denied incorporating this sentence in his affidavit.

The strange feature of his affidavit is that it contains a certification of documents below the signature of the Commissioner of Oaths. It would appear that this is not necessary to this affidavit as Mr Hlabisa conceded such. The certification should not have been put on this affidavit.

Before commencing with the evaluation of the evidence it should be mentioned that in his affidavit which was handed in as Exhibit ‘TT7’, Mr Manuel Thlabane stated that on the 20<sup>th</sup> December 2002, he was working at ward 22 at Baragwanath Hospital and that he only heard from his colleagues at Baragwanath that there had been an escape at Ward G1. He did not see the prisoner nor did he know the prisoner until after he began guarding him after his escape at ward H1 or H2 at

Baragwanath Hospital. This is supported by the evidence of Mr Mpeyi who during cross-examination also admitted that he did not see Mr Thlabane during the assault. He only met him after he was admitted for the second time at Baragwanath Hospital. He stated that Mr Thlabane did not assault him and that he felt that he could stay with him because he did not treat him like the others.

### **3. ANALYSIS & FINDINGS**

Although the evidence submitted before the Commission regarding the assault on Mr Mpeyi is not sufficient to establish a casual connection between his paralysis and the assault, the evidence establishes that he was indeed assaulted on the 12<sup>th</sup> December 2002, which evidence is corroborated by the following factors.

- 3.1 Dr Ibeziako testified that on examination of the patient, she had evidence of mild contusions over the face and a small laceration on his lip.
- 3.2 Sister Mokoma also examined the prisoner on the day in question and observed that his clothing was full of dust, that the patient was bleeding from his mouth and one of his toes was also bleeding and that the patient told her that he had been assaulted by the warders. Prior to examining the patient, she had heard some screams inside ward G1.
- 3.3 Bongani Mpeyi exhibited a healed scar on his back during the Court proceedings and Johan Grootboom, one of the prisoners who assisted him, testified that he observed that scar whilst it was still fresh when Mr Mpeyi was admitted to the prison hospital. The undisputed evidence of Johan Grootboom, the prisoner who assisted Mr Mpeyi when he was admitted to the prison hospital, is that he told him that he had been assaulted by the warders when he attempted to escape.

- 3.4 There is also undisputed evidence given by Mr Mpeyi himself that he told the Attorney who represented him during the escape trial at the Orlando Magistrate's Court, that he had been assaulted by the warders and that he did not know why the Attorney did not communicate that to the Magistrate.
- 3.5 Mr Manganye in his affidavit confirmed that he assaulted Mr Bongani Mpeyi with an open hand, punching with his fists and kicking him. Although he mentions other warders who assaulted him during this period, that evidence is not admissible against those warders.<sup>5</sup> There is, however, independent evidence which shows that they participated in the assault.

The evidence relating to the circumstances under which Mr Mpeyi attempted to escape have not been disputed by any of the persons implicated. Mr Mpeyi's evidence is that he arranged with his friend two (2) days before his attempted escape to bring a bolt cutter and private clothes to him. Evidence that he attempted to escape on the 12<sup>th</sup> December 2002 and that he used the bolt cutter to cut his leg irons has not been placed in dispute.

The evidence relating to the three (3) warders who guarded him on the day of his escape and the day on which the bolt cutter was brought in, has not been disputed. Mr Mpeyi was able to positively identify all the warders who assaulted him on the day in question during the Commission proceedings. He also stated clearly in his evidence that he could not identify the other warders who assaulted him. Under cross-examination, he stated clearly that Mr Thlabana did not assault him. If he

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<sup>5</sup> In terms of Section 219 of the Criminal Procedure Act 51 of 1977, no confession made by any person shall be admissible as evidence against another person.

wanted to implicate him falsely, he could have done so. This is a clear indication that he knew the persons who actually assaulted him on the day in question.

Mr Mpeyi also testified that he told his wife and his mother who are in the Eastern Cape about the assault. Mr Mpeyi also testified that Mr Ranaka after the assault took an amount of One Hundred and Twenty Rand (R120,00) from his wallet and two (2) rings. This evidence is, however, contradicted by the records, which indicated that he had no valuable possessions at the time of his admission to the hospital. Mr Mpeyi's evidence in this regard is doubtful and cannot be safely relied upon.

Considering all the evidence as a whole, it is clear that it has been proved on the balance of probabilities that Mr Mpeyi was indeed assaulted by the warders referred to in the evidence on the day in question. The witnesses who gave evidence on behalf of the Commission did so clearly and in a straightforward manner and there is no reason to doubt the reliability of their evidence.

The warders who were implicated in this assault elected not to give evidence when they were given an opportunity to do so and most of them elected not to make statements regarding this issue. Only Mr Manganye elected to make a statement regarding the assault.

The warders in question had no right to assault Mr Mpeyi even if he attempted to escape. There is also no indication that the force used by the warders was aimed at preventing Mr Mpeyi from escaping. This assault took place after he had already been apprehended. It is clear that this was an attempt to punish Mr Mpeyi for his attempted escape. The Commission also heard evidence that Mr Mpeyi appeared on the 6<sup>th</sup> March 2003, at the Orlando Magistrate's Court and he was sentenced to

five (5) years imprisonment for escape relating to this matter.

The evidence that Mr Tshabalala was guarding Mr Mpeyi in hospital on the Wednesday when the bolt cutter and private clothing were brought into the hospital, was not disputed by Mr Tshabalala. Mr Mpeyi even stated in his evidence that Mr Tshabalala was outside when the bolt cutter and private clothing were brought in. Mr Tshabalala did not give any evidence and even under cross-examination, he did not attempt to dispute this evidence he earlier had heard from Mr Mpeyi.

The evidence against Mr Tshabalala in this regard amounts to gross negligence in the execution of his duties in terms of the Department's Regulations and Disciplinary Code. The Commission will recommend that Mr Tshabalala be charged internally in terms of Clause 2.1 (Column A) of the Department's Disciplinary Code.

There is undisputed evidence that on the 20<sup>th</sup> December 2002, when Mr Mpeyi attempted to escape, he was being guarded by Warders Mr Manganye and Mr Tshabalala. Mr Mpeyi testified that when he escaped, the two (2) guards were far away outside under a tree when he decided to cut his shackles and try to escape. The two (2) warders had a duty to guard Mr Mpeyi on the day in question. Their conduct in not paying attention and sitting outside, thus giving Mr Mpeyi an opportunity to attempt to escape amounts to gross negligence in the execution of their duties in terms of Clause 2.1 (Column A) of the Department's Disciplinary Code. Mr Mpeyi's evidence in this regard was not disputed since the two (2) warders did not give evidence. There is no reason to doubt the reliability of the evidence of Mr Mpeyi in this regard.

The two warders should be charged accordingly.

Insofar as the assault on Mr Mpeyi is concerned, the warders in question should be charged both internally and criminally for assault.

Evidence has also been established that the assault on Mr Mpeyi was never reported to the Head of Prison nor recorded in the register. The prison administration files were under the control of the Area Manager. Mr Le Kay was an Acting Area Manager at the time, who should have reported the assault of Mr Mpeyi to the Head of Prison or the supervisor of the investigating unit. As a result thereof, no internal investigation of this assault was conducted.

The only probable explanation for Mr Le Kay's conduct is that he was merely covering up the assault in order to protect the members involved.

The Commission will recommend that Mr Le Kay also be charged with gross negligence of his duties.

#### **4. RECOMMENDATIONS**

##### **4.1 Assault**

4.1.1 There is conclusive proof that Mr Mpeyi was assaulted by the warders on the 20<sup>th</sup> December 2002. The warders implicated are the following:

4.1.1.1. Mr Kevin Tebogo Manganye;

4.1.1.2. Moses Mashebele Ranaka;

4.1.1.3. Bethwell Ntimo Mahlangu;

4.1.1.4. Felix Maudekeni Phakula;

4.1.1.5. Gideon Moketsi Tshabalala;

- 4.1.1.6. Ntshipi Brian Malaza;
- 4.1.1.7. Dumisani Saggies Nhlapho;
- 4.1.1.8. Arnold Sebastian Le Kay;
- 4.1.1.9. Kgmotso Edward Mahuma;
- 4.1.1.10. Emmanuel Thabo Ntsoane.

4.1.2. It is recommended that the warders referred to in paragraph 4.1.1. above be:-

4.1.2.1 charged with contravening Clause 5.7 (Column A) of the Department's Disciplinary Code in that they assaulted Mr Mpeyi.

4.1.2.2 be suspended immediately pending the finalisation of their disciplinary inquiries.

4.1.3 It is recommended that the record of the proceedings implicating these warders be sent to the Gauteng Director of Public Prosecutions for consideration of criminal charges against them.

**4.2. Gross negligence in the execution of duties : 18 December 2002 : (Mr G M Tshabalala)**

4.2.1. There is conclusive proof that Mr Gideon Moketsi Tshabalala was posted at Baragwanath Hospital to guard the prisoner, Mr Mpeyi, on Wednesday, the 18<sup>th</sup> December 2002, when the said prisoner received the bolt cutter and private clothing from his friend.

4.2.2. The conduct of Mr Gideon Moketsi Tshabalala amounts to gross negligence in the execution of his duties.

4.2.3. It is accordingly recommended that Mr G M Tshabalala be charged with contravening Clause 2.1 (Column A) of the Department's Disciplinary Code.

4.2.4. It is also recommended that Mr G M Tshabalala be suspended from duty immediately pending the finalisation of his disciplinary hearing.

**4.3. Gross negligence in the execution of duties : 20 December 2002**  
**(Messrs G M Tshabalala and K T Manganye)**

4.3.1. There is conclusive proof that Messrs Kevin Tebogo Manganye and Gideon Moketsi Tshabalala were on duty guarding a prisoner, Mr Mpeyi, on the 20<sup>th</sup> December 2002, at Baragwanath Hospital when Mr Mpeyi attempted to escape.

4.3.2. Evidence also established that at the time Mr Mpeyi cut his leg irons with a bolt cutter and attempted to escape from the hospital, the two warders were outside under a tree.

4.3.3. They thus neglected their duties.

4.3.4. Their conduct amounts to gross negligence in the execution of their duties.

4.3.5. It is recommended that Messrs Kevin Tebogo Manganye and Gideon Moketsi Tshabalala be charged with contravening Clause 2.1 (Column A) of the Department's Disciplinary Code.

4.3.6. It is also recommended that they be suspended with immediate effect pending the finalisation of their disciplinary inquiries.

**4.4. Failure to report assault : (Mr A S Le Kay)**

4.4.1. There is conclusive proof that Mr Arnold Sebastian Le Kay, as the then Acting Area Manager, failed to report the assault on Mr Mpeyi to

the Head of Prison and other relevant officials. As a result thereof, no internal investigations were done to bring to book the members involved;

4.4.2. His conduct amounts to gross negligence in the execution of his duties in terms of the Department's Disciplinary Code;

4.4.3. It is accordingly recommended that Mr Arnold Sebastian Le Kay be charged with contravening Clause 2.1 (Column A) of the Department's Disciplinary Code;

4.4.4. It is also recommended that Mr Arnold Sebastian Le Kay be suspended from duty immediately pending the finalisation of his disciplinary hearing.

## **5. GENERAL RECOMMENDATIONS**

For the reasons stated in the first interim report and further reports already filed, it is recommended that disciplinary inquiries against these officials be dealt with by a Special Task Team contemplated by the Commission in the previous interim reports.

## **6. CONCLUSION**

It was also surprising to hear that this assault on Mr Mpeyi was never reported to the Head of Prison by the relevant officials. This is also an indication of a total disregard of duties by certain officials of this Department. In the present matter there was no reason for these warders to have assaulted Mr Mpeyi after he had attempted to escape. Their conduct clearly amounts to abuse of power by these officials. The Department should therefore take urgent action against all the warders implicated in this matter.

## **CHAPTER TWO**

### **THEFT OF SCHEDULED MEDICINES**

## 1. INTRODUCTION

This Chapter deals with the unlawful sale of the Schedule Six (6) drug Rohypnol to prisoners at Johannesburg Prison by a member, Mr Reno Johannes Lerm, which drug according to the evidence heard by the Commission, is freely available in Johannesburg Prison.

Expert medical evidence on the drug Rohypnol and its effects was provided to the Commission by Dr Clifford Weinbrenn, a registered specialist psychiatrist, who visits Johannesburg Medium B prison regularly every Tuesday of the week. He has, in fact, been working at the hospital section of Medium B Johannesburg Prison since 1989.

He confirmed that a member of the Jali Commission of Inquiry, Mr Pakiry, visited him at his practice at Meerdale Medical Centre and produced two (2) envelopes<sup>6</sup> containing a total of fifty (50) tablets, which he identified as Roche Rohypnol – a Schedule Six (6) drug that was a sleeping tablet that could only be prescribed by a medical practitioner.

In Dr Weinbrenn's expert opinion, Rohypnol is not a dangerous drug if administered in doses of two (2)mg but can cause confusion in a person if mixed with other drugs. The drug is not as strong as Mandrax and does not cause any euphoria, but rather sedation. An overdose however, may also inhibit the respiratory system, and may also cause depression and skin reaction.

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<sup>6</sup> Handed in as Exhibits "2 and 3".

The tablets cost between One Hundred and Sixty Five Rand (R165,00) and One Hundred and Eighty Five Rand (R185,00) for a monthly supply on prescription and are normally sold for Ten Rand (R10,00) to Twenty Rand (R20,00) per strip.

Such drugs cannot be kept in the prison hospital unless prescribed by a doctor and accordingly such drugs should not be freely available at any prison. Dr Weinbrenn confirmed that he had only prescribed Rohypnol tablets to one prisoner at the prison hospital, namely Gary Benthin who presently used two (2mg) of Rohypnol per night. It was possible however that the warders could have got such tablets on prescription from other doctors.

## **2. EVIDENCE LED**

Several witnesses testified before the Commission in support of the allegations against Mr Lerm.

### **2.1 Michael Bellingan**

Michael Bellingan a sentenced prisoner serving twenty five (25) years for murder at the Johannesburg Prison hospital, testified that tablets such as Rohypnol and other drugs like Mandrax and dagga are freely available at the Johannesburg Prison. These tablets are sold for Two Rand (R2,00) per unit and between Ten Rand (R10,00) and Twenty Rand (R20,00) per card.

On the 14<sup>th</sup> July 2003, he was told by another inmate that a member, Mr Lerm from C single cells was at the gate of their section with sleeping tablets for sale. He then called another inmate Mr Richard Nortje, who agreed to go to the gate of their section and purchase the tablets. He gave Mr Lerm a Fifty Rand note (R50,00) and wrote down the serial number of the note.

At about 14h10 Mr Richard Nortje proceeded to the gate and concluded the transaction with Mr Lerm while Mr Bellingan stood at a distance in order not to be conspicuous but where he could observe the transaction.

Mr Richard Nortje came to the cell immediately thereafter and showed him the tablets he had bought from Mr Lerm which consisted of three (3) cards of Rohypnol with each card containing ten (10) tablets per card making a total of thirty (30) tablets. Mr Nortje explained that the Fifty Rand (R50,00) he had given to Mr Lerm had been insufficient because Mr Lerm wanted Sixty Rand (R60,00) for the tablets. Accordingly, he now owed Mr Lerm Ten Rand (R10,00). They placed them in an envelope and sealed it and made a note on the envelope. These were subsequently put in a bigger brown envelope and that envelope was handed to Mr Pakiry, an investigator of the Commission. The envelope was handed to the Commission marked Exhibit '1'.

