

COMMISSION OF INQUIRY INTO ALLEGED VIOLENCE
AND ADMINISTRATION OF JUSTICE
TIONS, MAJORITY VIOLENCE OR INTIMIDATION
PARTMENT OF CORRECTIONAL SERVICES APPEARS
OF THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
OF INFORMATION No. 15 OF 2001, AS AMENDED

FIN



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA

EXECUTIVE SUMMARY

1. INTRODUCTION

This is an executive summary of the full report of the Commission of Inquiry appointed by the State President in 2001 to investigate alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services (the Department).

The full report of the Commission contains an overview of the Commission's findings and recommendations and some of the evidence obtained during the existence of the Commission. The said report is divided into five (5) volumes as set out hereinafter:

- Volume One (1) consists of the Commission's Terms of Reference and main findings, evidence and recommendations organised thematically. The prominent matters are trade unionism, gangs, recruitment, prison security, treatment of prisoners, sexual violence in prisons, parole, conversion of sentence, judicial inspectorate, prison ombudsman, overcrowding, abuse of power, sexual harassment, disciplinary inquiries, overtime policy, procurement, logistics, prison workshops and stock control systems. The volume concludes with an assessment of how the Department has responded to previous investigations and how it has implemented the Commission's interim reports.
- Volume Two (2) deals with incidents of misconduct in three (3) Management Areas, namely, St Albans, Pretoria and Ncome, for which interim reports were not submitted. It also includes descriptions of, and key issues identified, in the nine (9) Management Areas investigated. It is

completed with recommendations on the Management Areas and a conclusion to the report as a whole.

- Volumes Three (3), Four (4) and Five (5) are interim reports on the various Management Areas, which were submitted during the Commission's hearings in order to deal with urgent issues of misconduct that were regarded as necessary to address discipline in the Department.

The five (5) volumes together make up the final report of this Commission of Inquiry.

2. ESTABLISHMENT OF THE COMMISSION

The State President of the Republic of South Africa appointed this Commission of Inquiry in terms of Proclamation No. 135 of 2001¹ to investigate and report on incidents of corruption, maladministration, violence or intimidation within the Department. In appointing the Commission, the President acted under the power vested in him in terms of section 84(2) of the Constitution of the Republic of South Africa Act No. 108 of 1996, read together with section 1 of the Commission's Act No. 8 of 1947.

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

During May 2002, the Commission became aware of certain acts of corruption that had been captured on video at the Grootvlei Prison, a prison situated in the Bloemfontein Management Area. The Commission approached the State

¹ See Government Gazette No. 22718 dated 27 September 2001.

President to extend its terms of reference to include the Bloemfontein Management Area. The terms of reference were accordingly amended.²

The Terms of Reference for the Commission requires an investigation into corruption, maladministration, violence or intimidation in nine Management Areas, including the Department's Head Office. However, the fact that the inquiry was conducted during the post-1994 constitutional framework that now regulates all social relations in South African society meant that this Commission brought a broader lens to the matter than many previous inquiries into the various aspects of prison malfunctioning had been able to do. The Commission therefore did not only focus on the transgressions of laws and regulations. It also focused on whether these violations related to practices and norms within the Department that did not conform to the norms and practices required of a government department in a constitutional democracy.

The constitutional norms and values specifically highlighted in the report are public service principles of transparency, demographic transformation and efficiency. Human rights, particularly the right of prisoners and staff to dignity, fair and humane treatment, equality, race, sexual orientation and gender are also examined.

The Commission became acutely aware of the Department's struggles with powerful underlying dynamics, many of which related to contested attempts to institutionalise the Department which was at the time, moving away from an old order and conforming to a new constitutional order.

The Nine (9) Management Areas the Commission investigated were, according to the information furnished to the Commission in 2001, selected because they were amongst the most problematic ones in the Department. The Commission did, in fact, find that corruption and maladministration, violence and intimidation

² See Government Gazette No. 23 558 dated 27 June 2002.

were prevalent at these management areas. Accordingly, the reading of this report should be seen in that context.

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

3. EVIDENCE AND FINDINGS

The Commission's work commenced by placing advertisements in the media, conducting radio interviews, setting up a toll free number and receiving telephone reports from various members of the public and prisoners in response to the advertisements and interviews. The Commission also notified Area Managers when a particular Management Area was about to be investigated and requested submissions from senior staff prior to hearings.

Most of the evidence was presented orally in open court. Where oral evidence could not be led, documentary evidence was used. Those people who appeared before the Commission were given an opportunity to cross-examine witnesses to test the veracity of their contentions and to lead evidence in rebuttal. Those who could afford legal representation and who elected to be so represented were also given an opportunity to be represented.

Five hundred and sixteen (516) witnesses testified before the Commission in a period of one hundred and five (105) weeks of hearings.

The Commission observed that corruption and maladministration were so rife in most of the Management Areas investigated as to warrant describing this as part of the institutional culture. There was a large group of employees who featured in

almost all the incidents of corruption and maladministration and who are predominantly driven by greed and the need to make easy money. This became apparent in the nature of the corruption that is endemic within the Department. Despite the aforesaid, some of the instances of corruption were systematic and not mere isolated incidents of corruption. The Commission also observed that there were members in the Department who are law-abiding and who sought to comply with the rules and regulations of the Department.

Investigations also revealed that many employees consciously and systematically disregarded Departmental rules and regulations. The refusal to comply with rules and regulations of the Department became apparent in the manner in which these employees consciously and deliberately flouted regulations relating to security, searching of members, searching of visitors, visitation rights, procurement of goods for the prisoners, the relationship between prisoners and warders, recruitment and appointments, promotions, merit awards, transfers, parole, disclosure of private work, treatment of prisoners, use of State assets and others. This appeared to be done with impunity in that there was little evidence of disciplinary action being taken against the transgressors.

3.1 Historical Background

Many of the current problems in the Department have their roots in the way it was structured and run before 1994, and in the way it tried to shift after 1994 to a democratic dispensation.

Before 1994, the Department was run along military lines in its rank structure, mode of dress and institutional culture. The Department was also one of the pillars in the "securocratic" apartheid State, which encouraged a culture of secrecy in the way it performed its functions.

An important development in the last years of apartheid was the advent of trade unionism in the Department. Because of its military culture, the Department did not recognise unions and it was a disciplinary offence for any employee to be a member. The pre-1994 period was also defined by its lack of emphasis on the rehabilitation of prisoners.

Regimental and authoritarian attitudes created fertile ground for gangs, which some members viewed as an institution that ensured prisoners were disciplined and compliant. This culture fed into the post-1994 dynamics.

The 1994 election brought about a Constitutional State in South Africa, and with it the urgent need to transform Government departments and other State enterprises, particularly those that had been part of the State security machinery. According to section 195(1) of the Constitution, transformation of all government departments became a constitutional imperative. The said transformation programmes also included transforming of the work force to reflect the demographics of the country (Affirmative action). At the time, the senior management positions were occupied by mostly white members of the Department. The black members who made up approximately ninety per cent (90%) of the work force were in the lower echelons of the Department.

This transformation in the Department was to be manifested in three (3) areas, Firstly, trade unions were legalised, and were allowed to mobilise workers openly; Secondly, the military culture and structure of the Department were abandoned; Thirdly, affirmative action became a constitutional imperative as the country sought to transform its work force, and the Department was no exception.

As a result, an impatient work force, which equated the transformation of the Department with affirmative action and ignored the other forms of transformation, embarked on a number of illegal programmes which were meant to render the Department ungovernable and also to enable them to get senior positions within

the Department. In so doing, the said work force totally ignored all other facets of the transformation programmes which were anticipated in terms of the Constitution, including, introducing a human rights ethos, a people orientated administration (Batho Pele), and an efficient and accountable work force within the Department.

A senior member in the Department and an office bearer of Popcru, testified that Popcru in KwaZulu-Natal had planned a fast-track affirmative action programme, codenamed "Operation Quiet Storm", aimed at taking over the top leadership positions in the province's prisons. According to other evidence before the Commission some of these union driven programmes included "Operation Quiet Storm", "Operation Thula", "Amaqugula" and all other forms of programmes which in the end either intentionally or unintentionally, rendered the Department ungovernable.

These operations were "strategic initiatives" of Popcru, meant to push the Department in a particular strategic direction. Secret meetings were held to orchestrate to which senior positions Popcru members should be appointed, and so infuse Popcru influence into the Department.

The people attending these meetings identified candidates for the senior positions including, National Commissioner, Provincial Commissioners, Prison Heads, Heads of the various sections, for example, inspectorate; personnel; recruitment and promotions; security; communications and health matters.

Operation Quiet Storm first emerged in the Pietermaritzburg Management Area in 1996 and was extended to other Management Areas in the country. This operation provides some understanding of the problems the Department experienced and casts light on why there was a sudden upsurge in violence and intimidation within the Department after 1996.

Soon after the plan being hatched, Popcru members began to force officials to leave the Provincial Office and to hold senior officials hostage. The evidence was that when faced with such actions, most senior staff simply never returned to work and were then replaced by Popcru appointees.

The appointments did not always occur in the manner in which those who orchestrated Operation Quiet Storm intended, and this resulted in friction between the parties involved. It is this friction which might even be contributing to dysfunctional management in the various Management Areas to date.

As a result of the aforesaid lawlessness which filtered into the Department, corruption, which is very insidious, also settled in. The climate was now fertile for irregular appointments, selective discipline, break-down of disciplinary procedures, abuse of power, smuggling and all the other corrupt practices which were identified by the Commission within the various management areas to date.

Furthermore, the climate was also fertile for the gangs which had always operated in an underground manner within the prison system to now operate openly as the members were busy with their own struggles for control of the Department, and were simply turning a blind eye to corruption. Some of the members were even seeking the assistance of the gangs to render the prisons ungovernable to achieve their own aims like smuggling of contraband for financial gain. The aforesaid state of affairs then led to the current corrupt situation within some of the management areas and consequently, the problems with the administration of the various prisons.

However, the unions equated transformation strictly with affirmative action rather than with the broader principles of human rights contained in the Constitution. These factors led to a radical work force ready to make demands on the Department and answerable only to union leadership. The absence of a coherent approach to transformation in the Department at the time also allowed

the unions and various members of the Department the opportunity to press for their demands and determine their own agenda. When the demilitarisation was implemented, no effective management principles and procedures were put in place and some of the old guard found it difficult to embrace the changes brought about by democracy. There was no proper or structured handing over of the various posts. The new appointees did not get adequate training. This shortcoming has prevailed to date.

A number of other factors were identified as having contributed to the general lawlessness within the Department, including, amongst others, the conflict between the different political parties, especially in KwaZulu-Natal. However, while these factors created a state of confusion, the main catalyst for the breakdown of law and order was the operations of certain organisations or renegade members of such organisations within the Department.³

The existence of "Operation Quiet Storm" as a Popcru campaign is, in itself, not an issue, as it is the right of every trade union to organise and strategise and engage in any legitimate activity aimed at any legitimate objective like transformation and affirmative action in a lawful manner. The problem, however, was the criminal nature of the operation and the culture which settled in the Department thereafter.

A major problem is that most of the people who participated in these criminal actions are still in the state employ and they were never disciplined. This has serious implications for discipline in the workplace because of inconsistency.

³ Operation Quiet Storm, Operation Thula, Amagqugula and Core.

3.2 Main Themes

3.2.1 Trade Unionism

The advent of democracy in South Africa resulted in a fundamental transformation of the South African work place with the Constitution entrenching workers' rights to join trade unions. It also resulted in an upsurge in trade unionism in the Department.

As of 31 January 2005, 95% of management, including senior management, belonged to unions. By the far the highest membership figures were those of Popcru, which constituted 63,59% of possible members. One of the reasons for the high union membership figures is the existence of the Agency Shop Agreement,⁴ which obliges the employer to deduct an agency fee from all employees who do not belong to a union that is a signatory to the Agreement. The other was the power or influence which Popcru was seen to have in the Department.

Trade unionism, coupled with some of the abovementioned operations also led to ordinary warders being promoted to senior management positions in extraordinary ways. According to the evidence before the Commission, the Department looked to trade union leadership to identify candidates for managerial positions in the Department. This led to a situation where trade union membership was "the ticket" to a senior management position⁵ and to allegations that Popcru had taken control of the Department.

⁴ This agreement was concluded by the parties to the Public Service Co-Ordinating Bargaining Council on 26 May 1998.

⁵ The issue of trade union membership giving access to senior positions within the Department has been the subject of investigation by a number of agencies, which have looked into the Department of Correctional Services, for example, the Public Service Commission investigation and the Department of Public Service and Administration investigation.

The Commission is of the view that the evidence relating to Operation Quiet Storm and the other union operations confirms that there was manipulation of the Department to the advantage of the members of Popcru and with the intention of realising Popcru's strategic objectives. This is partly confirmed by Popcru members themselves who argued that it was through their efforts that current managers were promoted and that, as a result, Popcru could remove them from their positions. This amounted to a concession by Popcru that recruitment processes are not fair, objective or free of outside forces, and in particular, of union influence.

Members were getting appointed on the strength of their influence within the union, and those in management who did not have union protection were intimidated. They ended up resigning and those who remained had to "toe the line" or risk being forcibly removed. The union's intentions were not in doubt as this was happening in various Management Areas and even at Head Office. It was clear that the union was no longer playing its lawful role in the Department, and appointments, at the time, even that of the Commissioner, had to get union approval.

Furthermore, where managers belong to a particular organisation, like a specific union, and promotion and merit awards are discussed, they often favoured and benefited their fellow union members. Even where managers acted with honesty and integrity, their decisions were often perceived as a conflict of interest by those belonging to a different union. Ultimately, such beneficial advantages were perceived as corruption.

The union influence within the Department had such a profound effect that even the appointment of senior, critical and technical staff has been affected with positions being filled by those not qualified to hold them.

Since the majority of senior managers belong to Popcru, there can be no doubt that the union has influenced the strategic direction taken by the Department, which raises the question as to who protects the interests of the Department when these are not the same as those of the union.

There has, however, been a slight change in this trend at head office recently, where a number of new recruits have been appointed from the outside since the advent of the new Commissioner. The current Minister and Commissioner are, under difficult conditions, endeavouring to reverse the situation.⁶

The fact that senior members of the Department with management responsibilities, including Provincial Commissioners, belong to unions clearly creates a conflict of interests due to the tasks assigned to managers and junior warders.

From a legal perspective, the Labour Relations Act directs that the appointment of employees, their promotion and the termination of the contract of employment are matters that fall within the power of the employer. Unions may be consulted.

It is apparent that there is some tension between employees' rights to freedom of association and their right to engage in collective bargaining on the one hand and the common law duties of employees on the other. Under the Labour Relations Act, senior managerial employees cannot be precluded from joining a trade union. However, since management has to decide on a number of issues that affect the rights of workers in the lower ranks, and, accordingly, it is imperative that they act with impartiality if they are to further the interests of the Department,

⁶ For example, warders who were involved in unlawful activities at Pollsmoor and disrupted a visit by the Minister were suspended and charged. (See *The Cape Argus*, Friday 4 June 2004). A similar approach was adopted at Barberton Prison when there was unlawfulness and on other matters.

it would be advisable if they were to join a separate union from that which organises within the lower ranks of the Department.

South African law would require that any proposal to restrict or limit the right of senior managerial employees to join whatever union they chose would have to pass constitutional muster.

Section 36 of the Constitution does allow the limitation of fundamental rights to the extent that the limitation is "reasonable and justifiable" on certain conditions. However, the Courts have found a total ban on union membership to be unconstitutional⁷ and also contrary to the provisions of the International Labour Organisation Convention.⁸ This, however, would be distinguishable, because it is not a total ban.

Such a recommendation would be based on the fact that senior members belong to a separate bargaining unit from which a trade union may draw its members. The identification of a bargaining unit is largely driven by determining whether the employees have a shared "community of interests". Such a shared "community of interests" does not ordinarily exist between "managerial" employees and more junior employees. The effect of this would be that senior managerial employees should not be in the same bargaining unit and therefore trade union as more junior employees.

Having separate bodies to represent different staff will therefore mean that the interest of the Department and the Government will be protected at all levels. This is a common practice in the private sector. The adoption of the

⁷ See *SA National Defence Union and Another v Minister of Defence and Another* (1999) 20 ILJ 2265 (CC), and also *SA National Defence Union and Another v Minister of Defence and Another* (1999) 20 ILJ 229 (T).

⁸ See Article 2 and 9(1) of the Freedom of Association and Protection of the Right to Organise Convention 87 of 1948 of the International Labour Organisation.

recommendations will depend largely on the manner in which the Department introduces the proposals to the members of the Bargaining Chamber.

The Commission also considered the Labour Law Regimes in Canada, United Kingdom and the United States of America in this regard.

In the interim, while negotiations are being undertaken in the Bargaining Chamber, the Department can expressly require, through employment contracts, that senior managerial employees keep secret certain categories of information and to recuse themselves from discussions in which the secrecy of the employer's information will be compromised.

3.2.2 Gangs

Gangs are a very powerful force in prisons. They play a significant role in corruption and violence, and they pose an ongoing threat to the orderly functioning of our prisons. It has even been suggested that gangs are in fact running some prisons.

It has been argued that, as conditions in prisons deteriorate because of overcrowding, gangs get stronger, which makes the penal system less effective because their presence ties up resources that could be made available for rehabilitation programmes. Furthermore, the prevalence of gangs makes it difficult for the Department to honour the goals of the Correctional Services Act to ensure the safe custody of prisoners and to promote their social responsibility and human development.

This is at variance with one senior gang member's description to the Commission of the day-to-day life of prisoners being one of drugs, gangsterism and corruption.⁹

Our prisons do not foster rehabilitation, and as prisoners' individuality and autonomy are stripped away they often seek status from gang culture, which is often defined by violence. In the gang context, your ability to fight and the nature of the crime you committed gives you a qualified status in prisons. Violence serves three purposes in prisons: firstly, it makes inmates into men rather than boys, secondly, it is used to patrol the boundaries of gang space against warders and thirdly, it divides inmates into men and women.

The gangs provide a form of welfare over and above protection from victimisation. Gangs alleviate some of the pains of imprisonment such as idleness, boredom, institutionalisation, powerlessness, the deprivation of goods and services and even sexual frustration.¹⁰

The phenomenon of prison gangs is not unique to South Africa. What is unique are the differences in context and history of our prison gangs, and although their origins may be clouded in a combination of myth and reality, the current functioning of gangs is very real. Tracing the origins of the different gangs helps understand the type of crimes they are often associated with and their codes of conduct.¹¹

⁹ See evidence of Marius Engelbrecht, Commission proceedings at Bloemfontein High Court, dated 28 June 2002 at page 735.

¹⁰ J.M. Lotter, 'Prison gangs in South Africa: A description', *South African Journal of Sociology* (1988) 19 (2) at page 71.

¹¹ For example, the so-called "number" gangs consist of three (3) tightly organised gang networks known as the 26s, 27s and 28s. Each has a specific identity and role.

Despite their differences, the number gangs, as well as the other, smaller gangs in prisons, perform certain common functions for their members. These include personal security, and the fulfilment of physical, psychological and social needs.

In certain provinces, such as the Western Cape, gang activity is rife both on the streets and in prison, and there is a relationship between the street gangs and the prison gangs, which reinforces much of the criminal activity, such as drug smuggling, in prisons. This collaboration between prison gangs and street gangs creates an extremely difficult environment for prison warders to work under and affects rehabilitation programmes. Given the constant movement of prisoners into and out of prison, there will always be a revolving door of gang influence. Gang associations formed outside prison will continue inside and *vice versa*.

Department members often take bribes to turn a blind eye to sexual abuse, gang violence and thefts, and are sometimes complicit in illegal activities. While gangs will continue to operate even if there are no corrupt prison officials, the absence of corrupt officials would be a positive step towards dealing with prison gangs.¹²

According to the evidence before the Commission, members of the Department belong to gangs. The main challenge is for the Department therefore, is to identify and deal with the members who are said to belong to prison gangs.

Smuggling

Smuggling has always been a problem for the Department. It is sometimes, conveniently associated with gang activities by some of the members. Others always refer to smuggling as happening because of the involvement of members of the community who visit the prisoners. The evidence heard by the Commission has clearly pointed to the fact that the members are as equally

¹² See Evidence of Marius Engelbrecht *ibid* at 744. Also see Fana Peete, 'Prison Boss encouraged culture of abuse' *Pretoria News*, 21 April 2004, at page 4.

culpable for smuggling especially drugs and alcohol. There are other items, which are also smuggled into prisons, like fire-arms, radios, tape recorders, fridges, stoves (hot plates), video recorders and DVD players and television sets.¹³ These obviously are smuggled to the various cells with the complicity of the members.

3.2.3 Supermax Prisons

American authorities have devised a number of ways to deal with prison gangs, with the most popular being super-max prisons. These prisons ensure maximum protection for prison staff and inmates within the super-max prison and throughout the rest of the prison system by isolating the most violent, predatory offenders and limiting inmates' freedom, making the potential for violence against fellow inmates or staff practically nonexistent.

Having considered the abuse of segregated isolated detention the Commission is of the view that it would be failing the number of prisoners who testified on its impact if centres such as C-Max Prison are not dealt with.¹⁴ The Commission found that Super-Maximum Prisons such as C-Max and others are institutions of solitary confinement and torture and cannot assist in the efforts to rehabilitate prisoners and correct their behaviour. They also cannot be justified in terms of the Constitution, the Correctional Services Act, the Regulations or Departmental Policies.

There is great pressure on the Department to build more super-max prisons like C Max in Pretoria and the super-max prison in Kokstad to break the stranglehold of gangs on our prisons. It is the Commission's view, however, that given the provisions of the Constitution and the need to apply acceptable norms for humane punishment, it is unlikely that this imprisonment policy in its current form

¹³ See the Chapter on the Durban-Westville Management Area.

¹⁴ Specific attention is paid to C-Max Prison since it fell within the Pretoria Management Area that was part of the Commission's terms of reference.

will survive constitutional scrutiny for much longer under the new constitutional and democratic order that seeks to protect basic human rights.¹⁵

3.2.4 Recruitment

Any efficient and well-managed organisation is entirely dependent for its continued success on the calibre of its senior employees. The Department of Correctional Services is no different. The Commission has repeatedly made the point that unless members recruited or promoted by the Department to senior positions have the necessary integrity, qualifications and expertise, problems of performance and discipline will continue to beset the Department.

Furthermore all employees expect that diligence and loyalty will be compensated by merit awards being granted to deserving members in a regular manner according to clearly defined policies. The granting of merit awards in an irregular manner to members not entitled to them has a negative effect on staff morale.

