

CHAPTER 6

PRISON SECURITY

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CHAPTER 6

PRISON SECURITY

1. INTRODUCTION

One of the most important functions of any prison is the safe custody of prisoners and to control the entry of people from the outside. Although correctional facilities serve many functions, the primary function of the establishment remains the safe custody of those who the courts of our land have ruled are to be restricted to the confines of a prison facility and who should remain there until such time they have served their sentences.¹ They are not in prison to be punished but as punishment. If the prison system succeeds in its basic function, then law abiding members of society can be assured that they can sleep peacefully at night, content in the knowledge that those of the community who choose to conduct themselves in an unacceptable manner have been temporarily removed from society, and that they will return rehabilitated from prison.

Victims of crime can also find solace in the fact that those who have caused pain and trauma to them are as far removed from their lives as possible and are securely locked inside prison. Witnesses who have given evidence against the perpetrators also find reassurance in the fact that the person sentenced will not unexpectedly return from prison seeking revenge.

Knowing that security is the cornerstone of our correctional system, the Commission was disturbed to hear evidence of prisoners who, for a fee, could

¹ See for example "Jailbreaks under Scrutiny" *The Mercury* dated 12 November 1999; "Arrest follows attempted jailbreak and shootings at Pretoria C-Max Prison" *Natal Witness* dated 10 November 2004; "Signs of inside help in prison break" *The Mercury* dated 22 September 2004; "Charges pending after jailbreak" *The Mercury* dated 2 July 2004.

disappear from prison and/or escape. Escapes of prisoners from prison are not a new issue and the Commission has heard evidence about escapes at almost all the Management Areas it investigated. What is new is the practice of members deliberately setting prisoners free. These corrupt members then escape the claws of the justice system because they are not suspended and thereby remain employed in the Department. The number of prisoners escaping from detention demands an effective response from the Department and any failure is likely to cause an outcry from the members of the public who may be of the opinion that the Department is not doing enough to ensure that such escapes are prevented.

It is against this background that the Commission will in this Chapter examine the nature of the current escapes and examine the part, if any, played by any Correctional Services official in the escapes that have occurred. Naturally the Commission will also attempt to investigate whether such escapes are the result of corruption on the part of members or whether there has been negligence by members of the Department. The Commission will also be seeking answers to the question of why these escapes continue to occur and what steps the Department is taking to prevent a recurrence thereof. It goes without saying that safety of prisoners is a necessary component of a successful rehabilitation programme of prisoners.

In dealing with the subject of escapes, the Commission will focus on the following matters, which it dealt with during the hearings:

- The Department's policy and general standpoint on escapes, and
- Mr Sydney Thlloe: a member of the Department employed at Johannesburg Prison who was implicated during the Commission's hearings in facilitating escapes and numerous other illegal activities; and

- The escapades of Mr Mzimase Thungula: an inmate, who is known by the name of McGyver because of his uncanny ability to escape from various prisons.

2. THE DEPARTMENT'S STANDPOINT

On the 21 August 2002, the then Minister of Correctional Services, the Honourable Mr B. Skosana, stated in a media briefing that the core business of the Department is to detain all prisoners in safe custody whilst ensuring their human dignity and promoting the social responsibility and human development of all prisoners and those persons who are subject to community corrections.

The importance of custody is also reflected in the 1998 Act in the following way:

"2 Purpose of correctional system

The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by-

- (a) *enforcing sentences of the courts in the manner prescribed by this Act;*
- (b) *detaining all prisoners in safe custody whilst ensuring their human dignity; and*
- (c) *promoting the social responsibility and human development of all prisoners and persons subject to community corrections."*

As recently as the 13 February 2004, the former Minister, Mr Skosana, made another statement from which it was clear that the then Minister was as concerned as the Commission is about those assisting escapees. He is quoted in the statement as saying:

“Some of those who are found to be accomplices in the current unacceptably high rate of escapes will also become the trophies of our strengthened anti-corruption strategy.”²

Safe custody³ can be interpreted in many ways⁴ but in the Commission’s view, in so far as this Chapter is concerned, it means that there should not be any escapes. The second interpretation is also correct, in so far as the treatment of prisoners is concerned.⁵

² See <http://www.pmg.org.za/briefings/feb2004/040213correct.htm>, accessed 19 November 2004.

³ The Department is obviously obliged to ensure the safe custody of all in terms of section 26 of the Correctional Services Act No. 111 of 1998, that provides as follows:

“26 Safe custody

(1) The right of every prisoner to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of correctional officials and safe custody of all prisoners.

(2) In order to achieve these the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, a correctional official may-

(a) search the person of a prisoner, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the prison or of any person, or which could be used as evidence in a criminal trial or disciplinary proceedings;

(b) take steps to identify the prisoner;

(c)

[Para.(c) deleted by s.13(b) of Act 32 of 2001].

(d) apply mechanical means of restraint; and

(e) use reasonable force.

[Sub-s.(2) amended by s.13(a) of Act 32 of 2001.]

(3) In order to achieve the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, the Commissioner may classify and allocate accommodation to prisoners.”

⁴ As stated by D. van Zyl Smit, *South African Prison Law Practice* at page 167: “The term safe custody is itself ambiguous. On the one hand, if the custody element is emphasized, it means that a prisoner should be prevented from escaping. On the other hand, the element of safety means that, at the very least, prisoners should be able to serve their terms of imprisonment without physical injury or other damage to their physical or mental health.”

⁵ See the Chapter dealing with Treatment of Prisoners.

The matter of Mr Sydney Thloloe clearly indicated to the Commission that some warders do not share the same vision as the former Minister in respect of the safe custody of prisoners. Some, it would seem, act in concert with inmates to set them free without such freedom being lawfully granted.

To determine whether the Department is succeeding in its stated focus of preventing prisoners from escaping, the Commission considers it important to look at and deal with the statistics given by the Provincial Commissioner of Gauteng, at the time of the hearings, Mr Z. Modise⁶ regarding escapes in the Gauteng Province.

Mr Modise stated in his formal evidence before the Commission that the Gauteng Province has struggled with escapes for a very long time. In fact, according to his testimony, the situation has improved over recent years. In 1999, a total number of one hundred and twenty nine (129) inmates escaped from Gauteng prisons alone. In 2002, however, the figure reduced to only thirty five (35) escapes. Mr Modise stated that the Minister of Correctional Services has put in a lot of effort and commitment into curbing escapes, down to the last warder doing guard duties. Much of the Department's emphasis has been placed on direct supervision and strict disciplinary action taken against officials who allow escapes through their negligence.

Mr Modise admitted, however, that there is a grey area with regard to aiding escapes, which is sometimes difficult to prove. In some instances where escapes had happened, it had been stated that such escapes should be ascribed to negligence. In his testimony, he referred to those Management Areas that have experienced many escapes since the year 2000 as being Johannesburg, Leeuwkop and Baviaanspoort. Most escapes from the Johannesburg Prison,

⁶ Mr Modise has since been appointed as Regional Commissioner of the Free State Province.

according to his testimony, happened at the Chris Hani Baragwanath Hospital.⁷ It has been mainly awaiting trial prisoners and foreigners that have succeeded in escaping.

It is interesting to note that one of the Management Areas Commissioner Modise categorised as a problem area, is in fact, the Johannesburg Management Area. The evidence before the Commission points to the fact that at this Management Area aiding and abetting prisoners to escape has been rife and certain members have been actively involved in it. It is, however, of concern that the Department does not do enough to ensure that the perpetrators are severely punished when caught so as to curb this problem.

That our government considers such conduct as serious is evident from the legislation and the penalty clause of the provision prohibiting such aiding, namely, a fine or imprisonment of ten (10) years.⁸

⁷ See the Ninth Interim Report for an escape where a prisoner used a bolt cutter to cut the chains to his bed and tried to escape from hospital.

⁸ See section 115 of the Correctional Services Act No. 111 of 1998 that provides as follows:

“Any person who-

- (a) conspires with or incites any prisoner to escape;*
- (b) assists a prisoner in escaping or attempting to escape from any prison or from any place where he or she may be in custody;*
- (c) for the purpose of facilitating the escape of any prisoner, supplies or agrees to supply or assists, incites or induces any other person to supply a prisoner with any document, disguise or any other article;*
- (d) without lawful authority relays any document, or articles or causes it to be relayed into or out of a prison or a place where prisoners may be in custody; or*
- (e) harbours or conceals or assists in harbouring or concealing an escaped prisoner,*

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to such imprisonment without the option of a fine or both.”