Mr Bellingan stated that he did not know where Mr Lerm had got the tablets from but pointed out to the Commission that he had discussed and had given information to senior officials in prison about the sale of drugs over the years, but nothing has been done about it. He also stated that no records of drugs were kept in the prison hospital.

He alleged that there was a massive discipline problem in the Johannesburg Prison and that there is no proper control of staff. Some of the acts of misconduct committed by warders, included the sale of a firearm to prisoner by a warder who was subsequently suspended. Mr Bellingan also claimed that he reported the smuggling of drugs, dagga and liquor by warders into the prison and that there was a version of a liquor which was brewed in the prison using yeast and bread.

## 2.2 Richard Salmon Nortje

Mr Nortje, a sentenced prisoner at Johannesburg Medium Prison, confirmed purchasing drugs as testified by Mr Bellingan. He also advised the Commission of an arrangement he had made with Mr Pakiry of the Commission that if drugs were sold in the prison, he would inform Mr Pakiry.

He needed medication to stop him from trembling. Sleeping medication or pills used for recreational purposes would put a person on a “high” and he needed such medication to control his blood levels in his body. The type of tablets he used were Triptonel and Rohypnol and they were in short supply in the prison. At all times when he required medication from the prison hospital, he was told that the medication was finished. He would then purchase his medication in the prison where there were a number of persons illegally selling medicines. These tablets cost hundreds of rands when he purchased them outside the prison, but inside prison they were being sold cheaper. They cost between One Rand (R1,00) and Three Rand (R3,00) cash for Rohypnol and Fifty Cents (.50) each for Triptonel.

He testified that on the 14<sup>th</sup> July 2003, a member, Mr Lerm came to him and told him that, although he wanted Sixty Rand (R60,00) for the Rohypnol, he would take Fifty Rand (R50,00) and Mr Lerm gave him three (3) cards of the medication. He told Mr Lerm that he would give him the Ten Rand (R10,00) later. After purchasing the tablets he then went back to the cell and showed the three (3) cards of tablets that he had received to Mr Bellingan. He corroborated the evidence given by Mr Bellingan regarding the placing of the tablets in an envelope and the handing over the tablets to Mr Pakiry in his office.

Mr Nortje then referred to another transaction that occurred on the 27th August 2003, when an inmate Mr Alistair Chetty approached him in his cell and offered him

three (3) cards of Rohypnol tablets. After telling Mr Chetty he had no money, he went to relate the incident to Mr Bellingan who then offered to provide money for the purchase of the tablets. Mr Bellingham's aim was to observe the transaction taking place.

Later he met Mr Chetty in the corridor and told him that he wanted the tablets. Mr Chetty later came to his cell and handed him through the bars of the cell door two (2) cards of Rohypnol tablets. Mr Nortje immediately thereafter called Mr Mike Bellingan who had been observing the transaction at a distance. and showed him the two (2) cards of tablets. He, thereafter, placed the tablets in a white envelope and these were the tablets that were handed in at the Commission as Exhibit '2", which Mr Nortje identified at the Commission hearings.

### **2.3 Andre Douglas Vogel**

Andre Douglas Vogel, a sentenced prisoner serving thirty one (31) years imprisonment for murder in the Johannesburg Prison, also testified regarding his dealings with the warder, Mr Lerm.

He stated that on the 27<sup>th</sup> August 2003, he was approached in his cell by Mr Lerm, who had six (6) cards of Rohypnol sleeping tablets for sale. He explained to Mr Lerm that he did not want to participate in any transaction and that he had no money whereupon Mr Lerm left his cell and he went back to sleep. However Ten (10) minutes later Mr Lerm returned to his cell and gave him three (3) cards of Rohypnol sleeping tablets. He observed that Mr Lerm was desperate for money and Mr Lerm told him that he would come back the next day to collect the money.

He thereafter borrowed Fifty Rand (R50,00) from an inmate, Mr Alistair Chetty, and later during the day, gave Mr Alistair Chetty two (2) cards of Rohypnol tablets at Twenty Rand (R20,00) per card, which is the black market value inside the prison. The following morning, Mr Lerm arrived and he gave him the Fifty Rand (R50,00) which he had borrowed from Mr Chetty.

It was the second time that he had purchased Rohypnol from Mr Lerm. On the previous occasion he had purchased a card of Rohypnol at the rate of Twenty Rand (R20,00) per card.

According to Mr Vogel the purchase of drugs or medication from inmates and warders inside prison is a common practice in Johannesburg Prison where the prisoners working in the prison hospital sell these drugs to others inside prison.

#### **2.4 Alistair Justin Chetty**

Alistair Justin Chetty is a sentenced prisoner serving twenty one (21) years imprisonment for murder at Johannesburg Prison. He confirmed that Mr Lerm had approached him to sell drugs and that he had borrowed an amount of Fifty Rand (R50,00) from Mr Vogel. He was selling the tablets to repay Mr Nortje and that is the reason why he went and asked Mr Nortje if he wanted the tablets. He thereafter took the tablets from Mr Andre Vogel and tried to sell them to Mr Nortje. He gave Mr Nortje two (2) cards of tablets but never paid for the tablets even though he had agreed to pay Mr Vogel the purchase price.

## **2.5 Reno Johannes Lerm**

Mr Reno Johannes Lerm, the warder implicated elected to take the stand and gave evidence. He stated that he has been a warder at the Johannesburg Prison for thirteen (13) years having joined the Department on the 1<sup>st</sup> April 1990. He has always been stationed at the Johannesburg Prison and presently holds the rank of Correctional Officer.

He denied that he had ever seen the tablets before they were handed in as exhibits or sold them to any person be it at the gate or anywhere. According to him, no one could have seen the transaction taking place at the gate because of the size of the gate. Any person standing in any position would not be able to see any transaction taking place at this gate.

He also denied that these tablets are freely available in the prison and pointed out that any person can get these tablets through a prescription from any doctor. He then stated that all the witnesses were falsely implicating him. He then pointed out that there had been a quarrel between him and Mr Chetty after he had instructed Mr Chetty to sleep when he was studying. Mr Chetty had then replied that he would hit him with a 'bomb'. He believed that this was the reason why Mr Chetty was falsely implicating him. He also alleged that Mr Chetty and Mr Vogel were influenced by Mr Bellingan. He also denied approaching Mr Nortje with the tablets.

Mr Lerm stated that he had high blood pressure and he uses Renitec and Coversyl tablets. He is on medical aid and he uses his medical aid to buy medicines for his chronic ailments. He claimed that he had never seen Rohypnol tablets being sold in prison. He could, however, not explain why he did not challenge the evidence of the witnesses when they testified that he had sold them these tablets.

### **3. EVALUATION AND FINDINGS**

There is overwhelming evidence that the Roche Rohypnol tablets which were handed in as Exhibits 2 and 3 were procured by prisoners on different occasions from Mr Lerm.

It is alarming for the Commission to hear evidence that these Schedule Six (6) drugs which Dr Weinbrenn cited as dangerous when used with other drugs, are freely available in prison where they seem to be obtainable at far cheaper prices than in ordinary Pharmacies.

Mr Lerm's defence is a bare denial that he ever sold these tablets to anyone. Despite overwhelming evidence from several witnesses that such tablets are freely available in prison, he denied that these tablets are freely available in prison. In rebuttal all he could offer was that the witnesses were falsely implicating him because they were being influenced by Mr Michael Bellingan.

According to the evidence of the witnesses, the tablets which were handed in as Exhibits 2 and 3 were purchased from Mr Lerm. There appears to be no reason why the witnesses should falsely implicate Mr Lerm on this issue. All the witnesses who testified were credible and they gave reliable evidence. Accordingly, there is no reason to doubt the reliability of their evidence.

Mr Lerm also failed to challenge the evidence of the witnesses that these tablets were purchased from him, when he had ample opportunity to do so. The fact that Mr Lerm confirmed that he was working nightshift is consistent with Mr Nortje's evidence that he was given these tablets early in the morning.

The Medicines and Related Substances Control Act 101 of 1965 prohibits the sale and possession of any medicines or scheduled substance except in accordance with the prescribed conditions. The relevant provisions of this Act provide as follows:

*“Section 22(A)(1) – subject to the provisions of this section, no persons shall sell any medicine or scheduled substance except in accordance with the provisions with the prescribed conditions.”*

The Act further prohibits the possession or manufacture of any schedule six (6) substance. The relevant provision of the Act provides as follows:

*”Section 22(A)(8)(a) – save as is permitted by the provisions of this sub-section, no persons shall use or hold in his possession or manufacture any schedule 6 substance, or collect, cultivate or keep any plant or any portion thereof from which any such substance can be extracted, derived, produced or manufactured. “*

Section 22 (8)(b) provides as follows:

*A schedule 6 substance shall not be sold –*

- i. by any person other than a pharmacist or a trainee pharmacist acting under the personal supervision of a pharmacist, upon a prescription issued by a medical practitioner, dentist or veterinarian, presented for dispensing not later than thirty (30) days as from the date of issue thereof and setting forth the quantity of such substance to be sold thereunder, a quantity not greater than that required for continuous use for a period of thirty (30) days, as determined by the person who issued the prescription, by the patient or, in the case of a prescription given by a veterinarian, by a person to whom such substance is to be delivered;*

- ii. *To any person other than a medical practitioner, dentist, veterinarian or pharmacist on production of a written order signed by such person or practitioner, dentist, veterinarian or pharmacist;*
- iii. *Unless the seller enters in the prescribed manner in a prescription book or order book required to be kept in the prescribed manner all the prescribed particulars of such sale.”*

The Drugs and Drug Trafficking Act No 140 of 1992 also prohibits the use, possession and dealing in scheduled substances.

The relevant provisions of this Act provides as follows:

#### Section 3 - (Manufacture and Supply)

*No person may manufacture any scheduled substance or supply it to any other person knowing or suspecting that such substance is to be used in or for the unlawful manufacture of any drug.*

#### Section 4 (a) and (b) - (Use and Possession)

*No person may use or have in his possession:*

- (a) any dependence producing substance; or*
- (b) any dangerous dependence producing substance; or*
- (c) any undesirable dependence producing substance*

#### Section (5) - (Dealing)

*No person may deal in any dependence producing substance, dangerous dependence producing substance or undesirable dependence producing substance.*

There is no evidence that Mr Lerm, whilst an ordinary warder at Johannesburg Prison was qualified to sell and possess Schedule Six (6) drugs in terms of the relevant provisions of the Act.

The conduct of Mr Lerm amounts to a contravention of Section 22A(1), Section 22A 8(a) and (b) of the Medicines Related Substances Control Act 101 of 1965.

Furthermore, Section 118 (2) (b) of the Correctional Services Act 111 of 1998 provides that:

*“No Correctional Official may directly or indirectly except for the purposes of execution of official duties, have any pecuniary dealing with a prisoner or with any other person relating to a prisoner; or”*

The conduct of Mr Lerm in selling the Schedule Six (6) tablets to the prisoners amounts to a contravention of Section 118 (2) (b) of the Correctional Services Act.

When Mr Lerm was required to address the Commission, he stated that he needed his job to maintain his children and that if there were adverse recommendations, his children and his career would be in jeopardy. Notwithstanding his submission, this Commission will make adverse recommendations because of the seriousness of his actions. This has the potential of involving the Department in unnecessary delictual claims.

## **4. RECOMMENDATIONS**

### **4.1 Contraventions of the Medicines Related Substances Control Act 101 of 1965 – The Drugs and Drug Trafficking Act 140 of 1992.**

4.1.1 It is recommended that Mr Lerm be suspended with immediate effect pending the outcome of his disciplinary enquiry.

4.1.2 There is conclusive proof that, Mr Reno Johannes Lerm, possessed and sold Roche Rohypnol tablets Schedule Six (6) drugs to two (2) prisoners, Richard Salmon Nortje and Andre Douglas Vogel therefore that he contravened the provisions of Section 22A(1) and Section 22A (8) (a) and (b) of the Medicines Related Substances Control Act 101 of 1965, alternatively, that he contravened Sections 4 (a) and (b), and 5 of the Drugs and Drug Trafficking Act 140 of 1992, hence it is recommended that he be charged criminally for the aforesaid statutory offences;

4.1.3 It is recommended that Mr Lerm be charged internally with two (2) charges of trading in prohibited drugs in that he contravened Clause 6.1 (Column A) of the Departmental Disciplinary Code. Since Mr Lerm was in possession of the said drugs, it is also recommended that he be charged internally for such possession, in that he contravened Clause 6.3 (Column A) of the Disciplinary Code;

### **4.2 Contraventions of the Correctional Services Act, No 111 of 1998.**

4.2.1 There is conclusive proof that Mr Lerm had pecuniary dealings with two (2) prisoners in that he sold them Rohypnol tablets

contrary to the provisions of Section 118 (2) (b) the Correctional Services Act No 111 of 1998;

4.2.2 It is recommended that Mr Lerm be charged criminally with two (2) charges of contravening Section 118 (2) (b) of the Correctional Services Act No 111 of 1998;

4.2.3 It is recommended that Mr Lerm be charged internally with two (2) charges of receipt of money from prisoners in that he contravened Clause 4.7 (Column A) of the Disciplinary Code;

4.2.4 It is recommended that the transcript of the proceedings before this Commission implicating Mr Lerm be submitted to the Gauteng Director of Public Prosecutions for his perusal and consideration for criminal prosecution.

#### **4.3 Recommendations : Disciplinary Enquiry : Mr Lerm**

For the reasons set out in the first interim report and further interim reports, it is recommended that the disciplinary enquiry against Mr Lerm be dealt with by a Special Task Team contemplated in these reports.

### **5. CONCLUSION**

Corrupt warders like Mr Lerm should be rooted out of the system and dealt with severely. As long as there are no proper controls of the medicines in the hospital section, the unlawful circulation of these drugs will remain a problem for the Department of Correctional Services.

The Commission will in its final report, however, make certain recommendations regarding the handling of drugs in these prison hospitals.

# **CHAPTER THREE**

## **FRAUDULENT TRANSACTIONS**

## 1. INTRODUCTION

This Chapter of the Report deals solely with the conduct of one specific warder working at the Johannesburg Female Prison who extorted monies from prisoners under her care.

In dealing with this chapter it is important not to lose sight of the object of an imprisonment sentence. A consideration of the object and aims of imprisonment will emphasize the severity of the conduct of the warders involved in criminal acts and the negative impact it has on rehabilitating prisoners. Often it is said that imprisonment of offenders has the purposes of punishment, incapacitation and rehabilitation.<sup>7</sup> Section 36 of the Correctional Services Act<sup>8</sup> states specifically the objective of punishment, as to enable the sentenced prisoner to lead a socially responsible and crime free life in future.

Similarly, International Law recognizes that the objective of imprisonment is to rehabilitate prisoners and not to lead them into a life that would be more corrupt and offending.<sup>9</sup> Bearing the aforesaid aims and purposes in mind, members of Correctional Services should not, through their conduct, attempt to corrupt the prisoners in their care but, in fact, should try to rehabilitate and assist prisoners in their quest to lead a crime free life.