The Commission was seriously concerned to find that in almost all Management Areas it has investigated, issues relating to the recruitment, merit awards and promotion of staff remain a major challenge facing the Department. Recruitment drives, appointments, promotions and merit awards are constantly tainted with allegations of malpractices, irregularities and even corruption. The common feature of these allegations is the manipulation of the Department's processes by senior officials in the Department.

The Commission heard evidence that the bi-annual recruitment drives conducted in various Management Areas are riddled with malpractices, corruption, irregularities, favouritism and nepotism. The Commission also found that

¹⁵ Although super-max facilities continue to exist in the USA, they have been found to contravene international human rights conventions and to deny inmates' rights. See chapter on the Treatment of Prisoners wherein the Commission recommends that such prisons are infringing on the rights of prisoners.

inexperienced and incompetent officials were appointed as Heads of Recruitment.

The multiplicity of documents and policies dealing with the Department's recruitment and employment practices adds to the problems of recruitment. It is extremely difficult for the Department to manage its recruitment and employment function properly when it uses a number of different policy documents, which sometimes contradict each other.

In terms of section 7(3)(b) of the Public Service Act of 1994, Heads of Department are responsible for the efficient management and administration of their respective departments and are therefore responsible for the execution of the recruitment function according to the needs of the Department. The Provincial Commissioner is responsible for implementing and activating recruitment in the Province. The final decision of all appointments up to the level of senior correctional officer is vested in the Provincial Commissioner.

From the evidence heard, it is clear that Human Resources malpractices in the Department nationally were not confined to recruitment, but also extended to the merit award system. There was also evidence of favouritism in that the wives and girlfriends of certain senior members were appointed. Some of them were even given merit awards when they did not qualify to receive same.

The recruitment challenges faced by the Department have been identified in earlier investigations, one by the Public Service Commission (PSC), which completed its report on 31 August 2000.

In its investigations into the various Management Areas, this Commission found that the problems identified by the PSC were all still present. The Department did not implement the recommendations and there appears to be no reason why it

did not. It seems that the Department does not consider the problems arising from recruitment and merit award malpractices as requiring urgent attention.

The affairs of the Department in the Eastern Cape Province, at the time of the Commission's investigations into the St Albans Management Area, were effectively run by a group of people closely associated with Popcru. The Department appeared to have lost total control in this region. It is even more disturbing that Head Office was aware of the situation but did nothing to rectify it.

The Commission concludes that recruitment, merit awards and promotions are amongst the most controversial activities undertaken by the Department.¹⁶ It is therefore clear to the Commission that the Department is unable to manage the recruitment of staff. It will be the Commission's recommendation that the Department should rather concentrate on its core business, being that of the safe custody and the welfare of prisoners, and that the recruitment of staff should be outsourced to an independent body or any other competent institution.

3.2.5 Disciplinary Inquiries

Discipline is the cornerstone of sound and effective management in any organisation. It is also the prerogative of management to ensure that there is effective discipline in any working environment. Setting standards of conduct for the workplace and initiating disciplinary steps against transgressors are the jealously guarded territory of managers everywhere, forming as they do an integral part of the broader right to manage.

The function of discipline in the employment context is to ensure that individual employees contribute effectively and efficiently to the goals of common enterprise. Production and the provision of services are impeded if employees are free to stay away from work as they please, to work at their own pace, to fight

¹⁶ See the Fifth Interim Report, Bloemfontein Management Area.

with their fellow employees or to disobey their employer's instructions etc. Hence, it is the right and duty of employers to ensure that their employees adhere to reasonable standards of efficiency and conduct.

The Department of Correctional Services has a disciplinary code and procedure, which was adopted in the Departmental Bargaining Council, in February 2001. Despite the existence of this code, employees, senior officials and unions complained about the disciplinary system in the Department.

Complaints involved a range of issues, including:

- The high rate of withdrawal of charges due to problems adhering to the three month time frame within which investigations must take place;
- Members do not adhere to disciplinary procedures;
- The disciplinary system is very weak, if not completely ineffective;
- Managers are reluctant to discipline staff because they either fear being unpopular or they collude with transgressors;
- Senior members sometimes represent junior members in inquiries;
- Initiators and chairpersons do not seem to be accountable to anyone for ensuring that the hearings take place timeously and properly;
- Delinquent initiators and chairpersons are never disciplined.

In addition to these complaints, which the Commission confirmed were present in most Management Areas investigated, the Commission also found that the

withdrawal of charges due to time frames being exceeded has contributed significantly to the state of lawlessness and anarchy in the Department.

Delays are caused by both initiators, who are tardy in finalising the investigations and chairpersons, who are slow to commence the hearings. Although managers are entrusted with monitoring disciplinary inquiries, they fail to investigate delays and the withdrawal of charges. Despite them being accountable they are never charged for their own failure to investigate such delays and withdrawal of charges.

The failure of the Provincial Offices to get directly involved in ensuring that disciplinary measures are put in place seems to the Commission to be an abdication of responsibility given that it is obvious that failure to institute hearings has reached shocking proportions. The Commission has also observed that Area Commissioners and Heads of Prison do not follow up on criminal charges that are laid against transgressors.

The Commission also noted that lack of skill and/or collusion in the appointment of chairpersons of various inquiries has led to undesirable outcomes in a number of disciplinary hearings, particularly in the Durban-Westville, Ncome and Pretoria Management Areas. Some instances have involved serious cases that warranted the dismissal of employees and yet chairpersons were appointed who had no power to impose a sanction of dismissal. This was done deliberately by certain officers in management to protect the transgressors.

In some Management Areas where intimidation is the order of the day, like the Pietermaritzburg Management Area, the Commission heard evidence that managers are scared of chairing disciplinary cases and are unwilling to impose sanctions when they have to chair these cases.

Statistics obtained on disciplinary inquiries for the period 1999 until 2003 show that a high number of charges are being withdrawn against officials due to time frames that had lapsed.

The statistics also confirm that for most offences committed by members, the sanction imposed is a warning even where the offence is very serious. For example, warders who had been found guilty of using excessive force, which led to the death of a prisoner, were given a written warning.¹⁷ This has happened in more than one inquiry. Similarly, warders who had been found guilty of fraud by producing false matric certificates were merely given written warnings.¹⁸

Statistics : Disciplinary Inquiries : 1999-2003

Year	1999	2000	2001	2002	2003	TOTAL
Dismissals	49	48	50	35	56	238
Final written warnings	45	174	73	38	48	378
Serious written warnings	23	28	29	48	36	164
Written warnings	177	103	75	116	111	582
Verbal warnings	135	176	226	144	81	762
Withdrawn	61	81	125	181	172	620
Acquittals	72	51	44	38	53	258
TOTALS	562	661	622	600	557	3002

NOTE: This table is a compilation of available data from the nine Management Areas. However, the different Management Areas do not all report on the same matters and the table is therefore not complete information but is indicative of trends.

¹⁷ See the Durban-Westville Management Area in the full report and the inquiry that followed after the death of prisoner, Mr Felize Cele.

¹⁸ See First Interim Report in respect of the Durban-Westville Management Area, pages 54 and 55.

Even where there have been successful prosecutions of offenders in terms of the Disciplinary Code and a sanction of dismissal is imposed there is still the possibility of interference. The majority of dismissals in the table above were overturned on appeal or through interference of a senior official. This happened in the Bloemfontein Management Area where forty-nine (49) employees who had been dismissed for intimidating, insulting and stealing from a senior member were re-instated on humanitarian grounds by the Provincial Commissioner. The Commission believes that by so doing, the Provincial Commissioner confirmed the belief of members that they were entitled to intimidate management in the manner that they did.

In summary, the Commission found that:

- (a) The disciplinary system is generally ineffective and has, in certain respects, collapsed. This is largely the result of poor management, including manipulation, abuse and inadequate skills.
- (b) The disciplinary system is often used either to get rid of certain officials or to retain certain officials by not disciplining them, including those who have committed serious offences.
- (c) The lack of appreciation for the seriousness of certain offences leads to offenders merely being warned after being found guilty of serious offences, which compromises the interests of the Department and results in corrupt and dishonest members remaining employed in the Department.
- (d) Justice is compromised when managers, who are involved in deciding whether a member should be disciplined, are also appointed as investigators, initiators or presiding officers in the disciplinary proceedings.
- (e) Neither the Labour Relations Office nor the Legal Services Section of the Department has rendered the necessary support in disciplinary matters.

- (f) The recommendations of the Commission in its various interim reports that disciplinary inquiries should be carried out by a Special Task Team fell on deaf ears and were not carried out in many instances.¹⁹

3.2.6 Treatment of Prisoners

It has been stated repeatedly that a nation's civilization is measured by the way it treats its prisoners. The human rights of prisoners are internationally recognised and norms have been accepted on how prisoners should be treated. These include being treated with human dignity and outlawing torture and cruel, inhuman and degrading treatment or punishment.²⁰ The rights of prisoners are also enshrined in the Bill of Rights of our Constitution. There is accordingly a duty on the Department to adhere to these norms.

Convicted criminals have for a long time been regarded in South Africa as outlaws. We have chosen to deny their existence and consider them as a form of subhuman species deserving of the consequences of their deeds. This lack of concern has allowed a mentality to take root amongst many correctional officials that prisoners can be treated in any manner without fear of sanction. Consequently, despite all of the pronouncements by our courts in terms of constitutional and common law rights, it has become clear to this Commission that many members of the Department are of the view that prisoners are in prison for punishment and not "as punishment".

¹⁹ See the Chapter on Implementation of Interim Reports for a detailed account from the Department.

²⁰ See Article 1 and 5 of the Universal Declaration of Human Rights. Also see the International Covenant on Civil and Political Rights, which sets general standards for the treatment of prisoners in Article 10.

A disturbing example of this is the use of solitary confinement as punishment. It is commonly accepted that solitary confinement is one of the worst forms of torture that can be imposed on another human being. It is also a product of our past and should not be resorted to as a norm by prison officials in our new democratic order.

If detention in isolation is used for the purposes of discipline then the detention is penal in nature and cannot be justified in terms of section 79 of the 1959 Act or in terms of section 30 of the 1998 Act which deals with the segregation of prisoners and provides in terms of section 30(9) that segregation may never be ordered as a form of punishment.

The Commission has found that the Department uses *de facto* solitary confinement without adhering to the safeguards of the Act, which has severe implications for the psychological well-being of prisoners. Having considered all the evidence and the trauma suffered by prisoners detained involuntarily in isolation once convicted for a disciplinary transgression, the Commission can find no justification for such detention other than that the objective is to punish prisoners who transgress the rules of the prison.

The Commission therefore recommends that the concept of solitary confinement be abandoned in order to recognise the trauma suffered by so many who were detained in this way. In its place, the Commission recommends that the term "restricted confinement" be used, but that it may only be ordered in very serious disciplinary cases, subject to strict monitoring.

A focus on discipline in the prison system and an evaluation of the process followed to punish those who transgress the rules is also necessary. The

disciplinary process is a prime example of abuse by officials. If prisoners complain, they are then subjected to punishment.²¹

The Department therefore should consider setting up a procedure that will ensure there are disciplinary inquiries that comply with the rules of natural justice and are held in public in order to improve transparency and accountability.

3.2.7 Visitations

Visits are also problematic; they are either abused in that prisoners have to pay for visits, or they are deliberately shortened. Instead of receiving their full quota of forty five (45) minutes per visit as they are entitled to, prisoners in some Management Areas were only allowed a visit of ten (10) minutes. A Head of Prison attempted to justify the infringement of the privileges of prisoners on the grounds of the prison being overcrowded and that the Department does not have enough personnel to supervise these visits.

In Leeuwkop Management Area there was evidence of prisoners being allowed by members to have unauthorised contact visits. During some of these visits prisoners were given an opportunity to have sexual intercourse with their wives or girlfriends on payment of a fee to members.²²

²¹ For example:

- (a) The prisoner, Mr David Nkuna at Leeuwkop Prison, who complained about the fact that the gangsters wanted to stab him, is the one who was sent to isolation and not the gangsters; (See Leeuwkop Transcript Volume 34 at page 2 677).
- (b) The prisoner in Pretoria who complained about being sodomised is the one who ended up being detained in isolation; (See the evidence of Louis Karp dealt with in detail in the chapter on Sexual Abuse of Prisoners).
- (c) When the prisoner, Mr Abel Ramarope, requested help from a nurse to assist in arranging food for a group of prisoners waiting to be tested for Aids, he was sent to isolation when he told the nurse that her advice was not helpful.

²² See Volume 5 of this Report.

3.2.8 Nutrition

The Commission has heard numerous complaints from prisoners in almost every Management Area regarding the fact that they do not receive three meals every day, that warders eat the food intended for them,²³ that they seldom get sufficient meat and so forth. In its earlier reports, the Commission has acknowledged the fact that food is an important commodity inside the prison and that it is used as a commodity not only by prisoners but also members. Internal corruption was ultimately exposed in Grootvlei Prison where a number of members augmented their income by selling chickens to the prisoners.²⁴ This complaint was also received in other management areas.

There was evidence of members combining meals for prisoners, for example, supper and lunch or breakfast and lunch so that they can leave early, to attend their errands or to suit their working conditions. This is happening, notwithstanding the rule that prisoners should have three meals which are six and a half hours apart and fourteen (14) hours between supper and breakfast. In some cases supper (which is combined with lunch) is served eighteen (18) hours before breakfast.

The catering of food is a well developed industry in South Africa. The focus of the Department and its members should be on its core functions, namely securing prisons and rehabilitating prisoners. In outsourcing the supply of food the Department can reduce corruption in prisons.

²³ See chapter dealing with the Theft of Prisoners' Food at the Pretoria Management Area.

²⁴ For more details see the Fifth Interim Report.

3.2.9 Sexual Violence

This Chapter highlights the horrific scourge of sexual violence that plagues our prisons where appalling abuses and acts of sexual perversion are perpetrated on helpless and unprotected prisoners. In dealing with the subject, the Commission examined the factors that contribute to such sexual violence, the treatment meted out to prisoners (sentenced and awaiting trial) who have been sexually abused, the existing policies within the Department dealing with such abuses and the vulnerability of young, gay and transsexual prisoners.

During its hearings in Bloemfontein and Pretoria, the Commission heard the testimony of a number of victims of sexual abuse²⁵ at prisons situated in the abovementioned management areas. The evidence underlined that sex is a tradable commodity in prison and that vulnerable, young prisoners become sex slaves whilst incarcerated. Prison warders sell them to the highest bidder despite the fact that prisoners are dependent on these very same warders to ensure their safety whilst in prison. Indeed, warders are themselves implicated in many of the sexual assaults.

If the Department keeps on ignoring the fact that sexual abuse is rife in our prisons and that there is an extreme likelihood that prisoners who are exposed to violent unprotected sex will in all likelihood contract Aids, then it is effectively, by omission, imposing a death sentence on vulnerable prisoners.²⁶

²⁵ The Commission would have felt much more comfortable to refer to these abuses as rapes but at the time of writing this report, rape was still defined as "a male having unlawful and intentional sexual intercourse with a female without her consent." See Snyman Criminal Law (1995) at page 424. This traditional definition emphasises clearly the notion that a man cannot be raped, whilst most cases heard showed that male rape is a reality and that rape is as bad for a male as it is for a female.

²⁶ Statistics show that 40% of prisoners are incarcerated for less than one (1) year and that an average 25 000 prisoners are released from prison every month. Consequently, 300

Evidence heard in Pretoria shows that there was a shocking lack of empathy and sensitivity by some members of the Department for prisoners who are sexually abused. When a young prisoner at the Medium A Prison Grootvlei, reported that two prisoners had sodomised him, instead of receiving support, he was then sodomised by the warder in the first of many such assaults. In fact, the number of cases the Commission heard all point to the fact that sexual abuse in prisons is rife. Evidence also revealed that homophobia is very real amongst the prison warders whose prejudice impacted negatively on how they treat prisoners who are sexually abused by their co-inmates.

In theory, the conditions for unsentenced prisoners should be better than those of sentenced prisoners since they are not yet convicted of any offence and should be entitled to be presumed innocent by law.²⁷ However, when examining the Department's policies and procedures, it is clear that unsentenced prisoners in South Africa have far fewer rights inside the prison than sentenced prisoners. This inequality is demonstrated in the very different policies that apply to sentenced and unsentenced prisoners who fall victim to sexual abuse.

The Department has specific policy dictating how prisoners who have suffered sexual assault should be treated. However, it is clear that none of the sexual assault victims who testified before the Commission was given the treatment the policy envisages. What became apparent is that the Department's well-designed policies relating to sexual abuse are not implemented and adhered to by members. It is clear that there are severe shortcomings in the system, particularly relating to the treatment meted out to prisoners and, especially, the awaiting trial prisoners.

000 prisoners return to the community each year. If they are infected, whilst in Prison, then they bring their infections with them.

²⁷

See section 35(3)(h) of the 1996 Constitution, which provides:

"Every accused person has a right to a fair trial which includes the right to be presumed innocent, to remain silent and not to testify during the proceedings."

3.2.10 Police Investigations

The sexual abuses at Pretoria Local Prison also compelled the Commission to focus on a related issue regarding police investigations in a prison environment. This state of affairs is unacceptable for the following reasons:

- (a) The officers can never conduct an investigation freely without interference because the complainants are inside the secure environment and complaints can therefore only be brought to the police officers with the co-operation of the Department.
- (b) The investigations can hardly be done in confidence because of the required co-operation of the Correctional Services members in bringing and taking complainants to the police.
- (c) Most importantly, it is very problematic if a complainant lays a charge against a member. There is ample opportunity and time for intimidation and interference in the criminal matter because the Department and the South African Police Service function independently from each other.

It is plain to see that this situation is untenable. It gives the members of the Department of Correctional Services the advantage of interfering, coercing and intimidating witnesses when matters are investigated against them and at the same time, many acts of corruption, assault and criminal transgression are not reported because the person reporting such corruption will not be protected as a result of his or her exposure to the greater personnel working in the Department.

Therefore, complainants, who do complain about the conduct of Correctional Services members, are certainly not in a position to do so in confidence to the South African Police Service. The police, on the other hand, are also hampered in their investigations because they cannot investigate, without making it known

to the personnel of the Department, whom they are investigating and who the complainant in the matter is. The successful completion of these investigations becomes virtually impossible and justice is seldom done due to the limited access of the police to the Prison.

3.2.11 Parole

The Commission received numerous complaints from prisoners and occasionally from members of Correctional Services about the Department's parole policy, the conversion of terms of imprisonment to correctional supervision, the remission of sentences and transfer of prisoners from one prison to another. The Commission was able to establish that there are problematic areas relating to parole because of mismanagement and/or corruption.

Department officials seem to be exercising unfettered discretion in respect of a parole and transfer, notwithstanding the fact that the Appellate Division has previously stipulated that an official may not exercise unfettered discretion. He or she is bound by the provisions of the enabling statute. Officials are clearly exercising this unfettered discretion because there are no checks and balances in place to ensure that in exercising their discretion, they act within the parameters of the law and the Constitution.

This state of affairs encourages corruption because the affected prisoners can only with great difficulty and at great cost challenge actions the members take. In some cases, the only way prisoners can ensure that they get what they are entitled to is to curry favour with, or even to bribe, Departmental officials. These are, however, the duties that members are supposed to perform without any financial gain. Prisoners in every prison the Commission investigated complained about this issue.

The risk factors involved in releasing a person on parole, or correctional supervision, are similar to the risk of releasing offenders on bail and our Courts have highlighted these in a number of judgments. However, a number of problems have emerged relating to the implementation of parole in practice. These complaints were best demonstrated through three cases that were presented to the Commission, amongst many others.

Medical parole was also an issue raised during the Commission's investigations. There was evidence in the Johannesburg Management Area that some prisoners already on their deathbed with chronic diseases were refused parole. In this regard the Commission also considered the matter of the prisoner Mr Stanley Ndlovu, who as a result of being stabbed was paralysed and suffered the loss of the use of his lower back muscles and lower limbs. Despite Mr Ndlovu's application being supported by medical doctors, the Head of Prison as well as the Chairman of the Parole Board, the then Provincial Control Officer refused the application for parole without furnishing reasons.

Parole Boards form one of the most important components in the criminal justice system chain. The task of the members of the Parole Board is to decide whether the person should be released before serving the full sentence that the judicial official imposed. Needless to say, that decision is one of the most important decisions that could be made in respect of any offender in the Department.

In 1998, the Department compiled guidelines, which were utilised in the Department for the purpose of assisting Parole Boards to ensure that some uniformity existed in deciding on the placement of prisoners on parole. However, the guidelines call for a system of credits for good behaviour, which is not a simple system that is understood well by the members.

The statistics provided by the different Management Areas suggest that there is confusion around the parole system. There certainly are inconsistencies in the

information given and huge discrepancies in the percentage of prisoners who are granted parole in the different areas.

Accordingly, there is the potential for the Department to be embroiled in a number of legal disputes before courts of law regarding the issue of parole as set out in the above policies. This has already happened in a number of cases that have been taken to court, which is not only affecting the Department of Correctional Services but also clogging the Motion Court rolls in the different divisions of the High Court in South Africa.

Given these problems, it is necessary to restore credibility and respect to the Parole Boards. This can be done through ensuring that their independence is expressly stipulated. The Office of the Parole Board should also preferably be managed and supervised by outside people and should be placed outside the prison system or that particular Management Area.

3.2.12 Conversion of Sentence

The conversion of sentences from imprisonment to correctional supervision is an issue that has caused a great deal of dissatisfaction amongst inmates. The main concern of the Commission is that there is a strong belief amongst the prisoners that members do not convert sentences on the basis of fairness and in accordance with the provisions of the regulations that govern such conversions.

Although this Commission has not found any convincing evidence to substantiate the claim of payment for the conversion of sentences, it has found sufficient evidence to support the fact that numerous problems exist in the manner in which Departmental officials apply the provisions relating to the conversion of sentences.

The Commission has examined the concept of correctional supervision as it relates to sentenced prisoners during its investigations and believes the Department should also utilise correctional supervision to address overcrowding in our prisons. The Commission is of the opinion that a proactive Departmental policy that uses the procedures the legislature provides to convert sentences to ones of correctional supervision will steadily reduce the prison population.

It should be stressed, however, that the Commission's advocating of the aggressive application of correctional supervision does not mean that it is insensitive to the victims of crime, as the early release of the perpetrators is likely to cause them grief. In this regard, the Commission has taken note of, and agrees with, the opinion of Kgomo J, in *S v van Rooyen*²⁸ wherein he referred to the void in the provisions of section 276A(3) of the Criminal Procedure Act dealing with correctional supervision.

The Commission has also examined abuses of the system uncovered during its investigations and highlight two such cases in its final report.²⁹ The first case is that of Mr Marimuthu, who was sentenced to four (4) years imprisonment, one (1) year of which was suspended, for dealing in mandrax tablets. After two appeals, both of which were denied, Mr Marimuthu was granted bail in order to petition the State President. Despite the number of courts involved and their judgments, he was then brought before a magistrate, who granted him correctional supervision.