3. MR SYDNEY THLOLOE

During the Commission's hearings of Johannesburg Prison, the Commission dealt with allegations against a warder, Mr Sydney Thloloe, who was, allegedly, implicated in:

- 3.1 the facilitation of escapes or disappearances of prisoners from Johannesburg Prison;
- 3.2 armed robberies, together with robbery syndicates, in and around the Gauteng and KwaZulu-Natal Province;
- 3.3 motor vehicle thefts and/or hijackings
- 3.4 drug smuggling; and
- 3.5 illicit sexual activities at the Johannesburg Female Prison.

Right at the outset it needs to be stated that besides Mr Thloloe, seventeen (17) other people were, allegedly, implicated in the allegations relating to escapes, including a Captain from the South African Police Services, Captain Senono. Many of those who were implicated were legally represented at the Commission hearings.⁹

A number of witnesses testified in front of the Commission, to wit, Mr Isaac Petros Wolfaardt, Mr Kguketli Louis Pobe, Mr Bhekisisa Vincent Shoji and Mr

⁹ Of the legal representatives, Mr P.J. Coetzee of the Pretoria Bar acted on behalf of the Police Services, representing Captain Senono; Mr Craig Beukes, an Attorney was initially representing Mr S. Thloloe but then later briefed Advocate Kruger from the Pretoria Bar and Advocate Jacobs represented Mr F.J. Muller, who was also implicated. Although Mr Jacobs represented Mr Muller, he never actively participated in the proceedings. He was excused from the proceedings since his client was merely mentioned and not truly implicated.

Madry Pakiry. Mr Thloloe, however, elected not to testify and preferred to hand in an affidavit¹⁰ wherein he denied any involvement in any criminal activities referred to by any witness before the Commission and in any statement made by any person that has been presented to the Commission. He also denied that he had made a pointing out statement to Captain Naidoo or any other police officer and lastly, he denied that any alleged pointing out statement or confession that was reportedly made to Captain Naidoo had been made voluntarily or freely.

In order to deal with the evidence as briefly as possible, the allegations will in short be summarised as they had been set out in the summary of facts, which was served on Mr Thloloe by the Commission's investigators:

3.1 Facilitation of Escapes/Disappearances of Prisoners from the Johannesburg Prison

It was alleged by the Commission investigators that during the period 1992 to 2003, approximately seventy five (75) escapes or “disappearances” of prisoners occurred from the awaiting trial section at Johannesburg Prison. Of these forty eight (48) escapees were listed in the summary of facts handed in. It was alleged that the majority of the escapes or “disappearances” took place while Mr Thloloe was a warder at Medium A Prison.

Further to this it was also alleged that Mr Thloloe also facilitated other escapes and disappearances after he was removed from Medium A and placed at Medium B. Specific allegations were made that he was involved in the escapes of the following prisoners:

1. Mr Robert Madinga Makhoba;
2. Mr Thulani Khumalo;
3. Mr Victor John Mahlangu;

¹⁰ See Johannesburg hearings, Exhibit ‘LLL’.

4. Mr Thembukwazi Sithole;
5. Mr Zama Ndlovu;
6. Mr Thandayiphi Sibiya;
7. Mr Jabu Louw;
8. Mr Solly Mkhize;
9. Mr J. Phiri;
10. Mr D. Mustapha;
11. Mr Z. Kunene;
12. Mr M. Ntshaba;
13. Mr Thabiso Ndlovu;
14. Mr Lucky Dube;
15. Mr Breuwell Ngwenya;

It was also alleged that Mr Thloloe worked in conjunction with several of the following colleagues in the Department to facilitate the escapes:

1. Mr Papi Koai;
2. Mr Solly Mndiniso;
3. Mr Benny Ngoetjane;
4. Mr Kgukutli Louis Pobe;
5. Mr Bhekisisa Vincent Shozi;
6. Mr May;
7. Mr J. Shaik Shabalala;
8. Mr Simphiwe Mkumbuzi;
9. Mr Mto;
10. Mr Mosala;
11. Mr Mazibuko.

The allegations went further to imply that the inmates who made use of Mr Thloloe to facilitate their escapes or “disappearances” paid vast amounts of money for such assistance. In respect of Mr Robert Madinga Makhoba’s escape,

an amount of two hundred thousand rand (R200 000,00) was allegedly paid for the escape. It was alleged that Mr Thloloe in turn rewarded his colleagues who assisted him with the various escapes. In this regard, he allegedly paid Mr Solly Mndiniso and Mr Benny Ngoetjane, fifty thousand rand (R50 000,00) each. Further to this, he also received payment from the family members of the implicated inmates at various locations.

On a number of occasions, he allegedly transported prisoners out of the prison in his motor vehicle. Furthermore, several of Mr Thloloe's colleagues who conspired with him in the facilitation of the escapes have been dismissed by the Department of Correctional Services but somehow this fate has not befallen Mr Thloloe.

3.2 Robberies in Gauteng and KwaZulu-Natal

It was alleged that Mr Thloloe, together with certain prisoners, whose escapes he had facilitated, targeted and robbed banks of foreign currency, traveller's cheques and cash. The allegations were that there was a direct involvement by Mr Thloloe in the following robberies:

- (a) An armed robbery at the Gezina branch of the Standard Bank that occurred at approximately 11H00 on 16 November 2000. On that occasion, Mr Thloloe drove the getaway motor vehicle, a Nissan Skyline, which had been reported as stolen. A prison warder's uniform was found in the Nissan Skyline after it was abandoned. It was alleged that Mr Thloloe worked on second watch on that particular day. It was also alleged that he was involved together with a group of Zimbabwean citizens and escapees in this particular robbery.

- (b) An armed robbery at the Brooklyn Mall branch of the Standard Bank in Pretoria on 13 March 2001, wherein an amount of over seven hundred thousand rand (R700 000,00) in cash, travelers cheques and foreign currency was stolen. During the robbery, Mr Thloloe drove the getaway vehicle, a Volkswagen Caddy, which had been stolen. It is alleged that this robbery was committed together with a group of Zimbabwean citizens, as well as escapees.

It was further alleged that Mr Thloloe was arrested for the robbery but despite having confessed to the robbery and despite having made a pointing out statement, the charges were inexplicably withdrawn against him in court.

- (c) An armed robbery at the Fourways Crossing branch of the Standard Bank on the 14 September 2000, where an amount in excess of two million seven hundred thousand rand (R2 700 000,00) in cash, traveller's cheques and foreign currency was allegedly stolen. Once more Mr Thloloe drove the getaway vehicle and accomplices were Zimbabwean citizens and other escapees.
- (d) An armed robbery at Pietermaritzburg in KwaZulu-Natal on the 5 June 2002. Mr Thloloe was arrested at the scene of the robbery and detained allegedly at the Mountain Rise Police Station. The police docket regarding such investigation disappeared and as a result thereof, Mr Thloloe escaped any prosecution. Once more it was alleged that he was involved in the crime with Zimbabwean citizens and escapees.

3.3 Motor Vehicle Thefts/Hijackings

The third allegation against Mr Thloloe was regarding motor vehicle thefts and/or hijackings, breaking into motor vehicles within the prison precinct and other

related offences. Regarding these allegations leveled at Mr Thloloe, it was alleged that:

- (a) On the 19 January 2001, he was arrested in Parkview whilst trying to steal a motor vehicle. He was with a certain Mr Leslie Boyboy Phanyeko. Implements used for breaking into motor vehicles were also found in his possession.
- (b) In at least two (2) of the robberies mentioned earlier, Mr Thloloe drove the getaway cars, which had been reportedly stolen. Specific reference will be made to the Nissan Skyline used in the Gezina robbery, as well as the Volkswagen Caddy used in the Brooklyn Mall robbery.
- (c) These motor vehicles have been impounded by the South African Police Services. It was discovered that the engine and chassis numbers had been tampered with.
- (d) On at least three (3) different occasions, Mr Thloloe, with the help of inmates, broke into members' cars parked in the vicinity of the prison precinct and removed sound and music systems from them.
- (e) Mr Thloloe travelled to the South African Police Services vehicle pound in Soweto and together with another member and an inmate removed or stole a BMW computer box from one of the BMW's impounded at the premises. At this time, he allegedly himself owned a BMW motor vehicle.

