

CHAPTER 25

ASSAULTS AT C-MAX PRISON

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CHAPTER 25

ASSAULTS AT C-MAX PRISON

1. INTRODUCTION

This Chapter deals with the assault and ill treatment of prisoners upon admission at Pretoria C-Max Prison.

Inmates irrespective of the nature of the crimes they have committed, are guaranteed by our Constitution the freedom from all forms of violence and torture. They also enjoy the right not to be treated or punished in a cruel, inhuman and degrading manner.¹

Pretoria C-Max Prison is one of only two South African super-maximum prisons, which are used as pilot projects to incarcerate highly dangerous prisoners, gang leaders and those who have tendencies to escape. Dangerous prisoners from various prisons in South Africa are admitted to C-Max.

During the Pretoria hearings, the Commission heard disturbing evidence of the manner in which prisoners are treated upon admission at C-Max Prison. Prisoners are allegedly stripped naked and searched, sometimes in front of female warders, assaulted without provocation and shocked with electrical shields before being admitted to their cells. This process has been referred to as “the initiation process” and is a systematic way of inculcating fear in prisoners.

This inhumane treatment is not only in violation of the prisoner’s rights in terms of the Constitution of the Republic of South Africa, but also in violation of both

¹ Section 12 of The Constitution Act No. 108 of 1996.

the provisions of the Correctional Services Act No. 111 of 1998 and the Prison Regulations.

2. IMPLICATED MEMBERS

The warders implicated in these atrocities are the following:

- 2.1 Mr Thomas Molaka Malamasho (a.k.a. Zero).
- 2.2 Mr Segawula Richard Nkosi.
- 2.3 Mr Mpsa Moses Tsetsane.
- 2.4 Mr Grant Mamogale Mabusela.
- 2.5 Mr Johannes Lulu Phaladi.
- 2.6 Ms Betty Regina Dikele Makhudu.
- 2.7 Ms Eunice Jamiya Nzuzi.
- 2.8 Mr Simon Mdau (a.k.a. Mambush).
- 2.9 Mr Themba Alfred Mtshika.
- 2.10 Mr Robert William Moore.
- 2.11 Mr Ignatius Kgomo.
- 2.12 Mr Simon Mdau (a.k.a. Bricks).
- 2.13 Mr Grant Mamogale Mamabusela.
- 2.14 Mr Billy John Floris Beukes.
- 2.15 Mr Matsobane Gabriel Phala;
- 2.16 Mr Kaloseke Semadi.
- 2.17 Mr Kevin Gamble.
- 2.18 Mr Sihlangu.
- 2.19 Mr Matsobane Mokwatlo.
- 2.20 Mr Peter Selolo.
- 2.21 Mr Herman Mabongela Makhubela.
- 2.22 Mr Christiaan Thomas Vosloo.
- 2.23 Mr Tsele.
- 2.24 Mr Gomba.
- 2.25 Mr Baloyi.

2.26 Mr Sumisa Simon Kumutela.

3. EVIDENCE LED

The evidence in support of the allegations against these warders is set out as follows:

3.1 Mr Johannes Jurgens Steenkamp

Mr Steenkamp is a warder at Pretoria C-Max Prison. He previously worked with the Emergency Support Team (EST) and still trains EST members. He also trains warders in self-defence and in escorting prisoners to courts and hospitals. He also trains members in the use of mini electrical shields, which were introduced in Pretoria C-Max Prison in 1996. These shields are known as “the Force Electrified Riot Shields”.

All members at Pretoria C-Max Prison have received training, which includes use of firearms and all other weapons in the Department.

They are very effective in crowd management and for use against aggressive inmates and inmates who refuse to relinquish sharp objects when instructed to.

Section 32 of the 1998 Act authorises members to use all lawful means, including a minimum degree of force, to detain in safe custody all prisoners. Section 33 of the Act authorises members to use non-lethal incapacitating devices if their security or the security of the prison is threatened by one or more prisoners.

The electric shields at C-Max Prison are kept in the armoury inside the building. They are used daily by members who have been trained in their use. The prison keeps a shield register in which members who use the shields initial their names, the times when the shields are taken and returned.

In training members in the use of the electric shields, Mr Steenkamp makes use of Sections 32 and 33 of the 1998 Act and the B-Orders. Although these sections of the Act were not in operation at the time of the training, he contacted the National Director and the Head Office and it was agreed that he could make use of these sections as guidelines. He, however, only uses them as guidelines to provide theoretical training for when force should be used and he also trains members practically on how to use force.