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<sup>7</sup> See D van Zyl Smit *South African Prison Law and Practice* at 102-104.

<sup>8</sup> Act No. 111 of 1998.

<sup>9</sup> United Nations Rules on detention of prisoners specifically Rule 65 reads as follows:

*“The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose so far, as the length of the sentence permits, to establish prisoners to lead law abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as to encourage their self respect and develop their sense of responsibility.”*

The conduct of Mrs Sims (née Roberts), the warder involved in fraudulent acts, clearly fell short when it comes to rehabilitating the offenders who were under her care and control. The facts before the Commission showed that she was the sole source of making the prisoners even more corrupt than they ever were before their incarceration. Her conduct negated any attempt at rehabilitation during their incarceration. Generally the Correctional Services Act provides that the Department and every Correctional official in its service must strive to fulfill the purposes of the Act and, to that end, every such official must perform his duties under the Act.<sup>10</sup> Mrs Sims, failed dismally in her obligation and duties in terms of the Act.

## **2. EVIDENCE LED**

### **2.1 Maria Petronella du Preez**

On the 2<sup>nd</sup> September 2003, the Commission had heard the evidence of Mrs du Preez. She confirmed an earlier affidavit deposed to by her, which was handed in and marked as Exhibit 'C'. Mrs du Preez was serving an eleven (11) year prison sentence for fraud when she testified before the Commission.

It was her testimony that when she gave Mrs Sims a manicure, they somehow got into a discussion about her Court case and Mrs Sims offered to assist her with her appeal. Soon after this offer, Mrs Sims brought her a typed document.<sup>11</sup> That contained changes made by Mrs Sims and in Mrs Sims' handwriting. She was requested to give Mrs Sims some detail about her matter and details of her case were inserted on a document. It is necessary to elaborate on the content of the form that was handed to Mrs du Preez. It is a Notice of Appeal in terms of section 309 of the Criminal Procedure Act. (An appeal against the conviction\or sentence in the

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<sup>10</sup> See Section 96 (1) of the Act No. 111 of 1998.

<sup>11</sup> This document was handed in and marked Annexure 'A1' and was attached to Exhibit "C".

Regional Court) It is clear from the Notice that the document was intended for another person, who must have been convicted and sentenced earlier on charges of attempted murder and attempted robbery by the Regional Court Westgate, which is in the Johannesburg Magisterial District, and furthermore that the mentioned accused was sentenced on the 27<sup>th</sup> January 1999. Mrs du Preez's case differed vastly because she was sentenced on a charge of fraud. The grounds of the appeal all related to a charge of murder and robbery, which could never have been applicable to Mrs du Preez's case or used by Mrs du Preez as she had been convicted on a different charge altogether and in a

different Court. Any lay person would have noticed that the form could never have been for the use of Mrs du Preez and could never have assisted her in lodging an appeal.

It was the testimony of Mrs du Preez that Mrs Sims told her that she had connections at the High Court that would be able to "pull strings" to process the appeal swiftly. Mrs du Preez was told that the cost for such assistance would be approximately Eight Hundred Rand (R800,00). Mrs du Preez, was expected to give Mrs Sims a deposit of Three Hundred Rand (R300,00) before the process could be put into motion. Mrs du Preez's testimony was that she had no money to pay but that she knew that another prisoner, namely Mrs Hazel Kidson, would be able to assist her in paying Mrs Sims. Since it was Mrs Kidson who would pay they both went to Mrs Sims and explained that Mrs Kidson would pay on behalf of Mrs du Preez. As a result, Mrs Sims gave her bank details to Mrs Kidson to enable her to pay an amount of Three Hundred Rand (R300,00) into her account. Mrs Hazel Kidson in turn asked a personal friend outside, namely Wendy Hardie, to arrange that the deposit of Three Hundred Rand (R300,00) be paid into Mrs Sims bank account. After the payment, Mrs Sims advised the prisoners that the money had

been paid into her account and she would therefore render assistance in handling the appeal.

Other monies were also paid to Mrs Sims for the appeal, namely an amount of Ninety Rand (R90,00) for transporting of the forms which had to be taken to the Roodepoort Magistrate's Court, uplifting the file from the Roodepoort Magistrate's Court and the filing of same in the High Court. Despite the fact that an amount of Two Hundred Rand (R200,00) was also paid to Mrs Sims on or about the 2<sup>nd</sup> February 2000, the appeal was never lodged at the High Court.

Despite numerous enquiries with regard to the status of the appeal, Mrs du Preez did not get any official answer instead she received a letter from which it was apparent that no appeal had been lodged.<sup>12</sup>

This letter was received by Mrs du Preez during June 2000 and was addressed to Mr Nico Du Preez. She was upset because her son, Nico du Preez is imprisoned in Johannesburg medium B Prison, for murder and she then took this letter to a

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<sup>12</sup> This letter was annexed to Exhibit C and was dated 20<sup>th</sup> April 2000. It read as follows:

"20/4/00

*Die volgende dokumente is aan my voorgelê :*

(a) *Klagstaat SH 60/98*

(b) *Aansoek om kondonاسie vir laat indien van aansoek om appel aan te teken.*

**BEVEL:**

*Op 28/5/99 is Art. 309 Wet 51/77 gewysig. Besk het op 20/5/99 skuldig gepleit en is ook op 20/5/99 skuldig bevind.*

*Wet 76/97 was op 20/5/99 nie gepromulgeer of in werking getree nie en is dus nie van toepassing in die geval nie.*

*Die beskuldigde in die geval het 'n gevestigde reg gehad om appel aan te teken en, kon dus sover kondonاسie van die hof by die Hoer Hof voorgaan met enige kondonاسie of appel wat hy wens aan te teken.*

*B P LUYT  
S/LANDDROS  
20/4/99"*

member and complained about the appeal and asked what the status was of her appeal. She was informed by Mr du Plessis, a member working with the appeals in the prison, after he duly checked his computer that no appeal had been lodged on her behalf. She then told him that she wanted to lodge a complaint as she had paid Mrs Sims an amount of Seven Hundred and Fifty Rand (R750,00) to lodge the appeal on her behalf at the High Court. According to her, Mr du Plessis called, Mrs Sims and it was said that the matter would be further pursued by Mr du Plooy. Even though the witness explained to Mr du Plooy how Mrs Sims had taken her money and had promised to do the appeal on her behalf, nothing came of her complaint.

She explained that Mr du Plessis told her that she must accept that she had lost the money and that she had to start the appeal proceedings all over again. She was not satisfied and complained to Captain V K Monama and took her form to Captain Monama to seek assistance in the completion of the said form. Despite her explanation to Captain Monama that Mrs Sims had taken her money in lieu of legal assistance, she was told by Captain Monama that she should not tell the Court that Mrs Sims had taken her money but rather proffer another reason why she did not lodge her appeal timeously. She was however, referred by Captain Monama to the Independent Prison Visitor,<sup>13</sup> Ms Magila, to complain. Before she could be assisted by the IPV, Ms Magila, the IPV herself got involved in fraudulent acts and could no longer attend to her complaint. The witness was visibly upset that no appeal had been lodged on her behalf and that she had been prejudice by Mrs Sims fraudulent conduct.

Not only was she prejudiced by the corrupt conduct of Mrs Sims inasmuch as no appeal had been lodged on her behalf, but also suffered a pecuniary loss because she was indebted to Mrs Kidson for an amount of Seven Hundred and Fifty Rand (R750,00), which was used to pay Mrs Sims for her assistance in the appeal.

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<sup>13</sup> Hereinafter referred to as the “IPV”.

Mrs du Preez was challenged on the fact that she had no personal knowledge of the monies being paid to Mrs Sims by Mrs Kidson. She conceded that she did not see the big amounts being paid into the account of Mrs Sims, but responded by stating that Mrs Sims had thanked Mrs Kidson for the money and had said that it was paid into her bank account. Regarding the money for the taxi fare, she was however with Mrs Kidson on the day in question and saw the money to wit, totaling an amount of Ninety Rand (R90,00) being paid to Mrs Sims.

Captain Monama also cross-examined the witness and challenged her on the fact that she complained to her about the conduct of Mrs Sims. Mrs du Preez remained confident and did not deviate from her earlier statement that she had lodged a complaint.

## **2.2 Hazel Johanna Wilhelmina Kidson**

Mrs Kidson also deposed to an affidavit which was confirmed by her as true and correct and handed in and marked as Exhibit 'D'. She is serving a prison sentence of Twenty Five (25) years for murder and is detained at the Johannesburg Female Prison since the 7<sup>th</sup> May 1997. The implicated warder, Mrs Sims, is known to her. She explained how it came about that she was approached by Mrs du Preez to give her money to pay the warder, Mrs Sims. Approximately Eight Hundred Rand (R800,00) was needed by Mrs du Preez to pay Mrs Sims for her assistance in lodging an appeal.

Her evidence was that it is a known fact that Mrs du Preez is single and has no money to support herself. She agreed to pay the money on behalf of Mrs Du Preez if she could be given the opportunity to pay the money in instalments to Mrs Sims.

They agreed that the financial assistance would come from Mrs Kidson and that the money would be paid in instalments. Both of them went to Mrs Sims and explained to Mrs Sims that the money would be paid by Mrs Hardie into Mrs Sims bank account even though this friend of Mrs Kidson was on holiday in Knysna at the time. Mrs Sims had no problem with this arrangements and instructed Mrs Kidson that Wendy Hardie had to pay the money into her bank account and gave her the bank account details, which was as follows:

Account name :	A D Roberts
Type of Account :	Savings
Bank name :	Absa
Branch :	Rossettenville
Account No.:	27645364
Branch Code:	632005

The money was then paid by Wendy Hardie. Despite that Three Hundred Rand (R300,00) was paid into the account, Mrs Sims also requested an extra Three Hundred Rand (R300,00) from Mrs Kidson for Christmas, which was paid to her in cash.

Mrs Kidson confirmed and corroborated the evidence of Mrs du Preez that another Ninety Rand (R90,00) was paid in cash to Mrs Sims to cover the transport costs of the person who would travel to Court to lodge the appeal. Mrs Kidson also testified that on the 2<sup>nd</sup> and 9<sup>th</sup> February 2000, Mrs Sims asked her to transfer the amounts of Two Hundred Rand (R200,00) and Two Hundred Fifty (R250,00) to her bank account for the services of lodging the appeal.<sup>14</sup> According to her evidence, the money was indeed paid into Mrs Avril Sims' account. The further testimony of

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<sup>14</sup> See transactions on 2.Feb.2000 and 9.Feb 2000 as reflected on the bank statement of A D Sims, marked Exhibit 'R1'.

Mrs Kidson was that when she saw the letter which arrived for Mrs du Preez with the name of her son on the envelope, it was clear that there was something questionable about the appeal and she decided to stop the payment of money to Mrs Sims.

Mrs Kidson's further testimony dealt with how she received electricity from the workshop in the prison. In September 2001, the prison laundry room was repaired and had undergone structural changes which meant that she could no longer get electricity from the laundry. She then approached Mrs Sims and asked her whether it would be possible for her to get electricity from the workshop since they needed electricity in the cell for their electrical appliances. She was told by Mrs Sims that she could make use of a cable from the workshop but that she would have to pay Fifty Rand (R50,00) per month for the use of the electricity to Mrs Sims. This money had also been paid into Mrs Sims account. Her testimony was that on three (3) occasions, she paid Mrs Sims Fifty Rand (R50,00) for the electricity. On the 3<sup>rd</sup> and 18<sup>th</sup> October 2001, and one more payment in December 2001.<sup>15</sup> In total she had paid an amount of One Hundred and Fifty Rand (R150,00) for electricity and another Fifty Rand (R50,00) was paid directly to Mrs Sims because she complained that a payment which was supposed to be paid into her account, was not paid. The total sum paid for electricity into Mrs Sims account amounted to Two Hundred Rand (R200,00). She stopped all payments in 2002, when they moved to another section in the prison.

Mrs Kidson was cross-examined but she remained confident in the witness stand and was precise in giving details about the amounts and times that money was paid to Mrs Sims. She was asked about the payments in total for the appeal and her testimony was that Seven Hundred and Fifty Rand (R750,00) was paid, in three (3)

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<sup>15</sup> See transaction on 18. Dec 2001 as reflected on the bank statement of A D Sims for the payment of Fifty Rand (R50.00).

instalments of (1) Three Hundred Rand (R300,00), (2) Two Hundred Rand (R200,00) and (3) Two Hundred and Fifty Rand (R250,00). This, however, did not include the amount of Three Hundred Rand (R300,00) that she gave directly to Mrs Sims for Christmas, nor the travel money of Ninety Rand (R90,00).

Although it was put to the witness that Mrs Sims would state in her testimony that she never received any money for the appeal, Mrs Sims never testified or tendered any documentary evidence before the Commission to support such a submission.

### **2.3 Wendy June Hardie**

Mrs Hardie also deposed to an affidavit and such was confirmed as true and correct by her and handed in and marked as Exhibit 'E'. Her testimony was that she is by profession a bookkeeper, employed at Outsource Financial Services, but is also a religious worker. She does religious work at the prisons and specifically at the Johannesburg Female Prison.

She was given the bank card of Mrs Hazel Kidson and assisted Mrs Kidson by doing her grocery shopping and paying things on her behalf. She acted as an agent for Mrs Kidson in handling her financial affairs and was always given reasons for specific transactions, be that withdrawing cash money or paying money into the accounts of others. She confirmed that she had paid money into the account of Mrs Sims but denied that she knew exactly what the money was for. She stated that she might have heard at some stage that it was to be used for an appeal. She also knew the prisoner Maria du Preez, whom she met at the prison. Most importantly she confirmed that when she was on holiday in Knysna, she made a deposit into the bank account of Mrs Sims. Through her testimony and particularly also through documentary evidence, which was attached to her affidavit marked 'A1' and 'A2', it was shown that on the 2<sup>nd</sup> February 2002, she paid an amount of Two Hundred

Rand (R200,00) into the account of Mrs Sims and through an electronic transfer and on the 9<sup>th</sup> February 2002. She also paid into the account of Mrs Sims, an amount of Two Hundred and Fifty Rand (R250,00) again via electronic transfer. This is again reflected in Annexure 'A2' attached to Exhibit 'E'.

The evidence of Mrs Kidson had been corroborated by the documents handed in by Mrs Hardie that showed an electronic transfer on the 14<sup>th</sup> November 2001, Mrs Hardie paid an amount of Fifty Rand (R50,00) into Mrs Sims account, as well as on the 18<sup>th</sup> December 2001, an amount of Fifty Rand (R50,00) was again paid into Mrs Sims account.<sup>16</sup> All these payments were made for the electricity used by Mrs Kidson in the cell.

#### **2.4 Charles Cedric Ronald Gunnell**

Mr Gunnell also deposed to an affidavit and confirmed same as true and correct. It was handed in and marked as Exhibit 'F'.

He explained that he has a daughter who is detained at the Johannesburg Female Prison namely, Deborah Steyn. She is serving a seven (7) year imprisonment sentence for fraud. He confirmed that he had deposited money into the account of Mrs Sims and confirmed that it was paid into the following account.

A D Sims – Account No. 27645364 at ABSA Bank, Rossettenville.