3.4 Drug Smuggling and Sexual Activities

The fourth and fifth allegation related to Mr Thloloe's involvement in drug smuggling in Johannesburg Prison, as well as his sexual activities at the Johannesburg Female Prison.

It was alleged that Mr Thloloe was the leader of a drug smuggling ring that operated at the Johannesburg Prison and that he allegedly brought dagga onto the premises of the prison. The *modus operandi* was, *inter alia*, that some of the dagga would be left in the coal yard behind the boilers to be picked up by a certain Tami, an inmate, who worked in the kitchen. Tami would then sell this dagga to fellow inmates and then pass the proceeds of the sale onto Mr Thloloe.

Furthermore, it was alleged that Mr Thloloe had an illicit sexual affair with a female prisoner called Ms Nomsa Nkosi, at the female prison. They had sex in the area the prisoners referred to as "Ehontshi" in the Female Prison. It is further alleged that he facilitated illicit relations between the female inmates and the male inmates who worked with him.

3.5 Evidence Considerations

The mysterious "disappearances" of prisoners allegedly committing crimes is an important development as it may very well clarify how the policing authorities appear to be unable to solve certain crimes that are committed in the country. If the allegation is indeed proven to be true that "escaped" inmates are in fact committing some of these crimes, then the possibility of solving such crimes is extremely remote as the perpetrators have a cast iron alibi. The alibi will be unshaken because the general public and no doubt the investigating officers investigating these cases would believe that these criminals were safely behind bars at all relevant times.

Most of the evidence produced in the matter of Mr Sydney Thloloe was aimed at the "disappearances" of prisoners from Johannesburg Prison and at the criminal involvement of Mr Thloloe in armed robberies with some of the prisoners who allegedly "disappeared" from the Johannesburg Prison.

This Commission cannot lose sight of the fact that as a Commission of Inquiry, it has to look at all the evidence presented, be it tested or untested. In the matter of Mr Thlooe, it was requested of the Commission that a number of statements that were submitted to the Commission and not confirmed with *viva voce* evidence, had the potential of being unreliable and that the Commission should not attach much weight to such statements. It is the view of the Commission, however, that it would fail in its duty to seek the truth of the allegations if it disregarded those statements solely on the fact that they were not tested and are therefore unreliable. The forum for testing the reliability of those statements is not at the Commission hearings but rather when recommendations are made that criminal action be taken against those implicated in crimes.

Throughout the hearings, the Commission has been extremely accommodating in allowing implicated people to be represented to protect their fundamental right to challenge evidence. However, this case has to be distinguished from the other matters since it is a complex matter and one that has plagued the Department for a long time. The "disappearances" of prisoners out of prisons has always remained a mystery to many in the Department. This necessitated a deviation from the normal means of gathering evidence as applied in criminal trials. In order to fulfill its mandate, the Commission had to relax the rules of evidence and attempt to solve the problem once and for all. Further to this, the Commission is of the view that the procedures followed in a court of law are not a *sine qua non* for procedural fairness before a Commission hearing.¹¹

¹¹ See *Bongaza v Minister of Correctional Services and Others* 2002 (6) SA 330 (Tk) and *S v Sparks NO and Others* 1980 (3) SA 952 (T) where Human J (with whom Theron AJP and Franklin J concurred) gave the following distinction between a court of law and a Commission at 961 C:

"A court of law is bound by rules of evidence and the pleadings, but a Commission is not. It may inform itself of facts in any way it pleases - by hearsay evidence and from newspaper reports or even through submissions or representations or representations on submissions without sworn evidence."

It was of grave concern to the Commission that during these hearings some of the witnesses who came forward and who were prepared to testify, inexplicably had a change of heart and refused to testify when called upon. Given the nature of the alleged transgressions and the facts of these escapes it is reasonable to infer that such a sudden change of heart and attitude was as a result of some undue influence. Something must have occurred between the time these witnesses declared themselves available to testify and the point where they changed their minds and were fearful to testify. Something or someone instilled that fear in them and it would not be unreasonable to infer from the facts that there must have been some intimidation. There was undisputed evidence that Mr Thloloe was feared within the Johannesburg Prison or even the Department as a whole. It is further important in the matter of Mr Thloloe to bear in mind that those who benefited from any assistance to get out of prison are obviously the best witnesses to testify in this matter but it would be completely unreasonable and presumptuous to think that those who "escaped their sentences", would come clean and now participate in an inquiry to implicate the very person they considered their saviour once out of the prison.

Hence, the Commission, in its endeavor to reach a decision, needed to look at all other indicators and all other bits and pieces of evidence to make findings in this particular matter of Mr Thloloe.

Early in the hearings, Mr Wolfaardt of the Department testified that a distinction between types of escape should be drawn. There are escapes where prisoners genuinely overpower a warder or where they escape by damaging the infrastructure of the prison. In both these instances, there is always a trail to follow, something to investigate and clues. This kind of escape would be classified normally as an escape.

On the other hand, Mr Wolfaardt, distinguished the escape from prison where at the time of lock-up, the numbers of all prisoners tally and all prisoners are behind

bars, but come the next morning when the members return to the prison and count the prisoners, it will be discovered that some of the prisoners have simply "disappeared". This was a different case altogether. There is no trail of what happened. There is no indication of any damage to any structure. A warder was in possession of the keys of the cells, and the cells were all locked.

The Commission concerned itself with those escapes where no trail could be found since they pose the greatest threat to the Department's security and safety and are the most difficult to detect.

3.5.1 Mr Kgukutli Louis Pobe

Mr Pobe is an ex-member of the Department of Correctional Services. He worked for the Department from 8 April 1991 until 15 December 2000. He deposed to an affidavit, which was submitted at the hearings.¹² He was dismissed from the Department on the 15 December 2000, and the reason for his dismissal was the fact that he helped two (2) prisoners escape from prison.

The witness made it clear that he wanted to make a full and frank disclosure to the Commission since he not only wanted to tell the Commission of his assistance but of some other escapes or assisted escapes in which he participated with others but for which they were never charged. If not for the consistency of his evidence, one would have been forgiven to think that one was reading a novel because the facts he revealed were facts of which best sellers are made.

Mr Pobe explained that he started working closely with Mr Thloloe, also a member, in 1999. At that time Mr Thloloe was the supervisor of section D, Johannesburg prison.

¹² See Exhibit 'CCC' of the Johannesburg hearings.

He told the Commission that his job was to take care of the complaints and requests from prisoners in section C2 of the Prison. At the time, prisoners complained that they had been robbed in section D, and when he approached Mr Thloloe, also known as “Biza”, as the supervisor of the section, Biza¹³ gave him money in order to be quiet about the prisoners’ complaints.

(a) Theft, Robbery and Drugs

His evidence was that Biza used to give him between fifty rand (R50,00) and one hundred rand (R100,00) per day and that this practice continued for awhile. The other practice that Biza exposed him to was that they allocated better cells to those prisoners who came from court and, on being searched by them, were found in possession of money than those without money. It was his evidence that in that way, both he and Biza would collect the money daily, which they would then share on an equal basis. At times the amounts involved were as much as five hundred rand (R500,00) per day.

They were also involved in practices where they would go out and buy food and liquor for the prisoners and would then ask for money from the prisoners for such services rendered. He explained that on occasion, he and Biza went to a house of a certain prisoner, Mr Makhoba, and that Biza, in his presence, collected mandrax tablets from Mr Makhoba’s wife.

Evidence before the Commission was that the drugs would be brought in when visits took place and that both he and Mr Thloloe would then supply the drugs to Mr Makhoba. The person who usually brought the drugs was Mr Makhoba's wife. She would bring them in at visitation times.

¹³ The witness constantly referred to Mr Thloloe as Biza and for the sake of clarity, the Commission will from herewith proceed in referring to Mr Thloloe as “Biza”.

It is not a practice that he started but rather a practice that he seemed to inherit when he got to that particular section of the prison as there was already an arrangement that Mr Makhoba, the prisoner, sells the drugs.

(b) Mr Makhoba's Escape

He explained to the Commission that he was briefed about Mr Makhoba's escape. The facts revealed that Mr Makhoba was also one of the prisoners that surprisingly "disappeared" from prison. In the execution of the plan, four (4) of them were supposed to take part, namely, Mr Solly Mndiniso, Mr Benny Ngoetjane, Mr Sydney Thloloe and himself. They were all supposed to work together on the same shift on the day when Mr Makhoba supposedly "disappeared" from prison.

