

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

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**FINAL REPORT**

**Volume 1**

The Hon. Mr T M Mbeki  
President of the  
Republic of South Africa  
The Presidency  
Union Buildings  
PRETORIA.

Dear Mr President

On 27 September 2001, you appointed me to inquire into and report on incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services and in particular, to investigate as well nine (9) Management Areas. The specific terms of the mandate are set out fully in this Commission Report.

The Commission of Inquiry has already submitted eleven (11) interim reports relating to matters, which the Commission thought at the time, ought to be addressed before the filing of this Final Report.

THE HON. MR T M MBEKI  
PRESIDENT OF THE  
REPUBLIC OF SOUTH AFRICA.

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The Commission has now considered the substantial body of evidence (both factual and opinion), which was submitted to the Commission. In the premises, the Commission once again wishes to re-affirm the views and recommendations contained in the eleven (11) interim reports.

The Commission's task has now been completed and your Commissioner has the honour to furnish you with the Final Report.

The Commission does not annex the numerous documents generated by the inquiry but recommends that they be archived so as to be available for perusal.

Signed at DURBAN on this                      day of DECEMBER    2005.

**MR JUSTICE T S B JALI**  
**(CHAIRMAN)**

## FOREWORD

This report constitutes the work of the Commission during the three (3) year period after it was constituted. The Commission would like to thank a number of people who assisted the Commission in executing its mandate.

The Commission is indebted to a number of Judge Presidents and Chief Magistrates who allowed the Commission to use various courthouses, at times to the inconvenience of their own courts. The Commission would like, in particular, to mention the following:

- **Judge President C.M. Somyalo**, Eastern Cape Provincial Division (St Albans Management Area);
- **Judge President B.M. Ngoepe**, Transvaal Provincial Division (Pretoria Management Area),
- **Judge President F. Bam**, Land Claims Court (Leeuwkop and Johannesburg Management Area);
- **Judge President R.M.M. Zondo**, Labour Court and Labour Appeal Court, (Durban-Westville Management Area);
- **Judge President J.M. Hlophe**, Cape Provincial Division (Pollsmoor Management Area);
- **Judge President J.P. Malherbe**, Orange Free State Provincial Division (Bloemfontein Management Area);
- **Mr T.C. Mabaso**, Chief Magistrate, Durban (Durban-Westville Management Area);
- **Mr C.S. Ngcobo**, Chief Magistrate, Pietermaritzburg (Pietermaritzburg Management Area);
- **Mr J. Botha**, Chief Magistrate, Dundee (Ncome Management Area).

The Commission's work would not have been possible without the support the Commission received from a number of people and organisations for which the Chairman of the Commission is greatly indebted.

The Commission pays tribute to those members, past and present of the Department of Correctional Services, the prisoners, and members of the public who under difficult circumstances testified before the Commission and took time off from their busy schedules to assist the Commission in its task.

The Commission also wishes to thank and acknowledge the strong general support it has received from the following institutions and organizations:

- Law Faculty of the University of Cape Town;
- The Office of the Inspecting Judge;
- Civil Society Prison Reform Initiative (CSPRI);
- South African Prisoners' Organisation for Human Rights (SAPHOR);
- Centre for Conflict Resolution (Cape Town);
- South African Police Services (SAPS);
- National Institute for Crime Prevention and Reintegration of Offenders (NICRO);
- Childline;
- Gay and Lesbian Organisation of Pretoria (GLOP);
- The Lesbian and Gay Equality Project;
- South African Law Society;
- University of Witwatersrand Aids Law Project;
- Treatment Action Campaign (TAC), and
- The legal practitioners and representatives who appeared before the Commission and assisted the Commission to execute its mandate.

During the tail-end of the Commission's work, the Commission had to obtain assistance from a number of organisations and people who assisted with research and the editing of the report. The Commission is indebted to those people.

Finally, the Commission expresses its gratitude to the members of staff who gave so much of their time and effort in order that their special skills and

experience may be utilized so as to uphold the values enshrined in our Constitution.

The Commission had to travel around the country for a number of years and these members of staff were away from their families during that period. The Commission is also indebted to members of their families and their contribution is greatly appreciated.

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**MR JUSTICE T S B JALI**  
**CHAIRMAN OF THE COMMISSION.**

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# **CHAPTER 1**

## **COMMISSION OVERVIEW**

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## CHAPTER 1

# COMMISSION OVERVIEW

### 1. INTRODUCTION

This is the final report of this Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services<sup>1</sup> appointed by the State President in 2002. It contains the Commission's findings, recommendations and evidence obtained during the existence of the Commission and its hearings

This, the first Chapter of this report, provides a general overview of the Commission, detailing its establishment and its Terms of Reference, the gathering and hearing of evidence, the interim reports submitted, the institutional culture in the Department as well as a brief overview of the Management Areas investigated by the Commission.

Chapter Two analyses the historical background to prisons in our country, as well as the significant events that have occurred in the Department of Correctional Services over the last ten to fifteen years and have resulted in a major change in the institutional culture, which the Commission believes are, to a large extent, directly responsible for the numerous difficulties and challenges currently facing the Department.

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<sup>1</sup> Hereinafter referred to as “the Department”

The remaining Chapters deal, in the main, with various areas of concern identified by the Commission that warrant action by the Department. Furthermore, the Commission's investigation into selected areas of the logistics and procurement sections of the Department are also dealt with. Previous investigations conducted into the Department as well as the implementation of the Commission's interim reports will also be examined.

Further Chapters deal with misconduct and maladministration emerging from certain Management Areas for which interim reports were not submitted. A detailed report on each of the Management Areas investigated by the Commission during its tenure is also incorporated.

## **2. ESTABLISHMENT OF THE COMMISSION**

The State President of the Republic of South Africa appointed the Commission of Inquiry in terms of Proclamation No. 135 of 2001<sup>2</sup> to investigate and report on incidents of corruption, maladministration, violence or intimidation within the Department.

In appointing the Commission, the President acted under the power vested in him in terms of section 84(2) of the Constitution of the Republic of South Africa Act No. 108 of 1996, read together with section 1 of the Commission's Act No. 8 of 1947.

The full terms of reference as set out in the Proclamation, as amended, are as follows:

*"1. To inquire into and report on –*

*(a) alleged incidents, of corruption relating to –*

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<sup>2</sup> See Government Gazette No. 22718 dated 27 September 2001.