It was obvious to the Commission that this case was handled in an extra-ordinary manner and that the Area Manager, was primarily responsible for keeping Mr Marimuthu out of prison.

²⁸ 2000 (1) SACR 372 (NC).

²⁹ Both these cases arose from the Durban-Westville Management Area.

The second case was that of the then chairperson of the Parole Board of the Durban/Westville Management Area. He had recommended the conversion of a six (6) year sentence of a prisoner who had been convicted of a sexual offence to correctional supervision. The Chairperson made false declarations about the prisoner's appearance at the Parole Board and regarding the number of years he had known the prisoner. He made irresponsible statements regarding the seriousness of the sexual offences that were committed by the prisoner and also failed to ensure that the prisoner had complied with the Magistrate's order that he should attend a sexual offender's course before conversion of the sentence.

This member completely abused his discretionary power and position by motivating in his report that a sentence be converted in circumstances where conversion was clearly not justified. It has also been clearly shown that the Chairperson lacked the skills and expertise to hold the position of Chairperson and in this regard the Commission recommends that the Department should ensure that all officials holding such positions have the necessary expertise and integrity.

Notwithstanding the aforementioned, the Commission remains firmly of the view that properly managed and applied, the applications for the conversion of sentences to correctional supervision will result in a steady reduction of the prison population in our country. Rehabilitated prisoners who qualify for correctional supervision should not continue to be incarcerated at enormous expense to the South African taxpayer and the Commission sees no reason why the Commissioner should not apply his discretion with greater resolve and vigour by applying for the conversion of sentences across the board for all qualifying prisoners.

3.2.13 Judicial Inspectorate

The Judicial Inspectorate was established in terms of section 85 of the 1998 Act and is an independent office under the control of the Inspecting Judge. The purpose of the Judicial Inspectorate, as defined in the law includes the inspection of prisons in order to report on the treatment of prisoners, conditions in prisons and any corrupt practices in prisons.

Professor Dirk van Zyl Smit, one of the drafters of the legislation, testified before the Commission that the drafters had intended the Judicial Inspectorate to investigate both treatment of prisoners and corruption because they saw a key relationship between these factors.

Despite this, the Office of the Inspecting Judge requested in 2000 to be relieved of its mandate to investigate and report on "corruption or dishonest practices in prisons". The reasons were that the good relationship between Independent Prison Visitors (IPVs) and prison officials would be compromised and the inspectorate's work hampered. It was also argued that the Department already has an Anti-Corruption Unit, which investigates corrupt and dishonest practices in prison, and that the presence of IPVs in prisons has an inhibiting effect on corruption and dishonesty.³⁰ The provisions of the Act enabling this office to investigate corruption were subsequently amended during 2001.

Although the Office of the Inspecting Judge has concentrated only on the treatment of prisoners, particularly overcrowding, evidence points to prisoner dissatisfaction with how they are treated by members in prisons.³¹

³⁰ See Annual Report 2000 at pages 18 and 19.

³¹ See Chapter on Treatment of Prisoners for a more detailed report on abuses in our prisons.

There was also evidence that pointed to the fact that IPVs may not be getting the assistance or co-operation they are entitled to from the Department.³² The reports on this lack of co-operation are of concern and include evidence from some of the IPVs that members of the Department have assaulted them.

It is clear that unless the status of the Inspecting Judge is enhanced and the powers of his office increased, the right of prisoners to be detained in conditions consistent with human dignity will not be achieved. The Office of the Inspecting Judge and the IPVs must be respected and their credibility protected by the Department for the system to succeed. In this regard, the Office must be given additional powers to deal with those members who are set on frustrating its officials in performing their work.

Section 93(1) empowers the IPVs to deal only with "complaints of prisoners". This means that even if IPVs were to observe an irregularity or corruption or maladministration they may not deal with it unless a prisoner complains. It makes the office reactive instead of being proactive. This definitely disempowers a watchdog in the performance of its duties, which could not have been the intention of the legislature. Furthermore, the Inspecting Judge should be given the means to ensure that the recommendations the IPVs make in the various prisons are carried out if he agrees with them.

Considering sections 85(2) and 90(1) of the Act, the Commission has come to the conclusion that the Office of the Inspecting Judge is merely a reporting body. Internationally, however, it is accepted that an oversight body has much greater legitimacy if it also has decision-making powers.

It is clear from the Act that the drafters anticipated that the Judicial Inspectorate would be an independent entity. This independence would ensure that the

³² See the memoranda by the Independent Prison Visitors (IPVs) submitted to the Commission, Head Office Exhibit 'Q'.

Inspectorate is not subject to the whim of the Department. In such an independent capacity, it would act as a watchdog and be capable of ensuring that any wrong committed by officials within the Department would be brought to book. Evidence placed before the Commission, however, suggests that the provisions of section 89 of the Act also compromise the anticipated independence of the Office of the Inspecting Judge from the Department in terms of both staff appointments and accountability and control over budget allocations.

Considering the complaints from the prisoners about their treatment during the Commission hearings, it is clear that the full independence of the Office of the Inspecting Judge would most certainly mean that the prisoners as well as the public have more confidence in the Office of the Inspecting Judge.

Given the importance to the country of dealing with corruption, it is the Commission's view that the amendment of the Act to remove the investigation of corruption from the Office of the Inspecting Judge was ill-conceived.

However, since the Office of the Inspecting Judge has argued to be released from the function of investigating corruption, it should at least have an obligation to receive complaints on corruption, which can then be passed onto an independent agency ("Prisons Ombudsman"), which is recommended to be established in terms of the Commission's recommendations.

This will help to ensure that corruption is combated on all fronts.

3.2.14 Prison Ombudsman

Corruption is a major challenge for the Department and South Africa as a whole. Corruption poses a major threat to the very fabric of a democratic state and should therefore be combated to save our young democracy. The Government's legal framework, in the fight against corruption in the civil service, covers institutions,

statutes, regulations and policies, including the Office of the Auditor-General, the Public Protector, the Inspecting Judge and the Special Operations Directorate within the National Prosecuting Authority (Scorpions), among others. All of these are meant, among other things, to ensure that the Public Administration is corruption free.

The specific challenge to the Department, however, is that unless corruption is addressed urgently, it has the potential of discrediting whatever transformation initiatives the Department might have planned. The main thrust of the Department's anti-corruption strategy should be to encourage the disclosure by employees and prisoners of whatever transgressions members, prisoners and visitors to the various institutions might have committed.

Prisoners are in a position to blow the whistle on corruption in prisons.³³ However, because of their circumstances, it is necessary to protect those who are prepared to blow the whistle on corrupt officials. Similarly, the members of the Department who are prepared to co-operate need to be protected because of the extent of intimidation within the Department.

The Setlai incident³⁴ did not instil confidence with the South African public as to the Department's commitment to protect whistle blowers as anticipated in the Protected Disclosures Act No. 26 of 2000.³⁵

³³ See the Fifth Interim Report dealing with corruption at the Grootvlei Prison, which would never have surfaced before the Commission had it not been for the prisoners being willing to blow the whistle.

³⁴ See the Chapter dealing with the Implementation of Interim Reports (Fifth Interim Report).

³⁵ See "Call for more support for whistle-blowers" – *Business Day*, Thursday 20 October 2005, as follows:

"A number of people who exposed corruption in the workplace have found themselves at risk of losing their jobs, facing charges of insubordination or being isolated. These include former Grootvlei prison head Tatolo Setlai, who exposed corruption at the prison by allowing prisoners to film warders engaging in illicit activities. After the exposure, Setlai was charged with unrelated offences by prison authorities and spent two years on suspension."

To facilitate whistle blowing, toll-free lines are very effective. The opening of a toll-free line by the Commission during its investigations was very successful in that it was been able to receive complaints from all over the country.

A new Anti-Corruption Strategy Plan to fight corruption internally was implemented in August 2003. The strategy has a three-pronged approach, namely Investigations, Prevention and Social Responsibility. The Department has also restructured the sub-branch of Legal and Special Operations. There is a unit in this branch called "Departmental Investigation Unit", which is intended to investigate corruption internally.

However, corruption is a mammoth task and it cannot be left to the Department alone to deal with. The Department has always had an anti-corruption unit and yet this has not been effective in dealing with the problems. The Department's anti-corruption strategy cannot be considered in isolation from the Department's capacity and the role that could be played by an independent agency. The Department can retain the Prevention and Social Responsibility components of their three-pronged approach. However, the investigation branch should be given to an outside agency, to ensure, among others independence and impartiality. This does not mean that the Department should not have an anti-corruption unit, but the Commission is of the opinion that there should also be an outside agency to look into the issue of corruption.

An independent agency can also act as a watchdog, monitoring the employees of the Department, including the members of the Department's anti-corruption unit. As the Roman maxim goes: "who guards the guards?"

For the Department to be able to fight corruption, it must have not only the capacity to do so but also members of staff who are "willing and able" to fight corruption. For members of staff to show their willingness and ability to do so,

they must be well trained. The Department has conceded that there is a lot of intimidation within it, which means that even issues of relative simplicity such as disciplinary inquiries have been ineffectively dealt with. In fact, they are an embarrassment to the Department.

Other Government departments have internal anti-corruption units. But even in these situations, it is found that there are outside agencies involved in overseeing the work of the department. In the case of the Department, the drafters of the Act originally regarded the Office of the Inspecting Judge to be the appropriate body to oversee the Department. However, it no longer has this function since Parliament deemed it appropriate to amend the Act.³⁶

It is the Commission's considered view that the fight against corruption and maladministration will have to be taken away from the Department and placed under the jurisdiction of an independent office, which will be committed to fight corruption and maladministration within the Department. In terms of section 3(1) of the Act, the Department "is under the control" of the Commissioner. He thus cannot investigate himself.

In the light of the above, it is the Commission's view that an Office of the "Prisons Ombudsman" or an independent agency with any other name entrusted with a role to investigate corruption should be formed in addition to the Office of the Inspecting Judge. However, if costs are a constraint, consideration should be given to opening up another directorate within the Office of the Inspecting Judge. The Commission has expressed its reservations about the fact that corruption was removed from the duties of the Office of the Inspecting Judge. It is still the Commission's view that the issue of corruption cannot be easily divorced from the treatment of prisoners.³⁷

³⁶ For more details on this, see the chapter dealing with the Office of the Inspecting Judge.
³⁷ See Chapters on Treatment of Prisoners and Sexual Abuse in Prisons that reflect that corruption directly impacts on the treatment of prisoners.

3.2.15 Overcrowding

Overcrowding is a major challenge for the Department, which has its own champion in the Inspecting Judge of Prisons.³⁸

Overcrowding, especially gross overcrowding, exacerbates, but does not cause, the problem of corruption and maladministration in our prisons. It also stretches the Department's resources to the limit, and it affects the rehabilitation of the prisoners, the health system and the education system within prisons. Overcrowding also encourages the sexual abuse of inmates.³⁹

Conditions are sometimes unsanitary and unbearable in that one toilet is shared by up to sixty (60) prisoners. Prisoners also have to share beds, sometimes two (2) to a bed, whilst others sleep on the concrete floor and sometimes with only one blanket to share.⁴⁰ In some of the prisons, like Bizana, prisoners were sleeping in shifts.

Overcrowding has a ripple effect on a number of levels and the Department needs to address it before it becomes uncontrollable. There is no international norm stating what an overcrowded prison is, but the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment gives a guideline. Seven (7) square metres per prisoner as an approximate, desirable guideline for a detention cell has been suggested.⁴¹

³⁸ The Commission is of the opinion that the Inspecting Judge's Office has done good work in this regard.

³⁹ Mr Johnson, the Western Cape Correctional Services spokesperson, was quoted as saying that:

"While prison authorities were aware that sexual abuse was taking place in jails, the biggest problem they faced was overcrowding. Our first priority is to reduce prisons numbers so that we can deal effectively with other challenges." (See *The Cape Argus*, 19 June 2004).

⁴⁰ See Mr Morris' evidence – Cape Town Transcript, Volume 7.

⁴¹ See case of *Kalashnikov v Russia* (Application No. 47095/99). Judgment – Strasbourg – 15 July 2002.

The Department cannot simply build more prisons to solve the problem of overcrowding, a fact that has been accepted by most criminology scholars.

In the Commission's view, there are a number of factors that contribute to overcrowding. While the new sentencing laws, the new bail laws and other factors have been highlighted as factors contributing to overcrowding, the maladministration⁴² within the Department has not been highlighted or considered as a major contributing factor to overcrowding.

For example, even though there is a prison in Bizana, which was 400% full,⁴³ about eighty (80) kilometres away there is the Kokstad Prison, which was about 7% full. Whatever the state of the Kokstad Prison is, surely for the sake of protecting the right of prisoners who have to sleep in shifts, one could consider moving some of the prisoners from Bizana to Kokstad Prison.⁴⁴ At the time of the Commission hearings this had not been done. There were other management areas with similar problems.

The issue of overcrowding is also a product of mismanagement, among others, in the application of parole provisions and in adequate planning regarding the impact of bail and minimum sentences legislation,⁴⁵ the failure to implement the

⁴² See Chapters dealing with Parole and Treatment of Prisoners

⁴³ See Mr Morris' evidence – Cape Town Transcript, Volume 7.

⁴⁴ According to the 2004 Inspecting Judge's Report, the Lusikisiki Prison was 285% overcrowded. The latest reports from Parliament have indicated that as of September/October 2005, Durban-Westville Management Area was in the same unbearable state of overcrowding. The same principle would apply with regard to Lusikisiki and Durban-Westville, which are not far from Kokstad.

⁴⁵ A study by Mr Lukas Muntingh indicates that the length of prison sentences is increasing. While large numbers of prisoners are given short sentences of up to six (6) months (49% in 1999), this figure has reduced over the last decade and a half and more prisoners are now receiving sentences of more than two (2) years (10% of prisoners in 1984, compared with 31% in 1999). (See *Reform and Stasis: Transformation in South African Prisons* by Amanda Dissel and Stephen Ellis. Obtained from www.csvr.org.za/papers/papdse.htm).

recommendations of some of the agencies that investigated the Department previously.⁴⁶

The Department mismanaged the situation in that it failed to project and forecast that by changing the parole regulations or guidelines⁴⁷ there would be an upsurge in the number of prisoners in the system, particularly if one takes into account the imposition of the minimum sentences and stringent bail laws.

Furthermore, the manner in which parole is dealt with by officials of the Department cannot be ignored. There has been an increase in the number of sentenced prisoners, which could be attributable to a number of factors, *inter alia*, the sentencing trends. However, the other contributing factor is the issue of parole, and the Department's parole system has not been producing the desired results.⁴⁸

This Commission is of the view that the State President's granting of amnesty to sentenced prisoners can be utilised to reduce overcrowding in our prisons.

In the circumstances, it is the Commission's view that the Department's consideration of this particular practice could result in both goodwill and an alleviation of the problem of overcrowding. Other suggestions which can assist with overcrowding are discussed in the Chapter.

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In particular the Management Audit of 2000.

⁴⁷

The Policy Directive No. 1/8/B, "Penalisation Factors:Applicable on Parole Boards and delegated officials" of 23 April 1998, required that a prisoner had to serve three quarters of the sentence imposed upon him before being considered for parole. This was contrary to the provisions of section 65 (4) of the Correctional Services Act No. 8 of 1959. The 1959 Act stated that the person would have to serve at least half of the term of imprisonment before being considered for parole. In other words, the Department increased the period that was applicable before prisoners could be considered for parole, contrary to what had been provided for the Legislature in the Act. The Department, through regulations, was also violating the rights of prisoners to be considered for parole at an earlier stage. (For more details see the Parole Chapter).

⁴⁸

See the Chapter on Parole and the Department's failure to act on its own guidelines which were stringent.

3.2.16 Abuse of Power

The treatment and harassment⁴⁹ of female employees of the Department, the abuse of power by senior officials and the manner in which the Department's disciplinary system is open to manipulation and abuse by senior officials were highlighted by, amongst others, a series of events at the St Albans Prison.

Evidence was led by three (3) complainants, who were sexually harassed by a senior official. He made suggestive comments and sexual advances, touched them inappropriately and kissed one of them.

However, he was never disciplined, but "promoted" to the Provincial Commissioner's office shortly after the complainants had laid the charges, a clear message to these women that they would not be believed. In the meantime, the women were subjected to a torrid time both in the investigation of their complaints and to victimisation in their working environment.

It is expected of officials employed in positions of authority in the Department to maintain exemplary conduct and at all times to adhere to higher standards of dedication, impartiality and integrity in the conduct of their duties. No circumstances justify officials abusing their power to victimise subordinates or to achieve sinister objectives.⁵⁰ Whilst the sexual harassment was the best example of the Abuse of Power, it is prevalent in other areas as well.

⁴⁹ The Commission is of the view that harassment is a by-product of the hierarchical relationship in the Department and that the harassment constituted an abuse of power. See C Cooper "Harassment on the basis of sexual gender: A form of unfair discrimination" (2002) 23 ILJ 1 at 1.

⁵⁰ C Cooper *op cit* 1 states as follows:

"Harassment is discriminatory because it sets up an arbitrary barrier to the full and equal enjoyment of a person's rights in the workplace. It also constitutes a violation of the dignity of the individual and it can never be deemed acceptable by the individual."

Against this backdrop, it was disturbing for the Commission to discover that although all three (3) complainants had been extremely traumatised by the sexual harassment⁵¹ they had endured at the hands of the official, they repeatedly stated that their main area of grievance was the manner in which officials of the Department had dealt with their complaints.

The disciplinary proceedings, which one of the complainants was subjected to, were riddled with irregularities and delays by several officials, including the Provincial Commissioner, who interfered with and manipulated the process to obtain a desired outcome. The Provincial Commissioner's actions may even, have been malicious. A line-manager was deliberately ignored in exercising his authority over a subordinate, an investigator was imported to investigate the matter and a special initiator and chairperson were selected to hear the matter. The evidence pointed to the fact that all of this was done to obtain a pre-determined result.

The complainants alleged that instead of being assisted by the Department, they were victimised to the extent that one of them decided to resign, another had to be medically boarded and the third, who decided to remain in the service, was subjected to disciplinary proceedings and ultimately dismissed by the Department. Her case is a classic example of how the Department's disciplinary process can be manipulated to bring about a desired outcome should anyone challenge those in senior positions.⁵²

⁵¹ Section 6(3) of the Employment Equity Act No. 55 of 1998, clearly defines 'harassment' as a form of unfair discrimination and it is prohibited on any one of the listed grounds in section 6(1), which reads as follows:

"(1) No person may unfairly discriminate, directly or indirectly, against an employee, in the employment policy on practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth."

⁵² See Chapter on Disciplinary Inquiries for an in-depth discussion.

The Commission is concerned that the Department, through the conduct of its members, is at risk of being vicariously liable for the failure to take reasonable steps to protect its employees against sexual harassment. Recently the Supreme Court of Appeal in *Media 24 Ltd and Another v Grobler*⁵³ held that it is settled law that an employer owes a common law duty of care towards its employees. *In casu*, a manager failed to take action when he received a complaint and the court held that the employer was vicariously liable for the manager's failure to take action against the alleged perpetrator.⁵⁴ In the circumstances, if the Department failed in its duties as it did in this sexual harassment case, it may be vicariously liable for a claim of damages.⁵⁵

Incidents of sexual harassment also surfaced before the Commission at the Durban-Westville Management Area, where a senior member harassed a junior member after hours at the staff quarters.⁵⁶ The said senior official was also not brought to book.

Such abuse of power and manipulation of the disciplinary process reinforces the Commission's view that disciplinary inquiries are a major problem and challenge

⁵³ (2005) 7 BLLR 649 (SCA). Also see R le Roux "Sexual Harassment in the workplace: Reflecting on *Grobler v Naspers* (2004) 25 ILJ and B Whitcher "Two Roads to an employer's vicarious liability for Sexual Harassment: *Grobler v Naspers Bpk en 'n Ander* and *Ntsabo v Real Security CC* (2004)" 25 ILJ 1907.

⁵⁴ *Op cit* at 650 G-H.

⁵⁵ See section 60 of the Employment Equity Act that deals with the liability of an employer. The relevant sub-sections read as follows:

- (1) *If it is alleged that an employee, while at work, contravened a provision of this Act, or engaged in any conduct that, if engaged in by that employee's employer, would constitute a contravention of a provision of this Act, the alleged conduct must immediately be brought to the attention of the employer.*
- (2) *The employer must consult all relevant parties and must take the necessary steps to eliminate the alleged conduct and comply with the provisions of this Act.*
- (3) *If the employer fails to take the necessary steps referred to in subsection (2), and it is proved that the employee has contravened the relevant provision, the employer must be deemed also to have contravened that provision.*
- (4) *Despite subsection (3), an employer is not liable for the conduct of an employee if that employer is able to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of this Act."*

⁵⁶ See the third Interim Report for more details.

facing the Department. The Department needs urgently to focus on all the shortcomings of the process in order to ensure fair labour practices and re-instil a sense of discipline in the workplace.

3.2.17 Prison Security

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. Prisoners are not in prison to be punished, but as punishment in the form of a sentence determined by a court of law.

Knowing that security is the cornerstone of our correctional system, the Commission was disturbed to hear evidence of prisoners who, for a fee, could "disappear" from prison and/or escape.

The core business of the Department is to detain all prisoners in safe custody while ensuring their human dignity and promoting the social responsibility and human development of all prisoners and those persons who are subject to community corrections. Safe custody can be interpreted in many ways, but in short it means that prisoners should be safe from harm, and prevented from escaping.

In 1999, one hundred and twenty nine (129) inmates escaped from Gauteng prisons alone. Evidence points to the fact that at the Johannesburg Management Area aiding and abetting prisoners to escape has been rife. It is, however, of concern that the Department does not do enough to ensure that staff who aid in these escapes are severely punished so as to curb this problem.

During the hearings of Johannesburg Prison, the Commission dealt with allegations against a specific warder who was, allegedly, implicated in: the

facilitation of escapes; armed robberies, together with robbery syndicates; motor vehicle thefts and/or hijackings; drug smuggling; and illicit sexual activities. Besides this warder, seventeen (17) other people were, allegedly, implicated in the allegations relating to escapes.

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.

A distinction was drawn before the Commission between types of escapes; escapes where prisoners genuinely overpower a warder or where they escape by breaking out and damaging the infrastructure of the prison, and where there is a trail to follow. On the other hand, there are escapes where prisoners simply disappear: at lock-up time, the numbers of all prisoners tally and all prisoners are behind bars, but come the next morning's roll call, it will be discovered that some of the prisoners have simply "disappeared". This is 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.