Biza was the supervisor of that particular shift and the members from the reception counted the number of prisoners coming from court. That counting process would be followed by Biza, who would lock the cells. At the time when he would be locking the cells, Biza would take the prisoner, Mr Makhoba, out of the cells and hide him. When the members at the reception went off duty, the arrangement was that Mr Solly Mndiniso would then take Mr Makhoba out of the room where he was hidden. He would take him to the control room where Biza was waiting. Thereafter, Biza would take Mr Makhoba to the main gate where Mr Benny Ngoetjane was working. The arrangement then was that Mr Ngoetjane would take Mr Makhoba to the electric gate, where according to the plan, he, Mr Pobe, was supposed to be working. At that stage, the car that would transport Mr Makhoba was waiting next to the electric gate. Mr Pobe was supposed to be carrying a cell phone in order to communicate with the three (3) colleagues, who were operating from inside.

When Mr Ngoetjane and the prisoner arrived at the electric gate, Mr Pobe would then open the gate and let both Mr Ngoetjane and Mr Makhoba, the prisoner, out

of the gate and into the car that would have been waiting there for them. Mr Ngoetjane would then travel with Mr Makhoba, together with the driver of the car, to Tembisa so that they could come back with the money. Mr Ngoetjane was not going to come back to the prison after leaving Mr Makhoba in Tembisa but would just go to the single quarters where they stayed and they would all meet after they got off duty. The amount that Mr Ngoetjane was expected to return with was two hundred thousand rand (R200 000,00).

Despite all the planning, on the day when everything was supposed to happen, Biza came to Mr Pobe and said that the plan was abandoned. Despite this comment, Mr Pobe heard from other colleagues that Mr Makhoba had "vanished", to use his own words, from the prison. Once he saw the name of Mr Makhoba on the notice board as one of the prisoners who had "disappeared", he approached Mr Ngoetjane and asked him what had happened and he was told that they had carried the plan out without him. According to Mr Ngoetjane, he and Biza shared the money. However, it became clear to Mr Pobe that they had received less money than they anticipated they would be receiving from Mr Makhoba.

Mr Pobe complained to Biza that he did not share in the 'loot' and Biza explained to him that he was not entitled to any money because he did not assist in the escape. After this plan with Biza from which he was excluded, Mr Pobe decided that from thereon he would work on his own.

(c) Messrs Mphenduka and Dlomo Escapes

Mr Pobe then on his own assisted two (2) prisoners, Mr Edmond Mphendukane and Mr Ladelike Dlomo, to escape after being approached by another prisoner, Mr Buthelezi, who asked him to assist the two (2) prisoners to escape. He requested from them the sum of one hundred thousand rand (R100 000,00),

namely fifty thousand rand (R50 000,00) each, which Mr Buthelezi agreed to and assured him that the two (2) prisoners would pay him.

The *modus operandi* was to have the prisoners taken to the hospital section over the weekend at which time Mr Buthelezi would pay him thirty thousand rand (R30 000,00) on behalf of the two (2) prisoners and the rest of the money would be paid once they were out of the prison. He himself reported for duty on that weekend and went to the hospital section where he found the two (2) prisoners. He asked them to remain there until he fetched them. At that stage, arrangements were made with another person outside the prison to come and fetch the two (2) prisoners to collect them in front of the main gate during the lunchtime period.

He himself went to a member on duty at the main gate, Mr Mema. He asked Mr Mema to go on lunch as he would take care of the main gate. Mr Mema then left for lunch. Mr Pobe went back to the hospital section and took the prisoners to the main gate. At the main gate, he released them. Later they got into a car that was waiting for them and left the premises. He said that he never got the balance of the money and that no-one was ever charged for the "disappearances" of these two (2) prisoners.

As far as he knows, members of the South African Police Services killed the one prisoner, Mr Edmond Mphendukane, outside the prison and the other prisoner, Mr Ladelike Dlomo, is still at large.

(d) Mr Oupa Buthelezi

Mr Pobe also revealed that other prisoners were then sent to him for his help and that those who were sent to him from other sections were all sent by Biza. He did not help each and every one that was sent to him as it became clear to him that management was also suspicious.

He did, however, get involved in the escape of another prisoner, Mr Oupa Buthelezi, who asked him for his assistance to escape and the prisoner also said he had been sent by Biza. Mr Pobe requested the sum of thirty thousand rand (R30 000,00) from this particular prisoner, which he negotiated with the wife of the prisoner. The wife gave him ten thousand rand (R10 000,00) during a visitation of which the balance would be given to him later once Mr Buthelezi had successfully escaped from prison. Again, management became suspicious about the planning operation and Mr Buthelezi was then internally charged. He never rendered any assistance to Mr Buthelezi to escape and he never paid the ten thousand rand (R10 000,00) back that he had received from Mr Buthelezi's wife.

Not surprisingly, Mr Pobe revealed to the Commission that the people who were assisted in "disappearing" were all incarcerated on charges of armed robbery. Members acknowledged that armed robbers have lots of money, so those prisoners are identified as people who are in need of "help" and who would benefit from the "assistance" of officials and would have money to pay them.

(e) Messrs Kunene and Ncaba Escapes

Mr Pobe testified about another escape of two (2) prisoners, Mr Zakeli Kunene and Mr Buleliseni Ncaba, whom he and one of his colleagues assisted in "letting them out" of prison. The *modus operandi* adopted in this instance was to escort the prisoners to the places where the money was kept. This revelation of Mr Pobe showed that they were not fearful of the law, nor did they fear any retribution from their seniors or action from police authorities. This points to the fact that the breakdown of discipline has everything to do with the problems the Department is experiencing.

The evidence of Mr Pobe was that each of the prisoners offered him fifteen thousand rand (R15 000,00), despite the fact that he had wanted thirty thousand

rand (R30 000,00) per prisoner. He then turned the first request down as if it were just a normal request for any legitimate privilege. Mr Pobe thereafter received a phone call from a certain Mr Thandayiphi Sibiyi, who also had 'disappeared' from prison. Mr Sibiyi asked him to render assistance to the prisoners who wanted to "disappear" from prison. Mr Sibiyi also informed him that Biza recommended him as the person who could assist. He explained to Mr Sibiyi that he required thirty thousand rand (R30 000,00) from each of the prisoners. Later he met with a certain Vusi, who introduced himself as a friend of the prisoners who wanted to escape. Vusi informed him that the money that they had agreed upon was indeed ready. He then realized that he could not arrange this escape all by himself and he approached his colleague, Mr Mdiniso, to assist him in the execution of the escape of the prisoners.

In this plan, they arranged as to where the prisoners would sleep and the next morning at 05h00, they went to the D section, collected the prisoners and took them to the cells. They then checked on whether they were noticed by anyone. Once certain and confident that everything went undetected, he called upon another warder and told him that the two (2) prisoners were going to court. He then hid the prisoners in the lawyer's toilets so as not to be noticed by other members, and when he could see that they were not being missed or looked for, he took them through the main gate.

The prisoners were then taken to the members' rooms and he and Mr Mdiniso came after work and took the prisoners to wherever the money was held. At their rooms they met with another colleague, Mr Papi Koai,¹⁴ who assisted them in transporting the prisoners from the prison members premises.

It is important to note that Mr Pobe together with Mr Koai took the prisoners from Johannesburg to KwaZulu-Natal. Enroute to KwaZulu-Natal, they stopped at Vosloorus Township, where they met with a traditional healer. At that stage, one

¹⁴ Mr Koai was also dismissed from the Department at the time of the hearings.

of the prisoners decided that he no longer wanted to go with them to KwaZulu-Natal but would remain there with the healer. They came to Colenso in KwaZulu-Natal, where they left Mr Koai's vehicle and then took another vehicle belonging to an uncle of Mr Ncaba in order to go and collect the money.

They arrived at the house and eventually eighteen thousand and seven hundred rand (R18 700,00) was handed over to them. Throughout the trip, Mr Pobe was in contact with Mr Mndiniso asking him what was happening at the prison. The next morning, he casually went to work as if nothing had happened.

It was this incident that caused Mr Pobe's dismissal because once the Department interrogated him, he decided to go to the police station and make a full and frank disclosure. He was, however, not criminally charged and not prosecuted. As at the time he testified before the Commission he had not been charged criminally.¹⁵

It is therefore important to note that Mr Pobe was dismissed on the 15 December 2000 and testified before the Commission on the 31 March 2004 and in that four (4) years he was never criminally charged for the fact that he, in a corrupt manner, assisted two (2) prisoners to escape from prison. He also contravened various sections of the Correctional Services Act.¹⁶ Nevertheless, the Commission is grateful that Mr Pobe was prepared to come forward, testify and be challenged on the veracity of his version and render assistance in the proceedings, even though he was no longer employed by the Department.