- (i) *the procurement of goods and services for the Department of Correctional Services;*
  - (ii) *recruitment and appointment, promotion and dismissal of employees for the Department of Correctional Services;*
  - (iii) *the treatment of prisoners;*
  - (iv) *dishonest practices and illicit relationships between employees and prisoners leading to unlawful activities;*
- (b) *alleged incidents of non-adherence to departmental policy and deviation from national norms and standards;*
  - (c) *alleged incidents of violence or intimidation against employees of the Department which affect the proper functioning of the Department;*
  - (d) *the extent of implementation of recommendations of past investigations relating to the Department.*
2. *To make recommendations as to steps that can be taken in order to prevent the future occurrence of such incidents.*
3. *To make recommendations as to steps that can be taken against any employee who in terms of the findings of the Commission is implicated in impropriety against the employer.*
4. *Although these terms of reference apply generally to the Department of Correctional Services, the Commission is required to prioritise its inquiry by focusing on the prisons in the order listed hereunder:*
- (a) *Pietermaritzburg Management Area;*
  - (b) *Durban-Westville Management Area;*
  - (c) *Ncome Management Area;*
  - (d) *Johannesburg Management Area;*
  - (e) *Pollsmoor Management Area;*

- (f) *Pretoria Management Area;*
  - (g) *St Albans Management Area;*
  - (h) *Leeuwkop Management Area;*
  - (i) *Bloemfontein Management Area.*<sup>3</sup>
5. *To inquire into and report on any other matter which in the Commission's opinion is relevant to the terms of reference of the Commission.*
6. *These terms of reference may be added to, varied or amended from time to time.*
7. *The Commission shall be subject to and conducted in terms of the provisions of the Commission's Act, 1947 (Act No. 8 of 1947), as amended.*
8. *The Commissioner shall commence with his duties forthwith.*"<sup>4</sup>

The President appointed Mr Justice T.S.B. Jali as the Chairperson of the Commission. Hence the Commission has commonly been referred to as the "Jali Commission of Inquiry".

Due to the magnitude of the task and the number of documents the Commission would collect, it was deemed necessary to set up an office to serve as the Commission's head office. The Chairperson also considered it necessary to be assisted by two Commissioners and thus appointed Advocate T.A. Sishi of the Durban Bar and Advocate E.J.S. Steyn, Senior Lecturer in

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<sup>3</sup> During May 2002 the Commission became aware of certain acts of corruption that had been captured on video at the Grootvlei Prison, a prison situated in the Bloemfontein Management Area. The Commission approached the State President to extend its terms of reference to include the Bloemfontein Management Area. The Terms of Reference were accordingly amended, in terms of Government Gazette No. 23 558 dated 27 June 2002.

<sup>4</sup> A copy of the Terms of Reference and Regulations governing the Commission are annexed hereto as Appendix "A".

the Law Faculty at the University of Cape Town. The offices that were rented through the Department of Public Works were at Embassy Building, 199 Smith Street, Durban. These premises operated as the head office of the Commission throughout its duration.

The first appointees of the Commission were administrative staff and investigators, who were appointed in November and December 2001 to commence investigations into the Durban-Westville Management Area.

Members of the administrative staff were Mr C. Frank (Commission Secretary), Mrs S.P. Lumley, Mrs L. Moopanar, Ms B.M. Koloko, Ms L.Y. Vanker and Ms S.P. Mlaba.

Members of the original investigating team were Advocate J. Brauns SC, Advocate V. Soni SC, Mr M. Magigaba, Mr S.D. Moloji, Mr I.B.G. Ngcobo and Advocate N. Joubert.

A researcher, Ms C. Goodenough, was also appointed in March 2004 to June 2005.

A second set of staff appointments was made when the Commission was investigating the Johannesburg, Leeuwkop and Pretoria Management Areas. Additional investigators were appointed to assist in investigating the Management Areas in Johannesburg and Pretoria. The additional members of the investigating team were Advocate G. Barlow, Mr D. Goqo, Advocate L. Halam, Advocate B. Shabalala, Mr L. Hlabisa, Mr M. Pakiry and Ms T. Hlophe. Advocate Barlow was the Head of Investigations for the Pretoria Management Area. Administrative staff members were also appointed for Gauteng (Johannesburg and Pretoria), namely, Ms M. Kester and Mr G.S. Phoshoko.

It was also deemed necessary to set up offices in Johannesburg for the purposes of serving as a base, storing all the documents and to provide space

for consulting with witnesses and implicated officials. An office was accordingly opened at J.H. Isaacs House, Cradock Street, Rosebank, Johannesburg. The Johannesburg office was operational for the period June 2003 to June 2004.

The last Management Area investigated was Ncome in KwaZulu-Natal, which had its own Head of Investigations, namely, Advocate S.K.D. Mdladla.

The Commission also used the services of forensic auditors, Manase and Associates, to assist with certain aspects of the Commission's investigations.

The circumstances that led to the establishment of the Commission are fully dealt with later in this report. However, it is appropriate to state at this stage that the recruitment of staff was not easy at the commencement of the investigations because of the violence and intimidation associated with the Department coupled with the uncertainty regarding the duration of the Commission. It was also not possible to ascertain the duration of the Commission at the outset since the level of corruption could not be anticipated before the investigations commenced.

### **3. INVESTIGATIONS, HEARINGS AND INTERIM REPORTS**

#### **3.1 Order of Investigations**

Notwithstanding the order of investigations suggested in the Proclamation, the Durban-Westville Management Area was the first Management Area to be investigated. The order of investigations was influenced by, among other things, external factors such as the availability of venues and the leads on corruption. The Commission commenced the gathering of evidence and information at the Durban-Westville Management Area with effect from the 1 December 2001. The hearings were conducted in the same order as the investigations.

Although the Terms of Reference make specific reference to the investigation of certain Management Areas, it is apparent from paragraph four of the Terms of Reference that the Commission was required to investigate the Department of Correctional Services generally. As a result, the Commission also investigated the Department's Head Office while it sat in Gauteng.

At the commencement of the Commission, contact was made with the various Provincial Commissioners and Area Managers to advise them of the establishment of the Commission. They were also informed of the specific time that the Commission would be at the various Management Areas and that they would be notified in due course about the Commission's programme as it affected them. In some Management Areas, the Commission posted letters on the notice boards and in some of the dining halls. The National Commissioner of Correctional Services, we were made to understand, also advised the Provincial Commissioners about the establishment of the Commission.

### **3.2 Gathering of Evidence**

The Commission's *modus operandi* in gathering evidence and advising members of the public about the Commission's work in the various Management Areas included, amongst others, placing advertisements in the media,<sup>5</sup> conducting radio interviews,<sup>6</sup> receiving telephone reports from various members of the public in response to the advertisements and interviews and

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<sup>5</sup> Durban-Westville – *The Daily News*, *Ilanga* and *The Sunday Times*;  
Pietermaritzburg – *The Natal Witness* and *Ilanga*;  
Bloemfontein – *The Citizen*, *Volksblad* and *Express*;  
Port Elizabeth – *Ilizwi* and *The Herald*;  
Cape Town – *Die Burger*, *The Cape Argus* and *Vukani*;  
Johannesburg and Pretoria – *The Sowetan*, *Beeld* and *The Pretoria News*.

<sup>6</sup> Interviews were conducted with a number of radio stations including *Radio Ukhozi*, *P4 Radio* and *East Coast Radio* (Durban); *Radio Naledi* and *Radio Oranje* (Bloemfontein); *Cape Talk*, *KFM* and *Radio Islam* (Cape Town) and *Radio Metro* and *SAFM* (Johannesburg).

receiving reports from members of the public and prisoners on the Commission's toll free number.