On the allegation that new prisoners are stripped naked and shocked with the electric shields, he stated that it would be contrary to the training in the use of the shields. Although they use the shields they have never been told how dangerous the electrical shields are. It is the function of the Section Head to monitor the use of these electrical shields.

3.2 Mr Peter Martin Trosky van Zyl

Mr Van Zyl is a warder at C-Max Prison. When he arrived at Pretoria C-Max Prison, he received informal training. He was trained by Mr Steenkamp, including in how to use electric shields.

He was taught that an electric shield is only used if a prisoner's or a member's life is in danger. When it became known that he was going to testify before the Commission, a false allegation that he was smuggling with the prisoner, Mr Elias Dlamini, was made against him and he was put on a shift from 22h00 until 06h00. When he complained about the change of shift he was told by the Head of the Prison, Mr Gomba, that if he had a problem, he should go and complain to the Jali Commission.

In January 2003, he was also accused of smuggling with the prisoners involved in the Boeremag trial but was not charged at that time.

A procedure for receiving inmates at Pretoria C-Max Prison is clearly documented² but this procedure is normally not followed.

Prisoners are transferred from various prisons around the country to C-Max Prison and when they arrive at the reception area they are stripped naked and searched, taken to the doctor and severely assaulted in the presence of medical practitioners. The evidence adduced was that these prisoners were assaulted without any provocation. The assaults normally take place when the prisoners are handcuffed, wearing leg-irons and some with stun-belts on.

The stripping of prisoners upon admission is a standard procedure to check if the inmate has anything in his possession but this should not be done in the presence of female members as is being done.

During June or July 2001 at Section C prisoners who had been transferred from Cape Town were instructed on arrival by members to strip naked in the presence of female members and were then assaulted. The members involved in these assaults were Mr Thomas Molaka Malamatsho (a.k.a. Zero), Mr Richard Nkosi, Mr Moses Tetsane, Mr Grant Mamogale Mabusela and Mr Johannes Lulu Phalati. The two (2) female members who were present when these prisoners were stripped were Ms Betty Regina Makhudu and Ms Eunice Jamiya Nzuza. These prisoners were also shocked with the electric shields.

Mr Nkosi was specifically observed and was positively identified in court as a member who used an electric shield under the prisoners' arms.

This assault on prisoners took place in the presence of a medical member, Mr Mzikayise Magudulela (a.k.a. Vusi). This medical officer did not attempt to come to the rescue of the prisoners and merely watched them being assaulted. Mr Johannes Lulu Phaladi, the Head of the Section, was present when the assault took place.

² See Exhibit "TT1".

These prisoners were thrown into their cells with handcuffs and leg-irons on and these are sometimes only removed the day after admission. The prisoners Mr van Zyl identified as being assaulted were Solomon (Chinaman) and Mr Shabalala. However, these prisoners did not give evidence before the Commission.

At the beginning of November 2003, Mr van Zyl was approached by a Popcru Shop Steward, Mr Kgomo, when it became clear that he was going to testify before the Commission. At that time he was working at the Access Gate. Mr Kgomo told him that it was normal procedure for the prisoners to be assaulted. He said it was done for the safety of the members. Mr Kgomo tried to persuade him not to testify before the Commission and said that if the prisoners were given cigarettes they would not testify. Mr Kgomo said that most of the members would lose their jobs as a result of the Jali Commission. The conversation between him and Mr Kgomo was tape-recorded and the tapes are available if required, but they were never produced for the Commission.

Although Mr Kgomo was not implicated, he stated that he was speaking on behalf of the Popcru members and said that the members would make his life miserable.

3.3 Mr Cosmos Ndlovu

Mr Ndlovu is a prisoner at Pretoria C-Max Prison. He and Mr Mondlala were transferred from Potchefstroom to Pretoria C-Max Prison in March 2001.

Before giving evidence to the Commission he was intimidated by members who tried to prevent him from testifying. A member, Mr Madiyapolo, came and told him that he no longer needed to testify. He wanted to phone the Jali Commission's investigator, Mr David Goqo, to confirm this, and then asked the Assistant Head of Prison, Mr Mandla Msibi, to use his phone. The keys to open the gates for him were then grabbed from Mr Msibi's hand by a member, Mr

Lehutso, who told him that as long as he works there, he would not get help. Mr Ndlovu then asked that the Jali Commission fetch him from the prison.

Mr Malamatsho (Zero) told him that the Commission will leave one day and he would remain in prison. Mr Ndlovu said he would report this to the Commission.