It is necessary to mention that the evidence of Mr Pobe, albeit very consistent and confidently stated throughout the hearings, was not perfect. In fact, the affidavit of Mr Pobe, Exhibit 'CCC', clearly showed that he said that he went to

¹⁵ This once again is the clear evidence of the failure by members of SAPS to deal with transgressions in the Department. See also Chapter dealing with Sexual Violence in Prisons.

¹⁶ Act No. 111 of 1998.

the house of Mr Makhoba where the wife handed them the tablets. However, during his testimony, he deviated from this and stated that they went to a house in Tembisa and that they were told that it was Mrs Makhoba's house but no tablets were ever given to him in her presence. However, she gave him tablets in the visitors' room at the prison. Mr Pobe was properly challenged by those implicated in the transgression but the contradiction could not be explained.

When Mr Pobe was cross-examined at length by the counsel acting on behalf of Mr Thloloe, he was asked why he was involved in all the wrong-doings and why he had not decided earlier to be honest and divulge the truth. Mr Pobe in answer stated "my eyes had been closed by money". He acknowledged that he exposed the public to dangerous criminals and robbers but in mitigation explained that he had decided now to tell the truth and to assist the Commission to bring it to an end.

3.5.2 Mr Bhekisisa Vincent Shoji

The kind of interference and the level of intimidation to which the witnesses were subjected became apparent at the time when Mr Shoji testified before the Commission.

Mr Shoji deposed to an affidavit that was handed in and marked as Exhibit 'GGG'. The interesting development in his evidence was that when he delivered his testimony in chief, it became apparent that he had a document in his hand which had visible notes on it. The document was confiscated and when perused by the Commission it showed that there were notes made onto the document that were clearly not in the handwriting of Mr Shoji. The nature of the notes indicated that there has been clear interference and intimidation of this witness so as to exculpate Mr Thloloe. The document, which speaks for itself, was handed in and marked as an exhibit.¹⁷ The witness was questioned regarding his deviation in

¹⁷ See Exhibit 'GGG1' of the Johannesburg hearings.

evidence in chief and his evasiveness when trying to explain how the document that was found in his possession came into his possession. All the contradictions and evasiveness showed that Mr Shozi's evidence could not be relied on. In fact it is clear that Mr Shozi committed the crime of perjury because he gave two (2) different or conflicting versions of events under oath.

Mr Shozi was given an opportunity to explain his contradictions but did not take the Commission in his confidence and left the Commission with no other option than to make adverse recommendations regarding his honesty and demeanour in the witness stand. He did not even attempt to give an excuse in order to determine whether such excuse is "just", given the circumstances.

This concludes the evidence dealing with all the allegations against Mr Thloloe at the Johannesburg prison.

3.6 FINDINGS

In the matter of Mr Thloloe, the Commission is satisfied in the light of the evidence adduced that Mr Thloloe was involved in criminal activities and that he was not properly disciplined in all the matters. The evidence shows overwhelmingly that Mr Thloloe, even though he was in charge of the shifts, never faced disciplinary action in all the "disappearances". The fact that he was allegedly involved in criminal conduct and arrested was also not internally investigated.

The number of times that he was involved in criminal conduct surely should have drawn the attention and suspicion of his seniors and should have led to his suspension, since he became a security risk. Instead of suspending him when criminal cases were pending against him, he was transferred to another section where he still had access to keys and prisoners. It is not unreasonable to have expected, given the allegations, that Mr Thloloe would have been re-deployed

where he had no authority over prisoners. The witnesses who testified against him showed no bias; on the contrary, they were prepared to admit their own wrong doing and be crucified for that in the witness stand in order to help the Commission to be in a position to make a recommendation.

The facts presented to the Commission regarding the times when Mr Thloloe was on night duty showed that the aforementioned policies were not adhered to on a regular basis. The disturbing part is that there were no consequences to face when Mr Thloloe arbitrarily interfered with the members manning the posts. If the Department is serious about its own policies, then it should put mechanisms in place that will target those who are not adhering to it, with disciplinary action. The Department should be pro-active in its management strategies and not first wait for a prisoner to escape to investigate. Should there be a relaxation of its security policies by a member, such conduct should be investigated immediately because it poses a potential risk. Members will certainly be more aware of the applicable policies and more diligent in order to protect their employment.

4. MR MZIMASE THUNGULU

As early as 2002, whilst the Commission was hearing evidence in Port Elizabeth, the Commission's attention was drawn to the fact that one (1) prisoner, to wit, Mr Mzimase Thungulu, had escaped from prisons in the Eastern Cape at least six (6) times. What made his case so unusual is the fact that he had clearly been assisted by members of Correctional Services to escape serving his sentences.

At the time of the hearings in Port Elizabeth, no break through was made by the Commission's investigators regarding how and with whose assistance Mr Thungulu escaped. It did not come as a surprise to the Commission that this inmate had acquired the name "McGyver" because it soon became clear that very much like the television character of a series in the 80's, he most certainly,

by escaping from some of these places, committed things that are humanly impossible.

The matter remained unresolved until the Commission arrived at Pretoria Prison and heard the evidence of some of the C-Max prisoners, including Mr Mzimase Thungulu.¹⁸ During his testimony, after he was confronted about his legendary escapes in Port Elizabeth by one of the Commissioners, he indicated to the Commission that he feared to reveal what really happened but that he was prepared to consult with the investigators of the Commission and would give them the necessary information as to how he escaped from a single cell in a Maximum Prison in St Albans.

At all times, one should remember that Mr Thungulu is a serious and dangerous criminal, serving one hundred (100) years of imprisonment and he was convicted of offences, *inter alia*, murder, robbery, possession of an illegal firearm, possession of illegal ammunition and so forth, yet he managed to escape twice within a year from St Albans Prison.¹⁹

Mr Thungulu is a prime example of how dangerous criminals, if they have the necessary funds, can buy their way out of prison. Whilst most people think that justice has been done and that prisoners are serving their sentences behind bars, those very same dangerous criminals are right in the midst of their communities.

The matter of Mr Thungulu also focused on another aspect, which is the unnecessary wastage of resources used to investigate and also apprehend a prisoner not once, but twice within one (1) year whilst that prisoner was supposed to be behind bars. Precious time was wasted by the South African Police Services, which time could have been used in investigating new criminal matters.

¹⁸ See chapter dealing with Assaults at C-Max Prison.

¹⁹ He managed to escape on the 13 December 2000 and also between the 22 and 23 August 2001.

To understand what makes Mr Thungulu's escapes so unique, the Commission will now try and focus on some of the aspects that will illustrate that despite the fact that some correctional officers take their duty very seriously and are very committed to the safe custody of prisoners, there are others who are unscrupulous. These unscrupulous members have no problem in augmenting their income by releasing prisoners in the way Mr Thungulu was "released".

4.1 Escape whilst in transit from Bisho High Court to St Albans Prison on 13 November 2000

On 13 November 2000, three (3) members of the Department, namely Messrs Dasa, Kama and Vava, were instructed to escort prisoner, Mr Mzimase Thungulu to Bisho High Court and back to St Albans. On their return from Bisho High Court, the prisoner's hands and feet were in hand cuffs and leg-irons respectively. He was in the back of the van, which was secured with a padlock. The three (3) members, however, never stopped to check on the prisoner. They only stopped en route to drop off one of the members, Mr Vava at his residence. When Mr Dasa and Mr Kama arrived at St Albans, they discovered that the padlock was missing from the door of the van and that the diamond mesh had a hole in it. Needless to say, the prisoner Mr Thungulu, was no longer in the van.

Now the peculiarity about this particular escape is that the diamond mesh (cast iron) on the inside of the van had been sawed through and there was a hole in the mesh on the inside of approximately twelve (12) centimetres in length by seven (7) centimetres in width. The mesh at the side of the vehicle had been forced out with a piece of iron of approximately thirty (30) centimetres (this iron was part of the bench on which the prisoner was sitting at the back of the van). However, the hole that was made in the mesh was approximately the size of a cricket ball and there were sharp edges of the mesh, which should have clearly inflicted wounds on the arm of the prisoner. However, at the time of the internal

investigation, which was conducted by Messrs R.R. Daniels and M.A. Spyers, no blood was detected on either the mesh or in the vehicle.