The Commission's toll free number was a major source of information regarding corruption within the Department. It quickly became apparent that most prisoners and officials were less anxious to talk to the officials of the Commission on the toll free number than they were to talk in person, as it gave them a sense of security.<sup>7</sup> Some prisoners and officials only gave leads anonymously and indicated that they would not want to testify, while others gave both leads and indicated a willingness to testify. The complaints received, however, were not confined only to the nine (9) Management Areas under investigation. As word spread in the Department about the existence of a toll free number, people called the Commission with complaints about other Management Areas as well.<sup>8</sup> The toll free number was also used to communicate with some of the Commission witnesses.<sup>9</sup>

When the Commission was about to investigate a particular Management Area, formal notification would be sent to the Area Manager advising him or her of the dates when the investigators would be arriving and requesting certain submissions. These submissions were to be made to the Commission by the Area Manager, the various Heads of Prisons and the various Heads of Departments. The officials were thus requested to submit their presentations before the Commission arrived so that the Chief Investigator could analyse

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<sup>7</sup> See the Chapter dealing with the establishment of the Office of a Prison Ombudsman to investigate corruption for more details on leads received.

<sup>8</sup> See the report on all the other complaints the Commission received from Management Areas not specified in the Terms of Reference for investigation. The report is annexed hereto marked Appendix "B".

<sup>9</sup> The toll free number was operational whenever the Commission offices were open, which was five and a half days a week. Two alternating members of staff manned the phone. They took detailed statements from callers and passed the information on to the investigators, who then followed it through if it related to the nine Management Areas under investigation. However, if it related to the other Management Areas, this was passed on to the relevant agencies within the Department, including the Office of the Inspecting Judge, who were to follow up on those leads.

the submissions and check that all the required information was available prior to the start of the hearings.

During the first week of each investigation in an area, the procedure was that the investigators would meet with all the stakeholders in the Management Area, including prison management, unions, prisoners and staff members, to introduce themselves, explain the investigation procedure and answer any questions that might arise. Investigators then conducted interviews and took statements from various people who had knowledge of corruption or maladministration within the Department. In accordance with the views expressed by the Supreme Court of Appeal, copies of those statements were served on all those people implicated.<sup>10</sup> Thereafter, evidence was led in open Court<sup>11</sup> to comply with the provisions of the Commission's Act.<sup>12</sup>

All members of the Commission endeavoured to approach their task with an open mind. An added assurance of impartiality was provided by the fact that the investigators had to present whatever evidence they had collected before the Commissioners. In cases where a member of the investigating team was not sure what approach to adopt with regard to a particular matter, the approach was discussed with the Chief Investigator for direction and guidance. If the matter was not resolved, it was further discussed with all other Commission members to ensure total openness and impartiality in evidence gathering and that the approach was in accordance with an inquisitorial process.

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<sup>10</sup> *Du Preez and Another v The Truth and Reconciliation Commission* 1997 (3) SA 204 (SCA).

<sup>11</sup> Even though it was not compulsory to use courts, every attempt was made to sit in a court environment for reasons of safety and the welfare of prisoners.

<sup>12</sup> See Section 4 of Act No. 8 of 1947.

### 3.3 Commission Hearings

For purposes of the safety of the witnesses and prisoners, it became necessary for the Commission to conduct its hearings within courthouses, with provisions being made for the prisoners to have their meals during these sittings in order not to violate their rights.

The Commission is indebted to a number of Judge Presidents and Chief Magistrates who allowed the Commission to use various courthouses, at times to the inconvenience of their own courts.

As already stated, two Commissioners assisted the Chairperson of the Commission. For seconding Advocate E. Steyn to the Commission for a period of two and a half years, the Commission is indebted to the Dean of the Faculty of Law at the University of Cape Town, Professor H. Corder. When Advocate Steyn had to return to her duties at the University of Cape Town, the Commission appointed another Commissioner, Advocate S. Poswa-Lerotholi of the Durban Bar, who assisted with the Ncome Management Area hearings.

The first two weeks of the hearings in each Management Area were spent listening to presentations from the Provincial Commissioner (where applicable), the Area Manager, Heads of Prisons and the Heads of various Departments within the Management Area. However, the presentations were not limited to the Heads of Prisons and senior officials.

Where there was a need to hear other stakeholders, those stakeholders were also given an opportunity to make their submissions.<sup>13</sup> The unions were also

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<sup>13</sup> For example in Pollsmoor the various Non-Government Organisations running projects within the prison were also allowed to give presentations to the Commission.

invited to give presentations. This invitation to the unions to give presentations was honoured at some Management Areas, for example, Durban-Westville and Pietermaritzburg Management Areas. Most unions in other Management Areas only responded when they were implicated by witnesses.

Commission hearings were held in open court with *viva voce* evidence being led. In cases where oral evidence could not be led, documentary evidence was tendered, which the Commission accepted.

In accordance with regulations governing this Commission, the people who were implicated by the various witnesses were given an opportunity to cross-examine witnesses to test the veracity of their contentions and to lead evidence in rebuttal.<sup>14</sup> Those who could afford legal representation and who elected to be so represented were also given an opportunity to be represented by their legal representatives before the Commission.<sup>15</sup>

At no stage was the right to legal representation refused to any of the implicated people who applied for it, even though in terms of the Regulations this right could be exercised only at the discretion of the Chairperson of the Commission. As a result, up to sixty-five (65) legal representatives appeared before the Commission.<sup>16</sup>

The sittings of the Commission and hearing of evidence with respect to the various Management Areas covered the period 2 February 2002 to the 12 May 2005 and were held as follows:

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<sup>14</sup> See Regulation 9 of Regulations published in Government Notice No. 22 718 of the 27 September 2001 (“the Regulations”).

<sup>15</sup> See Regulation 10 of the Regulations.

<sup>16</sup> The names of these representatives are contained in Appendix “C”.

	<b>Management Areas</b>	<b>Dates</b>
1	Durban-Westville	4 February - 30 April 2002; 7,8,17,18, 24 June 2004
2	Pietermaritzburg	15 April - 15 June 2002
3	Bloemfontein (Grootvlei)	18 June - 2 August 2002
4	St Albans	12 August - 27 September 2002; 31 May - 2 June 2004
5	Pollsmoor	11 November - 6 December 2002; 17 February - 14 March 2003; 9 – 12 May 2005
6	Leeuwkop	9 April - 26 June 2003; 27 – 31 October 2003
7	Johannesburg	1 August – 2 October 2003 20 – 31 October 2003 29 March – 2 April 2004 19 April, 21 - 22 April & 30 April 2004
8	Pretoria	4 November 2003 – 19 March 2004 20 April & 23 - 28 April 2004 3 - 27 May 2004
9	Ncome	26 July - 23 September 2004

The Commission did not hear evidence continuously as it sat in accordance with the High Court calendar for the Natal Provincial Division. The Commission thus took recess at the same time as the High Court. The recess periods were used for the drafting of interim reports, which were submitted to the President and the Minister of Correctional Services.

### **3.4 Interim Reports**

During the hearings the Commission adopted the procedure of issuing interim reports. These reports were attempts to deal with incidents of misconduct that the Department needed to attend to on an urgent basis.