He had kept the deposit slips and had proof of same as follows:

On 1.4.2002. an amount of Fifty Rand (R50,00) was paid marked 'F1'

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<sup>16</sup> For further confirmation see the bank statement ('R1') and the transactions reflected on 14. Nov 2001 and 18. December 2001.

On 7.4.2002 an amount of Fifty Rand (R50,00) was paid marked 'F2'

On 15.7.2002 an amount of Sixty Rand (R60,00) was paid marked 'F3'

On 23.7.2002 an amount of Fifty Rand (R50,00) was paid marked 'F4'.

The evidence of Mr Gunnell was never contested and never challenged by the legal representative of Mrs Sims. In light of this, it is accepted that Mr Gunnell's evidence is beyond any criticism and factually correct.

## **2.5 Melanie van Dyk**

Ms van Dyk's testimony was that she had deposed to an affidavit too, which was confirmed as true and correct by her and handed in and marked as Exhibit 'G'.

She is an adult housewife and a friend of the prisoner, Helene Tee, who was serving a prison sentence for fraud at the Female Section of the Johannesburg Prison. She testified that she was also asked to pay money into the account of Mrs Sims, the warder. She requested her husband to pay an amount of One Hundred and Fifty Rand (R150,00) into the account of Mrs A Sims on the 15<sup>th</sup> August 2003.<sup>17</sup> She confirmed that the money that was used to pay money into the account of Mrs Sims, was money that they kept for Helene Tee. She also assisted Mrs Tee by purchasing groceries for her.

The *modus operandi* was that Helene Tee would give her a list of things to buy and she would then purchase the goods and then drop it off at a specific place at the prison. She described the "drop off zone" as the kitchen of the Female Prison. Each time an arrangement would be made with the warder, Mrs Sims, who would then instruct the staff at the gate to let her through on the days she was coming to

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<sup>17</sup> For confirmation of the payment see the transaction as reflected in the bank statement ('R1') of A D Sims on the 15<sup>th</sup> August 2003.

the prison. She usually telephoned Mrs Sims in advance to tell her what car she would be driving on that particular day, so that arrangements could be made by Mrs Sims to give her access to the prison.

On one occasion she dropped the goods intended for Ms Tee off at Mrs Sims' house. It had been her evidence that she was never searched when she visited the prison although the boot of her car was opened for inspection each time when she went through the gates. The parcels, however, were never opened. She also explained that Mrs Sims arranged a visit for her and Helene Tee's ex-husband on a particular day and that the visit took place near the kitchen. It didn't last long and they were merely there for five to ten minutes only. During this visit, the warder, Mrs Sims was with the prisoner Mrs Helene Tee when she was visited by her ex-husband.

Her testimony was only challenged by Mrs Sims legal representative on the aspect that Mrs Sims would testify that she allowed Mrs van Dyk into the kitchen only once. She denied this submission and said that it happened more than once and that regular arrangements were made by Mrs Sims to park her car near the kitchen area.

## **2.6 Fowzieya Navelling Mohamed**

Mrs Mohamed is also a prisoner detained at the female section of the Johannesburg Prison and was sentenced on the 1<sup>st</sup> August 2001, to a term of six (6) years imprisonment on a charge of fraud.

The evidence of Mrs Mohamed was that during October 2001, another prisoner, Ntsiki Mpame, asked her for a loan of Seven Hundred and Fifty Rand (R750,00) which she required to pay her daughter's school fees. She agreed to give the money to the prisoner. She was then given bank details of an account into which the money

should be deposited. She was convinced that the details belonged to someone close to the prisoner. What she remembered about the account was that it was in the name of A D Roberts and it was an ABSA account. She telephoned her daughter, Shurina, and requested her to deposit money into the said account. She testified that during that evening as she was about to climb onto her upper bunk in her cell, her prison card fell onto the floor and on this card was the piece of paper with the bank details that were given to her by the prisoner. Another prisoner, Pearl Mabutho, picked this piece of paper up and read it and then asked her what she was doing with the bank details of Avril Roberts, who was a warder.

Mrs Mabutho informed her that this warder was working at the workshop. She said she argued with Mrs Mabutho and told her that it does not belong to a warder but that it belonged to Ntsiki Mpame who needed money to pay her child's school fees. The next morning, however, Mrs Sims [née Roberts] unlocked the cell door and Pearl Mabutho said to Mrs Roberts:

“Good morning, ABSA Bank”.

She confronted Ms Mabutho about her conduct since she did not know the warder, Avril Roberts. After the confrontation, Mrs Mabutho explained to her that prisoners are not allowed to deposit monies into the bank accounts of warders and that it is an offence to do so. When she heard this, she told Mrs Mabutho that the payment would be by cheque and that it would be deposited into the account of Mrs Sims. She was then advised to stop the payment of the cheque immediately. She acted on this advice and requested her daughter to stop the payment of the cheque.<sup>18</sup> Her daughter then duly did as she was told by her mother. Later on Mrs Mohamed was confronted by Ntkisi Mpame about the fact that there was no money paid into the

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<sup>18</sup> For details of this transaction see the bank statement ('R1') and the transactions dated 17<sup>th</sup> October 2001, which reflects a cheque deposit of Seven Hundred and Fifty Rand (R750,00) and a stop payment reflected for that amount on 22<sup>nd</sup> October 2002.

account. She told Ntsiki Mpame that she had lost trust in her and that she was no longer prepared to give her the money.

Her evidence was never challenged in any way.

## **2.7 Sibongile Pearl Mabutho**

This witness confirmed that she deposed to an affidavit and confirmed the contents of the affidavit as true and correct, which was then handed in and marked Exhibit 'J'. Ms Mabutho is a prisoner, serving a fourteen (14) year prison sentence for fraud at the Johannesburg Female Prison.

She is a monitor and is detained at Cell C1. Part of her duties as a monitor is to orientate new prisoners. Fowzieya Mohamed was admitted to her cell and she noticed that the prisoner, Ntsiki Mpame, had approached Mrs Mohamed. Ntsiki Mpame is known to her as someone that should not be trusted. She thereafter watched Mrs Mohamed carefully when she saw that Mrs Mohammed was in conversation with Mrs Mpame. Her evidence corroborated that of Ms Mohamed regarding the details of the bank account of Mrs Sims and how she confronted the warder the next morning.

She shared with the Commission how she knew that the bank details belonged to Mrs Sims and her explanation was that the very same bank number and details were previously given to another prisoner, Claudia Benjamin, and that she noted that number and therefore knew that it belonged to Mrs Sims who worked in the workshop. In essence it concerned her that Ntsiki Mpame tried to get money out of a "new" prisoner, Mrs Mohamed. Such conduct could have got Mrs Mohamed, the prisoner, into trouble since no prisoner should have financial dealings with a

warder. She explained that she confronted Ntsiki Mpame and that Ntsiki in turn explained to her that if the money was deposited into the account of Mrs Sims, then she and Mrs Sims agreed to split the money. Mrs Sims would get Three Hundred Rand (R300,00) and she, Ntsiki, would then receive Four Hundred and Fifty Rand (R450,00). It is clear that no school fees had to be paid and that she and Mrs Sims colluded to get money from the prisoner. She confirmed that she advised Mrs Mohamed to stop the payment of the cheque which advice was carried out by Mrs Mohamed.

Besides sharing with the Commission her knowledge of the fraudulent conspiracy between the prisoner Mrs Mpame and the warder, Mrs Sims, Mrs Mabutho also told the Commission that drugs and liquor are freely available in the Female Prison. She, however stated that she has never seen female warders bringing drugs into the prison but suspects that it is the male warders who have to escort inmates to the prison, that are involved in the drug trafficking in the prison.

She also alleged that a male warder had an affair with a female inmate and that these visits between them would usually take place when the male warder escorted the inmates to the Female Prison to do some maintenance. She was pressed for the name of the prisoner but feared retaliation in prison and was not prepared to divulge the name in an open Court but declared herself willing to give co-operation to the Commission should she be approached for such information afterwards.

## **2.8 Helene Tee**

Ms Tee deposed to an affidavit which was confirmed as true and correct and handed in and marked Exhibit 'K'.

When Ms Tee testified before the Commission on the 3<sup>rd</sup> September 2003, she was already released on parole. Previously she had been detained at the Johannesburg Prison and served eight (8) years sentence for fraud.

She explained to the Commission that during or about August 2001, she met the warder, Ms Avril Sims who was working in the workshop. Mrs Sims then asked her if she could borrow Three Hundred Rand (R300,00) from her. The warder promised to repay her on the 15<sup>th</sup> of the month. Because she had no money herself, she explained to Mrs Sims that she would have to approach her mother, Sarie van Niekerk to lend her the money. Mrs Sims then gave her the bank details so that the money could be deposited into her account. The details that were given to her corresponded with the same bank details that were given to all the other prisoners. Although her mother paid the money into the bank account of Mrs Sims, she was never repaid by Mrs Sims.

The next time Ms Tee had financial dealings with Mrs Sims was when Mrs Sims approached her and Ricky Niewenhuys, another prisoner. On this occasion, Mrs Sims told the two (2) prisoners that she could smuggle food into the prison for them, provided that they paid her for this favour. The *modus operandi* to be followed was that Mrs Sims would arrange for a friend of Ms Tee's, Ms Melanie van Dyk, to bring the groceries in through the main gate. Once Ms van Dyk had made the arrangements with Mrs Sims, the groceries would then be delivered and given to the prisoners. In most of these instances, Ms Tee and Ms Niewenhuys accompanied Mrs Sims to the car of Ms van Dyk to collect the groceries. The money given to Mrs Sims for this favour was anything between One Hundred Rand (R100,00) and Three Hundred Rand (R300,00) at a time.

On other occasions, Ms Niewenhuys made use of her daughter, Lucinda Niewenhuys to purchase groceries and deliver them to Mrs Sims' house. Mrs Sims

would then personally smuggle the groceries into the prison at night when she was on night duty. Ms Tee was not one hundred per cent (100%) sure what Mrs Sims was paid for this favour but suspected that it was anything between Fifteen Rand (R15,00) and Fifty Rand (R50,00) for the deliveries.

The favours that Mrs Sims was prepared to do for monetary reward were endless. She also suggested to the prisoners that she could buy them food at a shop outside as long as they paid money into her bank account. Usually Ms Tee herself paid One Hundred Rand (R100,00) a time to arrange that items like chips, hamburgers and bread rolls be bought for her and smuggled into the prison.

She also testified about the fact that three (3) of them, namely Ricky Niewenhuis, Deborah Steyn and herself, were approached by Mrs Sims shortly before she got married and they were asked to give her different things. Ms Tee was asked to buy grape juice for Mrs Sims, Deborah Steyn was asked to buy serviettes and Ricky Niewenhuis was asked to buy and do the decorations. Furthermore, all three (3) were asked to give her One Thousand Rand (R1000,00) as a wedding gift. They decided to give Mrs Sims the One Thousand Rand (R1000,00) and the other items that were requested to remain in her 'good books'. Of the three (3) of them, Ricky Niewenhuis and Ms Tee paid Three Hundred and Fifty Rand (R350,00) and Deborah Steyn paid Three Hundred Rand (R300,00) towards the "wedding money". The cost for the three (3) cases (36 bottles) of Monis Grape Juice which Ms Tee bought for Mrs Sims was Five Hundred and Fifty Rand (R550,00).

Ms Tee's husband, Mr Carel Small, deposited the money for the Monis Grape Juice and Ms Tee's Three Hundred Rand (R350,00) contribution into the bank account of Lucinda Niewenhuis. It was Ms Tee's testimony that Lucinda Niewenhuis bought the Monis Grape Juice as instructed and delivered the Grape Juice, decorations,

serviettes and the amount of One Thousand Rand (R1000,00) cash to the home of the warder, Ms Avril Sims.

Ms Tee testified that her husband had a heart attack in September 2001 and at that stage she was not allowed to have contact visits. However, her husband was returning to Botswana over a weekend and as it happened, it coincided with a delivery by Ms van Dyk on a Friday. Ms Tee said that she then requested Mrs Sims whether she would allow her to see her husband when Melanie van Dyk delivered the groceries. Mrs Sims assisted her, even though she was not entitled to have contact visits. She saw her husband for about five (5) minutes in the presence of Melanie van Dyk and also in the presence of Mrs Sims. It was her testimony that all of them were very nervous when this happened because they all knew that she was not allowed to have a contact visit. She was informed after this visit by Mrs Sims that she needed to pay Two Hundred Rand (R200,00). She assumed that this was for the favour of the contact visit and she again approached her mother to assist her. Her mother, however, did not have any money and she had to approach her mother-in-law to pay Two Hundred Rand (R200,00) into Mrs Sims' bank account.

The requests for money never stopped. During March 2002, Mrs Sims asked her for Five Thousand Rand (R5000,00) which she said she needed to pay for a loan. Ms Tee said that at that stage, she informed Mrs Sims that she did not have access to that kind of money. She was then also asked at the time when Mrs Sims was renovating her house to assist in the acquisition of timber. Mrs Sims knew that Ms Tee had worked at a timber company prior to her conviction, and then relied on her to get chipboard. Ms Tee could no longer get such favours from her old company, so she had to approach her sister-in-law, Maggie Loubser to assist her in the acquisition of chipboard for Mrs Sims, which was then paid for by the family in the amount of Eight Hundred Rand (R800,00). The chipboard was then delivered to Mrs Sims' house.

After this, Mrs Sims approached her again and asked her to arrange for the delivery of super boards for doors to the house. Ms Tee again arranged that the super boards be delivered. However, she could not again ask her sister-in-law to arrange it, so she arranged it with her brother, Beyers van Niekerk, who then deposited money into her sister-in-law's account to the amount of One Thousand Two Hundred and Thirty Two Rand and Eighty Cents (R1 232,80) for the super board. The super board was then delivered to Mrs Sims' house, and Mrs Sims was so happy with the delivery that she then approached Ms Tee and said that her husband, Owen Sims would deposit Two Hundred Rand (R200,00) into the 'snoopy' to thank her for the timber.<sup>19</sup>

Ms Tee stated that she was instructed by Mrs Sims to go to reception on a day and collect the Two Hundred Rand (R200,00) that was deposited into her snoopy account. The receipt of this deposit was attached to her affidavit and marked as Annexure 'A'. It is receipt no. 984846 dated the 18<sup>th</sup> July 2003 and an amount of Two Hundred Rand (R200,00) was paid in cash. The receipt was issued to a certain Owen from 20 Amarula Street, Eldorado who duly paid it into the account of H Tee, prison number 201256473. Ms Tee was challenged in cross-examination that Mrs Sims would deny that she ever assisted in the delivery of groceries and that she was willing to repay the money for the chipboard and super board that had been delivered to her house. Ms Tee could not answer these questions in any other way, except to state that no such offer was ever made to her and that she was the one who had to suffer the cost.

Mrs Tee made it clear during her testimony that she never had any problems with the warder, Mrs Sims, and was at pains to tell the Commission that she had no

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<sup>19</sup> The 'snoopy' account is the account that is held for each prisoner. Family and friends of prisoners are able to deposit monies into this account which can then be used by the prisoner in prison.

reason to falsely implicate Mrs Sims. According to her she had a very good relationship with Mrs Sims. Despite her good relationship she stated that she was not prepared to lie to the Commission about the financial dealings Mrs Sims had with her and the other prisoners.