It was also clear on the next day when they were video taping the vehicle that from the driver's seat the driver has a full view of the back of the van where the damage was caused. Notwithstanding this, the driver of the vehicle did not observe the prisoner at the back. Further to this, the road between Bisho High Court to St Albans in most part is a highway where the speed limit is approximately one hundred and twenty (120) kilometres per hour. It would therefore have been impossible for the prisoner to jump out of the vehicle without being seriously hurt. It was further observed that there were saw marks, which also left a question as to how the prisoner was searched, if it was the prisoner that had escaped by himself from the back of the van.

It is also evident from the damage to the vehicle and the time that elapsed between Bisho High Court and St Albans that the prisoner could not have escaped without assistance. That particular finding was also made by the internal investigator.²⁰ Furthermore, the prisoner was handcuffed and in leg irons when he was put in the van. The van only stopped once between the Bisho High Court and St Albans, as was eluded to earlier, to drop off Mr Vava.

Neither of these two members could explain where or how the prisoner escaped. They admitted during the investigation that they never stopped to check on the prisoner, not even when they dropped off Mr Vava at his residence. It was found by the internal investigation that the members were clearly grossly negligent and all three (3) of them were charged with transgressions of the Disciplinary Code.

Very little emphasis was placed on the question of how the prisoner managed to escape and no statement was taken from the prisoner when he was again apprehended as to how he managed to escape from the vehicle. What is

²⁰ See Departmental memo dated 13.11.2000, file 1/6/2, as per St Albans Exhibit 'TT'.

disturbing in this particular matter is that although the Department went through the process of a disciplinary hearing, Messrs Vava and Kama merely received written warnings. Mr Dasa, who was the member in charge of the transport and also responsible for the safe custody, was initially dismissed but the Provincial Commissioner of the Eastern Cape decided to put the dismissal aside and to give the member a final written warning. Mr Dasa was also re-instated in his position.

It is common cause that this was one of the most serious cases dealing with an escape and that all three (3) of the members failed in their safekeeping of the prisoner. It is also evident to the Commission that all three (3) should not merely have been issued written warnings but that they should in fact not be in the Department since they do not have the Department's interests at heart.²¹ The message that is sent out is that the escaping of prisoners is not a serious transgression and that it is not serious enough to put your job at risk.

When the Commission re-investigated the matter after Mr Thungulu decided to co-operate, a statement was obtained from Mr Nicholas Charles Esope Meyer, who explained to the Commission the procedure of transporting prisoners. Mr Meyer's affidavit was attached to Mr Pakiry's exhibit.²² What is evident from his affidavit is that despite the fact that he had been involved in transporting Mr Thungulu on numerous occasions to the Bisho High Court, with a crew of members, he was never informed that Mr Thungulu was a dangerous prisoner. It was only at Bisho High Court when the investigating officer of the case approached him that he was told that Mr Thungulu was dangerous but up to that point he was still escorting Mr Thungulu in a sedan motor vehicle, without him being in leg irons. From that day on, he requested that Mr Thungulu be transported in a van to the Bisho High Court.

²¹ See Chapter on Disciplinary Inquiries and the inadequacy of the disciplinary hearings in the Department.

²² See exhibit 'TT' – MP9 of the Johannesburg hearings.

The importance of the affidavit of Mr Meyer is that it should be the duty of the Head of Prison or his delegate to alert the team escorting prisoners to and from court who the dangerous prisoners are, so that extra precautionary and measures can be taken to ensure that the prisoners are, at all times, held in safe custody. Such conduct would not only be prudent but would also be in accordance with good governance.

Mr Thungulu, in a statement to the Commission, gives an explanation for his magical disappearance from a van when he was secured with handcuffs and leg irons. He told the Commission that he had paid the warder fifteen thousand rand (R15 000,00) for his escape but because it was a fellow black man, Mr Dasa, he did not want to get him into trouble. It needs to be stated that Mr Thungulu obviously gave a different version to the internal investigators when they investigated the matter and the Commission therefore does not consider recommending any criminal prosecution against the warder, bearing in mind the burden of proof resting on the State regarding such conflicting statements.

4.2 Escape from St Albans on the 22/23 November 2000

At the time of this escape, Mr Thungulu was detained in a single cell at the maximum prison at St Albans. Mr Thungulu explained how a warder approached him and told him that he could offer him some assistance in escaping but that he would have to pay ten thousand rand (R10 000,00) for the escape. He then arranged with the warder, a certain Mr Jordaan, who then also brought another warder into the plan, Mr Stander.

Mr Thungulu explained how he got the ten thousand rand (R10000,00) to prison and that on the 22 August 2001, whilst he was in the exercise yard with three (3) other prisoners, he then came back to his cell and saw that the window and gauze wire of his cell was already cut but that everything was still in position. Mr Thungulu explained in his statement that he inspected it and saw that it was

loose. He was then approached by Mr Jordaan who asked him whether he would get through the hole or whether it was too small. Mr Jordaan also told him that the single cells on the second floor, which had asbestos gutters would not hold him and that he would be injured if he had to try and escape through the window. Mr Jordaan then told him that he would make a plan to assist him and that he must prepare his bed and put things in his bed so that it appeared as though he was still sleeping. He was also told that he should push the gauze wire with his hands and injure his hands in the process.

His version in his affidavit was that both these warders assisted him and that they helped him from the single cells to the ground floor and unlocked the different grills for him. He then proceeded to the main gate. At the time when he was exiting the prison, he was dressed in jeans and a blue T-shirt. He was told exactly where there was a hole in the fence, which was opposite the reception and this is where he went through the fence, where he was picked up by his sister in a car. Not long after he escaped on the 25 August 2001, he was re-arrested.

Even though there is doubt about the version given by Mr Thungulu, it is clear that there was gross negligence on behalf of the warders, who never properly inspected the cells and during the change of shifts, never ensured that the prisoners were accounted for. The Department then decided to charge the warders, Messrs Stander and Jordaan and also some other supervisors, Messrs Jacobs and Nomsanga. Once again the outcome of the disciplinary hearing was quite alarming, as it appeared that Messrs Stander, Jordaan and Nomsanga were found to be not guilty and that all charges against Mr Jacobs were withdrawn. As for the rest of the warders who were all on duty during the shift, no disciplinary hearings took place.

Irrespective of the outcome of the disciplinary hearings, it was as clear as daylight from the inspection *in loco*, which the Commission had at the St Albans

Prison that it was impossible for an adult person to escape through the window Mr Thungulu allegedly escaped from. Considering the circumstances, it is clear that Mr Thungulu needed the assistance from someone inside the prison to get to the outside and the mere fact that he was arrested outside, shows that such assistance was rendered.

Mr Thungulu could never have got out of the prison without being in possession of the keys of all the gates himself or more realistically, without the help of a member or members. The Department failed to take criminal action against any of its members in both these cases. It cannot be emphasized enough that such failure not only leads to corrupt officials remaining part of its work force but that such lack of action can be seen by the “offenders” as condoning their action. The Commission is convinced that this is not the message the Department wants to send out and hence more vigilant discipline is needed against those who transgress the laws of the country and the policies of the Department.

5. DEPARTMENT’S WHITE PAPER

The Commission has referred to the standpoint of the Department on security of its prisons earlier but to be comprehensive the Commission will also deal with the Department’s White Paper which sets the scene for the years to come. The Department’s response to safety and security is announced in the White Paper of the Department at page 72, particularly section 10.2:

Safety, Security and Order as part of rehabilitation

“10.2 Operating secure, safe and orderly correctional centers;

10.2.1 The Department is obliged to –

- Ensure the safety of the public from inmates who pose a threat to the public;
- Provide a safe environment for inmates; and
- Enforce sentences and ensure that justice is seen to be done.

10.2.2 The balance between security control and justice is the responsibility of all correctional managers. Excessive security and control at the expense of justice, such as oppressive security measures, which exclude rehabilitative programmes, brutal methods of control, lack of justice and disciplinary hearings and unlawful punishments, can lead to situations in which orderly and fair management gives way to abuse of power, violence by both offenders and staff, the possibility of escapes and the absence of constructive activities for inmates.