One member revealed 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.

This member testified about his role in various escapes, and even the fact that it cost between ten thousand rand (R10 000) and two hundred thousand rand (R200 000,00) to arrange an escape at Johannesburg Prison.

Some of the transgressions highlighted the poor record keeping in the prison that made it impossible to establish who was on duty at the time of escapes. The disappearance of prisoners while incarcerated and the fact that they are sometimes only detected a number of days later, is another indication of the poor record keeping.

At its Port Elizabeth hearings the Commission heard of a prisoner who had escaped from prisons in the Eastern Cape at least six (6) times, clearly assisted by members of Correctional Services.

It was no surprise 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 80s, he most certainly, by escaping from some of these places, committed things that are humanly impossible.

Details of how prisoners escape emerged from the testimony of this prisoner himself who is a serious and dangerous criminal, serving one hundred (100) years for *inter alia*, murder, robbery, possession of an illegal firearm, possession of illegal ammunition, and yet he managed to escape twice within a year from St Albans Prison.⁵⁷

Lack of control over its employees in itself leads to the fact that the Department indirectly puts the public at risk because these escapees re-offend. Its failure to act against those 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

⁵⁷ He managed to escape on 13 December 2000 and also between 22 and 23 August 2001.

only of the Department, but to the country as a whole and also to the criminal justice system. While it is a sound policy to take strict disciplinary action against corrupt and negligent officials who assist prisoners to escape, and while it is sound policy also to enforce the criminal prosecution, it is disconcerting that in the majority of escapes the Commission heard about, the Department very seldom followed its own directive of taking strict disciplinary and criminal action against members.

3.2.18 Procurement and Logistics

The Department has approximately two hundred and forty six (246) Management Areas throughout the Republic of South Africa. In almost each one of them there is an office that deals with the issue of procurement and logistics. Procuring goods for approximately one hundred and eighty five thousand (185 000) prisoners and approximately thirty five thousand three hundred (35 300) staff members in the Department of Correctional Services makes the Department's procurement section a multi-billion rand industry.

Due to the size of the task and the limited time the Commission had, the Commission decided to concentrate its investigations only on certain selected areas of the Department's Logistics section of the Management Areas falling within its terms of reference in order to establish whether a wider and more comprehensive investigation by another agency was warranted.

The Commission's investigations showed that there are clearly problems the Department needs to address. As procurement and logistics are an area in which any person with a corrupt mind or even a slight propensity towards corruption will easily be tempted to do something illegal because of the amount of money involved, there is a need for greater scrutiny, security and checks and balances to be set in place.

The investigation focused on the procurement of goods and services at:

- The purchase of screws by the Logistics Department at Pollsmoor at a price three times higher than the average market price for such screws.
- Pollsmoor Management Area, as well as the Department's Head Office in Pretoria.
- The irregular award of tenders at the Provincial Office of the Western Cape where the conduct of a senior member of the Department at that office was examined.
- Durban-Westville Management Area.

The Commission received a complaint from the Pollsmoor Management Area relating to an order that had been placed for 6 000 screws at a cost of R21 000 after two tenders had been obtained. The Commission requested three (3) other suppliers to give quotes for the screws. The quotes received amounted to R9 000, R9 400 and R6 000 for exactly the same item. Responsible officials acknowledged that there was a problem with the system but said that there was nothing that they could do because they were dealing with previously disadvantaged individuals and were under obligation to award contracts to them.

The Commission found it extremely disturbing that programmes to address the economical imbalances of the past are blatantly manipulated to enrich selected individuals. Nothing whatsoever can justify the use of taxpayers' money to purchase items at three (3) times the value merely because the purchaser is from a previously disadvantaged community of our country. This could never have been the intention of the legislature in its drafting of, inter alia, the Preferential Procurement Policy Framework and Regulations, to empower small contractors and to transform our society.

The Commission's investigators found a number of other irregularities in its investigation into the procurement of goods and services at Pollsmoor, including

member's close relatives owning companies doing business with the Department where members had not disclosed information that they were obliged to have disclosed.

The Commission also investigated allegations that a senior member of the Department in Provincial Commissioner's Office of the Western Cape bypassed the proper tender system for the award of tenders for accommodation required for bosberaads, with dishonest intent. Tenders that were called for were opened and processed irregularly and existing tenders, which had been submitted, were irregularly altered by means of "*Tippex*". There was an irregular award of a tender for rations valued at approximately R1 000 000.

The Commission found that maladministration and corruption were rife in procurement at Pollsmoor and that serious systemic weaknesses were found to exist, which may well represent a microcosm of the general malaise that prevails in prisons in South Africa. The database of suppliers does not give sufficiently precise information to ensure an efficient and fair service is procured while non-compliance with acceptable procurement procedures resulted in transactions that were excessive and wasteful. Problems with written delegations of authority and, what appears to have been collusion in some instances of a number of staff resulting in losses to the Department, suggest breaches of the Public Finance Management Act.

The Commission also found irregularities in the provision of goods in the Durban-Westville Management Area. These included tenders to provide fresh cream (the four (4) different companies used were all owned by the same entity and artificially boosted the price), funeral services (documentation appeared to be altered or incomplete) and medical supplies (expensive drugs ordered from a limited number of pharmacies).

The Commission found that there is the possibility of gross negligence and misconduct within the Durban-Westville Management Area Logistics Department. The control environment within procurement is weak or non-existent, enhancing the opportunity for fraudulent behaviour and the system used by the Logistics Department is outdated and lends itself to misuse and thus the possibility of corruption. Furthermore, the lack of linkage between documentation and transactions in the system increases the possibility that fraudulent transactions can be processed without detection. It is therefore easy for any person with a good knowledge of the system to bypass manual controls in order to process fraudulent transactions for personal enrichment.

3.2.19. Prison Workshops and Stock Control Systems

The Commission heard evidence about corruption in the workshops run in Pollsmoor Prison. Prisoners in the workshops manufacture various goods, some of which are ordered by the Department of Correctional Services. In addition, employees of the Department are allowed to have things manufactured. In each case certain procedures have to be followed and members are charged accordingly for goods that they order. The Commission heard that a number of jobs were "smokkel" (smuggling) jobs for the benefit of warders who used state time, materials and other resources without authority and making the necessary payments for the work done.

The Commission also heard of almost similar abuses at the Pretoria workshop. It was apparent here as well, that members working in the workshop may be using government time and resources to run their own businesses. There was no-one who safe-guarded against such conflict of interest.

3.2.20 Non-Adherence to Overtime Policy

In September 2002, the Public Service Commission (PSC) finalised its report on the management of overtime and made recommendations to the Department on how to improve this management. Despite the substantial financial savings that would have resulted had the Department adopted these recommendations, it had not, for some inexplicable reason, yet implemented the PSC's recommendations at the time of the Commission's hearings.

The Department does nevertheless have a well established policy on weekend and public holidays' overtime, which was supposed to have been a provisional policy to deal with staff shortages until the PSC had finalised its recommendations. A procedure manual also specifically deals with weekend overtime remuneration. However, despite this policy, there is clear evidence that weekend overtime and remuneration is not properly managed.

The unions also complained that their members were being prejudiced because of improper implementation of the overtime policy. They raised concerns that high ranking officials were working in lower ranking jobs during weekends.

Non-adherence to the policy on overtime has led to the Department to exceed annual budget allocations. Evidence led showed that the national budget allocated for the weekend overtime for the year 2003/2004 is seven hundred and forty nine million, nine hundred and thirty thousand rand (R749 930 000,00), an increase of one hundred million rand (R100 000 000,00) over the 2002/2003 year. Furthermore, the budget was overspent in the 2002/2003 year by ninety three million rand (R93 000 000,00) and by sixty three million rand (R63 000 000,00) in the 2003/2004 financial year.

The Department's policy in respect of the remuneration of members for overtime provides that overtime payments for weekend duties shall be limited to the level of Deputy Director. Furthermore, the same procedure manual states that if a member is utilised and placed on duty in a post with a rank lower than the one held, he or she shall receive overtime pay of the post in which he or she was being utilised on that specific weekend and not of the rank held.

Evidence, however, has established that very senior officials are allowed to perform monitoring duties in prisons and over weekends and are remunerated at their higher level salary scales. Sometimes these officials are drawn from other Management Areas. Senior officials from Assistant Director and below can be utilised to perform such duties in exceptional circumstances in terms of the policy, but there can be no justification for these senior officials to be remunerated at their senior scale and rank.

The policy measures were put in place to curb overspending on overtime and were not intended for the enrichment of personnel. Area Managers, who are responsible for ensuring this doesn't happen, should guard against it while the role of an Area Commissioner is to see to it that there is no overspending on overtime. The Department has clearly failed to achieve this.

The Commission also found other violations of policy, including disregard for the limitations on the amount of overtime an official is allowed to work per month, the use of non-essential staff for weekend duties and the failure to keep sufficiently detailed records of overtime to enable correct remuneration rates to be paid.

As a result of the complaints about weekend overtime from unions and finance divisions, directives were sent to Regional Commissioners to remind them to manage weekend overtime properly.

The policy of the Department regarding working weekend overtime is clear and straightforward. If it were properly implemented by the officials, there would be no need for the Department to spend so many millions of rands of the taxpayers' money nor would it struggle with huge deficits in the budget in order to cover the costs of remuneration for overtime work.

However, there would have been no need for overtime paid out currently had the Department implemented the PSA recommendations that it implement a seven (7) day work week, which would also have allowed it to employ a number of new members. The implementation of overtime was introduced as an interim measure by the Department on the recommendation of the Public Service Commission, subject to the treasury approval, with effect from 1 February 1978, on condition that the system would phase out when the Department had sufficient manpower to implement the seven (7) day service rendering establishment.⁵⁸

A task team was appointed in November 2003⁵⁹ to investigate the possibility of changing the seven (7) day working week. The task team has finalised the investigation and the report was given to the National Commissioner for his approval. The evidence suggests that, for an unknown reason, this task team did not deal with the PSC's report. Further evidence also suggests that the implementation of the PSC recommendations were not due to the resistance from unions but from management.⁶⁰

The Commission therefore found that there was no attempt by the Department to curtail overspending on weekend overtime remuneration nor was there any real attempt by the Department to adopt a seven (7) day week establishment as recommended by the PSC. Instead, there was large overspending and deficits in the weekend overtime budget. The overspending is largely due to the

⁵⁸ Clause 2.2 of the policy.

⁵⁹ This was established approximately three (3) years after the PSA recommendations.

⁶⁰ On the role of management in crucial issues see Chapters one to three of this report.

Department's non-adherence to the policy governing the system of weekend overtime.

3.2.21 Previous Investigations Into the Department

The Commission's Terms of Reference require it to inquire into and report on the extent of implementation of the recommendations of past investigations relating to the Department. The Commission confined its investigations to the post-1994 period.

It was of concern to the Commission that it appeared that no one in Department was in charge of investigation reports and members were not able to advise on the number of investigations conducted.

In terms of information on the implementation of these previous investigations, the Commission requested the Department to prepare a report setting out in full the extent to which the past investigations mentioned in the Commission's list had been implemented by the Department. The report received sets out the general response to the recommendations as well specific comments on each of the investigations conducted into the Department.

The main concern for the Commission regarding the Department's response was that many parts it lacked detail and adequate explanation. A number of places where the Department either dealt inadequately with the actual recommendations emanating from the various agencies and failed to explain why certain important recommendations, particularly from the Public Service Commission and the Department of Public Service and Administration had not been implemented.

The Commission's view is that the failure by the Department to implement certain recommendations has had serious financial consequences for the Department, particularly in the area of overtime, overcrowding and recruitment. The

Department did not furnished the Commission with any reasons for the lack of the implementation of these recommendations.

The Department's approach to the reports of investigations is a cause for serious concern for this Commission. Recommendations formulated by Commissions should not be ignored without good reason.

3.2.22 Implementation of Interim Reports

The Commission is of the opinion that the Department has also not dealt with the Commission's interim reports in an adequate manner.

It is clear that not all the recommendations have been implemented and indeed the most crucial recommendations have been ignored. This has led to the low success rate of the disciplinary inquiries against certain members.

In the First Interim Report, the Commission recommended that a Special Task Team should be appointed to deal with the disciplinary inquiries, and that it should consist of independent people who are experienced in labour relations and/or labour law. However, contrary to these recommendations, the very first hearings were chaired by a person who was not familiar with either labour relations or disciplinary procedures in labour law. As a result, a number of technical mistakes were made which then could not be rectified at the appeal level, where the former Area Manager of Durban-Westville Management Area was reinstated.

It was in anticipation of such problems that the Commission recommended in its First Interim Report that properly qualified and experienced people be appointed as a Special Task Team to deal with all disciplinary inquiries emanating from its recommendations. The Commission is of the view that if the Department had

appointed people who were properly experienced in labour law then these problems would never have occurred.

The Department's response to the Grootvlei video incident demonstrated vindictiveness against whistle-blowers, especially Mr Setlai, the then Head of Prison at Grootvlei at the time of the video hearings at the Bloemfontein Management Area.

With regard to the Eighth Interim Report, the Department has advised the Commission that it is investigating these matters further. The report had three (3) Chapters, which dealt with three (3) different transgressions by various members. Chapter One dealt with "Irregular Contact visits". Chapter Two dealt with "Illicit Relationships". Chapter Three dealt with "Hospital Malpractices". In none of the cases were adequate steps taken in accordance with the Commission's recommendations. For example, Chapter Three deals with hospital malpractices at the Leeuwkop Management Area, where sentenced prisoners, who were totally untrained or unsupervised, were made to perform medical duties, which are reserved for qualified nurses and medical doctors.

This matter was reported and a number of charges were recommended against various members and nurses. The Department has stated that it is still investigating these cases. The ninety (90) day period has passed and the implicated members and nurses will easily raise this defence if any charges are brought against them.

In the circumstances, the Commission strongly recommends that the Department conduct a thorough investigation as to what progress was made with regard to these reports and all the other matters referred to in this chapter.

4. MISCONDUCT CHAPTERS

During the course of the Commission's investigations into the nine (9) Management Areas, the Commission uncovered several areas of misconduct that the Commission felt required the Department's urgent intervention. As the Commission's hearings were public knowledge, the Commission was of the opinion that the integrity of the Department's entire disciplinary system would be at risk if such misconducts were only reported in the Commission's final report and implicated members were allowed to continue with their duties as normal.

The Commission then took a decision to submit interim reports to enable the Department to take action against the members alleged to have been involved in misconducts, maladministration or corruption. In total the Commission submitted eleven (11) interim reports to the Department.⁶¹

Subsequent to the submission of these reports, further areas of misconduct maladministration and corruption were discovered by the Commission. Accordingly, the Chapters that make up this part of the report will focus on the areas of misconduct, maladministration and corruption for which no interim reports were filed by the Commission.

The areas of misconduct and maladministration dealt with are:

4.1 St Albans Management Area

4.1.1

This Chapter deals with the allegations that a serving member of the South African Police Services colluded with members of the Department to allow a

⁶¹ For full details on the interim reports and their implementation, see the Chapter dealing with Implementation of Interim Reports.

sentenced inmate to leave prison to have sexual intercourse with the police officer. As a result of this a child was born. Evidence showed that the child was born while the prisoner was supposed to be incarcerated at St Albans Prison. The Inspector, who also allegedly provided a motor vehicle to the members in order for the prisoner to leave prison, identified the prisoner as the father of the child on the birth registration forms with the Department of Home Affairs. The prisoner whilst at St Albans Prison signed a document acknowledging paternity but when he appeared before the Commission he denied such paternity.

4.2 Pretoria Management Area

4.2.1 The Theft of Prisoners Food

The theft of prisoners' food by members of the Department as well as the practice of members consuming prisoners' food was found to be a normal occurrence in many of the Management Areas investigated. In many of the prison kitchens, prisoners are made to prepare food for members on a daily basis.

In this investigation it was established that two warders used prisoners to cook food for them out of prisoners' supplies. Another member was found to be regularly stealing buckets of chicken from the prisoners' meat supply.

4.2.2 Supply of Drugs by Warders to Prisoners

This Chapter examines the smuggling of drugs into Pretoria prison by corrupt warders and again highlights how the greed of members traps them into becoming pawns of prisoners by participating in the smuggling of drugs into the prison.

The evidence led established how different members⁶² assisted prisoners in the smuggling of dagga into Pretoria Prison. Evidence also showed how the dagga would be brought in from the outside and then hidden in dustbins and in flowerbeds. Sometimes the dagga was merely thrown over fences into the prison and at times the parcel of dagga was tied to a rope which was then hauled up into the prison by prisoners.

4.2.3 Assaults at C-Max Prison

In this Chapter the gross violation of prisoners' rights at C-Max is dealt with. The allegations are that prisoners, on their arrival at C-Max, are made to strip naked and are assaulted and shocked with electric shields. The practice is part of an initiation practice with many members participating in the assaults. This form of torture has been the practice at C-Max for years.

4.2.4 Misuse of Examination Centres

In terms of the Department's policy, only prisoners are allowed to write examinations at examination centres. The Commission found that contrary to this policy, members in charge of the examination centre at Pretoria Central Prison allowed people who are not prisoners to write their examinations at the centre.

This chapter also highlighted the fact that policies of the Department are not properly communicated to officials at the lower level.

4.2.5 Illegal Transactions with Prisoners

This Chapter deals with evidence of corruption and an illicit relationship between a warder and a prisoner at Pretoria C-Max Prison. The member is alleged to

⁶² The members implicated were

have received money from a prisoner in return for assisting the prisoner to escape. The member allegedly failed to keep to his part of this illegal criminal agreement and furthermore failed to return all the money received. When it became clear that the prisoner would file a complaint with the Case Management Committee, the member deposited some money into the prisoner's 'snoopy' account at the prison.

4.2.6 Micro-Lending Scheme

Members are alleged to have run a micro-lending scheme without the necessary consent having been received. They also abused their positions by processing changes on the persal system for members who had taken loans without authority. Members' salaries were diverted to other banking accounts to obtain payment of the loans.

4.3 Ncome Management Area

Ncome was the last Management Area investigated by the Commission and the incidents of misconduct and maladministration found by the Commission at Ncome were:

4.3.1 The Arsenal Investigation

This Chapter examines the control and maintenance of the arsenal at Ncome Prison wherein the competence and lack of training of the members responsible for the arsenal is also highlighted. The records and registers were found to be a complete state of disarray to the extent that a Department official from Head office could not conduct an inspection of the armoury because most of the documentation was not available. The member in charge could also not account for all the firearms

4.3.2 Pecuniary Dealings with Prisoners

This Chapter deals with the unlawful pecuniary dealings in which members are involved with prisoners contrary to the clear provisions of Departmental Regulations and the Correctional Services Act. A member was alleged to have extracted money from an inmate on the promise that he could arrange for the purchase of a television set for the inmate. The television set was never purchased and the money was not refunded his money. Another member in similar circumstances took money from a prisoner to purchase a compact disc player.

4.3.3 The Investigation

While this matter also involves a pecuniary dealing involving a member extracting money from a prisoner on the promise of arranging an early release on parole, the matter is being dealt with separately as the events being complained of happened in Pietermaritzburg. As the complaining inmate was imprisoned at Ncome at the time that the Commission was conducting its hearings there, and for the sake of convenience, the Commission decided to hear the matter together with those emanating from Ncome.

4.3.4 The "Gonondo" Matter

In this Chapter the Commission deals with the dereliction of duty by certain members at Ncome who allowed an inmate to enjoy all the privileges of a free man. Departmental officials, who appeared to fear the medicinal powers of the inmate "Gonondo", permitted him to practice as an "inyanga" while he was in jail. He treated members of the public as well as members of the Department and was even allowed to keep his medicines in a storeroom to which he was given keys.

He was even taken out to a nearby dam to conduct ceremonies. He was also the invanga for a football team.

4.3.5 Withdrawal of Assault Charges

This Chapter examines the background to the mass assault of prisoners which took place in Ncome on the 4 January 2005. As the facts to the assaults were widely covered in the media and have been investigated by the Department, the Commission's report will mainly look at the response of management to the assaults and in particular the Management's failure to discipline the members implicated.

The investigation was intentionally or negligently allowed to lapse in that it was only pursued after the ninety (90) day period stipulated in the Disciplinary Code.

4.3.6 Prisoners' Private Cash

This Chapter deals with the discovery by the Commission's Investigating team of a cash shortfall in the Prisoner's Private Cash records at Medium B of Ncome where it was found that the entire system was not being carried out in accordance with the policies of the Department and that the books of record had not been written up for a very long time.

As a result the Department officials cannot account for the full amount of the prisoners' private cash. Furthermore Department officials at the Provincial and management area level have done nothing to address the problem which they have been aware of for some time.

5. MANAGEMENT AREAS

The nine (9) Management Areas investigated by the Commission each had their distinctive problems, but many of the broad issues relating to overcrowding and corruption were found in all of them in one form or another. These problems are all dealt with extensively in the Interim Reports and in specific Chapters relating to, for example, the Management Areas individually, Trade Unionism, Prison Security etc. What follows is a summary of the key characteristics of the Management Areas that emerged from the hearings:

The Commission heard that there is a great shortage of personnel for various reasons, which include poor planning and the use of a significant number of personnel to guard prisoners outside the prison during court or hospital visits in a number of Management Areas.

5.1 Pietermaritzburg Management Area

The proper functioning of the prison was hampered by political divisions between staff belonging to either the ANC or the IFP, and also by divisions between managers.

Recruitment and appointments were manipulated in contravention of procedure, and disciplinary inquiries were stalled or sabotaged by managers to protect their own supporters.

While Pietermaritzburg Prison suffered from many of the same issues of mismanagement, corruption and overcrowding seen in other prisons, it was unique in the way in which it had been rendered ungovernable there was a lot of violence, intimidation and fear. This may still be the by-product of Operation Quiet Storm. There was a clear lack of compliance with the rules and regulations.

The Department was aware of this and the transgressors, yet they were not brought to book.

A number of officials were found with fake matric certificates.

5.2 Durban-Westville Management Area

Corruption appears to be endemic in the Durban-Westville Management Area and there is a total breakdown of law and order. As a result of the involvement of senior officials in corruption, it has become difficult for them to enforce rules and regulations among junior members.

Searches of those entering or leaving the prison are not conducted, and security is so compromised that judges are reluctant to conduct prison inspections for fear of their lives.

These conditions are symptomatic of the lack of control by prison authorities, who fail to enforce Department regulations or discipline members who transgress them. Two examples suffice to illustrate the point. A convicted policeman was given preferential treatment by sympathetic warders to the extent that his cell was equipped with luxuries including a fridge, TV, video recorder and other electronic equipment. A long-term prisoner convicted of armed robbery was allowed to go to soccer matches, visit nightclubs and sleep over at his girlfriend's house, all with the full knowledge of the authorities and the Area Manager.