## **2.9 Susara Wilhelmina van Niekerk**

Mrs van Niekerk's testimony was that she deposited an amount of Three Hundred Rand (R300,00) into the bank account of Mrs Sims, when she was requested to do so by her daughter, Helen Tee. The money was paid into an Absa bank account but she had lost the receipt. She, however, told the Commission that it was paid in during August or September 2001. She also stated that the money was never repaid to her by Mrs Sims despite it being loaned to Mrs Sims.

## **2.10 Margaret Astrid Lubbe**

Mrs Lubbe testified that she is the sister-in-law of the prisoner, Helen Tee, and confirmed that she was approached by Ms Tee to supply chipboards and super boards to the house of Mrs Sims. In each of these incidents the goods were paid for. In the first instance, financial assistance was given by the brother of Ms Tee, Beyers van Niekerk and the second time, the family contributed in payment of the money. Neither Mrs Sims nor her husband Owen Sims have ever offered to pay for the chipboard or super board and they as a family suffered the loss. They never received any benefit from the payment of this money. They only paid to assist the prisoner, Helen Tee.

### **2.11 Johanna Maria Jacoba Niewenhuys**

Mrs Niewenhuys is serving a sentence of six (6) years imprisonment in the Johannesburg Female Prison.

Her testimony was that she met Mrs Sims when she also started working in the workshop. She confirmed that she, together with Helen Tee and Deboray Steyn deposited monies into the bank account of Mrs Sims for groceries that were to be smuggled into the prison for them. She confirmed that her daughter, Lucinda Niewenhuys, also assisted in getting the groceries in by sometimes delivering the groceries to Mrs Sims' house and then when Mrs Sims was on night duty, she would then bring the groceries into the prison for them. She corroborated the earlier testimony of Ms Helen Tee, namely that she, Ms Tee and Deboray Steyn had to give One Thousand Rand (R1000,00) to Mrs Sims as a wedding present and besides that each one of them were also requested to assist in giving other items for the wedding.

### **2.12 Johanna Magdalena Niewenhuys (a.k.a Lucinda Niewenhuys)**

Ms Niewenhuys, who is also known as Lucinda, confirmed the earlier testimony of her mother regarding the monies that were paid into the bank account of Mrs Sims and the fact that she sometimes delivered the groceries to Mrs Sims' house. It had been her testimony that she delivered groceries on approximately six (6) to eight (8) occasions to the house of Mrs Sims and paid her Fifty Rand (R50,00) to One Hundred Rand (R100,00) each time to deliver the goods to her mother in prison. She also stated that on about four (4) occasions she paid money into Mrs Sims' bank account. On the bank deposit slips she never wrote her own name because Mrs Sims told her that the bank would be able to trace it, so she used different names on the bank deposit slip when she deposited the money. She corroborated the version

that she paid into Mrs Sims' bank account an amount of One Thousand Rand (R1000,00), which was given to her by Ms Tee's husband and also from Deboray Steyn's father.

### **2.13 Deboray Steyn**

Deboray Steyn is the daughter of Mr Charles Gunnell and also a prisoner detained at the Johannesburg Female Prison. She deposed to an affidavit which was handed in and marked Exhibit 'P'. She confirmed the testimony of Ms Helen Tee, Mrs Niewenhuys and also Mrs Niewenhuys' daughter, Lucinda, regarding the monies that had been paid into the bank account of Mrs Sims.

### **2.14 Cassandra Chrissie Phyllis**

The Commission also heard the evidence of Ms Phyllis who is employed by the Department of Correctional Services and who works at the reception of the Johannesburg Female Prison. She deals mainly with the cash received for the prisoners, which she has to account for by writing out receipts in a receipt book, known as the 'Z263'. She explained the procedure which is normally adopted, namely that she would ask for details of the person depositing the money and to whom the money must be paid. She further explained that on the 18<sup>th</sup> July 2003, Mrs Sims came to her and requested her to write out a receipt for her. Mrs Sims handed her Two Hundred Rand (R200,00) and told her that the name of the person who is depositing the money is 'Owen'. Ms Phyllis was questioned as to whether she thought that this was in accordance with the Departmental Orders, whereby she acknowledged that she did not know whether it is in accordance with Departmental Orders to receive money from a warder, when that money had been paid into an account of a prisoner.

### **2.15 Sherina Mohamed**

The Commission has also heard the testimony of Ms Sherina Mohamed, who is the daughter of the prisoner, Fowzieya Mohamed.

She confirmed that her mother had contacted her in October 2001 to first deposit money into Mrs Sims' bank account. Shortly after she had done so, her mother had requested her to stop the payment of the cheque which was for Seven Hundred and Fifty Rand (R750,00), which she duly did.

### **2.16 Heitor Paulo de Jesus Mendes Gasper**

Mr Gasper is the customer services clerk employed by ABSA bank, Rossetenville and had been employed with the bank for the past four (4) years.

He stated that the account number 27645364 belonged to Mrs Avril Dawn Sims, identity number 670413 0064 082. The account was opened on the 28<sup>th</sup> February 1997, and it is a flexi-save account. He then went on to explain the deposits into the bank account as reflected on the statement of the account, which was handed in and marked as Exhibit 'R2'.

Most of the evidence was self-explanatory since the statement reflects each and every transaction that appeared on her account. These transactions will be fully dealt with later in this report under analysis.<sup>20</sup>

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<sup>20</sup> See 3.3. *infra*.

### **2.17 Mr du Plessis**

A statement made by Mr du Plessis was also handed in, which was marked Exhibit 'T'. In short, Mr du Plessis confirmed in his statement that during 2000 he was asked by a prisoner, Maria du Preez to check if there were any copies of an appeal application on her file. He checked her file and found that there was no application of an appeal being lodged on her behalf. When he was informed that she had paid a member an amount of money for the appeal application, he contacted Mr du Plooy, who was the Head of Investigations to consult with the prisoner Maria du Preez. He then gave Mrs du Preez the necessary application forms to lodge an appeal.

### **3. ANALYSIS AND FINDINGS**

In considering the evidence of all the prisoners and the relatives of the prisoners who testified in support of the financial dealings with Mrs Sims, it is clear that the different transgressions and illegal activities committed by Mrs Sims can be divided into five (5) main groups:

- Her involvement in lodging an appeal;
- Her illegal smuggling of goods to the prisoners;
- The number of deposits by prisoners or their agents into her bank account;
- The receipt of timber, i.e. chipboard and super board from a timber company;
- Permitting a prisoner an unauthorized visit which the prisoner was not entitled to.

The transgressions will be discussed and dealt with in detail.

### **3.1 Appeal**

Regarding the so-called appeal lodged by the prisoner, Mrs du Preez, it is clear that Mrs Sims had no intention in assisting the prisoner to lodge an appeal. If she had assisted the prisoner in any way whatsoever, she should in any event not have claimed any monies for her assistance. In the absence of any explanation on behalf of Mrs Sims, it is clear that the only finding that this Commission can make regarding her involvement in the matter of Mrs du Preez, is that she fraudulently and intentionally made misrepresentations to a vulnerable prisoner that she could assist her in her appeal, whilst never intending to do so. It is clear that her conduct is criminal in nature and that she should be charged criminally and internally.

### **3.2 Illegal Smuggling of Goods**

The evidence before the Commission showed that Mrs Sims was deeply involved in the smuggling of goods into the prison. The witnesses were not really challenged regarding the groceries being smuggled into the prison, nor did Mrs Sims proffer any explanation from her side. It is clear from the evidence that Mrs Sims, being a warder, was in a position of authority and abused such position of authority not in the interests of the prisoners but for her own selfish interest to make money. She constantly tried to augment her income as a warder with extra monies which she received for smuggling goods into the prison. All her actions were done with solely a pecuniary aim in mind. Mrs Sims conduct must not only be seen in the light that she was abusing her power over prisoners in order to make money out of them, but also that she had a total disregard of her duties as a warder and that is to ensure that no goods entered the prison in an illegal manner. Her conduct

clearly created a security risk at the Female Prison and she never even considered this risk when she allowed groceries to be brought into the prison. From the evidence tendered before the Commission there is conclusive proof that there were five (5) incidents of smuggling goods into the prison and that she should be charged criminally and internally.

### **3.3 Depositing of Monies**

The monies that were deposited into the bank account of Mrs A D Sims, account no. 27645364 at ABSA Bank, Rosettenville, clearly reflects a disturbing feature and proves the seriousness of the transgressions committed by Mrs Sims. From all the amounts that were paid into Mrs Sims account as contained in Exhibit 'R1', it is clear that an amount of almost Fifty Thousand Rand (R50 000,00) went through her account, all of which is unaccounted for.

From the evidence heard from the prisoners, it was clear that Mrs Sims had a specific *modus operandi* which she followed. She would firstly identify prisoners who were serving time for fraud or similar crimes. She would then approach them to do them certain favours with the sole idea of financially gaining from those specific prisoners. For each one of the so-called favours she would receive money. She blatantly had no hesitation in giving her bank account details to these prisoners and the money was then paid into her bank account. In fact, even during the time of the Commission's hearings in Gauteng, she was not scared to persist in obtaining money from prisoners, as the last deposit made into her account, which was money from a prisoner, was made on the 15<sup>th</sup> August 2003. This shows the flagrant disregard for law and order by Mrs Sims. Eight (8) of the witnesses testified as to how much money either they or their relatives had paid into



(R750,00). Even though the money was never received by Mrs Sims, due to payment being stopped on the cheque, it still remains a pecuniary transaction with a prisoner. In this instance, it was not directly with the prisoner Mrs Mohamed, but it was with another prisoner who tried to defraud Mrs Mohamed and wanted to share the money with Mrs Sims. Therefore in that regard, it is recommended that she be charged departmentally with a contravention of the Code.

Furthermore, she should be charged with receiving Three Hundred Rand (R300,00) from Ms Helen Tee, which she was not entitled to. It is clear that even though there is no receipt in proving that, the evidence of Helen Tee's mother together with the evidence of Ms Tee herself, must serve as sufficient proof that the money was paid into her account and that she should be charged criminally for her conduct and internally.

#### **3.4 Timber**

There is overwhelming evidence heard before the Commission showing that Mrs Sims received, not once but twice, timber from Helen Tee's family and that Ms Tee had to pay almost Two Thousand Rand (R2000,00) for the supply of these goods. Mrs Sims clearly received benefits, which she was not entitled to from the prisoner Ms Helen Tee and should be charged not only criminally but also internally.

#### **3.5 Unauthorised Visits**

It is clear from the evidence of Ms Tee, which was not successfully challenged that Mrs Sims once more with a pecuniary aim in mind, allowed

Ms Tee an unauthorized contact visit when she was not entitled to receive such contact visit. There were a number of witnesses who confirmed this, namely the evidence of Mrs van Dyk and that of Ms Tee, who supported each other in this regard. The said evidence showed that there is no doubt that this visit took place in the manner they described and that Mrs Sims also received Two Hundred Rand (R200,00) for the favour that she granted the prisoner. Once again her conduct is not only criminal in nature but also puts the Department in disrepute. It will therefore be recommended that she be charged criminally and internally.

#### **4. RECOMMENDATIONS**

It is recommended that Mrs Sims:

- (a) be suspended immediately, and
- (b) she be charged as set out hereunder relating to the offences committed in respect of the matters dealt with above.

##### **4.1 Appeal**

4.1.1 Fraud alternatively contravening Section 121(d) of the Correctional Services Act No 111 of 1998; and

4.1.2 Contravening Clause 4.7 (Column A) of the Departmental Disciplinary Code in that she received money from a prisoner.

## **4.2 Illegal Smuggling of Goods**

- 4.2.1 Five (5) counts of contravening Section 1(b) of the Corruption Act No. 94 of 1992, alternatively she be charged with five (5) counts of contravening Section 118 (1)(a) of the Correctional Services Act No. 111 of 1998; and
- 4.2.2 She be charged internally with five (5) counts of contravening Clause 5.10 (Column A) of the Disciplinary Code in that she breached the prison's internal security arrangements by illegally smuggling goods into the prison; and,
- 4.2.3 She be charged internally with five (5) counts of contravening Clause 4.7 (Column A) of the Disciplinary Code in that she received monies from prisoners.

## **4.3 Depositing of Monies**

- 4.3.1 Thirteen (13) counts of contravening Section 118 (2) (b) of the Correctional Services Act No 111 of 1998 in that she received monies from prisoners and/or their relatives; and
- 4.3.2 Thirteen (13) counts of transgressing Clause 4.7 (Column A) of the Departmental Disciplinary Code in that she received monies from prisoners of their relatives.

#### **4.4 Timber**

4.4.1 Charged criminally with two (2) counts of contravening Section 121 (d) of the Correctional Services Act, No. 111 of 1998 in that she received benefits from a prisoner which she was not entitled to; and

4.4.2 Internally with two (2) counts of transgressing Clause 4.7 (Column A) of the Disciplinary Code in that she received rewards from a prisoner or a family member of such prisoner.

#### **4.5 Unauthorised Visits**

4.5.1 Contravening Section 1 (b) of the Corruption Act, No. 94 of 1992; alternatively that she be charged with contravening Section 118 (2) (b) of the Correctional Services Act, No. 111 of 1998; and

4.5.2 Internally with transgressing Clause 4.1 (Column A) of the Departmental Code in that she received a bribe to allow the prisoner to receive a contact visit when such prisoner was not entitled to such visit.

#### **4.6 Mesdames M du Preez, H Kidson, F Mohamed, H Tee, J Niewenhuys and D Steyn**

It is acknowledged that most of the abovementioned prisoners who testified before the Commission also made themselves guilty of contravening Section 113(c) of the Correctional Services Act, which regulates that any person who assists, conspires with, or induces any Correctional or Custody official not to perform his duties or to perform any act contrary to such duties, commits an

offence. However, one should bear in mind that the Department would never have known about the contraventions and the breaches of trust by its employees had it not been for the willingness of these prisoners to come forward and report the corrupt warder.

During the hearings before the Commission the prisoners fully co-operated with the Commission and gave frank and honest testimonies before the Commission. Given the circumstances, it will not be recommended that the prisoners, who benefited from the corrupt conduct of Mrs Sims, be prosecuted. It is foreseen that it is important for the State to use their evidence in order to succeed with criminal charges against Mrs Sims.

It is recommended that in terms of Section 204 of the Criminal Procedure Act<sup>21</sup> the aforesaid witnesses be granted immunity for the offence(s) they committed on condition that they testify before a Court of law and give their co-operation to the Director of Public Prosecutions, Guateng.

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<sup>21</sup> Act No. 51 of 1977.

# **CHAPTER FOUR**

## **CORRUPT PRIVILEGE ABUSES**

## 1. INTRODUCTION

This Chapter deals with the situation at Johannesburg Prison where a extremely intelligent but cunning and deceptive inmate manipulated the prison system and managed hoodwink numerous members of the Department and a financial advisor outside prison to involve themselves in improper and corrupt activities which resulted in the inmate receiving numerous gifts and privileges which she was not entitled to.

From the dictum in the minority judgment of Corbett J A in *Goldberg and Others v Minister of Prisons and Others* 1979 (1) SA 14 (A) @ 39C-F,<sup>22</sup> it is clear that prisoners during their incarceration are entitled to certain rights but at the same time, they are also obliged to submit themselves to the discipline of prison life and the rules and regulations that should be followed in a prison.