The urgency that led to the Commission following this format was the Commission's realisation during the hearings that the Department is experiencing a total breakdown in the disciplinary system, which required recommendations for immediate intervention. This breakdown was highlighted in the Commission's First Interim report in which it made certain recommendations as to how to address the problem.

The Commission submitted eleven (11) interim reports during the sittings, which were with respect to all the Management Areas except the Ncome Management Area. The interim reports deal with illegal drug dealing, medical aid fraud, favouritism in appointments, extortion, unlawful financial transactions with prisoners, fraudulent matric certificates, unlawful visits, theft, fraud, assault of prisoners, irregular appointments, irregular transfers and parole transgressions amongst other things.

No interim report was submitted on the Ncome Management Area because it was the last area the Commission investigated. However, the Commission's findings and recommendations on Ncome form part of this Final Report.<sup>17</sup>

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<sup>17</sup> See Chapters dealing with the Ncome Management Area in Volume Two (2).

The eleven (11) interim reports that the Commission has submitted are hereby incorporated and form part of this final report. For ease of reference, the interim reports form part of this report.<sup>18</sup>

#### **4. INSTITUTIONAL CULTURE**

The Commission, in accordance with its Terms of Reference, investigated nine (9) Management Areas. The incidents of corruption and maladministration that the Commission came across in the various prisons will be discussed in greater detail later in this report. However, these incidents were influenced by a particular and generalised institutional culture, which the Commission observed in all nine (9) Management Areas investigated.

##### **4.1 Department's Rules and Regulations**

The most noticeable feature of the institutional culture the Commission observed was that corruption and maladministration were rife in most of the Management Areas investigated. There is a large group of employees within such Management Areas who featured in almost all the incidents of corruption and maladministration and who are predominantly driven by greed and the need to make easy money. This became apparent in the nature of the corruption that is endemic within the Department. Despite this, the Commission also observed that there were members in the Department who are law-abiding and who sought to comply with the rules and regulations of the Department.

The investigations also revealed that many employees consciously and systematically disregard Departmental rules and regulations. The failure or refusal to comply with rules and regulations of the Department became apparent in the manner in which these employees consciously and deliberately flouted regulations relating to security, searching of members,

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<sup>18</sup> See Volumes 3 and 4 of this report.

searching of visitors, visitation rights, procurement of goods for the prisoners, the relationship between prisoners and warders, recruitment and appointments, promotions, merit awards, transfer, parole, disclosure of private work, treatment of prisoners, use of State assets and others. This appeared to be done with impunity in that there was little evidence of disciplinary action being taken against the transgressors.

It became apparent to the Commission that besides the initial training members receive after recruitment, there are no systematic training and development programmes for members to acquaint themselves with the rules and regulations of the Department at a later stage. Even when circulars and information are disseminated, there is no effective mechanism to ensure that such information is properly disseminated and reaches all staff members. This obviously might, on some occasions, have detrimental consequences for the Department.<sup>19</sup>

The disregard for rules and regulations was also apparent in the attitude of some of the members towards the Commission, Commission staff and the work of the Commission. There is a clear lack of accountability by officials, including, management.

#### **4.2 Work Ethic, Competence and Discipline**

The Commission's general observation was that there appeared to be a poor work ethic prevailing in most of the Management Areas investigated. There is a general breakdown of organisational standards and norms. Many correctional officials are not dedicated to their duties with a high level of absenteeism and truancy being a major problem.

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<sup>19</sup> In Pretoria the rules and regulations regarding the writing of examinations by prisoners and members of the community were changed and such information was not properly disseminated. This had serious negative consequences for the Department (See, for example, the Chapters dealing with Misuse of Examination Centres and Sexual Violence in Prisons).

There also appears to be a general culture of violating prisoners' constitutional rights with prisoners being deprived of their full visitation rights, being served lunch and supper together at midday<sup>20</sup> and thereafter being locked in their cells often merely because members want to leave work early to attend to their own private affairs.<sup>21</sup>

It is also clear that many officials occupy responsible senior positions without having the necessary competence and experience for such positions. This lack of competence leads to a situation where the senior official is unable to command the respect of subordinates, which ultimately results in a general breakdown of discipline, law and order.

The lack of discipline is of serious concern to the Commission as it is the Commission's view that unless disciplinary issues are addressed urgently and dealt with as recommended by the Commission, the Department faces the prospect of anarchy in its work place. This particular aspect will be dealt with in more detail later in this report.<sup>22</sup> The anarchy has manifested itself in the prevalent abuse of power by senior officials towards junior officials, female staff members and those who are vulnerable.<sup>23</sup>

The lawlessness and failure to respect any form of authority is not only confined to the failure to respect colleagues but also the Commissioner and the Minister of Correctional Services.<sup>24</sup> It is also evident that Departmental officials do not respect orders of the High Court of South Africa and the Supreme Court of Appeal.

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<sup>20</sup> See also Chapter dealing with Treatment of Prisoners.

<sup>21</sup> See the Chapter dealing with Treatment of Prisoners and the section on Johannesburg Management Area where officials are alleged to leave their posts when big soccer matches are being played and the evidence of Mr Golden Miles Bhudu, a Director of SAPHOR in Leeuwkop Transcript Vol. 40, page 3 327 who alleged this also occurred in the old days whenever there was a Springbok rugby match.

<sup>22</sup> See Chapters dealing with Disciplinary Inquiries and Sexual Violence in Prisons.

<sup>23</sup> See Chapter dealing with the Abuse of Power.

<sup>24</sup> This aspect will be dealt with in more detail later in this Report.

The failure to respect the Orders of the High Court can best be demonstrated by the Department's failure to honour the various orders of the High Court directing them on to how to deal with, amongst others, the interpretation and application of the parole provisions and guidelines. The reason the Department provided for not abiding by the Parole orders was that there were conflicting Judgments from the Cape Provincial Division and the Natal Provincial Division.<sup>25</sup> There is, however, no merit in this reason as the Department's legal advisors should have advised the Department about the South African legal system and how it operates under these conditions. It may be that the Department treated these legal advisers the same way it has treated other professionals within the Department, which is to ignore their advice.<sup>26</sup>

At the Pretoria High Court, in what is commonly referred to as "The Boeremag Trial", the Judge in the trial was so infuriated that he stated that it is scandalous that the Department had ignored his order to return a laptop computer to one of the accused. As a result, the Judge ordered the Head of Prison, Mr Baloyi, to come to court to appear in a contempt investigation.<sup>27</sup> The prison officials were even reported in court to have said that the court would not dictate to them.<sup>28</sup>

This once again was an indication of how the Department reacts to orders emanating from the High Court and various other courts. The reports, which

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<sup>25</sup> See the Chapter dealing with Parole where this issue is discussed in more detail.

<sup>26</sup> In this regard, see the Chapter dealing with Abuse of Power on the manner in which the Department deals with psychologists, the Chapter on Parole on how the advice of doctors in respect of the release of terminally ill prisoners is ignored, the Chapter on Recruitment regarding the psychometrist and later in this Chapter

<sup>27</sup> See the Court record in the abovementioned trial, pages 3 705 et seq. The details were also briefly reported in "*This Day*" newspapers of Wednesday, the 25 February 2004: "Boeremag trialist gets back his laptop computer".