5.3 Ncome Management Area

The Ncome Management Area in KwaZulu-Natal consisted of three (3) prisons at the time the proclamation establishing the Commission was issued and they were the focus of investigations.

The institutional culture is similar to that of Pietermaritzburg Prison, but it is complicated by the geographical location of the Ncome Management Area, which is in far northern KwaZulu-Natal. This Management Area belonged to the old KwaZulu Government before 27 April 1994. As a result, there is a perception, rightly or wrongly, that those who were previously employed there were members of or partisan to the IFP. This exacerbated tensions within the Management Area that was also affected by strong trade union rivalry between Popcru and the PSA.

As a result of serious drought and water restrictions, the prison population at Ncome was dispersed during the Commission investigations to other prisons in the province.

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

5.4 Johannesburg Management Area

The Johannesburg Management Area in Gauteng is one of the biggest Management Areas in terms of size, employees, number of prisoners and financial resources. If taken together with the rest of the Gauteng prisons, it accounts for approximately one third of the budget of the Department.

Its overcrowding problems are therefore acute. Cells built to accommodate 38 inmates, at times house 100 prisoners.

Most of the Management Area's problems can be traced back to poor or corrupt management, as exemplified by the number of escapes, many in collusion with

members. In 1998 there were 53 escapes of various kinds. In 1999 there were 17; in 2000, 24; in 2001, 8, and in 2002, 7.

A number of members were allegedly involved in the facilitation of escapes or "disappearances" of prisoners, armed robberies, together with robbery syndicates, in and around Gauteng and KwaZulu-Natal, motor vehicle thefts and/or hijackings, drug smuggling, and illicit sexual activities at the Johannesburg Female Prison. Vast amounts of money changed hands to pay for the escapes. In one case an amount of R200 000,00 was allegedly paid for an escape.

There was clearly a lot of intimidation and fear amongst members who were not keen to talk about corruption for obvious reasons.

5.5 Pollsmoor Management Area

Pollsmoor Prison is the largest in the Western Cape and consists of four male prisons and one female correctional centre. Evidence indicated that conditions did not support the promotion of human rights in that overcrowding led to inadequate conditions, privileges were arbitrarily allocated and meals were often insufficient.

Gangsterism is a significant feature of Pollsmoor Prison. The Commission heard evidence from a gang member of the important role played by warders in gang activities and who are themselves members of the various gangs. He said that money is obtained from non-gangsters and from prison warders. In addition drugs, guns and knives are smuggled in by prison warders. Some of who belong to prison gangs.

The Area Manager of Pollsmoor said that drugs are sometimes confiscated daily and the drug problem is exacerbated by the close relationship between gangsters outside and gang members inside.

5.6 Pretoria Management Area

The Pretoria Management Area in Gauteng consists of six prisons, namely, Pretoria C-Max, Local, Central, Female, Atteridgeville and Odi. During the period February 2002 to June 2003, all the prisons were overcrowded, with Pretoria Local Prison being most affected.

Among widespread corruption, the Commission heard evidence of prisoners having to pay warders to use the phone or to buy food, and warders regularly smuggled drugs into the prison for inmates. A firearm was even found during a search of a cell. The smuggling of goods in and out of the prison is facilitated by the poor search procedures of staff and visitors.

There was evidence of warders stealing prisoners' food rations, either for themselves or for sale to others for profit.

It also appeared that, as in other Management Areas, ex-members of the police service who were in detention were given preferential treatment. For example, [redacted], the ex-captain of Vlakplaas hit-squads, was allowed extended privileges to which he was not entitled and was being held at Pretoria Local Prison when he should have been held at Pretoria Maximum.

Evidence relating to C-Max Prison showed that prisoners were routinely stripped naked and searched, sometimes in front of female warders, handcuffed, assaulted and shocked with mini electrical shields before they were admitted to their cells. This process is seen as an initiation process and is feared by all new admissions as the assaults are carried out without provocation.

5.7 St Albans Management Area

The St Albans Management Area in the Eastern Cape consists of three prisons, namely, Maximum Security Prison, Medium A Prison and Medium C Prison. During the period February 2002 to June 2003 all of the prisons were overcrowded, with Medium A being the most affected.

The institutional culture, as elsewhere, is one that is rife with corruption and maladministration. Matters were complicated by political and trade union rivalry, as well as favouritism in treatment and employment prospects based on whether one came from the old apartheid areas of Transkei, Ciskei or South Africa, even though these demarcations no longer exist under a consolidated Eastern Cape province.

The Commission heard about Amagqugula, which bears some resemblance to Operation Quiet Storm at the Pietermaritzburg Management Area. The term refers to gatherings in garages, and was made up of a network of people who acquired positions of power which they used to influence who retained positions of authority in the Department. They held secret meetings where policy and practice was resolved and the fate of individuals determined. When they did not like someone who was occupying a position and they could not get the person out by manipulating the system, they sent in their "storm troopers" and bypassed any legitimate process to achieve their own ends.

One of the victims of Amagqugula was [redacted], who was intimidated by Popcru "storm troopers" and told to leave the province. Pressure on her had the backing of the then National Commissioner, and she eventually left.

The Commission heard testimony about how the Department had failed to take action against a senior official who allegedly sexually harassed several female colleagues.

The Commission also investigated claims against the former Provincial Commissioner who claimed thousands of rands for travel he never undertook.

5.8 Leeuwkop Management Area

Leeuwkop Prison in Gauteng comprises five correctional institutions, namely Medium A, Medium B, Medium C, Maximum and Community Corrections, which is based in Randburg. Medium A houses medium category prisoners with a low escape risk. Most of these prisoners are participating in trade and skills development programmes with a focus on agriculture, artisanship and formal education. Medium B is the juvenile centre where inmates between the ages of 14 years and 20 years are kept.

A former Acting Area Manager, told the Commission that when he arrived at Leeuwkop he found that officials had cell phones in the sections, prisoners moved as they wished from one section to another, prisoners were wearing private clothes and pastors were taking letters out of prison for inmates.

Gang-related crimes in Leeuwkop include assault, rape and robbery. Evidence indicated that some members of the Department promote gangsterism, sell drugs and engage in sodomy. In addition, when prisoners ask to be taken to reception or to the psychologist, for example, a warder will ask for R5 in return for taking the prisoner where he wants to go. It was also allegedly common practice for medium status to be sold to prisoners for about R30 to R40.

In its Eighth Interim Report the Commission described in detail evidence that was heard about irregular contact visits that were expressly or tacitly authorised by members of the Department for a fee.

5.9 Bloemfontein Management Area

On 27 June 2002, the State President, in the light of the videotaped evidence of corruption received from four inmates at Grootvlei Prison, amended the Terms of Reference of the Commission by including the Bloemfontein Management Area as a further Management Area to be investigated by the Commission.

The Bloemfontein Management Area in the Free State consisted of Grootvlei Prison at the time of the Proclamation. Grootvlei Prison, which is the subject of this report, consists of two prisons, namely, Medium A, the Maximum Security Prison, and Medium B, the Medium Security Prison. For the period February 2002 to June 2003, both prisons were overcrowded.

It was in this Management Area where, for the first time, the Commission came across proof of the sale of juveniles to adult prisoners for sexual favours. Although this had been an ongoing complaint, which the Commission heard in the Management Areas of Pietermaritzburg and Durban-Westville, there had never been any conclusive proof of such behaviour.

There is also a problem of tribalism, which was evident in the way issues were dealt with. There are two major groupings among the staff of the Bloemfontein Management Area, those who are Sotho speaking and those who are Xhosa speaking. Accordingly, there was a lot of jockeying for positions along tribal lines, which affected the functioning of the Management Area.

One of the scenes in the aforesaid video shows the sale of juveniles for sex. Evidence showed that some warders are deeply involved in supplying

incarcerated youths for sexual favours to adult prisoners for a fee. Some warders abused their power even further by using these youths for their own sexual gratification.

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

The evidence before the Commission regarding Grootvlei Prison confirmed once more that drug and alcohol smuggling is prevalent in prisons. At Grootvlei, not only were prisoners involved but also senior members of the Department. The prisoners traded drugs and alcohol on behalf of members of Correctional Services in order to get preferential treatment within the prison, which in turn served as an incentive for other prisoners to get involved. In most instances, the prisoners were running lucrative businesses with the help of corrupt officials. This only served as encouragement for other prisoners to get involved in these illegal activities, creating a continuous cycle of illicit activity.

On 2 August 2002 the Commission issued a Memorandum, which made recommendations on the immediate actions which needed to be instituted by the Department in terms of its internal disciplinary procedures against the warders implicated in the various scenes on the video.

6. RECOMMENDATIONS

The Commission has made a number of recommendations set out in the various chapters in the report. These will be repeated hereinafter. However, for anyone to understand the reasoning behind some of the recommendations, one will have to read the actual chapters.

6.1 TRADE UNIONISM⁶³

6.1.1 The Department needs to address the issue of union influence urgently. This matter can be regulated immediately at the level of the Bargaining Council. In this regard, the Department should table a draft resolution for adoption by the PSCBC and the General Public Service Sector Bargaining Council (GPSSBC) dealing specifically with senior managerial employees on the terms as set out hereinafter:

- (a) Serious consideration should be given to encouraging senior managerial appointments to undertake that they will not join any trade union that organises for junior members of staff.
- (b) The people who are currently employed in management positions should give an undertaking that in making management decisions, they are not being influenced or trying to drive the agenda of a trade union or any secret organisation. The interests of the Department should be paramount at all times.

⁶³ See Chapter 3, Volume 1 at page 101, of the Report.

- (c) Resolution 8 of 1998 should be amended to specifically provide for the regulation of the fiduciary duty that senior managerial employees owe their employer, including the following matters:
 - (i) a very cautious or careful handling of confidential information that such an employee receives or is exposed to by virtue of his or her senior managerial position;
 - (ii) a positive obligation to keep such information secret;
 - (iii) a positive obligation to recuse himself or herself from discussions with the union to which such information might be relevant, either directly or indirectly.

6.1.2 The Department should seriously consider encouraging senior members of staff and the union to agree with the parties introducing a resolution to be debated in the PSCBC and the GPSSBC that:

- (a) Members of staff who are in senior management positions have a different "community of interests" to the one shared by junior members of staff who are in non-management positions;
- (b) Managerial employees from the position of Director upwards should be encouraged to belong to an association or union, which is different from the union which junior staff members join;
- (c) To protect their constitutional right to collective bargaining, managerial employees should be encouraged to form a staff association or union, which junior members of staff may not join;

- (d) A separate bargaining unit should be formed for managerial employees.

6.1.3 The Department should propose that senior managerial employees who want to be union members and hold office in their trade unions be appointed by their trade unions as their negotiators, and that they, from time to time, go on special secondment for the specific purpose of conducting negotiations on behalf of their trade unions in the bargaining council.

6.1.4 In the event of an agreement not being reached on the abovementioned matters within thirty six (36) months of the commencement of negotiations, the Department should consider referring these issues to arbitration for determination and later to Labour Courts for adjudication.

6.1.5 The Department needs to investigate the issue of agency fees as against union subscription fees that employees must pay to ensure that they comply with the provisions of section 25(3)(b)(i) and (d) of the Labour Relations Act.

6.2 GANGS⁶⁴

To address the problem of gangs in our prisons, the Commission makes the following recommendations:

6.2.1 To restrict the influence that gangs are able to exert over newly arriving prisoners, the Commission recommends that the Department undertake the classification and separation of awaiting trial prisoners into:

⁶⁴ See Chapter 4, Volume 1 at page 138 of the Report.

- (a) First offenders;
- (b) Repeat Offenders, and
- (c) Gang members

Depending on the outcome of the research and the comprehensive strategy to be developed on gangs referred to hereunder, this separation policy could even ultimately be extended to sentenced prisoners. Considerations could also be given to dedicated correctional facilities or even portions thereof, being used to house members of a particular gang. The Commission is mindful, however, that the implementation of such a policy will be dependent on a whole host of practical and logistical considerations and that the implementation of such a policy may only be possible in certain prisons.

6.2.2 Proper and detailed research should be carried out by the Department on gangs and their culture with the aim of developing and ultimately implementing a comprehensive gang strategy with such strategy being incorporated into the Department's Strategic Plans.

6.2.3 To achieve this, the Department should create better networking and working relations with the many NGO's who have the skills and knowledge needed for the development and implementation of a comprehensive anti-gang strategy. It is, accordingly, recommended that the Department liaise with these organisations before it compiles its anti-gang strategy, as envisaged in its White Paper. The anti-gang strategy should be compiled after due consultation with non-government organisations such as:

- (a) Centre for Study of Violence and Reconciliation (CSV);
- (b) Centre for Conflict Resolution;
- (c) Institute for Security Studies.

- 6.2.4 Linked to the above, the Department should develop a comprehensive database on prison gangs and gangsters and collect and update such information on an ongoing basis. With the high rate of recidivism in our society, this database will easily identify repeat offenders who are gang members when they return to prison. Prisoners who are being transferred from one prison to another will also be identified if they are gang members. Procedures will naturally have to be incorporated to ensure that the names of those inmates who have clearly proven that they have given up their gang membership, can be reclassified on the system.
- 6.2.5 The Department should make use of the expertise and skills of the National Intelligence Agency in building a database of known gang members and follow a multi-disciplinary approach with the Agency in order to successfully clamp down on gangsters in prison.
- 6.2.6 More contact should also be made by the Department with those selected NGO's who have valuable experience and skills to offer the Department in its rehabilitation programme by assisting gang leaders to change and become law-abiding citizens.
- 6.2.7 The Department can also learn and draw upon the experience of the South African Police Service, which has achieved significant success by not working in isolation but rather in closer contact with communities and non-governmental organisations.
- 6.2.8 As a short-term safety measure, the Department should develop strategies as suggested by the CSVR and the Commission⁶⁵ to ensure that inmates

⁶⁵ See recommendations in Chapter on Sexual Violence where the installation of cameras connected to closed circuit television is recommended.

are safe in their cells especially at lock-up time when gang activities are at their most prevalent and dangerous.

6.2.9 The Disciplinary Code of Conduct should be amended to make any involvement and association with a gang by correctional services members a dismissible offence. Clearly no gang can exist in prison without the active or passive assistance of warders. If these members who cooperate in any way with gangsters are not dismissed, the image and the integrity of the Department and their fellow colleagues will be tarnished. An amendment of the Code would also impact on the gang's ability to recruit new correctional service members who will now fear the severe penalty of associating with gangs.

6.2.10 Heads of Prisons and Unit Managers should be trained in basic labour law in order to fulfil their tasks as managers and to equip them to discipline transgressing members decisively, confidently and without fear of coming to incorrect decisions or following incorrect procedures. The presence of such better trained and skilled Heads of Prison and Unit Managers will have a positive impact in improving general discipline at correctional facilities. Members under their command will be less inclined to consider improper behaviour, such as colluding with and being corrupted by gang members.

6.2.11 In the short-term, it is recommended that the Department make use of the Prevention of Organised Crime Act No. 121 of 1998 (POCA). Section 9 of the Act can be used to charge those prisoners involved in gang activities and section 11 to identify prisoners as members of a gang.

6.3 RECRUITMENT⁶⁶

The Commission noted that the Department has not heeded or has failed to implement the recommendations with regard to the recruitment process made by various investigations conducted in the Department. The disturbing feature with these recruitment malpractices is that the processes are manipulated by very senior officials.

It has been pointed out that recruitment is one of the non-core functions of the Department, which can readily be outsourced to private non-state service providers. The Commission accordingly makes the following recommendations:

6.3.1 Short Term Recommendations

- (a) The advertising of posts, setting out the criteria, short-listing and interviewing of candidates nationally should be outsourced to independent non-state service providers.
- (b) be charged with:
 - (i) contravening clause 4.4. Column A of the Department's Disciplinary Code (fraud); alternatively
 - (ii) contravening clause 5.4. Column A of the Department's Disciplinary Code (sabotage).
 - (iii) he be charged criminally with the offence of fraud.
 - (iv) the record of the proceedings relating to in this regard be handed over to the office of the Director of Public Prosecutions in

⁶⁶ See Chapter 5, Volume One at page 185 of the Report.

the Western Cape for his perusal and consideration of the charge of fraud.

(c) be charged with:

(i) contravening clause 2.1. Column A of the Department's Disciplinary Code (gross negligence) (First recruitment drive Pollsmoor).

(d) appointment to a senior position at St Albans Management Area be reviewed by the Department.

6.3.2 Second Recruitment Drive

The Commission recommends that:

(a) be also charged with:

(i) contravening clause 2.1. Column A of the Department's Disciplinary Code (gross negligence); alternatively

(ii) contravening clause 5.4. column A of the Disciplinary Code (sabotage).

(iii) he be charged criminally with the offence of fraud.

(iv) the record of the proceedings with regard to In this matter to be handed over to the office of the Director of Public Prosecutions in the Western Cape for his perusal and consideration.

- (b) be charged with:
 - (i) contravening clause 2.1. Column A of the Disciplinary Code (gross negligence).
- (c) be charged with:
 - (i) contravening clause 4.4. Column A of the Disciplinary Code (fraud); alternatively
 - (ii) contravening clause 5.4. Column A of the Disciplinary Code (sabotage).
 - (iii) he be charged criminally with the offence of fraud.
- (iv) the record of the proceedings relating to this member be forwarded to the office of the Director of Public Prosecutions in the Eastern Cape for his perusal and consideration.

6.3.3 Long Term Recommendations

- (a) Recruitment in the Department of Correctional Services nationally, should be outsourced to independent non-state service providers.
- (b) Alternatively, recruitment in the Department of Correctional Services should be undertaken under the direct supervision of the Public Service Commission.

6.3.4 Merit Awards

The Commission makes the following recommendations:

- (a) No disciplinary action or any action relating to the recovery of merit awards incorrectly paid, is recommended by the Commission at this stage as this may present difficulties.
- (b) Proper systems must be put in place in the Department with regard to the granting of merit awards.
- (c) The chairpersons and secretaries of the moderation committees responsible for merit awards, should be senior officials in the Department.
- (d) The chairpersons and secretaries of the moderation committees must keep proper minutes in respect of each and every merit award granted.
- (e) The chairpersons and secretaries of the moderation committees must adhere to the policy relating to merit awards.

6.3.5 General Recommendations

- (a) The Department should consolidate all its recruitment policies into one Recruitment Policy document applicable in all Management Areas and disseminate it to all the Management Areas as soon as possible.
- (b) The Department should implement the recommendations made in the Public Service Commission's Report of August 2000.

6.4 PRISON SECURITY⁶⁷

6.4.1 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 be 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.

6.4.2 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

⁶⁷ See Chapter 6, Volume 1 at page 274 of the Report.

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.

6.4.3 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.

6.4.4 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.

6.4.5 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.

- 6.4.6 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.
- 6.4.7 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.⁶⁸ 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.
- 6.4.8 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.⁶⁹ 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

⁶⁸ 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.

⁶⁹ See 'Total Security for prisoners' – <http://www.accontrols.co.uk/industry/prison/index.html> accessed on 17/10/05.

registers are not effective is the "negligence" of members completing them 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.

6.4.9 Specific Transgressions

- a) It is recommended that the *viva voce* evidence of be transcribed and together with his affidavits⁷⁰ 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 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.

6.4.10 This report and the transcript should be referred to the South African Police Services so that they can consult with to decide what

⁷⁰ Both exhibits "GGG" and "GGG1" should be forwarded to the Director of Public Prosecutions.

action can be instituted against him or any of those who might have transgressed the law and particularly with regard to those matters that the Department or other people never investigated.

6.4.11 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.

6.4.12 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.⁷¹

6.5 TREATMENT OF PRISONERS⁷²

6.5.1 Dirty Linen

Prisoners should under no circumstances be required to wash contaminated and dirty linen in prison hospitals. This puts them at a very high risk of contracting various diseases. It is accordingly recommended, that this practice cease with immediate effect and the Department is directed to provide a laundry service in all its prison hospitals, including Leeuwkop Maximum Hospital.

6.5.2 Prisoners' Disciplinary Tribunals

The Department should give serious consideration to setting up a disciplinary procedure for prisoners, which will recognise their Constitutional rights and also the rights of natural justice including:

⁷¹ See Chapter on Pretoria Management Area for more details regarding such practices.

⁷² See Chapter 7, Volume 1 at page 324 of the Report.

- the right to call witnesses;
- the right to cross-examine witnesses;
- the right to be assisted/represented, at least, by another prisoner;
- the right of appeal or review;
- the reasons for the judgments or decisions, which are given against them;
- the right to be tried in an open hearing where fellow prisoners and members of the prisoner's family may be allowed, provided that security permits it. In cases where security prevails, the right to have the decision of the disciplinary tribunal be made public.

6.5.3 Re-training of Warders

The Department should give serious consideration to the re-training of the warders, in the following:

- The Constitution and human rights culture;
- Conflict resolution skills;
- Chairing and prosecuting in the Prisoners' Tribunals.

6.5.4 Amendment of Legislation

The Department should give serious consideration to changing the existing procedures as prescribed by the 1998 Act since the likelihood exists that some provisions will not pass constitutional muster. It is therefore recommended that section 24 of the 1998 Act be amended as follows:

- (a) Disciplinary hearings must be fair and may be conducted either by a disciplinary official, a Head of Prison or an adjudicator in serious cases of discipline, who will be either a magistrate or any legal practitioner.
- (b) (i) A hearing before a Head of Prison may be conducted informally.

- (ii) At such hearing the prisoner must be informed of the allegation against him or her, whereupon the prisoner has the right to refute the allegation.
 - (iii) The proceedings of a hearing contemplated in paragraph (a) must be recorded in writing.
- (c) Where the hearing takes place before the Head of Prison the following penalties may be imposed severally or in the alternative:
- (i) a reprimand;
 - (ii) a loss of gratuity for a period not exceeding one (1) month;
 - (iii) restriction of amenities for a period not exceeding seven (7) days.
- (d) At a hearing before a disciplinary official or an adjudicator a prisoner-
- (i) must be informed of the allegation in writing;
 - (ii) has the right to be present throughout the hearing, but the disciplinary official may order that the accused prisoner be removed and that the hearing continue in his or her absence if, during the hearing, the accused prisoner acts in such a way as to make the continuation of the hearing in his or her presence impracticable;
 - (iii) has the right to be heard, to cross-examine and to call witnesses;
 - (iv) has the right to be represented by a legal practitioner of his or her choice at his or her own expense, unless a request to be represented by a particular legal practitioner would cause an unreasonable delay in the finalisation of the hearing in which case the prisoner may be instructed to obtain the services of another legal practitioner; and
 - (v) has the right to be given reasons for the decision.
- (e) (i) Serious disciplinary transgressions may only be heard by an adjudicator.