The Departmental Rules and Regulations that prescribe how warders and prisoners must conduct themselves are implemented for the very purpose of maintaining discipline and order in the prison. Prisoners cannot simply have unrestricted privileges or rights to receive gifts, contact visits and any other special privileges that liberated individuals can demand of right. To allow unrestricted rights to prisoners would defeat the very purpose of imprisonment. Warders on the other hand stand as the custodians of the general public and should always ensure that

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<sup>22</sup> “It seems to me that fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties (using the word in its hohfeldian sense) of an ordinary citizen except those taken away from him by law, expressly or by implication, all those necessarily in consistent with the circumstances in which he, as a prisoner, is placed. Of course, the inroads which incarceration necessarily makes upon a prisoner’s personal rights and liberties (for sake of brevity I shall henceforth speak merely of “ rights”) are very considerable. He no longer has freedom of movement and has no choice in the place of his imprisonment. His contact with the outside world is limited and regulated. He must submit to the discipline of prison life and the rules and regulations which prescribe how he must conduct himself and how he is to be treated while in prison.”

they do not become entangled in illicit relationships of any sort with prisoners under their custody and care.

This case that forms the basis of this Chapter of the report illustrates clearly how prisoners with the enticement of financial reward can easily manipulate warders to grant them special privileges. The result of this improper and irregular relationship is that the distinction between the warder in authority and the prisoner who is supposed to submit to such authority becomes blurred or non-existent. The prisoner no longer obeys the prison rules and regulations and the sentence is no longer the punishment that was originally envisaged by the Presiding Judge sentencing them.

In this matter of Mrs Roberts and others who appeared before the Commission, it was clear that a prisoner, albeit a very intelligent prisoner, by the name of Claudia Benjamin, managed to trick not only a financial advisor, but also those custodians who were supposed to rehabilitate her, into a scheme whereby she manipulated several warders and the system to receive gifts and privileges which she was not entitled to during her incarceration.

The Commission during its hearings also heard testimony of a financial advisor, Mr Dave Smit, who explained that he was completely tricked into assisting the prisoner, Claudia Benjamin to give financial assistance to warders in order to grant special visits to this prisoner.

The Department has set out clear policies and regulations to ensure that only those prisoners who are entitled to these privileges receive contact visits. Without elaborating fully on all of the regulations and the policies again, the relevant Departmental Orders that regulate visits are the B-Orders and more particularly,

V(3)(f)(i) – (xiii), which stipulates when and where these visits should take place and at the same time who are entitled to contact visits.

Even though the practice of giving and receiving gifts is generally accepted in day-to-day life as a necessary aspect of fostering good business or personal relationships, such practice is expressly forbidden by the Department which has formulated a policy regarding the receipt of gifts, commission, and money rewards from people outside the Department.

The main rationale behind the policy forbidding officials from receiving gifts or rewards from prisoners or their relatives is that the practice has the potential to compromise the warders independence and good judgment and place them in an invidious position when they are obliged to enforce the regulations and policies of the Department.

Much of the formulated policy of the Department referred to is stipulated in a letter dated the 8<sup>th</sup> February 1999, reference number 814\B, which was under the auspices of the Commissioner and signed by the Administrative Assistant to the DC Human Resources – Mr P Venter.

The heading of the letter is “Policy with Regard to Receipt of Gifts, Commission, Money, Rewards or Privileges,” and in this it is stipulated that in accordance with the provision of Correctional Services regulation 7 (1)(1) any member of the Department of Correctional Services who directly or indirectly receives any commission, gift, money, reward or any other compensation of any nature, as a reason to neglect to perform his duty properly, is guilty of an offence.

Throughout testimony of Mr Smit it was clear that the prisoner concerned acted maliciously and that the warders who received the financial favours from Mr Smit

had also acted unlawfully and not in accordance with the policies of the Department of Correctional Services.

## **2. EVIDENCE LED**

The evidence of those individuals who testified before the Commission will now be discussed and evaluated.

### **2.1 David Smit**

Mr Smit is a financial advisor and a Director of the company Hamilton Solutions, which carries on business at Richards Bay, Kwa Zulu Natal, where he also lives. Mr Smit deposed to a affidavit which was confirmed as true and correct and handed in and marked Exhibit 'V'.

His testimony was that during March 1998, he was approached by an inmate from the Johannesburg Female Prison, to wit, Claudia Benjamin to provide her with financial advice regarding a large sum of money that she wanted to invest with him. He was told that the money she wanted to invest was money she had inherited from her god-father. He met this inmate through his sister, namely Hazel Kidson, who is also serving a prison sentence, and it was stated to him that the money that was supposed to be invested with him was approximately Four Million Rand (R4 000 000,00).

It was also his testimony that he originally sent a letter to Claudia Benjamin advising her how to invest her money. However, the prisoner wanted to see him and he then arranged a visit at the Johannesburg Female Prison which was a non-contact visit and they discussed the dealings through a glass partition. A while after this consultation, Claudia Benjamin suggested that he speak to the warder called

Nthabiseng Sekgopane. He was told to arrange a contact visit through her. He contacted the aforesaid warder and a contact visit was then arranged for him on the 12<sup>th</sup> April 1998 to meet with the prisoner, Claudia Benjamin.

Not long after this visit during June 1998, he was asked by the prisoner, Claudia Benjamin, to give the warder, Alida Radebe, an amount of One Thousand Rand (R1000,00) for her assistance in arranging a contact visit. Mr Smit then duly gave a personal cheque of One Thousand Rand (R1000,00) to Ms Radebe. He, however, maintained that the real reason why he gave the cheque to Ms Radebe was for her to further her studies.

A week after he had handed the cheque to Ms Radebe, he had a meeting with Captain Tlobatla. Present at that meeting was Captain Tlobatla, Mrs Sekgopane, Mrs Benjamin and Mr Smit. It was at this meeting that Captain Tlobatla told him that they needed money at the Female Prison for their studies and he then gave cheques to Captain Tlobatla, Mrs Sekgopane, Ms E P Phetlane and Mrs M van der Merwe. The various cheques handed over by Mr Smit were as follows:

1. One Thousand Five Hundred Rand (R1500,00) which was given to Captain Tlobatla;
2. Five Thousand Rand (R5000,00) which was given to N H Sekgopane;
3. One Thousand Rand (R1000,00) which was given to E P Phelane;
4. One Thousand Rand (R1000,00) which was given to Sergeant M G M van der Merwe.

He said he thought the money which he gave to the members was to enable them to further their studies. He was, however, concerned that Claudia Benjamin was manipulating the warders to get extra visiting favours. However, in order to gain access to her, he was prepared to pay these monies.

Mr Smit's testimony was that soon after the cheques were handed to the warders, Ms Radebe approached him with the cheque and said that a certain Captain said that if it was to sponsor her studies, then it should be paid into a register. He was of the view that Ms Radebe's case was a genuine case of wanting to complete her studies and he then decided that he would use a Sanlam letterhead in acknowledging that the cheques were all towards the payment of a sponsorship for their studies. Attached to his affidavit marked Exhibit 'V', were annexures 'A1' – 'A5', which were letters dated 4<sup>th</sup> August and issued on Sanlam letterheads, and which stated the following:

*"It gives us great pleasure to be able to provide you with financial assistance for your studies. We trust that all your efforts will lead to greater things to come and your employment advancement will meet with your expectations.*

*We wish you everything of the best in your future endeavours.*

*Yours sincerely*

*D SMIT*

*SENIOR MANAGER."*

Five of these letters were issued and handed to Captain M H Tlobatla, Warrant Officer N H Sekgopane, Warrant Officer E P Phelane, Warrant Officer M G M van der Merwe and Warrant Officer A Radebe. Five letters were issued, however, Mr Smit, however, was of the opinion that some of the letters were used to disguise the fact that money was given to them in order to grant special visits.

Mr Smit, believing that the prisoner, Claudia Benjamin, would inherit all the millions that were bequeathed to her, decided to set up a trust in order to assist

Claudia Benjamin in handling the money. The trust was formed so that the investment could be used for her and her son and the trust was duly registered by Mr Smit and Mrs Benjamin's Attorney.

It was clear during the consultations and also the arrangements that were made by Ms Benjamin that she had no money and that she defrauded Mr Smit by making him believe that she would have money to repay all these costs that he incurred by paying the warders money, to grant these special visits for his financial consultations. In fact, Mr Smit went one step further, in that he deposited money into the warders bank accounts so that they could assist Claudia Benjamin in purchasing goods for her. The warders that were involved and whose bank account details were given to him by Claudia Benjamin were the following:

2.1.1 J N de Wet

2.1.2 R Neethling

2.1.3 Antoinette Janse van Vuuren

2.1.4 L Westenberg

2.1.5 Amanda Booysen.

He stated that amounts that were deposited into the accounts were between One Hundred Rand (R100,00) and Seven Hundred Rand (R700,00) at a time.

What appeared strange about Mr Smit's testimony, is the fact that he appeared to be an intelligent man, yet, he never questioned or checked whether the prisoner, Claudia Benjamin, truly inherited any money to invest with him. He was prepared to incur all sorts of costs and to make special arrangements to give financial assistance to warders in order to get contact visits with Ms Benjamin. It is clear that Mr Smit was someone who could move freely in and out of the Johannesburg Female Prison and who had no problem in getting access to the prisoner through special visits.

The Commission does not intend to deal at length with the full extent of the financial loss that Mr Smit incurred in his dealings with Claudia Benjamin as the Commission is more concerned with the irregularities committed by the implicated warders. It is clear that several warders were paid by Mr Smit in order for them to grant special visits to a prisoner who was not entitled to receive such visits and that the warders acted unlawfully and also contrary to the policies of the Department.

From the testimony of Mr Smit, it emerged that the following warders received payment for the granting of visits referred to:-

- (i) On the 4<sup>th</sup> January 1999 he had paid an amount of R500 into the account of A Janse van Vuuren;
- (ii) On the 20<sup>th</sup> April 1999 he had paid an amount of R100 into the account of A Janse van Vuuren;
- (iii) On the 22<sup>nd</sup> July 1999 he had paid an amount of R300 into the account of A Janse van Vuuren;
- (iv) On the 25<sup>th</sup> August 2000 he had paid an amount of R100 into the account of A Janse van Vuuren;
- (v) On the 23<sup>rd</sup> December 1998 he had paid an amount of R500 into the account of L Westenberg.

During his testimony, Mr Smit stated that he knew that Claudia Benjamin was serving a sentence of fifteen (15) years for fraud, whereby she defrauded Nedbank of Seven Million Rand (R7 000 000,00). He, however, never made the connection that a person guilty of such fraud could also be again making a misrepresentation to him when he assisted her with her financial affairs.

## 2.2 Claudia Benjamin

Mrs Benjamin is a female prisoner who is serving a sentence of fifteen (15) years for fraud at the Johannesburg Female Prison. She testified that she was approached by the Jali Commission investigators and did not approach them to tender evidence. However, once they approached her, she was willing to give evidence provided that whatever she said would not be used against her in a criminal prosecution.

Her evidence was that she was arrested in 1997 and during her incarceration she met another inmate, Hazel Kidson, and they started discussing their families. She mentioned to Hazel Kidson that she wanted to take out an education policy for her son Paul, who was at that stage, nine (9) years old. Hazel Kidson in turn told Mrs Benjamin that her brother, Dave Smit, was an insurance broker in Richards Bay and that he would be the ideal person to assist her in taking out a policy. Not long after she spoke to Hazel Kidson, her brother arrived at the prison. Since she was an awaiting trial prisoner, she was entitled to two (2) visits a week, on a Tuesday and a Thursday, both being non-contact visits. Her version was that Mr Smit complained that it was inconvenient to speak to her in that manner and that they should have contact visits.

Mr Benjamin stated that she first tried a warder, a certain Mrs Hersselman, to arrange a contact visit, but the warder informed her that as she was an awaiting trial prisoner, she was not entitled to contact visits. This warder was then transferred from the visitors section to another section and the person who then took over from her was Nthabiseng Sekgopane. Even though she was still an awaiting trial prisoner, she approached Mrs Sekgopane and requested a contact visit with Mr Dave Smit. This warder then told her that if Mr Smit contacted her, she would then be able to arrange something and she gave her contact details to Mrs Benjamin. In

short, Mrs Benjamin made it clear that she knew how vulnerable the warders were and how keen they were to make money and once she was sentenced, she decided to inform Dave Smit that he could visit her once a month. However, it was her version that Mr Smit wanted to see her more than once a month and therefore she asked him to make use of the warder, Mrs Sekgopane to arrange a visit between them. She informed the Commission that the warder, Mrs Sekgopane advised her that Mr Smit had tried to arrange a visit in the week and that she should tell Mr Smit that they needed money. However, they were afraid of the Anti-Corruption Unit and she should rather ask Mr Smit to pay the money under the guise of study bursaries for the warders. It was her version that Mrs Sekgopane then said she would render her assistance in whatever she wanted to smuggle into the prison.

Once she was visited by Mr Smit, he informed her that the Head of Prison, Captain Tlobatla and the warders were prepared to allow him regular contact visits with her, even during the week, provided that he paid them for these visits. She then informed him that the payments should be disguised as study bursaries, as they had indicated that they were afraid of the Corruption Squad. Mr Smit in turn, was keen to make it appear legitimate and said that he would give the warders an official letter from Sanlam, which denoted that the payments were for bursaries.

Mrs Benjamin admitted that she initially spoke to Mr Smit about Two Million Seven Hundred Thousand Rand (R2 700 000,00) to be invested and which finally grew to Nine Million Rand (R9 000 000,00) and even more. She told him that she had inherited the money and she tried to explain to the Commission why she had made this misrepresentation. It is, however, not important for this report to even analyse her motive since she is not the one being charged for fraud, but the warders who transgressed the rules and regulations of the Department. She admitted that she saw Mr Smit's financial support as one way of helping her to endure her imprisonment and she was also spoilt by receiving presents and phone calls from him.

She was asked whether the warders made use of her to defraud Mr Smit, whereby she vehemently denied that. She stated that she acted at all times on her own and whenever the warders received benefits from these visits, they did not approach her to negotiate it with Mr Smit but they approached him personally.

As for the money that was paid into Mrs van Vuuren's bank account, Mrs Benjamin explained that the money was used for phone cards. In total, there was Eight Hundred Rand (R800,00) paid into her account. Some of the money was given to her to buy the phone cards and a percentage of the money was kept by Mrs van Vuuren for petrol money.

With regard to the money being paid into the account of the warder, Mrs Westenberg, it was the version of Mrs Benjamin that she needed more phone cards and perfume and Mrs Westenberg got it for her.

She also explained to the Commission that she knows the warder, Avril Sims, previously known as Avril Roberts, who worked also in the Female Prison. She was approached at one stage, by warder Mrs Sims, to get her some perfume. It was the version of Mrs Benjamin that she told Mrs Sims that she would arrange for the money to be deposited into her account in order for her to buy the perfume herself and that she could then pass on the balance of the money onto her. The account details that were then given to her was an account at The People's Bank at Southgate, which she then used for the payment of money. Much later, she received an account number from Mrs Roberts, which was an ABSA account. In her own words, she said that this was a warder that she could manipulate and who was prepared to bring her food and phone cards into the prison and she could receive a lot of items through Mrs Roberts, who had no problem in bringing goods into the prison.