Mr James Masiye and Mr Tsetsane accused him of reporting them to the Commission and said they had received subpoenas. He now fears for his life and is no longer eating the prison food as he suspects that it might be poisoned.

When Mr Ndlovu first arrived at C-Max Prison for admission a member, Mr Malamatsho said, “welcome to hell”, which made him afraid as he had heard bad things about C-Max Prison.³ Both his feet and hands were handcuffed. When the new prisoners were taken to the reception area, a member by the name of ‘Zero’ (Mr Malamatsho) started getting rough with them and asked him why he had escaped from prison. He was speaking to him in Pedi. He then told him that he did not understand Pedi and Zero told him that he was being clever. He was then stripped naked and searched in the presence of a female member, Ms Betty Regina Makhudu. He was ashamed and embarrassed to be stripped naked in front of the female member.

Mr Malamatsho instructed Mr Tsetsane and Mr Mdau to shock them with an electric shield. He then called other members on the radio, who escorted them, naked and handcuffed, to phase one (1). On the way they were assaulted with open hands, insulted and shocked by Mr Tsetsane and Mr Mdau with an electric shield. They were also handcuffed with their hands behind them. At phase one (1) they were locked in a holding cell, where Mr Tsetsane and Mr Mdau and other members continued to shock and assault them.

³ See Chapter on Treatment of Prisoners for more details regarding the impact of detention at C-Max Prison.

He was then taken to cell A6, where he was still being shocked until a member, Mr George Bambo, interfered and instructed the members to stop. He was frightened and cried at the time. He felt sick but did not see the doctor that day. He tried unsuccessfully to report the matter to the outside police, but Mr Mdaou was Head of the Grievance Section and although he reported the assault to him nothing happened. He was then locked in the single cells for 23 hours.

3.4 Mr Ernest Beukes

Mr Beukes is a prisoner at Pretoria C-Max Prison. He was transferred from Kimberley Prison. On arrival at C-Max Prison in December 2002 he was instructed by Mr Malamatsho to strip naked and given a prison uniform. Mr Malamatsho called other members on the radio and they arrived at the reception area with electric shields. Mr Malamatsho handcuffed him and escorted him and two (2) other members, Mr Tsetsane and Mr Kgomo, to phase one (1) and shocked him on the way. He did not see the doctor that day, and was only allowed to see the doctor in January the following year.

He reported the matter to the Head of Prison, Mr Tsele, but nothing happened.

3.5 Mr Eric Ghofu Majola

Mr Majola is a prisoner at C-Max Prison. He was transferred from Baviaanspoort Prison. He had been assaulted by members at Baviaanspoort Prison and he arrived at C-Max Prison with injuries. On arrival he was instructed by Mr Malamatsho to undress and change into prison uniform. In January 2003, he went on a hunger strike for nineteen (19) days to protest against his incarceration at C-Max Prison. He was then taken to Pretoria Local Prison and began to eat when he was told that he would no longer be transferred to C-Max Prison. However, four (4) days later he was transferred back to C-Max Prison, where he resumed his hunger strike for fifty nine (59) days.

He was handcuffed by Mr Themba Alfred Matshika and Mr Robert William Moore who pushed him into his cell and shocked him with an electric shield for a long time. He sustained serious injuries and was taken to C-Max Prison hospital. He was examined by Mr Magudulea, a medical officer, who noted down his injuries. He reported the matter to Mr Gomba, who summoned the police and a docket was opened under Pretoria Cas No. 1619/06/2003. He does not know what happened to the case.

3.6 Mr Mzimasi Thungulu

Mr Thungulu (McGyver) is incarcerated at C-Max Prison. He was transferred from Kirkwood Prison, Eastern Cape on 28 October 2001.⁴

On his arrival at C-Max Prison, he was instructed by Mr Mdau to undress and told to put on a prison uniform. He was thereafter handcuffed and taken to a doctor, who examined him. He identified Mr Kgomo in court as one of the members who assaulted him. He was then pushed to the prison hospital by many members but he could only identify four (4), namely Mr Mdau, Mr Kgomo, Mr Shongwe and Mr Ellis. Mr Ellis shocked him. He was also assaulted with fists and booted feet and further shocked with the electric shield. They took him from the reception area to phase one (1). When he arrived at his cell, a member, Mr Ignatius Kgomo, took a red fire extinguisher hosepipe and inserted it into his anus and opened the tap. His stomach became painful and it was full of water. They removed his handcuffs and gave him some food, but he was unable to eat as his stomach was still painful and full of water. He asked Mr Mdau and Mr Kgomo to take him to hospital but they refused.