- (ii) The Commission determines whether a charge is serious.
 - (iv) The Commissioner must refer a serious transgression to the adjudicator within twenty eight (28) days of the alleged infringement.
 - (v) At a hearing before an adjudicator a prisoner has the right to be legally represented.
- (f) Where the hearing takes place before a disciplinary official, the following penalties may be imposed severally or in the alternative:
- (i) a reprimand;
 - (ii) a loss of gratuity for a period not exceeding two (2) months;
 - (iii) restriction of amenities not exceeding forty two (42) days.
- (g) Where the hearing takes place before an adjudicator, the following penalties may be imposed severally or in the alternative:
- (i) a reprimand;
 - (ii) a loss of gratuity for a period not exceeding two (2) months;
 - (iii) restriction of amenities not exceeding forty two (42) days;
 - (iv) in the case of very serious infringement, restricted detention for a period not exceeding thirty (30) days.
- (h) The penalties referred to in subsections (3), (6) and (7) may be suspended for such period and on such conditions as the presiding officer of the tribunal deems fit.
- (i) (i) At the request of the offender proceedings resulting in any penalty other than segregated confinement must be referred for review to the Commissioner.
- (ii) The Commissioner may confirm or set aside the decision or penalty and substitute it with an appropriate order.

- (i) The Commission recommends that the term "solitary confinement" be deleted from the 1998 Act. It is recommended that the term be replaced throughout the Act with the term "restricted detention."

6.5.5 Appeal or Review Committee

The Commission recommends that a Committee be set up in each Province or Management Area under the Chairmanship of the Inspecting Judge or his nominee to act as an Appeal or Review Committee in respect of transgressions by prisoners.

6.5.6 Segregation

It is recommended that section 30 be amended to read as follows:

- (a) Segregation of a prisoner for a period of time, which may be for part of or the whole day and which may include detention in a single cell, other than normal accommodation in a single cell as contemplated in section 7(2)(e), is permissible-
 - (i) upon the written request of a prisoner;
 - (ii) to give effect to the penalty of the restriction of amenities imposed in terms of section 24(3)(c) or (6)(c) to the extent necessary to achieve this objective;
 - (iii) if such detention is prescribed by the medical officer on medical grounds;
 - (iv) when a prisoner displays violence or is threatened with violence;
 - (v) if a prisoner has been recaptured after escape and there is a reasonable suspicion that such prisoner will again escape or attempt to escape; and

- (vi) If at the request of the South African Police Service, the Head of Prison considers that it is in the interests of the administration of Justice.
- (b) (i) A prisoner who is segregated in terms of subsection (1)(b) to (f)-
- (aa) must be visited by a correctional official at least once every four (4) hours and by the Head of Prison at least once a day; and
 - (bb) must have his or her health assessed by a registered nurse, psychologist or a medical officer at least once a day.
 - (cc) Segregation must be discontinued if the registered nurse, psychologist or medical officer determines that it poses a threat to the health of the prisoner.
- (ii) A request for segregation in terms of subsection (1)(a) may be withdrawn at any time.
- (c) Segregation in terms of subsection (1)(c) to (f) may only be enforced for the minimum period that is necessary and this period may not, subject to the provisions of subsection (5), exceed seven (7) days.
- (d) If the Head of Prison believes that it is necessary to extend the period of segregation in terms of subsection (1)(c) to (f) and if the medical officer or psychologist certifies that such an extension would not be harmful to the health of the prisoner, he or she may, with the permission of the Inspecting Judge, extend the period of segregation for a period not exceeding thirty (30) days.
- (e) All instances of segregation and extended segregation must be reported immediately by the Head of Prison to the Area Manager and to the Inspecting Judge.

- (f) (i) A prisoner who is subjected to segregation must be advised of his right to refer the matter to the Inspecting Judge to be reviewed immediately when taken into segregation.
- (ii) A prisoner who is subjected to segregation may refer the matter to the Inspecting Judge who must decide thereon within seventy two (72) hours after receipt thereof.
- (g) Segregation must be for the minimum period, and place the minimum restrictions on the prisoner, compatible with the purpose for which the prisoner is being segregated.
- (h) Except in so far as it may be necessary in terms of subsection (1)(b) segregation may never be ordered as a form of punishment or disciplinary measure.

6.5.7 Overall Recommendations

Accordingly, the Commission makes the following recommendations:

- (a) The admission criteria and the rules covering prisoners at Pretoria C-Max Prison and Kokstad Maximum Security Prison should no longer be utilised in their present form.
- (b) The incarceration of inmates at these institutions in their present form should cease to exist.
- (c) The policies governing these institutions should be upgraded by the Department to be brought in line with ordinary Maximum Prisons as they exist in various management areas.

6.5.8 Short-Term Recommendations

- (a) The Department should ensure that in sending people to restricted detention and/or segregation to Super Max Prisons that it complies with its own regulations in that there is a proper medical evaluation as to whether the person can survive the detention in segregation, as anticipated in terms of the Act.
- (b) A proper record of all people sent to isolation in the C-Max Prison should be kept and proper reasons recorded and the provisions of the Act, which are applicable, be recorded.
- (c) The circumstances of the juvenile who was sent to C-Max should be investigated and the officials who abused their powers, should be charged accordingly.
- (d) The Department should review the cases of all the prisoners who are currently at C-Max to see:
 - (i) whether there was full compliance with the rules and regulations in terms of proper hearings, prior to sending them to C-Max;
 - (ii) the reason for sending them there;
 - (iii) the duration of their incarceration; and
 - (iv) whether there is medical evidence to indicate that the said inmates could withstand incarceration at C-Max.

The Inspecting Judge should confirm the above review.

6.5.9 Nutrition

- (a) It is recommended that the current practice of serving three (3) meals at two (2) specified times be ceased and that prisoners be served as specified by the 1998 Act.

- (b) It is recommended that the Department as a matter of urgency do an analysis of the costs and benefits of outsourcing the supply of food since the Department lacks the necessary capacity to comply with the supply of food.

6.6 SEXUAL VIOLENCE IN PRISONS⁷³

6.6.1

The Commission considers it appropriate to deal separately with the persons implicated since the recommendations regarding those implicated will be specifically linked to incidents of misconduct that occurred at the Pretoria Prison and which are not, in every instance, related to the general discussion of sexual violence in Prisons. Accordingly, the recommendations dealing with the specific transgressions of the Correctional Services members in abusing are set out hereafter in section 13, headed "Specific Misconduct Recommendations". The Commission's general recommendations regarding sexual violence in Prisons are set out below.

6.6.2 Sexual Violence in Prisons

- (a) In the light of the findings, it is essential that members of the Department be sensitised in dealing with rape survivors and giving assistance to rape victims.

The Commission therefore recommends that a group of Correctional Services members be nominated in each Prison to receive the necessary training to act as rape counsellors. Such training would be necessary in order properly to counsel the prisoners who have suffered the trauma of

⁷³ See Chapter 8, Volume 1 at page 390 of the Report.

being raped. The availability of such trained personnel will make a positive contribution towards protecting the psychological well being of such victims. Furthermore, prisoners will also be encouraged to come forward to report such crimes, which will in some measure have an impact on decreasing the high rate of rape at the Prisons.

- (b) It needs to be accepted that it is extremely likely that members of the Department will at some time during their careers, be exposed to prisoners of different sexual orientations and will need to accommodate those prisoners within the Prison premises and treat them all with the necessary dignity and respect as anticipated in our Constitution. To ensure a general sensitivity of all members to these situations, the Commission recommends that all newly recruited Correctional Services members, during their initial training towards qualifying as fully fledged members, be made aware of the enormous diversity of prisoners that will at some time be entrusted into their care. This training will also, no doubt, positively take care of the general homophobia that currently exists amongst most members of the Department.

It is recommended that the curriculum of the aspirant Correctional Services members include chapters/modules such as:

- (i) diversity,
- (ii) sexual orientation,
- (iii) sexual practices,
- (iv) homophobia, and
- (v) cultural differences.

- (c) It is recommended that upon admission to the Prison, the Department ensure that procedures are put in place to profile each and every prisoner

entering the correctional facility. Such profiling will take into account all the distinct features of the Prisoner relating to appearance, evidence of femininity, age and any similar indications that should indicate to the officer that such inmate is a vulnerable potential target for sexual abuse. The prisoner should, as far as possible, not be placed in the same environment as extremely violent prisoners with histories of assault.

Accordingly, it is recommended that the Department's admission criteria be re-examined and amended where necessary.

- (d) Newly arrived, first time offenders are clearly the most vulnerable group because they are ignorant about certain existing Prison practices and hence easily fall into the trap of becoming a sexual object. The institution also overwhelms them, since the warders, who are the ones who should inform them about the gangs and the discipline system in Prison, do not properly orientate them towards Prison life. The availability of such information will go a long way to protect the prisoners. They would be aware of the fact that when goods are offered to them they would be put in a position where they are in debt to the provider and that the debt would then be claimed at a particular point as, in most instances, a demand for sex.

It is therefore recommended that all first time offenders, when admitted to Prison, be put together in a cell for the first few days on their own. There should be no sentenced prisoners either as a monitor or a cleaner, as is currently the practice. This will enable the Department of Correctional Services personnel to orientate the prisoners and inform them about the existing gang activities and any other practices in Prison that could lead to sexual and other abuses. Once they are informed of this kind of behaviour, they would be able to minimise the risk and they should be able to then guard against such behaviour or recognise patterns and eminent dangers.

Such protection would be much better than the current situation where, in the view of the Commission, prisoners themselves arrange and control such orientation which, in fact, then leads to the gangs exerting and abusing their power over first time offenders. In some instances, such orientation is done by the monitor of the cell, which defeats the purpose of ensuring protection for the arriving first offender.

- (e) It is recommended that warders be educated regarding the different kinds of sexual preferences that exist amongst prisoners. Such education would be crucial in dealing with their attitude towards sexual victims in Prisons. Lack of education has been shown in that warders have little or no empathy or sympathy towards sexual victims. It is envisaged that such sexual education will also address the homophobia that exists amongst warders. The Commission is alive to the fact that this homophobia may to be reduced once all the new recruits are trained.
- (f) It is also recommended that when a prisoner commits a sexual offence, the offender, in addition to the appropriate discipline applied in accordance with the disciplinary system of the Department, or the laying of a criminal charge, be assigned to specific rehabilitation programmes. These programmes will directly address the question of sexually offending behaviour as well as any other auxiliary factor and issues that indirectly feed into the offender's sexual behaviour. Accordingly, it is recommended that the Department design rehabilitation programmes that are specifically and exclusively aimed at sexual offenders inside and outside Prison.
- (g) ~~It is recommended that more psychologists be appointed to address the Department's lack of counselling and trauma Service.~~ Psychologists fulfill a major role in addressing the victimisation and trauma sexual victims suffer and it is clear from the evidence before the Commission that there

are far too few psychologists in each Prison to deal with the needs of awaiting and sentenced prisoners.

- (h) It is also recommended that the policy designed for sexual victims apply not only to sentenced prisoners but also to awaiting trial prisoners, who are as in much need of such Service as their sentenced counterparts.
- (i) It is recommended that proper complaint mechanisms and channels be put in place to encourage rape and sexual survivors to come forward and report the offences committed.
- (j) It is further recommended that the current system that exists to investigate criminal matters within the Prison by the South African Police Service be stopped. These investigations leave much to be desired since the police constantly interview, consult and take statements inside the Prison with the assistance of the Prison authorities, under circumstances where members of the Department are implicated in offences being investigated.

It is recommended that when prisoners lay criminal complaints, they are moved to the Police Station where the interviewing of the complainant will take place. This procedure will ensure that the investigation will then be done independently at the Police Station and without the "assistance" of members of the Department. Such recommendation will indeed lead to better and far more reliable information being received from the complainant regarding the offences committed inside the Prison. Prisoners laying charges will be in a position to request protection, if it is required, and to lay charges without fear of reprisal from the Departmental officials.

- (k) It is recommended that in cases of sexual offenders, the release of the prisoner either on parole or correctional supervision be considered only after assessing information gathered from a variety of sources, including psychological, psychiatric and pre-sentence reports, behavioural observations and victim impact statements.
- (l) It is recommended that a long-term policy for awaiting trial detainees be drafted as soon as possible since the absence of such policy has a huge impact on the lack of Service rendered to awaiting trial detainees and, more specifically, the lack of support Service rendered to those in this section of the Prison who have suffered abuse.
- (m) It is recommended that better liaison procedures be set up between the Department of Correctional Services and the Department of Health in order to orientate and inform medical personnel of all the existing policies in each of these Departments. Alternatively, that doctors working for the Department of Correctional Services are seconded to the Department in order to discipline those who are working for the Department of Correctional Services who disregard the policies of the Department and who put it in disrepute.
- (n) It is recommended that a new system for distributing the Department's policies be designed. Without being prescriptive, it is necessary, at an operational level, that such a system has a method of ensuring that each and every member acknowledges having received or being aware of any policies applicable to him or her and that such acknowledgement is in writing.

It is suggested that in order to disseminate effectively all the information of all the policies as soon as possible, the Department arrange a series of workshops where these policies will be made known to the members and where they can come to terms with what is expected of them.

- (o) It is recommended that sexually abused prisoners not be put in solitary confinement nor segregated detention but rather be kept under observation in the Prison hospital. Furthermore, that if the victim cannot be accommodated in the Prison hospital, consideration be given to detaining the alleged perpetrators in single cells until the disciplinary matter is finalised.
- (p) It is recommended that cameras connected to closed circuit television be installed in all communal cells in order to monitor the activities between prisoners at all times. Such monitoring would be in the interests of the Department and the safety of all the prisoners who are detained.
- (q) It is recommended that the movement of juveniles in the Prison, as stipulated by the Commission in its Fifth Interim Report, be followed in order to combat sexual abuses of young prisoners under the age of twenty one (21) years.
- (r) It is recommended that all prisoners, upon admission, including juvenile and awaiting trial prisoners, be informed of their rights, including that they are entitled to be separated, that they are entitled to certain counselling Service etc. The Department is expected to inform them fully of their rights in the form of either a booklet or a compendium of rights of prisoners. Having due regard to the Constitution, it is recommended that such a booklet be drafted in all eleven (11) official languages.

It has also come to the Commission's attention that there are still some prisoners who are illiterate and unaware of their rights. It is recommended that in such cases, the *onus* should be on the admission's office to inform illiterate prisoners in person of their rights and only then to hand them a booklet or compendium of rights.

6.6.3 Specific Misconduct Recommendations

As stated in the main report, the Commission considered it appropriate to deal separately with the persons Karp implicated since the recommendations regarding those implicated will be specifically linked to incidents of misconduct that occurred at the Pretoria Prison. Many of these misconduct incidents are not in every instance related to the general discussion of sexual violence in Prisons.

The evidence of Karp has been discussed in the Chapter on Sexual Violence and it should be clear that he made a positive impression on the Commission. At all times Karp appeared to be confident, despite the witness having graphically to describe intimate and personal details of the harrowing experiences. Furthermore, most of Karp's testimony was substantiated with either documentary or other evidence.

By contrast, the implicated parties, who had no difficulty in subjecting Karp to the rigours of cross-examination, decided to hide behind a shield of silence by not taking the witness stand. Although the Commission is fully aware of their constitutional right and choice not to testify, they most certainly cannot exercise such choice in the face of strong and incriminating evidence and expect to escape the consequences of their decisions. They elected not to testify under circumstances that required them to at least speak up in the face of direct

accusations. They were given ample opportunity to come forward and give their version of what happened and be questioned, yet they elected to be silent. Despite there being a strong *prima facie* case against those implicated, not an ounce of evidence was presented by them to counter the accusations. Given the specific accusations against them, the Commission has to draw an adverse inference from their silence. It would be reasonable to say that those implicated did not testify because they were trying to hide behind their silence.

Despite Karp's traumatising, Karp was still able to give the Commission a coherent and detailed account of what he was subjected to at the hands of the warders at Pretoria Local Prison. The Chief Psychologist, Dr Van der Bergh, also agreed that Karp would continue to suffer for a long time and would definitely need psychological counselling to deal with the trauma.

Ultimately, in dealing with the specific incidents perpetrated, it is the finding of the Commission that Karp was a truthful and forthright witness who presented his evidence in a satisfactory manner and that there was no evidence to rebut anything that he said.

The Commission therefore makes the following findings and recommendations against the implicated parties:

(a)

By not paying any heed to the policies of the Department, Mr demonstrated clearly that he is not competent to manage a Prison as big as Pretoria Local Prison. This lack of competence may be explained by Mr

alleged lack of training as to the duties of a Head of Prison⁷⁴ but clearly does not justify or excuse the misconduct he committed.

Clearly, when one assumes a particular position of authority, it is your own responsibility to fulfill all the daily duties that come with the position – one of which would be to make decisions in terms of section 79 of the Act as to who should or should not be detained in terms of the provision and particularly, and most importantly, not to abuse the provision as a method of punishing Prisoners.⁷⁵

In dealing with the matter of Karp, it was clear that Mr _____ never applied his mind as to Karp's detention in a single cell. In fact, during cross-examination, he responded by saying if someone escapes then they are sent to isolation. This indicates that there was no application of the mind and certainly no reasons given when such a drastic decision was taken. Clearly, as can be seen from the outcome of his decision, Mr _____ abused the provisions of section 79 by using it as a form of punishment. Mr _____ also abused his powers in ordering that mechanical restraints be used on the prisoner.⁷⁶ His conduct was definitely not in accordance with Departmental policies.

The Commission accordingly recommends that Mr _____ be charged with:

- (i) Contravention of Column A, clause 2.1, in that he was grossly negligent in execution of his duties by ordering that Karp be placed in the isolation cell;

⁷⁴ Mr _____, in his own words, said that he had not received any training for the position as Head of the Prison and had never attended a course on what heads of Prison do.

⁷⁵ Mr _____'s abuse of the provision is dealt with in detail in the Chapter on Treatment of Prisoners.

⁷⁶ Mr _____ ordered that the prisoner Karp also be put in leg irons when he was arrested for his escape. The record shows that Karp could not pose a security risk after being put in segregation and that the only reason for such an order was to further "punish" him.

- (ii) Contravention of Column A, clause 2.1, in that he was grossly negligent in the execution of his duties by ordering mechanical restraints when this was not authorised by Departmental policies or any other regulation.
- (iii) Contravention of Column A, clause 2.1, in that he failed to keep proper record of prisoners sent to segregation, or kept proper data as required by legislation and the Department's policies.⁷⁷

(b) Mr

The Commission finds, in the light of the evidence presented by Karp, that Mr was indeed under the influence of alcohol on the day that he ordered the prisoner, Karp, to perform oral sex on him.

Mr , like many of the others, decided not to testify at all despite the *prima facie* case against him being presented to the Commission. The testimony of Karp becomes therefore conclusive evidence given the specific circumstances.

Accordingly, with regard to Mr , the Commission recommends that:

- (i) He be charged with contravention of Column A, clause 5.5 of the Disciplinary Code in that he committed an act of sexual harassment by compelling a prisoner to have oral sex with him and that by doing so he injured the sexual dignity of the prisoner, Karp;
- (ii) He be charged in terms of the Disciplinary Code of contravening Column A, clause 6.4 in that he permitted a prisoner or any other person subject to

⁷⁷ See Pretoria transcript pages 5621 and 5622 and Exhibit 'NNNS'.

community corrections to take alcohol or prohibited drugs and had that in their possession.

Should it be shown that Mr [redacted] was not on duty on the day in question, then, it is the view of the Commission, that he should not escape discipline. If that is the case, it is our opinion that, by being under the influence of alcohol, he breached the security arrangements and that he then should be charged in the alternative with contravening Column A, clause 5.10, breach of the internal security arrangements.

- (iii) He be criminally charged with an act of indecent assault, alternatively *crimen injuria* by forcing the prisoner, Karp, to perform oral sex on him.
- (iv) He also be charged criminally with contravening section 119 of the Correctional Services Act No. 111 of 1998, in that he supplied intoxicating liquor to prisoners whereas the Act provides that no person may supply prisoners with any intoxicating liquor. In this particular instance, this will take care of the fact that he was not on duty should the documentation prove that he was not on duty.

(c) Mr [redacted]

Regarding Mr [redacted], it is clear that he committed an act of *crimen injuria* and the Commission therefore recommends that:

- (i) He be charged criminally with an act of *crimen injuria* in that he insulted the prisoner by saying certain things to him, which indeed affected and impaired his dignity. The insults that were leveled at Karp were homophobic insults, which infringed upon his dignity.

(ii) He be charged in terms of the Disciplinary Code with a transgression of Column A, clause 5.5 in that he impaired the sexual dignity of the prisoner by stating certain insults, which were homophobic.

(d) Mr

The Commission's findings are also that Karp was confident regarding what Mr said. Karp was in fact so confident that a charge was laid against him. The words spoken that insulted him were "*you're a pig, you're a rubbish.*" Even considered separately, the words seem to be insulting in nature. Added to this was the repeated discrimination of saying "*you look bad moffie*", words clearly intended to degrade Karp and to impair his dignity.

As the prosecution service has already decided not to proceed with any criminal charges, the Commission will only deal with the internal transgressions committed by Mr . In this regard, it is recommended that Mr be charged:

- (i) In terms of the Departmental Disciplinary Code, contravening Column A, clause 5.11 in that he used improper language.
- (ii) In terms of the Departmental Disciplinary Code, contravening Column A, clause 5.13 in that he willfully and intentionally discriminated against Karp on the basis of Karp's sexuality, which is outlawed by the Constitution.

(e) Mr

Karp's evidence was also clear with regard to Mr [redacted] insulting Karp by saying the words *"aren't you ashamed of mixing with kaffirs"* because Karp had befriended a black prisoner, Ms Shelley Ndlovu.

It is recommended that Mr [redacted] be charged:

- (i) In terms of the Departmental Disciplinary Code, contravening Column B, clause 5.11, the use of improper language to another person or alternatively,
- (ii) contravening column B, clause 5.16, that he used words that discriminated on the basis of race, gender and sexuality.

(f) Mr

The evidence of Karp is also accepted regarding his implication of Mr [redacted] and his actions. It is recommended that Mr [redacted] be charged:

- (i) In terms of the Departmental Disciplinary Code, contravening Column B, clause 5.11, the use of improper language to another person, alternatively;
- (ii) Contravening Column B, clause 5.16, that he discriminated against another on the basis of race, gender, disability and sexuality.

(g) Mr

As Mr also used derogatory terms and insulting words against Karp, the Commission recommends that:

- (i) He be charged in terms of the Departmental Disciplinary Code, with contravening Column B, clause 5.11, in that he used improper language to another person, alternatively;
- (ii) Contravention of Column B, clause 5.16, in that he discriminated against Karp on the basis of race, gender, disability and sexuality.