10.2.3 Principle 4 of the Basic Principles for the Treatment of Prisoners says that: “The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State’s other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.”²³

It makes little sense that the Department is so concerned about the security classification of offenders by assessing the risk of the offender and taking into account the impact of incarceration on other inmates etc., if the Department does not act firmly and speedily against those correctional services members who assist and aid prisoners to escape. Irrespective of how prisoners are classified, it would be a futile exercise if members assist them to escape. This lack of control over its employees in itself leads to the fact that the Department indirectly puts

²³ See White Paper on Correctional Services on page 72.

the public at risk because these offenders again re-offend as has been seen time and time again.

This lack of control over its employees also shows a complete disregard for the rule of law. Therefore, the Department's failure to act against those correctional service members who, by the use of a single key, undo all the efforts of the National Prosecuting Authority, the Judiciary and the whole criminal justice process, makes a mockery of justice.

One can therefore never lose sight of the fact that a proper disciplinary code, which is properly enforced and respected by all, is ultimately to the benefit not only of the Department, but to the country as a whole and also to the criminal justice system. Over the years, the Department has always made safe custody of prisoners one of its priorities and one of the primary functions of the Department. In the annual report of the Department 1999,²⁴ the Department stated that it is committed to quality service delivery by reducing the number of escapes from custody in order to contribute to the safety of the community. It has also committed to providing a safe and secure prison environment to ensure the personal safety of both prisoners and personnel. As early as 2001, the Department, still focusing on the reduction of escapes, stated the following in its annual report 2000/01:²⁵

“Although the target set for zero escapes from prison was not achieved, there was a significant reduction of 55.4% escapes in comparison with the number of escapes during the previous financial year. Although this figure reflects a major reduction in the prison outbreaks, the Department is not satisfied with this performance and will continue in its efforts to reduce escapes even further during the next financial year.

²⁴ See page 9 of the Annual Report.

²⁵ See pages 68 and 69 of the Annual Report.

Areas that hampered our performance in this regard and which will be critical focus areas during the next financial year, include:

- *Staff shortages*
- *Overpopulation and*
- *Negligence by officials.*

Steps already taken to address the problems and which will be intensified during the coming year:

- *Strict disciplinary action against corrupt and negligent officials;*
- *Criminal prosecution of officials and any other person aiding escapes;*
- *Enforcement of strict compliance and adherence to all the relevant policies and procedures in improving control and security in prisons;*
- *Incentives for prisoners who report escapes or “whistle blowers”;*
- *Budgetary planning to eliminate the current manpower backlog;*
- *Various initiatives to reduce over-population.”*

If one considers the aims and objectives of the Department already stated in its annual report of 2000, then it is clear that the Department failed in the very first step and that is to discipline those involved in corruption and those that were grossly negligent. Whilst it is a sound policy to take strict disciplinary action against corrupt and negligent officials who assist prisoners to escape, and whilst it is sound policy also to enforce the criminal prosecution, it is disconcerting that in the majority of escapes that were testified about during the Commission hearings, the Department very seldom followed its own directive of taking strict

disciplinary action against members. The public at large would also expect the Department to pursue criminal prosecution against those that assist prisoners to escape.

To aid and abet a prisoner is a very serious offence.²⁶ The seriousness of the offence is clearly demonstrated in the penalty clause provided for in terms of the Correctional Services Act and it is clear that the Department had no will to stamp out the corruption that exists amongst its own members when they are involved in corrupt acts by assisting prisoners to escape.

In focusing on the escapes from custody, it appears that one always reads the same refrain, printed every year in report after report, depending on which year of the Department's annual report you are looking at. Looking at the annual report issued by the Department for the year 2001/2002,²⁷ the following was said:

“Although the said target of zero escapes from prison and a 50% reduction of escapes from outside prison was not achieved, there was a slight reduction of three (3%) per cent in the total number of escapes in comparison with the previous financial year. The Department is not

²⁶ See section 43 of the Correctional Services Act No. 8 of 1959, which provides as follows:
“Any person who – (a) Aids any person in escaping or attempting to escape from prison or while in the course of removal and custody from one place to another; or (b) For the purpose of facilitating the escape of any prisoner, supplies or agrees or attempts to supply or aids, incites or encourages any person in supplying a prisoner with any mask, dress, disguise or any other article, instrument, matter or thing; or (c) conveys or causes to be conveyed into or out of any prison or any place where prisoners may come to work, any letter or token encouraging or inciting any prisoner to escape or to contravene a regulation or showing a desire to aid any prisoner to escape or to contravene any regulation; or (d) harbours or conceals or assists in harbouring or concealing an escaped prisoner, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five (5) years.” Also see in similar vein section 115 of the 1998 Act.

²⁷ At pages 64 and 65.

satisfied with this performance and will step up its efforts to reduce escapes even further during the next financial year.

Negligence by officials continue to be a major cause of escapes whilst staff shortages and over-population also aggravate the situation.²⁸ The following measures are being enforced to combat these causes:

- *Strict disciplinary action against corrupt and negligent officials;*
- *Budgetary planning to eliminate the manpower backlog;*
- *Various initiatives aimed at reducing over-population;*
- *The introduction of advance security equipment;*
- *Safe and security detention of high risk prisoners in suitable prisons.”*

When one considers the annual report of the Department of 2002/2003,²⁹ the same appears:

“The said target of fifty (50%) per cent reduction in respect of escapes was not achieved and the Department is not satisfied with the performance at all. It must, however, be mentioned that to a large extent the Department’s performance in this regard was negatively influenced by one single incident, during which ninety eight (98) offenders escaped while being evacuated for their own safety from the Bizana Prison following the explosion of kitchen boilers. Negligence by officials continue to be a major cause of escapes, whilst the over-population of prisons also aggravates the situation. In an effort to deal with this situation, various strategies were adopted and measures were put in place. These measures focus mainly on aspects such as:

²⁸ Own emphasis.

²⁹ At page 44.

- *Involvement of managers at all levels in monitoring and ensuring adherence to policies and procedures;*
- *Strict disciplinary action against negligent officials;*
- *Various initiatives aimed at reducing over-population.”*

6. DEPARTMENT’S STRATEGY

The Department revealed as early as 3 October 2000³⁰ measures to combat escapes and the Commission lists them:

- Involvement of management at all levels to motivate/guide officials towards adhering to security policy/procedures.
- Strict disciplinary action against officials who are negligent in the performance of their duties.
- Strict disciplinary and criminal action against corrupt officials aiding escapees.
- Optimal utilization of existing security aids and equipment.
- Upgrading of personnel training.
- Sensitisation of prisoners in respect of the negative consequences of escapes.
- Criminal prosecution of escapees and those who assist in escapes.
- Rewarding prisoners who report planned escapes or who blow the whistle.
- Installation of electrified fences and X-ray scanners in so-called “high risk” prisons.
- Incarceration of High Risk Prisoners in C-Max Prison.

³⁰ See Correctional Services Portfolio Committee briefing dated 3 October 2000 <http://www.pmg.org.za/viewminute>, accessed 14 February 2005.

The aforementioned measures cannot be faulted but once more it is not a matter of having a plan but of executing that plan. Without execution these measures remain only ideals and do not serve a useful purpose. What is required is strict compliance with these measures and forceful action against those who transgress them.

7. GENERAL FINDINGS

The evidence in the case of Mr Thungulu and Mr Thloloe proves that security is problematic at our prisons and that members need to be properly disciplined when they assist prisoners to escape. Security, or the lack thereof, almost becomes a commodity for the warders involved in corrupt activities. Unlike other more subtle corrupt practices,³¹ assisting a prisoner to escape is easy to determine as corrupt because it goes against every possible rule of ethics that should exist for members of the Department.

The Commission is of the view that the “disappearances” listed at Johannesburg Prison and St Albans Prison are only the tip of the iceberg. The Department needs to do everything in its power to address security at our prisons. The current systems are fallible and need to be revised to secure our prisons. The evidence tendered before the Commission showed that a multi-faceted approach is required that will address the corruption on all levels. What has been exposed at these two (2) Management Areas is something that had been known to the Department for a long time. One only needs to consider the reported cases to know this is not a new phenomenon. In the case of *S v Davids*,³² the accused for

³¹ For example, practices like not working full hours, not adhering to directives, favouritism, etc.

³² 1998 (2) SACR 313 (C). Also see *S v Strydom* 1994 (2) SACR 456 (W) for ways to assist prisoners to escape from prison and *Van Der Spuy v Minister of Correctional Services* 2004 (2) SA 463 (SE) for the Department’s delictual liability when its members were negligent in securing the prison.

example, a warder at Pollsmoor prison assisted a prisoner to escape at the cost of five thousand rand (R5000,00) cash and a BMW motor vehicle. The facts of the case are not unique and support our contention that members are prepared to risk the safety of society for a fee. It is therefore essential that members be sensitised and be trained not to succumb to devious and sly criminals. The Department should also be pro-active and regularly train its members in ways to combat the psychological onslaught from prisoners.