3.7 Mr Thabo Papire Phale

Mr Phale is incarcerated at Pretoria C-Max Prison. He and eight (8) other prisoners were transferred from Johannesburg Prison to C-Max Prison on 21

⁴ Also see Chapter on Prison Security for further details on Mr Thungulu and his notorious escapes.

January 2001. He was transferred from Johannesburg Prison because he had escaped from there.

On 20 November 2003, he asked a prisoner called Cosmos to write a letter for him to the Jali Commission because he was not conversant in English. He had laid a charge against Mr Tsetsane who on the morning before he was due to give evidence, asked him not to tell that he had assaulted and shocked him. He told him to say only that he had held him.⁵

Upon arrival at C-Max Prison, Mr Mdau instructed them to strip in the presence of females. While naked, he was shocked with an electric shield by Mr Oupa Abraham Moropa. The other members, Mr Leonard Setati and Mr Moses Tsetsane, instructed them to enter the other office, and they were then shocked with the electric shield. When he asked why they were shocked, they were told that it was the procedure at C-Max used to welcome them. He had been assaulted at the Johannesburg Prison and he asked Mr Mdau to see if he could see a doctor but he did not respond.

Mr Moropa told him that he was talking too much and kept on shocking him. Mr Tsele, the Head of Prison, was present and he ran to him and asked why they were being shocked. Mr Tsele told him it was because he wanted to run away. Mr Mangwako Leonard Setati and Moses Tsetsane shocked them from the reception area until they reached a holding cell in phase one (1).

He was not allowed to see a doctor until six (6) days after admission.

He laid a case of assault against these members but does not know what happened to the case.

⁵ See Pretoria hearings, Exhibit JJ1.

3.8 Mr King Winner Maluleke

Mr Maluleke is a prisoner at Pretoria C-Max Prison. He was transferred, together with other prisoners from Odie Prison on 31 July 2001. When he arrived, both his and Elias Mhlambi's legs and hands were handcuffed.

As new arrivals they were instructed by members Mr Grant Mamogale Mabusela, Mr John Floris Beukes and Mr Matsobane Phala to undress in the presence of Ms Florence Zwane. Mr Beukes and Mr Phala shocked them with electric shields whilst they were naked. Mr Mabusela punched him in the ribs. Another member, Mr Andre Storm, came to their rescue and told the other members to stop.

He sustained injuries as a result of the assault and the matter was reported to the Case Management Committee, Mr Diamond, but no police came to him to enable him to open a case of assault against these members. The police only came to him after the Jali Commission had started their investigations into this matter.

3.9 Mr Sibusiso Bethwell Ngwenya

Mr Ngwenya is a prisoner at Pretoria C-Max Prison. He and others were transferred from Barberton Prison on 16 October 1999.

When they arrived five (5) members, Mr Kaloseke, Mr Peter, Mr Semadi, Mr Chicco and Mr Kevin Gamble, and other members whose names he could not remember, asked them to remove all their clothes. They then gave them their uniforms and shocked them with an electric shield from the reception area to phase one (1). He was also punched by Mr Sishlangu and sustained bruises on his body. Mr. Semadi, Mr Gamble and Mr Sishlangu were identified by the prisoner in court. Mr Chicco has since left the Department and could not be traced.

3.10 Mr George Mbonani

Mr Mbonani is a prisoner at Pretoria C-Max Prison. He was transferred from Modderbee Prison on 25 September 2002. On arrival he was instructed by Mr Jacobus du Toit and Mr Lourens Buitel to strip naked and given a uniform. One member handcuffed his hands behind his back and others shocked him with an electric shield from the reception area to phase one (1).

The matter was reported to the Section Head, Mr Johannes Lulu Phaladi, but no action was taken. He did not open a criminal case because he did not know the procedure.

3.11 Mr Mathews Sithole

Mr Sithole is a prisoner at Pretoria C-Max Prison. He was transferred from Thohoyando Prison on 9 November 1998.

On arrival he was instructed by Mr Herman Makhangela Makhusela, Mr Christian Thomas Vosloo and Ms Eunice Jamiya Nzuzi to undress. Ms Nzuzi looked at him while he was naked.

He was assaulted by all these members in a public room in phase (one) 1 before he was taken to cell A6. The assault was without provocation. He was then given his prison uniform.

The following day he reported the assault to the Head of Prison, Mr Baloyi, who told him that he could not open a case of assault against members and if he does so he would not be released from C-Max Prison.