(h) Mr

It is clear from the evidence before this Commission that Mr violated Karp in that he forcefully raped him.

As was stated earlier in this Chapter, the Commission is mindful of the fact that the common law offence of rape has still not been extended by legislation in South Africa to cover such sexual assaults; as such conduct is clearly an act of rape.

The Commission, however, cannot go beyond the boundaries of the law despite the fact that the common law is not in tune with gender equality.

The Commission therefore recommends that Mr be charged with:

- (i) A charge of indecent assault. This is, however, a recommendation and does not detract from the fact that the right to institute prosecution lies with the National Director of Public Prosecutions (NDPP). Given the circumstances, it is recommended that the docket be sent to the NDPP, together with this Chapter of the Commission report and the Commission transcript in order to put the NDPP in a position to make a decision.

(i)

The evidence against _____ was astounding. The Commission was shocked to hear that a medical practitioner could be so insensitive and reckless regarding the emotional plight of a patient. _____ failed in not properly investigating or adequately assisting a patient in desperate need of help.

The Commission recommends that:

- (i) A transcript of _____ evidence, along with the relevant documentation, be sent to the Health Profession's Council for investigation;
- (ii) The Department review _____ contract in the light of his own admission that he mismanaged the patient, Karp.

(j) **Mr Wilkins**

The Commission's findings are that Mr Wilkins was ordered to deal with the matter of Karp. Although Mr Wilkins' conduct, in some respects, clearly does not correspond to that of a prudent Correctional Services member, the Commission

is of the opinion that it would be regrettable if he alone were to face any disciplinary action since many of his actions were born of instructions from his superiors.

The Commission would, however, like to recommend in general that matters like sexual violence and sexual transgressions against prisoners are given higher priority in the Department and that all involved personnel deal with them with empathy and sympathy.

It is clear from the evidence of the Chief Psychologist, Dr Van der Bergh, that the assistance rendered to Karp by Mr Wilkins and others fell short of what should have been done for a sexual victim. Given the lapse of time and the hierarchy of the different role players, it will serve no purpose to pursue any disciplinary action against him alone. The Commission therefore does not recommend that any action be taken against Mr Wilkins. However, he should be better trained in the psychological trauma sexual victims suffer in order to be of better assistance to these victims in future.

6.7 PAROLE⁷⁸

6.7.1 Parole Generally

- (a) To avoid interference from employees of the Department, the Minister of Correctional Services should consider amending the Correctional Services Act and regulations to specify that Parole Boards are accountable only to the Minister.

⁷⁸ See Chapter 9, Volume 1 at page 463 of the Report.

- (b) The exclusion of officials of the Department as chairpersons and vice-chairpersons of the parole boards and correctional supervision boards should be expressly incorporated in the Act.
- (c) The Minister should consider delegating the powers of overseeing the Parole Boards to an Independent Board created for that purpose or to the Office of the Inspecting Judge. In the case of the Office of the Inspecting Judge, an assistant should be appointed in terms of section 87 (2) of the Act to set up a new directorate to oversee paroles.
- (d) The independence of the Parole Boards and the Correctional Supervision Boards should be enshrined in the Act and Regulations.
- (e) The Parole Boards and Correctional Supervision Boards should be chaired by legally qualified persons on an ad hoc basis.
- (f) The area of jurisdiction of the Parole Boards and Correctional Supervision Boards should be demarcated according to the provinces or the various command areas in terms of which the Department of Correctional Services is demarcated;
- (g) The right of a prisoners to review a decision of the Parole Boards or the Correctional Supervision Boards should be enshrined in the Correctional Services Act 1998 and it is recommended that section 75(8) of the Act be amended to read:

"(8) (i) A decision of the Board is final, unless the prisoner wants to exercise his right to review the proceedings in which case the record of the proceedings before the Board will be prepared and submitted to the Correctional Supervision or Parole Review Board;

(ii) *A Board shall forthwith inform the prisoner whose parole has been denied that he may inspect and make a copy of the record of the proceedings and that such application for review should be lodged within 14 days of the decision of the Parole Board."*

- (h) Payment of the members of the Boards should fall under the Minister and not the Commissioner of Correctional Services. In this regard an amendment should be made to Section 74(8) of the Act.
- (i) The appointment of members of the Parole Review Boards and the Correctional Supervision Review Boards should not be limited to members of the National Council of Correctional Services. Consideration should be given to the appointment of retired Judges and other retired legal practitioners on an ad hoc basis.
- (j) Section 79 of the 1998 Act should be amended to have a less restrictive threshold for terminally ill prisoners to be released on medical parole.
- (k) In the light of the above, it is the Commission's view that the policy of the Department dealing with the classification of crimes for parole purposes should be reviewed.
- (l) It is recommended that the parole policies of the Department be amended, more specifically the section classifying assault *per se* as an aggressive offence. More information should be placed before the Board before it decides that the crime was an aggressive crime.
- (m) Chairpersons of the Boards should give reasons, especially if they are refusing parole, so as to comply with the Constitution and the Promotion of Access to Justice Act.

- (n) The Department should make a concerted effort to explain the Parole Provision to the inmates. This should include preparing a booklet for the inmates and their families explaining parole. In particular explaining:
- (i) The legal provisions;
 - (ii) The underlying rationale of the system;
 - (iii) The manner in which parole operates in practice;
 - (iv) How parole affects each individual;
 - (v) The responsibilities of each prisoner released on parole; and
 - (vi) How to deal with problems which may affect your parole.

6.7.2 The Matter of Mr Hlongwane

The Commission recommends that _____ should never be appointed to any position within the Parole Boards or any position of responsibility within the parole system.

6.7.3 The Stanley Ndlovu Matter

- (a) _____ should be subjected to counselling or training so that she can understand the provisions of the Act and the incorrectness of her reasons for refusing the parole of Mr Ndlovu. She should also be apprised of the consequences of her unlawful refusal of parole.
- (b) Mr Stanley Ndlovu's application for parole should be referred to the Parole Board immediately.

6.8 CONVERSION OF SENTENCE⁷⁹

6.8.1 Correctional Supervision

To address the challenge facing the Department of prison overcrowding, the Commission recommends that the Department should, as soon as possible:

- (a) Conduct a survey of all its Management Areas countrywide to establish how many prisoners currently qualify for their sentences to be converted to correctional supervision.
- (b) Inform such qualifying prisoners about the provisions of the Criminal Procedure Act that entitle them to approach the Commissioner to request that he consider converting their sentences to one of correctional supervision.
- (c) Make application to the relevant courts for the release of all such prisoners on correctional supervision.

6.8.2 Mr Marimuthu

as a senior member of the Department, should have been aware of the policies of the Department, the Commission recommends that the Department should charge him in terms of the Disciplinary Code for his actions in flagrantly pursuing the application for Mr Marimuthu's release and flagrant disregard for the Department's clear policy directives.

⁷⁹ See Chapter 10, Volume 1 at page 540 of the Report.

6.8.3

It is recommended that _____ not be considered for any placement as a Chairperson of a Parole Board until such time as he has undergone appropriate training, which will make him fit to sit in a position on a Parole Board or Institutional Committee.

6.8.4 Victims of Crime

To address the sensitivities and give due recognition to the victims of crime, the Commission motivates that serious consideration be given to the amendment of Section 276A(3) of the Criminal Procedure Act to read as follows:

"Sub-section A(3) – Where a person has been sentenced by a court of imprisonment for a period –

- (i) not exceeding five (5) years; or*
- (ii) exceeding five (5) years but the date of release in terms of the provisions of the Correctional Services Act, and the Regulations made thereunder is not more than five (5) years in the future.*

The Commissioner may, if he is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the Clerk or Registrar of the Court, as the case may be, to have that person appear before the court a quo in order to reconsider the sentence, provided that the Commissioner has given notice to the complainant of the application that will be lodged, which notice must be advertised in the Government Gazette and in a local newspaper where the crime was committed and which notice must notify the complainant of their right to oppose such an application."

6.9 JUDICIAL INSPECTORATE⁸⁰

Accordingly, the Commission recommends that:

- 6.9.1 The Correctional Services Act should be amended to provide that the Office of the Inspecting Judge should also deal with complaints of "corruption and maladministration". In this regard, the IPVs should have an obligation to take reports or complaints of corruption from complainants and prisoners for onward transmission to the new corruption-fighting agency or Directorate to be set up in terms of this report. Such amendment should expressly set out the aims and objectives of the Office of the Inspecting Judge.
- 6.9.2 The Office of the Inspecting Judge to consider the amendment of the Act to incorporate the appointment of deputies to the Inspecting Judge to deal with specific areas that may need to be investigated.
- 6.9.3 Section 90(1) of the Act be amended to ensure that the investigations can be conducted in respect of the entire Department by deleting the word "prisons" and substituting it with the words "Department of Correctional Services including various Management Areas and the prisons."
- 6.9.4 The Correctional Services Act be amended so that:
 - (i) The Independence of the Office of the Inspecting Judge is protected in the Act. The Office should be subject to the Constitution and law so that it can exercise its powers and perform its duties without fear, favour or prejudice. No person or organ of State should interfere with the functioning of the Office of the Inspecting Judge;

⁸⁰ See Chapter 11, Volume 1 at page 562 of the Report.

- (ii) The Office of the Inspecting Judge is accountable to the Minister of Correctional Services and reports on the activities and the performance of its duties and functions to the Minister at least once a year;
- (iii) The Office of the Inspecting Judge functions independently of the Department and in particular the Commissioner, as he is responsible for the prisons and prisoners;
- (iv) The functions of the Office of the Inspecting Judge are funded by money appropriated by Parliament for that purpose;
- (v) The Inspecting Judge is the accounting officer for the Office of the Inspecting Judge in terms of the Exchequer Act No 66 of 1975 ;
- (vi) The powers of the Office of the Inspecting Judge are increased to include powers of:
 - (aa) search and seizure to make its work more effective. (See Regulations 13 and 17 of the Regulations governing the work of the Commission);
 - (bb) enforcing the recommendations of the Office of the Inspecting Judge within the Department. Foreign experiences in this regard should be considered after due consultation with civil society organisations, the Department and the Correctional Services Portfolio Committee;
 - (cc) for the moment the responsibility set out in (ii) above should be entrusted to the Heads of Prison to provide regular feedback on the recommendations made by the IPVs in various prisons.
- (vii) Section 87(1) and section 89(1) are amended so that the appointment of staff occurs "after consultation with the Minister" and not "in consultation with the Commissioner".

- (ix) Section 89(3) is amended so that the employees of the Office of the Inspecting Judge are deemed to be members of staff of the Department of Public Service and Administration or the Department of Justice, or any other Department other than the Department, to retain their independence from the Department.
- (e) The necessary arrangements be made with regard to budget, accommodation, employment of staff and opening of branch offices to enable the Office of the Inspecting Judge to perform an effective job with regard to the fight against ill-treatment of prisoners in the various prisons in the country.
- (f) In order to accord the officials of the Inspecting Judge adequate protection against officials of the Department who frustrate them in the performance of their work, Chapter 16 of the Correctional Services Act No. 111 of 1998 should be amended to include a further section that makes it a criminal offence for members of the Department to interfere, hinder or frustrate the officials of the Inspecting Judge in the performance of their duties. A penalty clause should accompany the criminalisation of this conduct, like all other criminal offences created in terms of Chapter 16 of the Correctional Services Act.
- (g) Lastly, the general amendment of the entire Chapter is advised to stress that the fight against corruption is a paramount issue in the Department and the Office of the Inspecting Judge cannot ignore it, notwithstanding its amended mandate. The Office of the Inspecting Judge should give this serious consideration when it is investigating the various prisons, as corruption goes hand in hand with the treatment of prisoners.

6.10 PRISON OMBUDSMAN⁸¹

6.10.1 Anti-Corruption Agency

- a) An independent agency (Prison Ombudsman) similar to the Independent Complaints Directorate of the South African Police Service should be established.
- b) The agency should be mandated to investigate corruption, maladministration and dishonest practices within the Department.
- c) The agency should have a presence in the whole country, that is, offices should be opened in every province to deal with the issue of corruption, maladministration and dishonest practices.

6.10.2 Toll-free Number

- a) A toll-free number should be opened for purposes of reporting corruption.
- b) The existence of the toll-free number should be conveyed to all prisoners upon their arrival at each institution.
- c) Notices must be put up in the various institutions about the existence of the toll-free number.
- d) The toll-free number should be published nationally for the benefit of the members of the public at large.

⁸¹ See chapter 12, Volume 1 at page 594 of the Report.

6.10.3 Witness Protection

- a) The Department and/or the agency should set up an appropriate witness protection programme for their witnesses, especially prisoners, and can use the Witness Protection Act to support the protection of ordinary witnesses. This agency might have to develop a policy that will specifically deal with prisoners and how they are going to be incarcerated in the various prisons if they are under witness protection.
- b) A witness protection policy should be developed. Such policy should aim to ensure that the protected disclosure, which is given to employees in terms of the Protected Disclosure Act, should be extended to the prisoners who are incarcerated in the various prisons, insofar as it might be appropriate.

6.10.4 Inspecting Judge

The reporting to and taking of corruption complaints by the Office of the Inspecting Judge should complement the work of the abovementioned agency.

6.10.5 Department of Public Service and Administration

The Department should align itself with the recommendations of the Department of Public Service and Administration (DPSA) with regard to the anti-corruption strategy.

6.10.6 Security Functions

(a) **Short-Term:**

- (i) The Department should seriously consider the restructuring of the security function at prisons so that a new unit should take full responsibility for guarding and searching members, visitors and all other officials who enter and exit the prisons. This will ensure that if contraband is found inside the prison, then the said security unit could be penalised in terms of penalty clauses incorporated into their contracts of employment for the failure to perform the functions accordingly.
- (ii) The employees of the aforesaid security unit to be appointed would have to be properly vetted by the necessary authorities to ensure that the unit does have integrity and has complied with the various statutory provisions in terms of which prisons are run.
- (iii) The separate security unit should only be in charge of searching and guarding the prison premises. The unit should be distinguishable from the correctional services members, who are in charge of safe custody of the prisoners. In this regard, the unit should be distinguishable in terms of uniform, ranks, salary structure and the nature of training, which would be given to them specifically for this task.
- (iv) The searching of warders, visitors and prisoners should not be limited to searching when warders are entering the prison in the morning or leaving in the afternoon. The searching of prisoners and warders should, in addition to the searching when they enter the prison, also be carried out at random when they are on duty. The searching should be done by

this newly formed security unit within the Department to carry out searches and seizures.

- (v) For checks and balances, the searching of visitors should be done at three (3) different points. On visitation days, the prisoners, in addition to the random searches referred to above, should be searched before they return to their sections.
- (vi) The security unit that would be contracted to deal with the searching of the members, visitors and prisoners entering and exiting the prison should report to the agency, (Prison Ombudsman), which will be formed to fight corruption, which is set out in this report.
- (vii) The aforesaid Ombudsman should have full responsibility for ensuring that there is a corruption-free prison system in South Africa and thus should take responsibility for searching to ensure that no contraband enters the prison premises. Alternatively, depending on logistical issues, the aforesaid security unit could be the responsibility of the Area Manager of each Management Area until such time as the Office of the Ombudsman has been established.
- (viii) The Area Manager should ensure that each of the Prison Heads give the security unit unlimited access to the various prisons.
- (ix) When the security function has been outsourced, the monitoring and scanning equipment should become the responsibility of the security unit.

(b) **Long-Term:**

- (i) The issue of a prison layout, which is conducive to searching and to the fight against the smuggling of contraband into the prison, needs urgent attention and the Department should review all visitation areas in the various prisons to ensure that:
- (aa) The visitation areas are conducive to the searching of visitors, both males and females, whilst maintaining their dignity and privacy;
 - (bb) The monitoring or scanning machines are fully operational.
- (ii) The Department should give serious consideration to building a visitation area, which will be separate from the main prison, in all prisons the Department plans to build in the future;
- (iii) With the resources permitting it, consideration should be given by the Department to the renovation of some of the prisons to ensure that the visitation areas are separate from the main prison and are a distance away from the prison;
- (iv) If the Department, for whatever reason, does not restructure the security function as suggested in this Chapter, then it must seriously consider installing monitoring equipment, like video cameras in strategic positions in all prisons nationally.

6.11 OVERCROWDING⁸²

6.11.1 Short -Term

The Commission recommends that:

- (a) The Department should seriously consider moving sentenced prisoners to outlying less crowded Management Areas or empty prisons within Management Areas to create space for other prisoners from the overcrowded Management Areas or prisons.
- (b) For purposes of the visitations of sentenced prisoners and for those prisoners who have been moved, the Department should consider making a detailed logistical plan for transport arrangements for members of the families, relatives and friends to be transported on a Saturday and Sunday morning to the prison where these people are incarcerated and then return the relatives/visitors to the original point of collection. The point of collection could be a Management Area.
- (c) Arrangements should be made for the Department of Safety and Security to bear the costs of awaiting trial prisoners.
- (d) The above recommendations should be implemented after seeking the necessary approval.
- (e) The Department should re-introduce the system of Gaol Returns and ensure that all Management Areas comply with it, to enable the members of the Judiciary to intervene with respect to awaiting trial prisoners.

⁸² See Chapter 13, Volume 1 at page 619 of the Report.

- (f) The Department should be directed to implement the recommendations emanating from previous investigations regarding overcrowding.

6.11.2 Long-Term

- (a) In the light of the function of the National Council Correctional Services, this Commission would like to recommend that a sub-committee of the Council be formed, which will, amongst others, consider setting up:
 - (i) Parameters for release of prisoners on amnesty who may not necessarily qualify to be released on parole. For example, the aged, the infirm and the young prisoners;
 - (ii) Consider recommending to the President through the Minister, the need, or otherwise, of:
 - (aa) regular amnesties being recommended to ease the overcrowding;
 - (bb) to make recommendations to the various Parole Boards to consider releasing various categories of prisoners when there is a need.
- (b) The Parole Boards be directed to consider the issue of overcrowding of prisons as one of the compelling factors that needs to be taken into consideration in any application for parole by sentenced prisoners.
- (c) The Correctional Services Board be directed to prepare a score card or a means test, which should be utilised by the Parole Boards, to take cognisance of the overcrowding situations within our prisons.

- (d) The Correctional Services Board and/or the Correctional Supervision and Parole Board prepare guidelines, which will be utilised by the Commissioner in releasing prisoners on correctional supervision in terms of section 276(1)(i), section 276A(3)(a), section 287(4)(a) and section 287(4)(b) of the Criminal Procedure Act. These guidelines should be driven by, or be influenced by, the overcrowding situation in our prisons.
- (e) The Department seriously consider the appointment of a Special Task Team of experts or lawyers for a fixed period with instructions to assist with the applications to the various courts in terms of sections 276(1)(i), 276A(3)(a), 287(4)(a) and 287(4)(b) in respect of those prisoners who qualify.

6.12 ABUSE OF POWER⁸³

It is recommended that:

- (a) Mr [redacted] and Mr [redacted] be charged with contravening Column A, Clause 4.3 of the Departmental Disciplinary Code in that they furnished false and misleading evidence to the Commission.
- (b) The Department should investigate the reasons why Mr [redacted] Mr [redacted] and Mr [redacted] usurped the functions of Mr Delport and if no good reasons are forthcoming, then all three (3) should be charged for unsatisfactory work performance, for negligence and or failing to follow

⁸³ See Chapter 14, Volume 1 at page 642 of the Report.

⁸⁴ At the time of writing this report, Mr [redacted] was dismissed but his dismissal was still pending before the Bargaining Council.

Departmental policies. (See Column B, Clause 2.1 of the Departmental Disciplinary Code)

- (c) The Department should also investigate why the appeal of Ms. [redacted] has been delayed for a period of approximately two (2) years and charge those responsible for the delay for dereliction of their duties.

6.13 DISCIPLINARY INQUIRIES⁸⁵

6.13.1 General Recommendations

The Commission accordingly makes the following recommendations:

- (a) That the discipline of employees in the Department of Correctional Services be taken away from the Department and entrusted to independent outside agencies.
- (b) If for some reason the Department is unable to implement this recommendation referred to above then the Commission recommends that the disciplining of employees be entrusted to the Public Service Commission.
- (c) In the event that the Department is unable to implement the recommendations referred to above then the Commission makes the following recommendations:

⁸⁵ See Chapter 15, Volume 1 at page 695 of the Report.

- (i) That the Department solicit the services of specialists in Labour Law to train officials in the conduct of disciplinary hearings, i.e. investigators, initiators and presiding officers.
- (ii) That officials in managerial positions from the rank of Assistant Director upwards should not be permitted to represent junior employees during disciplinary proceedings.
- (iii) That the Department embark upon a full programme of training all employees about the nature and seriousness of the offences created in terms of the Disciplinary Code, and in particular assault on prisoners.
- (iv) That in all disciplinary hearings where cases are withdrawn due to time frame, each case should be investigated individually and if it is found that any member involved in such cases contributed to the delay then such member should be charged with negligence accordingly.
- (v) That the Labour Relations Office as well as the Legal Services Section of the Department should render the necessary support and guidance in disciplinary matters nationally.
- (vi) Managers who were involved in deciding whether a particular member should be disciplined or not should not be appointed as investigators, initiators or presiding officers in the ensuing disciplinary proceedings.

- (vii) All Area Managers should retain overall responsibility to ensure that all investigations are finalised timeously and disciplinary hearings, where applicable, take place in compliance with the provisions of Clause 7.4. Should an Area Manager fail in his duty in this regard he must be charged accordingly. All matters that are withdrawn because of the provisions of Clause 7.4 should be investigated and disciplinary steps be instituted where necessary against all initiators or chairpersons who are found to be negligent or acted improperly. This should be made standard procedure with immediate effect.
- (viii) The Department should engage outside agencies for the purposes of training initiators, special investigators and presiding officers to enforce the Disciplinary Code in the Department.
- (ix) The Department should establish a directorate under the Labour Relations Office which specifically deals with the disciplinary inquiries.
- (x) All Area Managers and Heads of Prison should be obliged to follow up criminal charges that are laid by prisoners or any other complainant against transgressors and make reports about progress in the cases to Head Office.
- (xi) All persons appointed as Chairpersons of Disciplinary and Appeal hearings in the Department should have demonstrable knowledge of labour law.

6.13.3 Amendments to the Disciplinary Code

- (a) The Commission is mindful of the fact that the Department's Disciplinary Code is a product of negotiations at the Bargaining Council and is therefore a collective agreement. The trade unions would be vehemently opposed to unilateral amendments to the Code by the Department.

- (b) It therefore stands to reason that all amendments to the Disciplinary Code and Procedure should be negotiated at the relevant Bargaining Council. The Department should therefore endeavour to negotiate an amendment of the Disciplinary Code and Procedure at the Bargaining Council with the view of attaining the following recommended amendments to the Code.