<sup>28</sup> "Hulle sê hulle laat hulle nie voorskryf deur 'n Hof nie". (Record of the trial at page 3707).

the Commission has received from various Magistrates and Judges, clearly indicate that the Department has difficulty in complying with Court Orders.<sup>29</sup>

Legal advice of Departmental advisers and Orders of the High Court and Supreme Court of Appeal are disrespected and ignored.

It is this culture of lawlessness that has led to members of the Judiciary in some of the Divisions of the High Court declining to do prison inspections because Judges fear for their safety. However, the absence of judicial supervision of the conditions and treatment of prisoners means that prisoners have lost the possibility of independent oversight of their conditions.<sup>30</sup>

Another example of failure or refusal to comply with Court Orders can best be illustrated by the Marimuthu<sup>31</sup> case. In this matter, officials ignored the court order and released Mr Marimuthu on correctional supervision, notwithstanding the Supreme Court of Appeal's refusal to entertain his appeal, in which he was seeking correctional supervision.

Under these circumstances, it is clear that Departmental officials and, in particular, the members of the traditional custodial sector, regard themselves as being the highest authority in the country with respect to anyone who has been incarcerated. The abuse of power by officials is embedded and also manifests itself in the manner in which officials treat their colleagues, especially those who are not from the traditional custodial sector. This trend becomes apparent in a number of areas, for example:

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<sup>29</sup> Prisoners sometimes are not delivered to courts on time for criminal hearings especially when the staff members are holding their meetings or Union meetings. As a result, there can be undue delays in commencement of trials. This fact has been conveyed to the Area Managers in the various Management Areas but it still persists.

<sup>30</sup> See the Chapter dealing with the Judicial Inspectorate for more details on the problems of oversight into prisons. On 21 October 2002, the Judge President of the Natal Provincial Division wrote a letter to the Commission explaining why prison visits had been stopped. For details of the letter, see the Chapter dealing with the Durban-Westville Management Area.

<sup>31</sup> See the Chapter dealing with Conversion of Sentences to correctional supervision, which details the circumstances surrounding the release of Mr. Marimuthu.

**a) Psychologists and Psychometrists**

Psychologists are supposed to assist the Department in dealing with psychological issues and psychometrists are supposed to assist in recruitment procedures. However, the evidence before the Commission was that psychometrists end up acting as clerks in the interviews. They also act as clerks for warders who do the interviews and are involved in the selection process. The warders may not necessarily be qualified to carry out the job.<sup>32</sup>

**b) Medical Doctors and Nurses**

Medical personnel, relying on the expertise they have due to their training, make certain recommendations about prisoners, which warders often ignore, irrespective of whether the medical doctor is a general practitioner, a district surgeon or a specialist.<sup>33</sup> It is not unheard of for warders to override a medical decision a specialist has made, and even do this in matters where another medical practitioner would not easily disagree.

**c) Social Workers**

The recommendations of social workers are often overlooked and the Department's officials decide whether or not a person will get parole. Even when social workers are of the view that a person has not

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<sup>32</sup> See the Fifth Interim Report on the Bloemfontein Management Area and the setting out of the role played by psychometrists in that recruiting process. See also the Chapter dealing with Recruitment in this report.

<sup>33</sup> See the case of *Stanfield v Minister of Correctional Services* 2004 (4) SA 43 (C) where medical evidence was challenged by the warders in the Department of Correctional Services. Similarly, in the matter dealing with the application for release on medical grounds of Mr Stanley Nkosi at Leeuwkop Prison and Mr du Plooy at Pretoria Local Prison, where the Provincial Control Officer and the Area Manager at Leeuwkop and Pretoria Prisons, respectively, overrode the medical evidence although they had no medical qualifications. (See Chapter dealing with Parole).

undergone the necessary programmes for him or her to get parole, officials sometimes override their professional assessments.<sup>34</sup>

**d) Lawyers**

Similarly, advice from lawyers is often ignored. Members of the Department decide on legal interpretation and the way in which they are going to apply the provisions of the Correctional Services Act without regard to the legal advice offered.<sup>35</sup>

**e) Human Resource Matters**

The Department appoints consultants and specialists in this area, who make recommendations, which the members ignore and instead do as they please. Mr Theron of Pollsmoor Prison stated in no uncertain terms that the Human Resources Directives given to them by the Department on recruitment were regarded as nothing more than pieces of paper.<sup>36</sup>

This abuse of power and general state of challenging any form of authority gives the impression that in the Department, the job of warder is the only job in the public service that allows one to work in all fields, as long as prisoners or prisons are involved, without training and regardless of whether such work requires professional expertise or training in other Departments or the private sector.

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<sup>34</sup> See the evidence of Mrs Bhamjee in the Conversion of Sentence Chapter.

<sup>35</sup> In this regard see the matters brought before court by the Department where it is clear that legal advice and parole judgments have been ignored. See also the manner in which the Marimuthu matter was handled. See also the evidence of Mr J.B.T. Chaka at the Ncome Management Area regarding how his advice was ignored: Ncome Transcript Vol. 10 pages 942-980.

<sup>36</sup> See Mr Theron's evidence – Pollsmoor transcript – Vol.34 pages 2 675-6 (5.3.03.)

### 4.3 Obstacles to the Commission's Work

Although Commission investigators found a high level of co-operation from some Departmental members, it also became apparent that there was a great deal of resistance to the investigations.

Notwithstanding that the unions were invited to make submissions to the Commission at each Management Area, there was very little or no information at all that emanated from this sector. It appeared that whenever the Commission asked members of the Department to provide certain information, they were afraid, in varying degrees, of complying with the request.

Senior officials sometimes harassed those who did provide information.<sup>37</sup> Furthermore, most senior Departmental officials frustrated the Commission's work by attempting to prolong the hearings in the hope that the Commission would eventually leave the Management Area without dealing with that particular issue. In some cases, officials were subpoenaed but refused to appear before the Commission.<sup>38</sup>

Non-co-operation was also evident in the behaviour of some officials who suddenly went on leave unannounced after the Commission had approached them to submit information. Other officials chose to work out of town to avoid the Commission's investigators. Then there were a number of officials who made their co-operation conditional upon the Commission meeting certain demands. Some of these officials demanded monetary compensation for their assistance and others demanded transfers before they would be of assistance to the Commission.

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<sup>37</sup> An element of interference and examples of members of the Department obstructing and hindering the work of the Commission are dealt with in Chapter Six of the Fifth Interim Report of the Commission.

<sup>38</sup> See the Sixth Interim Report in this regard.

The Commission's investigators also encountered great resistance from many officials at the Department's Head Office. In some instances, officials that were requested to provide information would either delay the submission or not submit the information at all. In other instances, some officials who gave statements to the Commission later reneged on the statements and subsequently alleged that the Commission's investigators had put words into their mouths. When requested again to write a statement in their own hand, giving their own version, there was again a failure to co-operate. The Commission also viewed this as an indication of an attempt not only to discredit the integrity of the Commission but also to discredit the integrity and professionalism of some of the Commission members and investigators.