3.12 Mr Letlegi Leso

Mr Leso is a prisoner at Pretoria C-Max Prison. He was transferred from Zonderwater Prison on 18 October 2001.

On arrival he was instructed to undress and change into a prison uniform by Mr Matsobane Vincent Mokwatlo. He was handcuffed together with another prisoner, Mr Makgabo and escorted to phase one (1). They were then taken to cells A5 and A6 respectively. On their way to their cells, they were shocked by members, Mr Mangwako, Mr Leonard Seati and Mr Matsobane Vincent Mokwatlo. He did not open a case against these members nor was he given a chance to see a doctor. He attended the prison hospital for chest pains. He was usually attended to by Sister Mpho, who always gave him one treatment and if he complained to her, she would say that he was mentally ill and should see a psychiatrist. He reported the matter to the Head of Prison and also wrote a letter to the Assistant Head but to no avail.

He therefore decided to stab Sister Mpho so she would be transferred to another prison. He stabbed her on 6 February 2003 with a piece of metal and was assaulted by Mr Selolo and Mr Mdau. They instructed him to go to his cell and they poured water over him with a hosepipe and then shocked him with an electrical shield for a long time. They handcuffed his legs and left him naked inside the cell the whole night without any blankets. He was only given blankets, pyjamas and a prison uniform the following day. He sustained serious injuries as a result of their assault and he opened a case against them but nothing happened.

3.13 Mr Dumisani Simon Solomon Kutumela

Mr Kutumela is employed by the Department as the Armoury Controller for Pretoria C-Max Prison. He made an affidavit alleging that he searched for the previous electric shield register on 4 November 2003 but could not find it. He told Mr Matiapoto the previous week that he had thrown the register away as he was upset but did not mean what he said. He reported the missing 1998 electric shield register to Mr Hunt on 4 November 2003.

In his oral testimony, he confirmed the contents of his affidavit (Exhibit NN). In his affidavit he stated that on the 4 November 2003 he became aware that the registers were needed by the Jali Commission. Mr Matiopoto came to him looking for the 1998 register but did not tell him why he was looking for the register. He was then called by Mr Miller, the Chairperson of the Case Management Committee (CMC), who told him that he was supposed to depose an affidavit for the Commission, and that wanted him to say in the affidavit that the register for 1998 had been disposed of. He did not know whether it had been disposed of.

Mr Miller had nothing to do with the shield register as the Chairperson of the CMC. He tried to look for the register but could not find it. He has never seen it. When he referred in his affidavit to the electric shield register that he threw away, he was referring to the register he could not find. He did not throw away any register. He stated that these registers are normally disposed of after a year in terms of the prison regulations. He disposed of the registers by burning them. He then stated that the Department does not supply special registers, that he simply used an exercise book.

He later changed his account and said he did not know what policy was applicable for electric shields and no policy had been given to him by the Department.

4. MR SAMSON GOMBA

The Commission also heard the evidence of Mr Gomba, the Head of Pretoria C-Max Prison. He came to C-Max Prison during April 2002, as the Head of the institution, having worked in various prisons before.

Pretoria C-Max Prison incarcerates highly dangerous persons. Although it was meant for sentenced prisoners, there are highly dangerous unsentenced prisoners at C-Max Prison. They are kept in C section and are not allowed to

mix with the sentenced prisoners. There are no communal cells at C-Max Prison and cells are similar to the isolation cells in ordinary prisons.

Prisoners undergo two (2) phases at C-Max Prison. Prisoners at phase one are locked up in their cells for twenty three (23) hours without any access to other prisoners and are given one (1) hour for exercise.

Contrary to the evidence we have heard from some of the prisoners, they are in fact not shackled when they are locked in their cells. They have no contact with anyone other than warders.

In Pretoria C-Max Prison they have one psychologist and a social worker. If an inmate needs to be seen by either the psychologist or the social worker, they are allowed to.

During the first seven (7) days of admission, prisoners are seen by social workers and psychologists. No pre-evaluation procedures by either social workers or psychologist are carried out to see if a prisoner is capable of sustaining the first phase of incarceration.⁶

Admission to C-Max prison is approved by the Regional Commissioner. Mr Gomba could not deny that being admitted to the first phase at Pretoria C-Max Prison amounts to a guaranteed thirty (30) days' incarceration in an isolation cell. Phase one (1) incarceration lasts a minimum of three (3) months, which appears contrary to the policy.⁷

In phase two (2), prisoners have more privileges than in phase one (1). They are not locked up for twenty three (23) hours but only for twenty (20) hours. They can interact with other prisoners and they also have access to the courtyard.