The more startling part of her evidence was that she was aware that the Scorpions<sup>23</sup> had investigated the transactions between her and Mr Smit and that they were looking for some documents. The documents in question, she had hidden in a bag and she asked the warder, Avril Sims to put the bag somewhere for her. She admitted that she did not tell the warder, Mrs Sims the truth as to why she wanted this bag to be hidden and not to be kept in the cell, but she said that at all times she asked the warder to keep the bag hidden.

It became clear that even though Mrs Sims did not know the reason why the bag should remain hidden somewhere else other than the prisoner's cell, she was quite willing to assist the prisoner in keeping the bag in the workshop. Mrs Benjamin said that the bag contained an affidavit drafted for a person who wanted to get her daughter back and there were also typed letters that were sent to Mr Smit. In the letters she reflected certain monetary figures, however, none of the letters that she drafted were ever sent to Mr Smit. The bag was later collected by an Attorney and her sister.

It is clear from her testimony that when the Scorpions finally arrived at the prison to conduct a search of the cell of Mrs Benjamin, they never found anything unlawful or illegal in her possession. Mrs Sims clearly had a hand in the outcome of the search since she took the bag with the information from the prisoner and hid it in the workshop.

Mrs Benjamin was also asked to reveal any knowledge she had regarding the smuggling of dagga into the prison and she mentioned a few names. However, none of the evidence submitted by Mrs Benjamin has ever been followed up or supported by any other witnesses or any other documentary evidence.

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<sup>23</sup> The Directorate of Special Operations affiliated to the National Director of Public Prosecutions.

During cross-examination, Mrs Benjamin was once more asked why she wanted to hide the bag from the Scorpions. It was her version that in that bag which was hidden by the warder, Mrs Sims, was a policy for her son, which she did not want the Scorpions to have access to. Mrs Benjamin was questioned by the legal representatives of the warders and it is evident that because of her deceitful way of dealing with Mr Smit, that she was not completely frank about all the wheelings and dealings she had with the warders and Mr Smit. However, her evidence is corroborated by Mr Smit who confirmed that monies were paid to the warders, that special favours were received in lieu of the money paid and that Mrs Sims assisted her in hiding information from the Scorpions. Accordingly even though there are shortcomings in her evidence, it is not of such that the Commission should reject her evidence in its totality. In fact, it is sufficiently supported by other indicators of truth.

### **2.3 Avril Dawn Sims**

Mrs Sims during her testimony handed in a statement that she had made earlier to the Department of Correctional Services on the 27<sup>th</sup> August 2003, which contained the following quote:

*“Claudia Benjamin brought to me a black bag which was locked with a small lock to keep for her. I put it in a cupboard. The next morning after parade, Claudia came to fetch the bag and told me that she want to give it to her lawyer later on. At about 10.30 I saw Claudia’s sister with a black guy presuming that it was her lawyer. On Friday that same week, Mr Saayman accompanied by Mrs Eygelaar came to the workshop and asked for the storeroom keys. I wanted to go and open for them but he said no I must stay and wait, then he called Mr Schultz to assist them. They stayed for a while in the storeroom and then left.*

*Signed by Avril Sims.*<sup>24</sup>

During the questioning by the Commission's Evidence Leader, it became clear that Mrs Sims has been working for the Department for the past fifteen (15) years and in all the time that she was employed by the Department, she had never been subjected to a disciplinary enquiry.

Mrs Sims was questioned about a document that was found in her possession on the day that Mr Saayman came to look for Claudia Benjamin's bag, that was kept at the workshop. More importantly, on this document which was handed in and marked Exhibit 'X1', appeared the following:

- 2.3.1 R R Ross, Standard Bank, Welkom - Cheque Account No. 040220702 – R2  
000 000,00;
- 2.3.2 G Nimrod, NBS, Randfontein – Savings Account No. 2640051683 R2  
000 000,00
- 2.3.3 A D Roberts, People's Bank, Krugersdorp – Savings Account No.  
2826070703 – R5 000 000,00
- 2.3.4 C E Roberts, Standard Bank, Randfontein – Savings Account No. 027042855  
– R5 000 000,00.

Mrs Roberts acknowledged that the information contained in 'X1' was indeed written in her own handwriting, but explained that these were, however, nothing more than dreams that she wrote down. As to why these specific account numbers appear on the document, Mrs Roberts was unable to come up with an answer. First and foremost, she could not explain why the personal details and bank account number of someone like R R Ross, who is not a direct family member, should be in

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<sup>24</sup> This statement was handed in and marked as Exhibit 'Z'.

her possession. The best explanation that she could offer was that she was a Church brother. As to who G Nimrod was on the list, her explanation was that person was her mother.

She was asked to explain why it had been necessary for her to keep the bag for the prisoner at the workshop. Her answer was that it was not the first time that she had kept documents for prisoners. In fact, she had been keeping documents for prisoners for a long time. She never hid anything from Mr Saayman when he came to investigate and she denied that she had smuggled the bag out of the prison. She admitted, however, that she had put the bag in the locker where the workshop stationery is usually kept.

Mrs Sims tried to explain the numerous deposits that had been made into her savings account on a regular basis since 2001 by stating that she had joined a 'stokvel' where people paid cash into her account and then she had to pay it out on a regular basis. However when Mr Moferefere Michael Moleko, one of the people who was supposedly a partner to the 'stokvel', was called to give evidence he denied that and challenged the truthfulness of Mrs Sims' defence that there was a 'stokvel' and that the people paid money into her account in terms of a stokvel agreement. It was Mrs Sims version that Mr Moleko was a partner. Based on Mr Moleko's evidence, however it is clear that he has never participated in any 'stokvel' at the prison and that the version tendered by Mrs Sims' was pure fabrication and can therefore clearly be disregarded.

After the evidence of Mrs Sims, it is still unclear as to why people deposited money into her account and why she would not know who the money was from and why the money was deposited into her account. Not at any stage of her evidence could she give a clear indication as to the monies that went through her savings account at ABSA. It is clear from the evidence, not only in this matter, but also in the earlier

matter that was heard, that Mrs Sims has been deeply involved in corrupt practices at the prison and that this incident where she hid the bag for the prisoner, Claudia Benjamin, is just one of many unlawful acts committed by her.

#### **2.4 Aletta Radebe**

The testimony of Mrs Radebe was that on a particular morning whilst she and other warders, namely, Mrs Sekgopane and Mrs van der Merwe were seated around a table, Mr Smit entered the prison to visit the prisoner, Claudia Benjamin. She had her Technikon books with her and was reading through some material when Mr Smit asked her what she was studying. She informed him that she was studying some courses since it was her ambition to become a Head of Prison. Mr Smit then offered to sponsor her studies and suggested that he was willing to sponsor her to enable her to study at the Technikon. She also stated that since she had been a junior member, she had never had any authority to arrange any visits for the prisoner and that was mainly done through the Head of Prison, Captain Tlobatla.

She then admitted that Mr Smit gave her a cheque for One Thousand Rand (R1000,00) and she then asked him to accompany her to the Assistant Head of Prison, Mr Kroukamp where they could enquire whether it was in order for Mr Smit to give her a cheque. Mr Smit then went with her to Mr Kroukamp. When they entered the office of Mr Kroukamp, he informed Mr Smit that if he wanted to give Ms Radebe a cheque, that the cheque should be entered into a register and once that had been done, he would approve of the receipt of the cheque. Mr Smit was then asked to give a letter explaining the reason for the gift. Such a letter was later received and was then also handed in and marked annexure 'A5', which was attached to the statement of Mr Smit. The procedure having been explained to Mrs Radebe, in her own words she stated that she did not register the sponsorship since she had already informed her seniors that Mr Smit gave her a cheque.

More startling, however, was that even though the money was given to her to further her studies, she herself admitted that when she received the money she did not use it for her own studies but handed the money to her brother, who was also studying. She also admitted that she received a gold bracelet from Mr Smit, who gave it to her as a birthday present. Her explanation was that Mr Smit must have noted that her birthday was on a birth chart which is in the office. She never asked him for the present but he gave it to her as a gift which was also never registered.

It was also Mrs Radebe's testimony that when she went to Mr Kroukamp to find out the procedure regarding sponsorships and gifts, she also came back and told her fellow worker, Mrs van der Merwe what the procedure would be and what should be adopted in receiving money from a sponsor.

Mrs Radebe was questioned at length as to whether she had the power to disallow a visit by a member of the public like Mr Smit. She never acknowledged that it was within her power to object or to complain that he be allowed such special visits when the prisoner was not really entitled to it. Instead she preferred to say that it was the Head of Prison who granted these visits and who finally gave Mr Smit permission to visit Claudia Benjamin. In fact she went as far as to say that those warders who were working in the visitors' section knew that the prisoner, Claudia Benjamin was not entitled to these contact visits, yet they never complained and followed the instructions of the Head of Prison since they were not entitled to undermine her authority.

## **2.5 Nthabiseng Hilda Sekgopane**

The Commission also heard the evidence of Mrs Sekgopane, who confirmed that in 1998 she was working in the visiting section and that the person who was in charge of them was Ms Eva Phetlane. It was the evidence of Mrs Sekgopane that she never

had any authority to grant visits or to deny someone the opportunity to visit once it was authorized by the Head of Prison. She confirmed that the prisoner, Claudia Benjamin approached her and informed her that she wanted a contact visit with her financial advisor, Mr Smit. It was her version that even though the financial advisor, Mr Smit had called her, she did not grant the visit but referred him to the Head of Prison, namely, Captain Tlobatla. She admitted that she had received a sum of Five Thousand Rand (R5000,00) from Mr Smit but insisted that this was given to her to sponsor her studies. She also admitted that other members were also present at the times when Mr Smit came to visit and that the only reason why she accepted the cheque from Mr Smit was because she viewed it as a sponsorship from Sanlam to further her studies. However, Mrs Sekgopane's explanation regarding the sponsorship cannot be accepted when her latter evidence clearly shows that she did not use the money to study at the Teknikon but in fact used the money to pay her own childrens' school fees.

She was or should have been well aware of her duty to control visits in the visiting section and the rules that govern such visits. Furthermore, at the time when Mrs Benjamin received all these visits from Mr Smit, she should also have been well aware that Mrs Benjamin was a B group prisoner and accordingly not entitled to receive such contact visits. In her own words she admitted that she knew that such visits could only be granted to legal advisors and that she was at all times aware that Mr Smit was not a legal representative but a financial advisor working for Sanlam.

Ms Sekgopane, however, denied the earlier testimony by Mr Smit that she was at a meeting when it was discussed that money would be given to them and that it would be disguised as a study bursary. She rather proffered the explanation that Mr Smit gave the money out of the goodness of his heart rather than giving the money to her in order to further his aim of having dealings with the prisoner, Claudia Benjamin. She was not prepared to admit that the money that was paid by Mr Smit was all part

of a scheme to grant him visits to which he was not entitled to and to persuade them as members, to turn a blind eye to conduct that was clearly not in accordance with their duties and obligations.

## **2.6 Eva Prudence Senyakoe**

Mrs Senyakoe's maiden name is Fenani. She was recently married and at the time when she testified before the Commission, she was still employed by the Department of Correctional Services but was on maternity leave. It was Mrs Senyakoe's evidence that in 1998, she was working at the reception area and was a Warrant Officer in charge of the visiting section. She started in her employment on the 15<sup>th</sup> January 1991 with the Department of Correctional Services.

From the outset of her testimony she made it clear that she was not impressed with the fact that Mr Smit was allowed contact visits whilst he was not a legal representative but merely a financial advisor. She was however, informed by her Head of Prison, that she was employed to take charge of the section and not to decide upon the visits being granted. The permission for such visits as those of Mr Smit, was at the discretion of the Head of Prison. On one occasion, Captain Tlobatla had reprimanded her for questioning Mr Smit's visits, she allowed him to do so on the authority of Captain Tlobatla. She was well aware that the Area Manager is senior to the Head of Prison but she did not report the conduct of Captain Tlobatla to the Area Manager, Mr Makgaile.

She also received a cheque of One Thousand Rand (R1000,00) from Mr Smit, which he gave to her as a sponsorship for her studies. It was her version that she trusted that everything was above board since he worked for Sanlam and Sanlam grants bursaries to scholars. She admitted that Mr Smit was allowed frequent visits to Claudia Benjamin and that was extraordinary for a prisoner to receive so many visits

particularly as Claudia Benjamin, was a B group prisoner and was not entitled to these visits. She denied that she made herself guilty of corruption and persisted in her claim that the visits took place with the authorization of the Head of Prison.

## **2.7 Antoinette Jansen van Vuuren**

Mrs van Vuuren is also a warder working at the Johannesburg Prison and was a production worker who worked at the section where Claudia Benjamin was detained during the time of Mr Smit's visits to Claudia Benjamin. She acknowledged that during her training at Kroonstad, she had been taught not to do prisoners any favours.

She examined the exhibits handed in to the Commission which reflected that on the following four (4) occasions money had been paid into her account:-

- 2.7.1 4<sup>th</sup> January 1999 an amount of Five Hundred Rand (R500,00);
- 2.7.2 23<sup>rd</sup> May 1999, an amount of One Hundred Rand (R100,00);
- 2.7.3 22<sup>nd</sup> July 1999 an amount of Three Hundred Rand (R300,00);
- 2.7.4 25<sup>th</sup> August 2000 an amount of Two Hundred Rand (R200,00).

Mrs van Vuuren understood the allegations against her and admitted that Mr Smit had paid the money into her account. However, it was her testimony that she was trying to help the prisoner, Claudia Benjamin because Mrs Benjamin did not receive regular visitors and needed some personal items such as toiletries etc. As she was not sure whether such monies should be paid into her account, she approached her Head of Prison, Captain Tlobatla and explained to her the situation. Captain Tlobatla then said that it should not be a problem to assist the prisoner in that way.

She acknowledged that she had given her bank details to Claudia Benjamin who then gave her a list of the goods she should buy to bring into the prison. She denied having done any other favours for the prisoner and persisted in her claim that she was not aware that she was doing something wrong.

She was challenged on the fact that throughout the time she was employed, she was well aware that she was not supposed to do any favours for prisoners and that by her receiving money into her account and buying goods for a prisoner she was doing nothing else but favours for the prisoner. Despite the clear evidence Ms Van Vuuren was not prepared to concede to the submission that she was doing a favour for the prisoner. She claimed that on her checking the locker of the prisoner, all she found was a little bit of shampoo and conditioner with no body spray and a few toilet rolls. She contended that it was this that prompted her to assist when the prisoner asked her for help. She however, had difficulty answering whether she would be prepared to do this for any of the thousand other prisoners.

It is clear that in receiving money into her account, Ms Van Vuuren was doing extra favours for Mrs Benjamin which go far beyond the call of her duties. In fact, with the money she received from Mr Smit, she did not buy ordinary essential goods for Claudia Benjamin, but had bought the prisoner expensive perfume, telephone cards and body spray amongst other things. In doing all of this for the prisoner, she stated that she received no benefit at all.

## **2.8 Louise Westenberg**

It was the testimony of Mrs Westenberg that in December 1998, she was working as a supervisor at D section at the Johannesburg Prison where the prisoner Claudia, Benjamin was detained.