Throughout the Commission's hearings, some senior officials made a concerted effort to discredit the Commission and its investigators. Investigators were threatened with death.<sup>39</sup> The attacks on the Commission increased in intensity and severity when the Commission was investigating the Bloemfontein, Port Elizabeth and Pollsmoor Management Areas and the prisons within Gauteng. It was at its most severe when the Commission was in St Albans<sup>40</sup> and Leeuwkop Management Areas.

A number of disparaging and defamatory press statements were released with the intention of discrediting the Commission. False statements with no substance were also released in the name of a union.<sup>41</sup>

Notwithstanding all of the above, the Commission's staff members carried on with their work and tried to avoid issues that sidetracked them from the objectives of the investigations.

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<sup>39</sup> See the Second Interim Report on Westville Management Area and the Fifth Interim Report on the Bloemfontein Management Area at page 136.

<sup>40</sup> See also the section dealing with the Mr Bones matter in the Chapter on St Albans Management Area.

<sup>41</sup> See the false media statement about the union not being given a fair hearing released by the Police and Prison Civil Rights Union (Popcru), on 30 May 2003, a media statement in SABC News of 12 May 2004 about the length of time the Commission had taken to investigate and the income of the Commission investigators in the *Mail and Guardian* online of the 17 May 2004.

#### **4.4 Intimidation and Fear**

Intimidation and fear is prevalent in the Department of Correctional Services, including Head Office. As a result, even the people holding management positions are not completely committed to the enforcement of the Departmental regulations because they fear reprisal from other members. This is the case even if they are not corrupt because fear drives them to avoid enforcing the rules and regulations.

The prison staff is in dire need of urgent intervention to give them direction and support. Morale is very low and members are disillusioned. This cannot be allowed to continue if the Department is expected to operate in an efficient and corrupt free environment where rehabilitation of prisoners is a priority.

Besides the generally known violence and intimidation associated with the Department of Correctional Services, the one incident which put the fear of death into a number of members in the Department was the murder of a senior departmental official, Ms Thuthukile Bhengu.<sup>42</sup>

This shocked most of the law abiding members in the Department because, even though the sinister forces operating in the Department had been violent towards male and female members previously, at no stage had a female member been murdered. In the eyes of the ordinary law abiding members, it gave the impression that the sinister forces within the Department were prepared to go to any extent to achieve their objectives. As a result, very few members were prepared to risk their lives and co-operate with the Commission.

The establishment of the Commission could not have been at a worse time insofar as intimidation and fear was concerned. Indeed, the murder of Ms

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<sup>42</sup> See also the Chapter dealing with the Pietermaritzburg Management Area.

Bhengu may have been one of the contributing factors which influenced the establishment of this Commission.<sup>43</sup>

## **5. MANAGEMENT**

### **5.1 Visionary Leadership**

There is clearly a lack of visionary leadership in the Department, especially in management at Management Area level. Management appears to react to rather than lead or direct situations. This reactive tendency suggests that management staff lack the necessary skill or capacity needed to move the Department forward. No organization can succeed where managers do not have vision for the organization or strategise and plan properly.

The lack of capacity in leadership also contributes to inefficiencies, maladministration, corruption and the wastage of resources apparent in the Department. This is partially expressed in the state of neglect of some of the prisons, which are in a state of disrepair, are not fully operational and need to be renovated.

In some Management Areas there is a fusion of the roles of management and the Union, Popcru. This, once again, leads to a dysfunctional management.

### **5.2 Record Keeping / Management**

Generally, most Management Areas have been found to be very poor in record keeping or management of information, in particular, the keeping and

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<sup>43</sup> Ms Thuthukile Bhengu was in charge of Human Resource Management in the KwaZulu-Natal Provincial Office of the Department of Correctional Services. She was murdered when she was shot through a window in her residence on the prison grounds on 26 June 2001. In June 2002, two senior correctional officers, Mr Mlungisi Dlamini and Mr Lucky Mpungose, were convicted and sentenced to life imprisonment for Ms Bhengu's murder. The court heard that the assassination was planned after Ms Bhengu refused to consider the employment of Mr Mpungose's fiancée allegedly as a result of a fraudulent job application.

managing of prisoner and staff information. This was an issue of concern brought to the attention of the Commission by senior members of the Department's staff. The improper keeping of information was not confined to one Management Area.<sup>44</sup> It was generally accepted that the Department's attendance register, in most Management Areas, cannot be relied upon.<sup>45</sup>

The information relating to staff records and attendance is critical in a facility like a prison because it has a bearing on prison security. Similarly, normal security requirements demand that each and every prisoner is accounted for at all times in any prison. Notwithstanding that, the Commission found that in some Management Areas, management could not actually account for the number of prisoners in custody because of poor record keeping. There were discrepancies in the records kept in some institutions within the Management Areas.

The keeping of records in Management Areas caused the Commission concern as the management of any correctional facility should, at all times, be in a position to account for each and every inmate incarcerated and the whereabouts of every official who is on duty. The situation was more alarming when the staff could not account for firearms in the Arsenal in one Management Area.<sup>46</sup> There is clearly an urgent need to upgrade the management of information in most Management Areas.

Furthermore, it has become apparent to the Commission that the late discovery of some of the "escapes", which are referred to in the Chapter

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<sup>44</sup> In particular, St Albans, Johannesburg and Ncome Management Areas.

<sup>45</sup> In this regard see the Sixth Interim Report dealing with Mr Mataka. The evidence was clear that on some of the days when he purported to be at work, he was in fact attending his trial in the Gauteng Province. Similarly, there was a query in the evidence with regard to the Attendance register relating to Mr Baloyi at St Albans, who was alleged to be on leave but was in fact attending some meetings in the Department. Similarly, it also became apparent that on days when major union activity was to take place, most of the union leadership would have been recorded as having been on leave on that particular day when, in fact, they were at work. (See evidence relating to St Albans and the removal of Mrs Tseane in this regard.)

<sup>46</sup> Even the Arsenal Register was not up to date at Ncome Management Area. (See Chapter dealing with Ncome Management Area – The Arsenal).

dealing with prison security,<sup>47</sup> was as a result of poor record keeping. The “disappearance” of some of the prisoners was only discovered a number of days after they had escaped. With proper record keeping and daily verification of prisoner information, controls and monitoring, such escapes could have been discovered earlier. They might even have been intercepted.

The mismanagement of prisoner information is not only confined to sentenced prisoners, it is also a problem with regard to awaiting trial prisoners. The “Gaol Returns”, which used to be furnished to the Department of Justice on awaiting trial prisoners, are no longer being furnished. These Returns provided information to the Department of Justice that clearly set out the status of the hearings with regard to an awaiting trial prisoner.<sup>48</sup>

When the Commission requested the information regarding “previous investigations into the Department”, which are referred to in the Terms of Reference, the Department could not supply a complete list, let alone provide the Commission with all the copies of those investigations they had identified. In order to identify the reports and obtain copies thereof, the Commission members had to use their own resources and rely on previous news reports so as to recall who had investigated the Department. Pursuant upon that, an approach was made to some of the people individually to obtain copies of the previous reports. This was another indication of the state of affairs in the Department.