⁶ See Chapter on the Treatment of Prisoners regarding the severe psychological impact of isolated detention.

⁷ *Ibid* Footnote 2.

Insofar as the education of prisoners is concerned, there are no formal classes and they have one educator to help them with their studies. They all study through correspondence.

He, however, conceded that sending a person to an isolation cell is a drastic step and acknowledged that such detention is not done in accordance with the Act. He could not produce any register of prisoners that he had sent to isolation.

He does not support the move to a seven-day week as it would not improve the situation. He would only support such a move if more members are employed by the Department and their salaries increased. The majority of the members are dependent on the money for overtime.

The maximum period of stay at Pretoria C-Max Prison by a prisoner is five (5) years and only five (5) inmates have been there for that long. Prisons like C-Max Prison are needed for inmates who assault others. He is not aware that assaults have taken place upon admission at C-Max Prison.

5. EVALUATION OF EVIDENCE

The members implicated in these assaults were all afforded an opportunity to cross-examine the witnesses who stood up well and did not change their versions. They gave their evidence in a clear and straightforward manner and there is no reason to doubt its reliability.

All the implicated members elected to exercise their right to remain silent and none of them gave evidence before the Commission. Except for what was elicited during cross-examination, the versions of the witnesses who gave evidence against these warders remains unchallenged.

It is clear from the evidence of all these witnesses that upon admission at Pretoria C-Max Prison, the prisoners were assaulted, humiliated, degraded and asked to undress, sometimes in front of the female warders, and were shocked with electric shields. It is clear that this is normal "initiation" practice at C-Max Prison. These prisoners are not treated with dignity, and even if stripping is part of the searching procedure, there seems to be no reason why this should be done in front of female warders.

Mr Moropa and Mr Phaladi made written submissions to the Commission. In his submission, Mr Moropa stated that he was implicated by Mr Thabo Papire Phale, an inmate at C-Max Prison. He denies assaulting or shocking Mr Phale and states that he had failed to prove the allegations against him.

In his submission, Mr Phaladi states that he was implicated by Mr van Zyl, who alleged that he was present when the prisoners were assaulted. He further denies that Mr Mbonani had laid a complaint of assault to him.

The Commission has examined the documents dealing with the admission criteria at Pretoria C-Max Prison. The Admission Policy document does not allow for the assault or shocking or any other ill treatment of offenders upon admission. The document mainly deals with the criteria for admission at Pretoria C-Max Prison.

The Commission also examined a document dated 22 June 1998 from the Commissioner of Correctional Services, which deals with management of offenders at C-Max. It also deals with the length of time a prisoner is to be incarcerated at C-Max Prison.

None of these Departmental policies authorises a member to ill-treat a prisoners upon admission.

6. FINDINGS AND RECOMMENDATIONS

6.1 There is proof that Mr Thomas Molaka Malamatsho and Mr Segawula Richard Nkosi assaulted prisoners, who were transferred from Cape Town to C-Max Prison, by shocking them with an electric shield and hitting them with an open hand and fists upon admission to C-Max Prison. Their conduct amounts to both a violation of the Department's Disciplinary Code and common law offence of assault.

6.2 There is also proof that Mr Thomas Molaka Malamatsho, Mr Mpansa Moses Tsetsane, Mr Grant Mamogale Mambusela, Mr Johannes Lulu Phalati, Ms Betty Regina Dikele Makhudu and Ms Eunice Jamiya Nzuzza, failed to take the necessary precautions to prevent other members from assaulting prisoners. Their conduct amounts to gross negligence in terms of the Department's Disciplinary Code.

However, in the light of the fact that none of the prisoners who were assaulted by these members testified before the Commission, it would be difficult to secure any conviction against any of the members.

Accordingly, no recommendations are made against the aforesaid members.

6.3 There is sufficient proof that Mr Thomas Molaka Malamatsho, Mr Mpansa Moses Tsetsane and Mr Simon Mdau, assaulted prisoner Mr Cosmos Ndlovu upon admission at Pretoria C-Max Prison.

Their conduct amounts to both a violation of the Department's Disciplinary Code and a criminal law offence of assault.

6.4 There is sufficient evidence that female member Ms Betty Regina Dikela Makhudu, was present when the prisoner was stripped naked and that she stood there looking at the other members when the prisoner was

assaulted. Her conduct amounts to a violation of the provisions of the Department's Disciplinary Code.