It is found by the Commission that a certain group of prisoners are a high risk flight group, namely those in custody for armed robberies, cash heists and fraud.³³ It should not be difficult to know who poses a threat to the security of the prison and an elite group of correctional members, who are regularly trained and who receive regular debriefing sessions from psychologists and other professionals, should guard them. This will address security on one level but more is required.

An examination of the Departmental B-Orders, specifically chapters 3, 5, 6, 12 and 19, dealing with security matters, indicates that the Department cannot be criticised for providing prompt directives that are aimed at securing our prisons. What should be criticized is the fact that the evidence before the Commission displays that very little, and in some cases, no implementation of these policies took place. In the matter of Mr Thloloe it was shown that members were chopped and changed from their posts to fit in with the “escape plan”, yet paragraphs 2.3 and 2.4 of the B-Orders provide as follows:

“2.3 Heads of Prisons must ensure that all gates providing access to the prison are manned by experienced or properly trained officials.

³³ See the Ninth Interim Report dealing with the acts of fraud and monetary transactions for more details of how prisoners serving sentences for Fraud and Robbery are targeted by the members to pay for extra privileges.

2.4 *Heads of Prisons must ensure that officials manning these posts are allocated on a permanent basis and such officials must not be arbitrarily removed/replaced with less experienced officials.”*

8. CONCLUDING REMARKS

The transgressions committed by Mr Thlooe have highlighted a number of issues and shortcomings in the manner in which information relating to prisoners and the staff is being managed within the Department. In this regard, it was even difficult for the investigators to establish whether on these particular days, Mr Thlooe was on duty or not because of the poor record keeping within the Department. The disappearance of prisoners whilst incarcerated and the fact that they are sometimes only detected a number of days thereafter, is clearly another indication of the poor keeping of records.

The Thlooe matter highlighted a number of shortcomings, which the Department needs to address. The one thing that the Commission would like to comment on is the manner in which the South African Police reacted upon hearing the evidence of the Commission and being contacted by the Commission on some of the transgressions Mr Thlooe committed. We have been advised that he has since been arrested. That was the evidence before the Commission at the time of writing this Chapter of the report.

The McGyver matter, even though it did not lead to the arrest of anybody, has however highlighted the shortcomings of the disciplinary system within the Department. In the circumstances, the Department should look at the McGyver matter in the context of the recommendations the Commission made in the very first interim report, namely that there is a problem with disciplinary inquiries and

the Department should seriously consider a system that will ensure there is proper prosecution.³⁴

9. RECOMMENDATIONS

9.1 It is essential that walk-through metal detectors and X-ray scanners are installed at all high risk prisons to enhance the detection of unauthorised items. It is of no use if these detectors and scanners are installed without being operational and functioning. During the Commission hearings, it has been said time and time again that most prisons have such equipment but that it is either malfunctioning or not properly maintained.

It is recommended that where such equipment is installed but not properly managed, that disciplinary action is taken immediately against those Heads of Prisons or Area Managers who failed to see to it that the equipment under their authorisation is fixed and maintained. Their ineptitude to supervise even the equipment at their disposal shows clear maladministration on their behalf.

9.2 It is recommended that the Department again consider the costs, feasibility and benefits of electronic monitoring not only as an option to release prisoners but also to monitor the movement of prisoners to court, hospitals and back. The Commission is of the view that the cost implication of electronic monitoring as opposed to building new prisons should be negligible. In 1997, the Department estimated that the long term implications of electronic monitoring is positive but that it was too costly:

"The cost implication of the implementation of electronic monitoring is approximately R68 million for the first year. This will make provision for the monitoring of 10 000 offenders. The cost

³⁴ For more details on this, see the Chapter dealing with Disciplinary Inquiries.

implication for the next two (2) years will be R95 million and R127 million respectively.”

It is envisaged that the recommendation will not be carried out unless a proper work-study is done taking into account the cost, the manpower that can be saved by electronic monitoring of a prisoner's movement, the cost of escapes, security in general and the cost of building new prisons.

- 9.3 It is recommended that the Department consider a reward system whereby prisoners who report planned escapes will be rewarded for bringing such plans to the attention of the Department.
- 9.4 It is recommended that the Department consider a reward system whereby warders who report a planned escape will be rewarded by an incentive bonus for bringing such valuable information to the attention of the Department.
- 9.5 It is recommended that the personnel be trained regarding the consequences of aiding and assisting a prisoner to escape. Such training should not only focus on the legal implications but also on who are likely targets or potential targets of the prisoners who are flight risks. Members should therefore receive training from professionals in the field of psychology who are best equipped to teach them how to cope with the psychological demands of guarding robbers, fraudsters and gang leaders. The training should not be once-off but should happen on a constant basis to assist the members guarding these prisoners. The Commission has heard so much evidence of members who were bribed and intimidated that it is of the view that more psychological assistance should be rendered to members focusing on the situations.

- 9.6 It is further recommended that greater emphasis be placed on the categorisation of prisoners. The evidence before the Commission revealed that prisoners that are charged mainly with robbery, armed robbery, fraud and cash heists pose a severe flight risk since the perception exists that they are the prisoners with money and that they can pay to avoid serving their sentences. It is recommended that these prisoners be specially classified and that they be guarded by an elite group of members who receive intensive training on security and that performance contracts be entered into with this group, which will be aimed at zero escapes.
- 9.7 The Commission recommends that stricter disciplinary action be taken against officials who are assisting prisoners to escape. Such cases should be investigated immediately and each case should be reported to the South African Police Services.³⁵ Discipline is still the cornerstone of accountability and should be enforced in order to maintain order in the prison. Clearly managers cannot escape liability if the Department's directives are not followed in their prisons. It is therefore recommended that stricter compliance with Departmental directives will have a more positive impact on security and should be viewed as the best practice for managing prisons.
- 9.8 It is recommended that the Department investigate the use of computer software and hardware, which is used in high profile British prisons to monitor the influx of people into the prison and visitors to the prisons.³⁶ Clearly a better system is needed to track the movement of prisoners in the prison because the movement registers are not effective in tracking the trail of prisoners inside the prison. One of the reasons that movement registers are not effective is the "negligence" of members completing them

³⁵ See Chapter on Sexual Violence in prisons where it is discussed that the current system followed by the Police to investigate matters in prisons is not successful and should be changed.

³⁶ See 'Total Security for prisoners' – <http://www.accontrols.co.uk/industry/prison/index.html> accessed on 17/10/05.

when prisoners move through gates and a plan should be devised that will make the system more effective.

Consideration should be given to systems like in the UK and other countries that are using computer systems that electronically track the movement of the prisoner. It is therefore recommended that the Department do a workstudy to determine the usefulness of such a system, taking all costs and benefits into account.

9.9 Specific Transgressions

- a) It is recommended that the *viva voce* evidence of Mr Shozi be transcribed and together with his affidavits³⁷ be submitted to the Director of Public Prosecutions: Gauteng for consideration of prosecution on a charge of perjury.

- b) It is recommended that the conduct of Mr Thloloe as discussed under 3 above be reviewed and that the Department follow up the criminal cases that were pending against him at the time of the Commission's hearings. Should the charges not proceed through the criminal court, it is recommended that consideration be given to proceed with an internal disciplinary enquiry on those "escapes" that he has not been charged with internally. It goes without saying that in the matter in which he received a final warning the Department can take no further steps.

9.10 This report and the transcript should be referred to the South African Police Services so that they can consult with Mr Pobe to decide what action can be instituted against him or any of those who might have

³⁷ Both exhibits "GGG" and "GGG1" should be forwarded to the Director of Public Prosecutions.

transgressed the law and particularly with regard to those matters that the Department or other people never investigated.

- 9.11 Teams that escort prisoners to and from Court should be briefed on the dangerousness/risk of each prisoner they escort so that such teams can take pro-active steps to secure the transport of the prisoners.
- 9.12 It is recommended that the admissions area of all prisons be monitored at all times, but especially when the prisoners from court are admitted. Such monitoring will combat any corruption like prisoners paying members a fee for better cells and beds, etc.³⁸

³⁸ See Chapter on Pretoria Management Area for more details regarding such practices.