## **6. OVERVIEW OF MANAGEMENT AREAS**

Notwithstanding the general institutional culture prevailing in the Department as a whole, the Commission also found a distinct institutional culture and some areas of concern in each of the Management Areas investigated. The

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<sup>47</sup> See the Chapter dealing prison security and in particular the escapes relating to Mr Sydney Thloloe (a.k.a. Biza).

<sup>48</sup> For more details on the discussion on the ‘Gaol Returns’ see the Chapter dealing with Overcrowding.

brief overview of the Management Areas which follows provides an understanding<sup>49</sup> of the challenges the Commission encountered and that the Department faces insofar as each of these Management Areas is concerned.

## **6.1 Durban-Westville Management Area**

This was the first Management Area the Commission investigated. The Commission received co-operation from the senior managers in the Management Area and the Provincial Commissioner.

Both local branches of the Public Servant's Association<sup>50</sup> and Popcru testified before the Commission. The Commission found it interesting that Popcru was of the view that the only corruption they were aware of in this Management Area was the poor work performance by a company that had been contracted by the Department to paint one of the prisons within the Management Area. They contended that the paint was peeling. As far as they were concerned, there was absolutely no corruption in this Management Area.

This submission was made to the Commission notwithstanding that the Commission investigators found drug dealing, medical aid fraud, sexual harassment, abuse of power and nepotism.<sup>51</sup>

The Commission interviewed a number of members who had participated in the medical aid fraud. The statements emanating from those interviews were passed onto the other investigating agencies.<sup>52</sup>

Whilst there was intimidation of members and witnesses, as expected, there were also unexpected threats, which surfaced in the Commission hearings, like the threat to kill the Chief Investigator of the Commission. There was even

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<sup>49</sup> For more details on each Management Area see the full detailed Chapters on each Management Area later in this report.

<sup>50</sup> Hereinafter referred to as "PSA".

<sup>51</sup> Interim Reports have been submitted in this regard.

<sup>52</sup> The Directorate for Special Operations of the National Prosecuting Authority (Scorpions) and the Special Investigation Unit (SIU).

an attempt to bribe the Commission investigators so as to suppress evidence.<sup>53</sup> This was a clear indication of the culture which feeds into corruption within the Management Area.

## **6.2 Pietermaritzburg Management Area**

This was the second Management Area the Commission investigated. From the Commission's investigations, it became apparent that the general level of intimidation and political climate made the Management Area almost ungovernable. Furthermore, the said level of intimidation and fear had been exacerbated by the killing of Ms Thuthukile Bhengu, who was murdered for refusing to appoint one of the warders' girlfriends during one of the recruitment drives, allegedly because of a fraudulent matric certificate. Her killing resulted in members being scared to testify and disclose corruption to the Commission.

The level of fear and intimidation amongst the members was apparent to both the investigators and the Commissioners.

While Pietermaritzburg Prison suffered from many of the same issues of mismanagement, corruption and overcrowding seen in the other prisons investigated, it was unique in the way in which it had been rendered unmanageable as an intended or unintended consequence of Operation Quiet Storm.

It was clear to the Commission that the problems at Pietermaritzburg Management Area were highly politicised. This might be a historical fact but is still prevailing and issues are still being defined along political lines and the pre-1994 political tensions still exist.

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<sup>53</sup> See the Second Interim Report in this regard.

### 6.3 Bloemfontein Management Area

This was the third Management Area the Commission investigated. The impetus of the investigation in Bloemfontein was the video tape, which had been compiled by the four (4) prisoners.<sup>54</sup> The said video tape depicted warders committing acts of corruption. However, it was the first time that such blatant acts of corruption were shown on television in South Africa. Even prior to the screening of the video there was a lot of tension in this Management Area. Investigators of the Commission were threatened to the extent that they had to have police escorts into the prison for the first time since the Commission began.

The Commission was further subjected to intimidation in that evidence was led of a member who insulted one of the Commissioners, by calling her a “bitch”.<sup>55</sup> The insults had racial connotations towards the other Commissioners as well.

The investigations into the Management Area were hampered by interference from Head Office, which created even greater tension in the Commission hearings. The Commission believes this interference by the Head Office made its task thereafter even more difficult, as this tension also spilled over to the next two (2) Management Areas the Commission had to investigate immediately thereafter, namely, St Albans and Pollsmoor.

The Commission found that the following factors contributed to the corruption and maladministration in the Bloemfontein Management Area: drug and alcohol trafficking and other illegal sales, sodomy, recruitment practices, abuse of prisoners, management malpractices and management rivalry.

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<sup>54</sup> Messrs Gayton Mackenzie, Moosa Mia, Petrus Sekutoane and Samuel Grobbelaar. They were also assisted by Messrs Kenneth Kunene, William Smith and Gideon van Niekerk.

<sup>55</sup> For more details see the Fifth Interim Report at pages 100-101. Also see Bloemfontein Transcript, volume 4 pages 235-260.

## 6.4 St Albans Management Area

St Albans was the fourth Management Area the Commission investigated. The investigations in this Management Area were prominently around the secret meetings, which senior managers held to decide the fate of the various members outside the formal management structure, the abuse of power by senior officials against the junior officials, fraud, filling of jobs, ethnicity etc.

For the first time during the Commission hearings, senior management staged a walk-out when they had to testify to refute serious allegations which had been made against them by a witness who was a former member of the cabal that was making decisions. The evidence of the witness was also corroborated by a number of other witnesses, who had been, one way or the other, victimised by this clique or senior management of the province. The individual members of the Commission were openly attacked in the media.<sup>56</sup> It then became clear to the Commission that it had touched “the untouchables”. These senior managers had never been asked to account for their actions. Their abuse of power had never been challenged. In fact, they were feared by the entire Department in the Eastern Cape.

The institutional culture, as elsewhere, is one that is rife with corruption and maladministration. The problems within the Management Area also had political connotations and divisions between employees’ complicated matters. The Eastern Cape as it is currently recognised in terms of section 103 of the Constitution includes districts, which were formerly part of the Transkei and Ciskei homelands and the Republic of South Africa. Consequently, the employees of the Department are from those areas. Notwithstanding the fact that the members now belong to the same province of the Eastern Cape, they still subscribe to the old apartheid divisions and decisions are scrutinised according to whether they favour one or the other of these old geographical regions.

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<sup>56</sup> The walk-out was on 18 October 2002 and the media releases were in the *Daily Dispatch* and *Die Burger*.

In addition to the above sectionalism, there is also strong trade union rivalry, which affects the functioning of the Management Area.

The Commission also heard testimony about how the Department had failed to take action against a senior official who allegedly sexually harassed several female colleagues. These incidents were symptomatic of the general problem of sexual harassment of female staff members in the Province. There were even allegations of sex for jobs, which could not be proven because witnesses were scared to testify.<sup>57</sup>

## **6.5 Pollsmoor Management Area.**

This was the fifth Management Area that the Commission investigated. The Commission's investigations at Pollsmoor Management Area concentrated mostly on the two (2) recruitment drives,<sup>58</sup> which had been riddled with irregularities, procurement practices, maladministration at the workshop, gangs, sexual abuse in the female prison and other general problems within this Management Area.