Accordingly, the Commission recommends that:

- 6.4.1 Mr Thomas Molaka Malamatsho, Mr Mpansa Moses Tsetsane and Mr Simon Mdau be charged with contravening Clause 5.7 Column A of the Department's disciplinary Code.
 - 6.4.2 These members be charged criminally for assault.
 - 6.4.3 Ms Betty Regina Dikele Makhudu be charged for contravening clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.
 - 6.4.4 Mr Mpansa Moses Tsetsane be charged departmentally or criminally with intimidation in terms of Act 72 of 1982, as amended.
 - 6.4.5 Mr Tsele, the Head of Prison, be charged with contravening Clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.
- 6.5 There is sufficient proof that Mr Thomas Molaka Malamatsho, Mr Mpansa Moses Tsetsane and Mr Ignatius Kgomo assaulted a prisoner, Mr Ernest Beukes, upon his admission to Pretoria C-Max Prison.

Their conduct amounts to both a violation of the Department's Disciplinary Code and the common law offence of assault.

- 6.6 There is also sufficient proof that Mr Tsele failed to take the necessary steps when Mr Beukes reported the assault to him. His conduct amounts to a violation of the Department's Disciplinary Code.

Accordingly, the Commission recommends that:

- 6.6.1 Mr Thomas Molaka Malamatsho and Mr Mpansa Moses Tsetsane be charged with a violation of Clause 5.7 Column A of the Department's Disciplinary Code – Assault.
- 6.6.2 They be charged criminally for assault.
- 6.6.3 Mr Tsele be charged with a violation of Clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.
- 6.6.4 A copy of the record of the proceedings regarding these officials be sent to the Director of Public Prosecutions Gauteng, for his decision.
- 6.7 There is sufficient proof that Mr Themba Alfred Mtshika and Mr Robert William Moore assaulted a prisoner, Mr Ghofu Majola, when he arrived at C-Max Prison.

Their conduct amounts to a violation of both the Department's Disciplinary Code and the common law offence of assault.

Accordingly, the Commission recommends that:

- 6.7.1 Mr Themba Alfred Mtshika and Mr Robert William Moore be charged with contravening Clause 5.7 Column A of the Department's Disciplinary Code - Assault.
- 6.7.2 Mr Themba Alfred Mtshika and Mr Robert William Moore also be charged criminally with assault.
- 6.7.3 The record of proceedings in respect of Mr Mtshika and Mr Moore be submitted to the Director of Public Prosecutions Gauteng for his decision.

6.8 There is sufficient proof that upon his admission at C-Max Prison, a prisoner, Mr Mzimazi Thungulu, was assaulted by Mr Simon Mdau (Bricks) and Mr Ignatius Kgomo. The nature of the assault meted out to Mr Thungulu amounts to assault with intent to do grievous bodily harm.

6.9 There is also sufficient proof that both Mr Mdau and Mr Kgomo refused to take Mr Thungulu to hospital after the assault, when he requested them to do so.

Accordingly, the Commission recommends that:

6.9.1 Mr Simon Mdau and Mr Ignatius Kgomo be charged with contravening Clause 5.7 Column A of the Department's Disciplinary Code – Assault.

6.9.2 Both Mr Mdau and Mr Kgomo be charged with assault with intent to do grievous bodily harm.

6.9.3 Both be charged with contravening Clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.

6.9.4 The transcript of the proceedings in respect of both Mr Mdau and Mr Kgomo be sent to the Director of Public Prosecutions Gauteng for his decision.

6.10 Although prisoner Mr Thabo Papire Phale testified that he was assaulted by Mr Simon Mdau, Mr Oupa Abram Moropa, Mr Leonard Sedati and Mr Mpanza Moses Tsetsane, his evidence was so unreliable that it cannot be accepted.

Accordingly, no recommendations are made in this regard.

6.11 There is sufficient proof that the prisoner, Mr King Maluleke, was assaulted by members Mr Grant Mamogale Mabusela, Mr Billy John Floris Beukes, and Mr Matsobane Phala.

Their conduct in this regard amounts to a violation of both the Department's Disciplinary Code and the criminal offence of assault.

Accordingly, the Commission recommends that:

6.11.1 Mr Grant Mamogale Mabusela, Mr Billy John Floris Beukes and Mr Matsobane Phala be charged with contravening Clause 5.7 Column A of the Department's Disciplinary Code – Assault.

6.11.2 They also be charged with assault.

6.11.3 The record of proceedings in respect of this matter be submitted to the Director of Public Prosecutions, Gauteng for his decision.