She admitted that Five Hundred Rand (R500,00) was paid into her bank account on the 23<sup>rd</sup> December 1998 but claimed that she was not aware at that stage, that the money had been paid into her account because she had no dealings with the prisoner, Claudia Benjamin. It was only in November 2000, when Mr Saayman was conducting an inspection regarding the monies that were paid into warders' accounts, that she went to her bank to conduct an enquiry to see if such an amount was paid into her account. She did not find out initially when the Five Hundred Rand (R500,00) was paid into her account since her mother used to borrow money from them on a regular basis and her husband was the one who was in charge of their finances. She claimed that she never allowed Mrs Benjamin any special favours, nor did she grant her any special privileges.

During cross-examination, she acknowledged that the amount had already been paid in three (3) years before Mr Saayman started the investigation of deposits into warders' accounts. However, she persisted in her claim that she was unaware of an amount being paid into her account before Mr Saayman started his investigation.

Mrs Westenberg also remained adamant that she never knew about the deposit made by Mr Smit into her bank account and that she never granted the prisoner, Claudia Benjamin any favours. She also stood by the fact that she never dealt with her financial statements herself but that her husband, who is the person in charge of the bank account, is the person dealing with the monies being paid and the withdrawals made from her account. She personally did not deal with any money matters in their marriage.

However, on analyzing the evidence of Mrs Westenberg, it is apparent that a person of her mature age would not be completely unaware of her own financial position and status regarding monetary transactions reflected in her account. It is unlikely and almost impossible that she was not aware of the payment made into her account.

## **2.9 Magdalena Gertruida Maria Susanna Petronella van der Merwe**

Mrs van der Merwe, who was a warder working at the Johannesburg Prison in 1998 and who also worked in the visitors' section testified that she did not have the authority to either authorize or change the status of prisoners nor to grant visits to prisoners.

She admitted however, that during the time that she was working in the visitors' section, she had received a cheque of One Thousand Rand (R1000,00) from Mr Smit who had advised her that it was a sponsorship towards her studies. Like the other warders, she admitted that Mr Smit had spoken to them and asked them about their studies and that they had told him that they were studying at the Teknikon. She said that she believed that Mr Smit was a manager at Sanlam and that he had the right to authorize such payments for sponsorship for studies.

Like Mrs Radebe, she also approached Mr Kroukamp and asked him whether she was allowed to receive the cheque. Even though he was only the Assistant Head, he was the one she would always approach for advice. He told her that the cheque needed to be entered in a register and once it had been done in the proper manner, they could then accept it. She also received a letter from Mr Smit, which was faxed on the 13<sup>th</sup> September 1998 confirming Sanlam's "sponsorship".

It was her testimony that she had intended all along to study during 1998, but she had fallen pregnant in the same year. She learnt on the 26<sup>th</sup> June 1998, that the child would be born early and the child was in fact born on the 17<sup>th</sup> October 1998, which obviously made it impossible for her to write the exams. She never told Mr Smit when he gave her the cheque that she was pregnant. She admitted under cross-examination that when she accepted the cheque, she already knew that she would

not be studying that year but that this did not bother her as Mr Smit had told her that she could always use the money the following year or even later. She conceded that she had used the money given to her by Mr Smit, for personal use.

In considering the evidence of Mrs van der Merwe it is clear that when she accepted the cheque, she knew that irrespective of what the letter accompanying the cheque stated, that the sponsorship was never intended for her to use for her studies but for her personal use, something that was completely against the regulations or the policy of the Department. Even though she was not the most senior person to stop the process, it is clear that there was a duty and onus on her to at least report the incident to higher authority in the Department.

## **2.10 Hendrik Johannes Kroukamp**

The evidence of Mr Kroukamp was that he is a Senior Correctional Officer and is stationed at Johannesburg Medium A Prison. Mr Kroukamp has twenty (20) years experience in the Department of Correctional Services. During the period of 1997 to 1998, which concerns this report, he was the Assistant Head at the Johannesburg Female Prison.

He stated that during June 1998 or later, he was approached by two (2) members, namely, Mrs Radebe and Mrs van der Merwe, who asked him if Sanlam could sponsor them for their studies and whether they could accept such a sponsorship. His version was that he questioned them as to whether they did anything extra to receive the money, whereby both of them answered that they had not done anything extra. He then called Mr Smit from Sanlam to his office and asked Mr Smit what the purpose was of giving the money to these two (2) members, whereby Mr Smit responded by saying that Sanlam gave financial assistance and that Mr Kroukamp

could even nominate himself to accept an amount for his studies, which offer he refused.

He suggested to Mr Smit that as proof of the fact that these cheques were intended for studies, Sanlam should send a letter of confirmation to the Department and that the donation should be registered in their donation book.

Mr Kroukamp further cleared the matter with the Area Manager, who confirmed that members could accept sponsorship from Sanlam provided that it was registered in the donation book. He said he was not aware that other members had also received cheques which were intended for the same purposes.

During cross-examination however Mr Kroukamp could not deny that Mrs Senjako had also approached him for advice regarding the acceptance of the sponsorship and conceded that there was a possibility that this could have occurred.

### **3. ANALYSIS**

The evidence of the financial advisor, Mr Smit and the prisoner, Claudia Benjamin, showed beyond any doubt that he had unlimited access to her even though she was a prisoner. The Commission, however, considered all the evidence that were led which showed that various transgressions were committed and that it could be grouped into almost three (3) categories of transgressions, namely, (i) the conduct of the warder, Mrs Avril Sims (née Roberts) who assisted the prisoner Claudia Benjamin to escape the claws of the Special Investigation Unit (ii) second category would be the deposits of money into the bank accounts of the different warders (iii) the third category of evidence related to Mr Smit issuing cheques to specific warders including the Head of Prison, Captain Tlobatla under the disguise that such

payments were made to sponsor the studies of a group of warders employed at the visiting section.

Very little of the allegations were in dispute. It has not been denied that the monies were paid into the accounts of the warders, neither has it been denied that cheques were issued by Mr Smit. In each of the allegations the dispute was whether these warders had the authority to grant these special privileges to the individual concerned, namely, Mr Smit, who was at the receiving end of these special privileges.

It is material in deciding the matter whether the warders given the specific circumstances had acted wrongfully. The policy of the Department is explicit that members of the Department should not get involved in the receipt of gifts, awards etc., in circumstances where it could affect the way they carry out their duties and their obligations. Objectively the warders were all in a position where they could have objected to these visits taking place, yet they never did. The question is why they preferred not to challenge the granting of these visits. The answer is however clear once all the evidence is considered: they never did because they all received money from Mr Smit and therefore turned a blind eye to these visits. It is unfortunate that one of the so-called main culprits who were implicated in this matter is, Captain Tlobatla the previous head of prison who is no longer employed by the Department. Many of those involved tried to shift the blame from themselves to her in order to escape liability.

The Commission is however not convinced that the members involved in this matter can escape liability by merely shifting the blame to Captain Tlobatla. It is clear that in exercising their duties and obligations if they did not agree with the instructions of their superior, then they could question her conduct despite the hierarchical order of discipline that exists in the Department. It is inconceivable that they never tried to

even contact the Anti-Corruption Unit of the Department if they believed that the granting of these visits and privileges to Mr Smit was not in accordance with their regulations and their policies. Each one of them, even though they did not do something positively, most certainly had a duty to take the matter up and to complain about the clear transgression of the Department's policies to their superiors. Each one of them failed in their duty and the only inference one can draw from such failure was that each of them working at the visitors' section was satisfied with the money that they received money from Mr Smit. The receipt of the money served a purpose and the facts proved in this matter point to one thing only and that is that the purpose of the money was not to question the conduct of their superiors who were granting the visits to Mr Smit.

The Commission is satisfied therefore that the conduct of the members implicated were wrong and that action should be taken against all them.

#### **4. FINDINGS**

##### **4.1 Avril Sims**

It is the finding of the Commission that Mrs Sims' version of how she received money into her bank account and why it was paid into her bank account was not only incongruous with the evidence led it is far-fetched and untrue. Her version of the monies being paid into her account because she was a partner of a 'stokvel' group, is untenable and rejected herewith. It is found that Mrs Sims assisted the prisoner, Claudia Benjamin to hide documents from the Special Investigation Unit, namely the Scorpions on the day when they were conducting a search of Ms Benjamin's cell. It is also clear that Mrs Sims had other financial dealings with the prisoner, Claudia Benjamin and it is the view of the Commission that Mrs Sims should not

only be charged criminally for her conduct but that she should also be charged internally.

## **4.2 Deposits**

The Commission found that Mr Smit had deposited money into the accounts of the following warders:

4.2.1 A Jansen van Vuuren four (4) deposits in the amounts of:

4.2.1.1 Five Hundred Rand (R500,00);

4.2.1.2 One Hundred Rand (R100,00)

4.2.1.3 Three Hundred Rand (R300,00);

4.2.1.4 One Hundred Rand (R100,00);

4.2.2 L Westenberg the amount of Five Hundred Rand (R500,00);

4.2.3 There was no evidence found to incriminate the warder, Vanda Booyesen as no deposits were made into her account at all.

4.2.4 It is the finding of the Commission that both of these warders, namely, Mrs Westenberg and Mrs Jansen van Vuuren committed a criminal offence as well as some transgressions of the Disciplinary Code..

## **4.3 Cheques Deposited**

From Mrs Benjamin's evidence it appears that a strategic plan had been hatched by herself, Captain Tlobatla, and Mrs Sekgopane to defraud Mr Smit of money and then to use the money for their own benefit. Careful consideration had been given to the testimony of Mrs Benjamin whose

testimony cannot be above criticism, in her own words, she admitted that she has the ability and the power to manipulate the warders yet she blamed everything on the warders because according to her they should have known better than to trust her.

It is therefore considered that the safest route in dealing with her evidence would be to view her evidence on the basis that positive findings will be made where her evidence is beyond any criticism and where it is being supported by other evidence aliunde. In the light of her evidence and the documentary evidence it is found that cheques had been paid to Captain Tlobatla, Warrant Officer Sekgopane, Warrant Officer Phetlane (Mrs Senyakoe), Warrant Officer Radebe and Warrant Officer van der Merwe.

All of these members were aware of the Departmental policy not to receive gifts, rewards, etc. from prisoners or people related to prisoners. Each one of them knew at the time when they accepted the money that it was not a genuine sponsorship for their studies and not a single one had spent the money directly for their own tuition fees. It can never be argued nor accepted that the sponsorship was not conditional. The condition was explicit in the accompanying letter and that it that it should be spent for their studies.

The various explanations they have given in their evidence cannot change the fact that they never used the money for what it was intended. This very fact gives support to the version that the issue of sponsorship for studies was merely a smoke screen. It was meant to disguise the fact that they were being given “gifts” or a “bribe” so that they could allow Claudia Benjamin contact visits when she was not entitled to them.

It is therefore found that all of them, that is Captain Tlobatla, Warrant Officer Sekgopane, Warrant Officer Phetlane (Mrs Senyakoe), Warrant Officer Radebe and Warrant Officer van der Merwe acted wrongly and that they should be charged criminally and also departmentally.

## **5. RECOMMENDATIONS**

Accordingly the Commission will make the following recommendations:

### **5.1 Mrs Avril Sims**

5.1.1 She should be suspended immediately;

5.1.2 She should be charged with the following transgressions:

5.1.2.1 Provision, receipt or claiming of money or other reward from a prisoner Clause 4.7 (Column A) of the Disciplinary Code; and

5.1.2.2 Gross negligence in the execution of her duties Clause 2.1 (Column A) of the Disciplinary Code.

5.1.3 She should be criminally charged for defeating the ends of justice, in that she assisted a prisoner to escape liability by hiding evidence from the Scorpions when they were conducting a search of the prisoner's cell.

### **5.2 A Janse Van Vuuren and L Westenberg**

5.2.1 Both should be suspended immediately;

5.2.2 They should be charged with

5.2.2.1 Provision, receipt or claiming of money or other reward from a prisoner Clause 4.7 (Column A) of the Disciplinary Code, Mrs Janse van Vuuren should be charged with four (4) counts of transgressing the said clause and Mrs Westenberg with one (1) count.

5.2.3 Mrs Janse Van Vuuren be criminally charged with four (4) counts of contravening Section 118(1) (b) of the Correctional Services Act No 111 of 1998. Mrs Westenberg should be charged with one (1) count of contravening section 45 of Act 8 of 1959.

**5.3 Warrant Officer Sekgopane, Warrant Officer Phetlane (Mrs Senyakoe), Warrant Officer Radebe and Warrant Officer van der Merwe**

5.3.1 They be suspended immediately;

5.3.2 They should be charged with the following transgressions:

5.3.2.1 Provision, receipt or claiming of money or other reward from a prisoner Clause 4.7 (Column A) of the Disciplinary Code;

5.3.2.2 Bribery or corruption in that they received money to neglect their duties Clause 4.1 (Column A) of the Disciplinary Code;

5.3.2.3 In the case of warrant officer Radebe she should be charged with a further transgression of receipting or claiming of money or other reward from a prisoner or someone related to the prisoner Clause 4.7 (Column A) of the Disciplinary Code;

5.3.2.4 They should be charged criminally with contravening Section 1 of the Corruption Act 94 of 1992 alternatively with contravening Section 118 (1) (b) of the Correctional Services Act No 111 of 1998.

#### **5.4 Captain Tlobatla**

It is recommended that a copy of this report be submitted to the Director of Public Prosecutions Gauteng and that it should be considered that criminal charges be preferred against Captain Tlobatla. The member is no longer employed by the Department but she had committed serious offences whilst employed and should not escape liability in this matter.

**DEPARTMENTAL POLICY WITH REGARD TO RECEIPT OF GIFTS,  
COMMISSION, MONEY, REWARDS OR PRIVILEGES**

In order to practically effectuate this matter, the following policy is effective:

- As overhead policy it is stated that no member of the Department may, besides his normal compensation and benefit package, receive any further compensation or benefit from whatever source which is related to his service commitment to the Department.
- With regard to the receipt of gifts from any person, firm or other institution with which the Department may maintain business relationships, any advertisement material or other goods or benefits of minor value which normally is offered as gifts for goodwill, such as pens, calendars, glasses, diaries, key rings, pocket knives etc., may be accepted. Aspects which could also be read into this category, are inter alia, the following:
  - Normal meal receptions;
  - Invitations to board and lodging for the attendance of sports occasions;
  - Invitations to sponsor sports days etc.
- Before any goods or benefit in whatever form may be accepted and retained by any member the approval of the relevant Provincial Commissioner must be obtained. In the case of members at Head Office, approval must be obtained at the Deputy Commissioner : Human Resources, while members of management must obtain the approval of the Commissioner. Such goods or

benefits to the spouses of members from a company, firm or person resulting from business relations with the Department, must be dealt with in the same manner.

Favours to members such as paid holidays, hunting trips, tours etc., are also regarded as gifts, for the purposes of this provision. For control and record purposes, a register should consequentially be held at the offices of the aforementioned functionaries with regard to the gifts or benefits for which approval has been received to receive and keep it, it is the responsibility of the aforementioned functionary to ensure that the register is completed suitably.

The identification particulars, the type of gift or benefit, date and who received it, must also be entered in the register. It is the duty of the member to declare such a gift or benefit and to receive the necessary approval for it.

- Any private purchases by members of goods or services by persons, firms or other institutions, with which the Department maintains business relations, may only be made through normal commercial channels and upon sales conditions, which are not more favourable than what applies to the general public.

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