The member who was implicated in the recruitment practices adopted the strategy of walking away from the proceedings when the time came for him to testify about what had happened. He did so after having employed the services of a senior counsel to cross-examine all the other witnesses and when the time came for him to testify and be cross-examined, he chose to walk out.

It was apparent to the Commission that Pollsmoor had a major drug problem, which was influenced by the general gang culture within Pollsmoor and the Western Cape generally. However, penetrating and breaking through the code of silence within the gangs in the Western Cape was very difficult. As a result, very little in the form of evidence on gang members and their activities

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<sup>57</sup> For more details see Chapter dealing with Abuse of Power.

<sup>58</sup> For more details see the Chapter on Recruitment.

was revealed. The only break through for the Commission was made when one of the former gang members came forward and offered to testify *in camera*.<sup>59</sup>

Pollsmoor Management was one of the most difficult areas to investigate. At best, the Commission can describe it by reference to a “laager”. Whenever the investigators got close to penetrating a problem, a shroud of silence was drawn around the person or the issue that was being investigated.

The management in this Management Area has succeeded in having a meaningful relationship with the community through non-governmental organizations.

## **6.6 Leeuwkop Management Area**

This was the sixth Management Area the Commission investigated. There was definitely a positive approach towards the Commission, which came from the Provincial leadership of the Department. However, the same cannot be said with regard to some of the managers within the Department and the leadership of the unions.

The co-operation of the Provincial leadership assisted insofar as general investigations were concerned whenever problems were encountered it was easy to get them resolved within a short space of time.

When allegations were raised against the leadership of Popcru they, as well, came before the Commission with their legal representative, to cross-examine the Provincial Commissioner and witnesses, who had also made allegations against them. However, when their turn came to testify, they elected not to do so and also left the hearings. This decision was again followed by a big press release and a radio talk show,<sup>60</sup> which sought to mislead the public about not

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<sup>59</sup> For more details see the Chapter on Gangs.

<sup>60</sup> This was on the Vuyo Mbuli show on S.A.F.M.

being afforded an opportunity to put their side of events to the Commission. They had received more than a month's notice and they had elected to avoid cross-examination, a procedure which was followed with other witnesses.

The Commission found a lot of corruption relating to the dealings between prisoners and warders and other transgressions.<sup>61</sup>

## **6.7 Johannesburg Management Area**

This was the seventh Management Area the Commission investigated. At the time that the Commission arrived in this Management Area, the Special Investigation Unit had already been there six (6) months earlier. In the circumstances, there was a problem in the investigations in that the evidence had already been taken by the SIU. However, there were other matters the Commission investigated, which had not previously been investigated.<sup>62</sup>

The general culture at the Johannesburg Management Area was almost similar to the culture at Leeuwkop insofar as the attitude to the Commission was concerned. However, it was clear to the Commission that there is a lot of fear and intimidation amongst the warders. This was especially so when the Commission investigators started making enquiries about the warder, Mr Thloloe (aka Biza). Witnesses were once again, intimidated.<sup>63</sup>

Corruption and maladministration were apparent to the members of the Commission, which heard of corrupt members trying to make easy money, all compounded by a lack of discipline which meant transgressions were carried out with impunity. Prisoners were in agreement that "money talks at Johannesburg Prison". With money, a prisoner can get whatever he or she wants.

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<sup>61</sup> See the Commission's Eighth Interim Report.

<sup>62</sup> See the Ninth Interim Report.

<sup>63</sup> See the Chapter on Prison Security.

Allegations of serious drug and alcohol smuggling at the prison were confirmed during the Commission's hearings by inmates.<sup>64</sup>

## **6.8 Pretoria Management Area**

The Pretoria Management Area was the eighth Management Area that was investigated by the Commission.

The institutional culture the Commission observed was the high levels of corruption and maladministration. In particular, the general culture the Commission observed was that, while many members within this institution were law-abiding and sought to comply with the Department's rules and regulations, the majority of those who featured in the incidents of corruption and maladministration were predominantly driven by greed. This became apparent in the nature of the corruption that was endemic within the prison.

The Commission also observed tribal or ethnic tensions in the Pretoria Management Area. This could be attributable to the fact that there are a number of Nguni and non-Nguni speaking members at the prison. This also affects the functioning within the Management Area. This defines the culture of the prisons, including the way members interact with the various prisoners. Depending on the tribal group to which you belong, the treatment you receive as a prisoner might be influenced by the tribal background of the member dealing with you.

C-Max, the super maximum prison, forms part of this Management Area. Here the Commission was shocked to hear of members abusing inmates and particularly that new inmates were being subjected to an "initiation ritual" of running the gauntlet while several members assaulted them as well as being shocked with electrical shields.<sup>65</sup>

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<sup>64</sup> See Ninth Interim Report.

<sup>65</sup> For more details see Chapters on Treatment of Prisoners and C-Max Assaults.

The exorbitant annual cost to the Department of the overtime system and the reluctance of management to implement the seven (7) day shift system to address the problem was dealt with at the Pretoria hearings. The system was being abused with some senior managers enriching themselves by undertaking menial guard duties at the prison on weekends to earn extra income.<sup>66</sup>

## **6.9 Ncome Management Area**

This was the last Management Area the Commission investigated. The state of affairs was complicated by the fact that most of the prisoners had been moved to other outlying prisons because of the drought and resulting water shortages. For the same reason, some of the members were not available to testify before the Commission. However, there was very little tension insofar as the members who were testifying before the Commission or those who were being investigated were concerned.

Several incidents of misconduct and maladministration were discovered at Ncome Prison, including unlawful pecuniary dealings with prisoners, the illegal taking out of prisoners from prison, poor controls of the Ncome arsenal and the absence of any control whatsoever over prisoners' private cash.<sup>67</sup>

This concludes the Commission's brief overview of the Management Areas investigated.

## **7. Concluding Remarks**

The Nine (9) Management Areas the Commission investigated were, according to the information furnished to the Commission in 2001, selected because they were amongst the most problematic ones in the Department.

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<sup>66</sup> For more details see Chapter on Non-Adherence to Overtime Policy.

<sup>67</sup> For more details see the relevant sections in the Chapters on Ncome in Volume Two (2) of this Final Report.

The Commission did, in fact, find that corruption and maladministration, violence and intimidation were prevalent at these management areas. Accordingly, the reading of this report should be seen in that context.

It is the Commission's view that to remedy the problems within the Department, management needs to intervene urgently in seven (7) areas, namely, recruitment of staff, disciplinary inquiries, training of personnel, treatment of prisoners, anti-corruption measures, anti-gang strategies and labour relations.

The Commission will deal with each of these areas in more detail in subsequent sections of the report. Addressing these areas will assist the Department in achieving its goal to rehabilitate prisoners as it ought to do in terms of the Correctional Services Act and the Department's White Paper on Corrections and to restore a culture of law and order.

The evidence before the Commission suggests that the problems in the Department as described in this Report have a history and can only be understood in terms of that background.

The next Chapter therefore examines this background before turning to deal with the various problem areas identified through the evidence obtained from the various sources.