6.12. There is sufficient proof that prisoner, Mr Sibusiso Bethwell Ngwenya, upon arrival at Pretoria C-Max Prison, was assaulted by members, Mr Kaloseke Peter Semadi, Mr Chicco, Mr Kevin Gamble and Mr Sihlangu.

Their conduct amounts to both a violation of the Department's Disciplinary Code and a criminal law offence of assault.

Accordingly, the Commission recommends that:

6.12.1 Mr Kaloseke Peter Semadi, Mr Kevin Gamble and Mr Sihlangu be charged with contravening Clause 5.7 Column A of the Department's Disciplinary Code – Assault.

6.12.2 They also be charged with assault.

6.12.3 The record of the proceedings in this matter be submitted to the Director of Public Prosecutions Gauteng, for his decision.

6.13 Although prisoner, Mr George Mbonani, testified that he was assaulted by members upon his admission to Pretoria C-Max Prison, the evidence of the identification of the members who assaulted him is entirely unsatisfactory. No reliance could be placed on his identification.

Accordingly, no recommendations are made in this regard.

6.14 There is sufficient proof that prisoner Mr Letlegi Leso was assaulted by members, Mr Matsopane, Mr Vincent Mokwatlo, Mr Mangwako Leonard Setati, Mr Simon Mdau (Bricks), and Mr Peter Selolo. There was no justification for this assault.

Their conduct amounts to both a violation of the Department's Disciplinary Code and a criminal law offence of assault.

Accordingly, the Commission recommends that:

6.14.1 Mr Matsopane, Mr Vincent Makwatlo, Mr Mangwako Leonard Setati, Mr Simon Mdau and Mr Peter Selolo be charged with contravening Clause 5.7 Column A of the Department's Disciplinary Code – Assault.

6.14.2 They also be charged with assault.

6.14.3 The record of the proceedings in this matter be referred to the Director of Public Prosecutions, Gauteng for his decision.

6.15 There is sufficient proof that the prisoner, Mr Mathew Sithole, upon admission at Pretoria C-Max Prison, was assaulted by members, Mr Herman Makhongela Makhubela, Mr Christiaan Thomas Vosloo, and Ms

Eunice Jamiya Nzuzi. Evidence has established that there was no justification for this assault.

Their conduct amounts to a violation of both the Department's Disciplinary Code and a common law offence of assault.

Evidence also established that the assault was reported to the Head of the section, Mr Johannes Lulu Phaladi. The prisoner also requested that the assault be reported to the South African Police Service but Mr Baloyi, the Head of Pretoria Local Prison, would not allow him to open a case of assault against these members. Mr Baloyi also did not take any action against the members who assaulted this prisoner. His conduct amounts to gross negligence.

Accordingly, the Commission recommends that:

6.15.1 Mr Herman Mankholongela Makhubela, Mr Christiaan Thomas Vosloo and Ms Eunice Jamiya Nzuzi, be charged with contravening Clause 5.7 Column A of the Department's Disciplinary Code – Assault.

6.15.2 They be charged criminally with assault.

6.15.3 Mr Phaladi and Mr Baloyi be charged with contravening Clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.

6.15.4 The record of the proceedings in this matter be sent to the Director of Public Prosecutions, Gauteng for his decision.

6.16 There is sufficient proof that Mr Dumisani Kutumela's conduct amounts to perjury and gross negligence in the performance of his duties.

Accordingly, the Commission recommends that:

6.16.1 Mr Kutumela be charged with contravening Clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.

6.16.2 Mr Kutumela also be charged with perjury.

7. GENERAL RECOMMENDATIONS

The Commission recommends that:

7.1 The Head of Prison at Pretoria C-Max Prison should ensure that a proper electric shield register is kept in which the issuing of the shields to members is properly registered.

7.2 Further recommendations with regard to the admission of prisoners and the existence of C-Max Prison are made in the chapter on Treatment of Prisoners.

7.3 For the reasons stated in the previous interim reports already filed, disciplinary inquiries against the members referred to in this report should be conducted by a Special Task Team contemplated by the Commission.

8. CONCLUSION

The treatment of prisoners at Pretoria C-Max Prison upon admission is a clear indication that the members of the Department have no respect for prisoners' human rights. Evidence has established that prisoners are assaulted for no apparent reason upon admission. This treatment is normally referred to as an initiation process. Prisoners at Pretoria C-Max have already been sentenced by courts of law and there is no need for further punishment on admission. This is

a further indication that members of the Department do not subscribe to the ethos of human rights for prisoners.

It needs to be accepted by all members of the public and the Department that even these categories of prisoners are entitled to the protection of their rights as enshrined in the Constitution.