- (c) The Commission recommends that the Department's Disciplinary Code should be amended accordingly as follows:
 - (i) By including a specific offence of assault on prisoners by members as a dismissible transgression under Column A.

 - (ii) By including an offence of sexual assault under Column A of the Disciplinary Code. Sexual assault should include a range of offences from indecent assault to rape of a prisoner and a member.

 - (iii) By including a transgression of failure to conduct a search while on duty as a dismissible offence under Column A of the Code.

- (iv) By including a transgression of allowing a prisoner to have sexual intercourse with a visitor in prison premises as a dismissible offence under Column A of the Disciplinary Code.

- (d) The Commission also wishes to raise other shortcomings in the Code which need to be addressed by way of negotiation in the Bargaining Council. Some of these shortcomings in the Code are:
 - (i) The definition of "gross negligence" in the Code:

As the Code currently stands the definition of "gross negligence" is:

"any act or omission without considering the possible consequences thereof and where such consequences could be dangerous to human life or limb – an element of recklessness should be present."

- (ii) It is the opinion of the Commission that the definition of gross negligence should be deleted since it is of no assistance in the interpretation of gross negligence. In some Management Areas the definition was used as an excuse for why members who were grossly negligent in the execution of their duties were not charged. The argument was that the acts were not dangerous to human life and hence, the preference was to charge such members only with unsatisfactory work performance. The different sections of the definition in Column A are read in conjunction and hence the argument was that the members can seldom be charged for gross negligence.

- (iii) Should the bargaining parties not come to an agreement to delete the definition, it is suggested that consideration be given to add the following words, namely:

"gross negligence is defined, amongst others as"

- (e) Another Clause that caused problems is Column A, Clause 5.12, which provides as follows:

"Misuse of position in the Department/Public Service to promote or prejudice the interest of any political party."

This Clause combines different actions, which are not always related to each other, with the effect that an employee may seriously abuse his position in the Department but because the abuse is not aimed at promoting or prejudicing a political party, the members get charged with transgressing Column B, Clause 5.10 – Misuse of position for personal gain to the disadvantage of the employer. This transgression, however, is not a dismissible offence.

- (f) The Commission is of the view that the transgression in terms of Column A, Clause 5.12 should be amended to read:

"Misuse of position for personal gain and/or to the disadvantage of the employer; Misuse of position in the Department to promote or to prejudice the interest of any political party."

The Commission is of the opinion that if the Clause is amended as suggested, it could be used more effectively in the disciplining of members.

6.13.4 Disciplinary Procedure

(a) Clause 7.4: Time Frame

The Commission recommends that Clause 7.4 of the Disciplinary Code should be amended to read as follows:

- (i) *If the employer without good reason fails to institute disciplinary proceedings within the period of three (3) months after completing the investigations, the employee may make representations to the Head of Prison to oversee the implementation of a disciplinary hearing. The phrase "disciplinary action" shall fall away and should be deleted from the original Clause 7.4.*

- (b) **Clause 7.1.1: Rights of Employees**
 - (i) A Clause should be added, that members of the rank Assistant Director or above should not be allowed to represent junior employees during disciplinary proceedings, alternatively, all officials in managerial positions should not be allowed to represent junior employees during disciplinary proceedings.

- (ii) The disciplinary procedures should be amended to include the following:

"The Department should be given power to reinstate a charge withdrawn in terms of Clause 7.4 of the Disciplinary Code or withdrawn for any other reason."

6.13.5 Recommendations With Regard to Individuals

- (a) [REDACTED]

- (i) The conduct of Mr [REDACTED], in failing to charge Mr [REDACTED] with the offence of breaching internal security arrangements when he stabbed a prisoner with a knife, amounts to misconduct in terms of the Disciplinary Code.

- (ii) It is accordingly recommended that Mr [REDACTED]

- (aa) be charged with contravening Clause 2.1 Column A of the Disciplinary Code – gross negligence, in that he failed to charge Mr [REDACTED] with contravening Clause 5.10 of the Disciplinary Code.

- (b) Mr [REDACTED]

- (i) The conduct of Mr [REDACTED] in accepting the appointment as chairperson of the disciplinary inquiry of Mr [REDACTED], well knowing that he had no power to impose a sanction of dismissal, amounts to misconduct in terms of the Disciplinary Code.

(ii) The Commission accordingly recommends that Mr . . .

(aa) be charged with contravening Clause 2.1 Column A of the Disciplinary Code -- gross negligence in the performance of his duties.

(c) Mr . . .

(i) The conduct of Mr . . . in appointing Mr . . . as the chairperson of the disciplinary inquiry of Mr . . ., well knowing that Mr . . . had no power to pass a sanction of dismissal because of his rank, amounts to misconduct in terms of the Disciplinary Code.

(ii) The Commission accordingly recommends that Mr . . .

(aa) be charged with contravening Clause 2.1 Column A of the Disciplinary Code -- gross negligence in the performance of his duties.

(d) Mrs . . .

(i) The conduct of Mrs . . .

In failing to implement the recommendation of the investigating team that the Heads of Prison, Mr . . . and Mr . . ., be reshuffled from their positions because of incompetence, amounts to gross negligence in the performance of her duties.

- (ii) The Commission accordingly recommends that Mrs [REDACTED]
- (aa) be charged with contravening Clause 2.1 Column A of the Disciplinary Code – gross negligence in the performance of her duties.
- (e) Mr [REDACTED]
- (i) The conduct of Mr [REDACTED] in carrying a knife in a working environment amounts to misconduct in terms of the Department's Disciplinary Code.
- (ii) The Commission accordingly recommends that Mr [REDACTED]
- (aa) be charged with contravening Clause 5.8 Column A of the Department's Disciplinary Code – unauthorised possession of a dangerous weapon;
- (bb) also be charged with contravening Clause 5.1 Column A of the Disciplinary Code – breaching the internal security arrangements.

6.14 NON-ADHERENCE TO OVERTIME POLICY⁸⁶

Accordingly the Commission recommends that:

⁸⁶ See Chapter 16, Volume 1 at page 779 of the Report.

- (a) the Department introduces a seven (7) day work week establishment within the Department, as it was recommended by the Public Service Commission during the year 2000.
- (b) the Department adopt proper verification procedures that clearly show the rank of the official, the nature of the work performed by the official, the time within which the official commences duties and departure time, prior to the authorisation of payment to the official who worked overtime. This is also one of the recommendations made by the Public Service Commission in its report of the year 2000.
- (c) Although a number of officials have been implicated as having been overpaid, in the light of the fact that there has been a serious misinterpretation of this policy as to how these officials should be remunerated, it is the view of the Commission that no recommendation should be made that these implicated officials be charged.
- (d) The Department should implement all the recommendations made by the Public Service Commission in September 2000.
- (e) The Department should embark upon an intensive training programme of all staff dealing with overtime. This training programme should emphasise the interpretation of the overtime policy.

The officials who failed to implement the Public Service Commission recommendations timeously should be charged with negligence as the delays have clearly caused wasteful expenditure.

6.15. PROCUREMENT AND LOGISTICS⁸⁷

6.15.1 Durban-Westville Management Area

In light of the findings at the Durban-Westville Management Area, the Commission makes the following recommendations:

- (a) A manual reconciliation should be performed between the quantities, as stated on paid invoices, and the actual deliveries to chief users. This would be a manual reconciliation of the G5, G6 and G23 documents.
- (b) The G23 obtained from the chief user should be reconciled with the information obtained and from the Logistics Department. This would enable the investigators to substantiate and quantify the extent of the irregularities.
- (c) There should be an audit or investigation on the purchases of other products and services by the Logistics Department by a follow-up of:
 - (i) addresses.
 - (ii) employee links.
 - (iii) over-expenditure.
 - (iv) lack of written contracts.
 - (v) purchases outside contractual conditions.
 - (vi) purchases from unauthorised suppliers, for example computer equipment.
- (d) There must be an audit and investigation into the adherence to policies and procedures by members, especially those employed at Logistics.

⁸⁷ See Chapter 17, Volume 1 at page 814 of the Report.

- (e) There must be an audit of the adequacy and effectiveness of the procurement process, in order to recommend corrective action.
- (f) Messrs [redacted] and [redacted] should be charged internally for the transgressions highlighted in this report.
- (g) The veracity of the statement regarding the need for "fresh cream" to be ordered at a prison should be investigated further to establish whether there is a need for fresh cream in this facility or any other facility.

6.15.2 Recommendation: Drugs

The Department should seriously consider the use of generic drugs to save costs, where possible, instead of using the expensive drugs sometimes being ordered by the Logistics Department, unless a medical practitioner has specifically prescribed the expensive drugs.

16.15.3 Pollsmoor Management Area

In light of the findings in the report, the Commission makes the following recommendations:

- (a) Mr [redacted]
 - (i) In view of the fact that Mr [redacted] was not charged with dishonesty, it is recommended that charges of dishonesty, based upon the allegations made by the witnesses in the annexed affidavits, be brought against Mr [redacted]. Mr [redacted] might claim that he is placed in "double jeopardy" by a second disciplinary hearing. However, Mr [redacted] was never charged with

dishonesty, merely with unsatisfactory work performance. The facts that go towards proving unsatisfactory work performance are wholly different from allegations of dishonesty, although there may be some overlap in terms of the evidence tendered in support of the charges.

- (ii) It is similarly recommended that investigations be carried out to determine how the charges that were preferred against Mr [redacted] came to be drafted. It seems improbable that the allegations of dishonesty were not apparent to those who formulated the charge sheet at the time. It was already known at that stage that the Commission's auditors had seized certain documents from Mr [redacted] ' office.
- (iii) The Commission recommends that criminal charges be brought against Mr [redacted].
- (iv) The role played by Mr [redacted] in this matter needs to be investigated further to see whether there were irregularities or abuse of power.

(b) General Recommendations

In addition to the aforementioned, the Commission makes the following recommendations emerging from the forensic auditor's report dated 24 July 2003.

- (i) It appears that no proper internal audit function was carried out at the Provincial Commissioner's Office. A properly conducted internal audit function would have reported on non-compliance with procurement policies and procedures and corrective action could have been taken earlier.

- (ii) Independent internal auditors should be appointed to ensure that the internal control system is operating as intended.
- (iii) The internal control system for procurement should be upgraded so that:
 - (aa) No member should be allowed to invite, compare and approve quotations by himself.
 - (bb) The chief user clerk should always invite the quotations by using the database.
 - (cc) After receiving such quotations and carefully evaluating the documents, these documents should be forwarded to a senior member who is delegated to approve such quotation documents. The tender/quotation documents should be disregarded if received by fax. The tender/quotation documents should be received in the same way as if it were a proper tender.
 - (dd) The procedure stipulated in the ST36/37 manual should be strictly adhered to.
 - (ee) A proper tender committee should be elected and trained.
 - (ff) All tender documents should be locked in a safe and the safe should have a double lock facility.
 - (gg) Two separate keys should open the safe door and these two keys should be issued to two (2) members chosen from the tender committee.

(c) Pollsmoor Procurement

The Commission recommends the following with regard to Suppliers, and Suppliers at Pollsmoor Logistics Department:

- (i) There should be properly documented official criteria detailing procedures and policies for the evaluation of suppliers entered on the database.
- (ii) The accounting officer and/or officials of Pollsmoor should be requested to reply, in writing, on the apparent contraventions of the Public Finance Management Act.
- (iii) Consideration should be given to building internal capacity in the Department, which should involve the training of members of staff with regard to processes, procedures, policies as well as ethics, good governance and best practices.
- (iv) Consideration should be given to the introduction of continual internal audit procedures to address the gap between procedures and implementation.
- (v) Messrs and should be charged, internally, for the transgressions referred to in this report. If they have already been disciplined they should be removed from any position which could have influence over the Logistic Department.

The investigator's report with regard to the specific investigations of suppliers was filed as an Exhibit with the Commission.⁸⁸

⁸⁸ See Investigator's Report Pollsmoor Exhibit "KKK".

(d) Screws Investigation

In light of the abovementioned, the Commission would like to make the following recommendations with regard to the supply of screws investigation:

- (i) The Department should seriously consider appointing suitably qualified people to head the Department of Logistics. By "suitably qualified", the Commission means people who have been properly trained and who have the necessary qualifications to understand the intricacies of doing what they are doing.
- (ii) In the absence of suitably qualified people, the Department should train the current officials heading the various logistics departments so that they fully understand the provisions of all the applicable legislation⁸⁹ and apply them accordingly.
- (iii) It is also recommended that the Department should have a scheme in terms of which the logistics departments in the various Management Areas are checked so as to monitor that there is no corruption or abuse of State

⁸⁹ Procurement of goods and services is governed by, amongst others, the following Acts, policies and Regulations:

1. Public Finance Management Act (Act No. 1 of 1999);
2. Preferential Procurement Policy Frame Work Act (Act No. 5 of 2000);
3. Preferential Procurement Policy Regulation;
4. State Tender Board Act (Act of 1968);
5. State Tender Board, General Conditions and Procedures (ST 36);
6. User Manual: Directives to Department in respect of Procurement (ST 37);
7. Provisioning Administration System Manual (PASM).

The National State Tender Board delegated powers for the procurement of goods and services to the National Commissioner who is the Accounting Officer for the Department. The Accounting Officer further delegated the powers to provinces and the Management Areas for practical reasons.

funds. The said system could include the setting up of an Audit Committee to attend to this. In the event of the Department not having suitably qualified people to sit on an audit committee, serious consideration should be given to employing outside people to be part of such a committee. It might even be better if an outside person chairs the committee.

- (iv) The Audit Committee will have the responsibility of reporting to the Office of the Auditor General on issues relating to procurement.

6.16 PRISON WORKSHOPS AND STOCK CONTROL SYSTEMS⁹⁰

Recommendations were made in respect of the following areas:

6.16.1 Admin Office in Workshop

The administration office should only be entered by appropriate members and should be closed off for the members working in the workshops. Better access control to this office is needed. This would minimise the risk of documents getting lost or unauthorised personnel gaining access to the computer.

6.16.2 Computer System in Admin Office

The computer system should be totally upgraded and linked to a central network. The user must then be able to access the network by using his/her own unique user identification code. This can also replace unnecessary documentation and minimise human error.

⁹⁰

See Chapter 18, Volume 1 at page 850 of the Report.

6.16.3 Internal Stores

These internal stores must be relocated away from the workshops. The Logistics Department should handle this.

6.16.4 Chalet Work

Chalet work should be treated as state work and should proceed via the Logistics Department on proper documentation and with a proper description of what is needed. Logistics should then forward these requests to the workshops for a proper quotation. Once approved by the member, the Logistics Department must then request the work via the proper system (VAS documentation). When the work is completed by the workshops it must be sent back to Logistics, where the member will collect his/her product. Once the member accepts the quotation he should complete a debit order document. By doing this, it will ensure that members pay for what they request.

6.16.5 Private Work

Members should not be allowed to do outside work that is in direct conflict with their duties and Departmental steps should be taken against any member for not disclosing or getting the necessary authorisation to operate private business.

6.16.6 Ordering of Materials

The responsibility for ordering materials should be placed on a responsible administration clerk. An outside member should be appointed, maybe a female warder, to oversee the ordering of materials in the workshop.

6.16.7 Quotations

The responsibility for obtaining quotations should be placed on a designated administration clerk. An outside member should be appointed, maybe a female warder, to oversee the obtaining of quotations in the workshop.

6.16.7 Access Control

A member should be placed at the outer limit gate to control the access to the workshop/logistics area. Everything going in or out should be checked by this member. He must also be responsible to see if the necessary documentation corresponds with the goods going in or out.

6.16.8 Prisoners

Prisoners should be given proper official documentation as a method of instruction. This will measure their productivity as well as minimise the risk of doing private work unwillingly.

6.16.9 Favouritism

The evidence, which was led, indicated that there was favouritism in the manner in which people were selected to work at the workshop. In particular, one witness testified about the fact that the supervisor was predominantly appointing "white prisoners" to work at the workshop. In the circumstances, the Department is directed to investigate this particular aspect and ensure that:

- (i) Prisoners from all racial groups are given an opportunity to work at the workshops.

- (ii) The work force at the workshops clearly represents the demographics of this country.
- (iii) Working at the workshop should be rotated as best as possible, so that most prisoners will get the opportunity to obtain the necessary training and be rehabilitated accordingly.
- (iv) Clear guidelines should be prepared as to who will work at the workshops. In this regard, consideration should also be given to the length of the sentence the prisoner is serving.
- (v) Consideration should be given to those prisoners who are likely to be released within the next five (5) years to work at the prison workshops so that they can learn a skill or trade to enable them to be integrated back into society and earn a living upon their release.

6.16.10 Pretoria Workshop

The Commission made the following recommendations regarding workshops in prisons:

- (a) Entry to the administrative office in the workshop should only be permitted to appropriate members and should be closed off to members working in the workshops. This would minimise the risk of documents becoming lost or that unauthorised personnel gain access to the computer. It is also recommended that access to the workshops should generally be restricted to authorised personnel. Members of the public should be prohibited from being in contact with the prisoners and all communications should be with the supervisor of the workshop or with other authorised officials only.

- (b) Workshops should institute controls over job cards, which would prohibit "clients" having access to these, as they may remove the job cards without effecting payment of any fees for work done.
- (c) In addition, prisoners should complete and sign time sheets.
- (d) A responsible official should compare these time sheets to the job cards and the invoices rendered to check for reasonableness and also as confirmation that all repairs undertaken have been invoiced.
- (e) A copy of the "client's" identification card should be filed with the job card and each employee/member should also be asked to identify that the property made or being repaired is his/her own property.
- (f) With regard to the computer system in the administrative office, the system should be totally upgraded and linked to a central network. The user would then be able to access the network by using his or her own unique user identification code. This could also replace unnecessary documentation and minimise human error.
- (g) Chalet work should be treated as State work and should work via the Logistics Department with proper documentation and description of what is needed. Logistics should then forward these requests to the workshop for a proper quotation. Once approved by the member, the Logistics Department must then request the work via the proper system using the VAS documentation. Once the work is completed by the workshops, it must be sent back to Logistics where the member would collect his or her product. Once the member accepts the quotation, he should immediately complete a debit order document. By doing this, it would be ensured that members pay for what they have requested.

- (h) With regard to private work, it is apparent from the investigations, as well as the evidence led before the Commission in Cape Town, that members can easily run their own private businesses from the workshop or use the facilities for their own private benefit, contrary to standing orders that the necessary permission is required to operate private business with a full disclosure thereof. Members should, in no circumstances, be allowed to do outside work that is in direct conflict with their duties and Departmental steps should be taken against any member for not disclosing or obtaining the necessary authorisation to operate a private business.
- (i) The current position whereby prisoners receive their work orders on pieces of paper, which are subsequently thrown away, creates a situation where it is not possible, at a later stage, to determine whether the work performed by the prisoner was State work or private work. Prisoners should be given official documentation as a method of instruction. They should also be required to detail and sign for the number of hours worked on any particular product so that proper controls are in place with regard to private work. This will have the added advantage of measuring the productivity of prisoners and also rule out the current situation whereby many prisoners are forced by members to do private work for them unwillingly.
- (j) In light of the fact that the prisoners who made allegations against Mr [redacted] refused to sign affidavits, it would be difficult for the Commission to recommend that he should be charged criminally or even internally for anything. However, it is clear that Mr [redacted] is running a business similar to the work he is doing in the Department. In the circumstances, he has a conflict of interest.

(k) In the light of the foregoing, the Commission will recommend the following:

- (i) The Department should check the records as to whether Mr [redacted] did disclose the fact that he has a private business;
- (ii) If Mr [redacted] did not make the disclosure, then disciplinary inquiries should be instituted against him for the above;
- (iii) If he did make the disclosure, then the Department should consider transferring him to another section where he will not be performing this type of work, as a result of the allegations raised against him by the prisoners.

6.16.11 Stock Control Systems

Accordingly, the Commission makes the following recommendations regarding control and stocktaking.

(a) Stock Controls Generally

- (i) It is recommended that the Department consider separate directives with regard to the storage of State stock from those directives that would be applicable to equipment in view of the fact that certain stock, for example as may be found in the kitchen, is perishable and more susceptible to theft, given its situation. In this environment, more careful and detailed stock control measures need to be introduced.
- (ii) The Commission also recommends that a periodic physical stock count, at least once every second month, should take place, when:

- (aa) Items should be physically counted and have their descriptions and quantities recorded on stock sheets.
 - (bb) Thereafter, the stock should be priced per item and the stock sheets accumulated and totalled so that it is possible to determine the value of the stock on hand.
 - (cc) A team of two (2) people per area should be used during each stock count, one person to count and the other to record. A team of "checkers" should independently check their work.
 - (dd) Reconciliation must take place between stock counts. This is achieved by taking the opening stock count from the previous count to which must be added purchases since the opening stock, less legitimate issues from that stock and spoilage. This should result in a theoretical closing stock. Once this figure has been obtained, the actual physical stock must then be compared with the results obtained from the reconciliation between stock counts.
 - (ee) Any material variances that emerge must be explained.
- (iii) The Department should make an effort to translate the Provisioning Administration System Manual into the other nine (9) official languages, besides English and Afrikaans.

(b) Stock Controls In Kitchens

The objective of stock control at the kitchens is to ensure that the quantities of stock being requisitioned from stores are reasonable relative to the number of prisoners to be fed.

The Commission therefore recommends that a "walk-through test" be performed periodically as follows:

- (i) Determine the total number of prisoners that the kitchen serves on that particular day.
- (ii) Obtain the menu for each meal and determine the quantities of ingredients required for each serving.
- (iii) Obtain the kitchen's requisition of stock from stores.
- (iv) Perform a reasonableness test of the quantities of items ordered against the food prepared. Where material variances are identified, inquire as to the reasons.
- (v) Determine what happens to uneaten meals.
- (vi) The issue of uneaten meals can be a major source of abuse by officials and prisoners. In the circumstances, guidelines should be prepared as to what happens to uneaten meals. The guidelines should seek to ensure that there are as few uneaten meals as possible to avoid pilferage and wastage.

(c) Kitchens at Pretoria Prisons

As regards the kitchens investigated in the Pretoria Management Area, the Commission recommends that:

- (i) More frequent stocktakes are required to be done in all kitchens to reconcile physical stock. With respect to the kitchen at C-Max, in particular, a stocktake should take place every week to reconcile the existing stock records.
- (ii) All kitchens should ultimately adopt the system used at the Local Prison kitchen, which requires that ordering and recording is effected both electronically (on computer) as well as manually. The results of the investigation at the Local Prison kitchen suggest that the Department's stock control system is not, in itself, deficient but rather that the personnel at C-Max are either negligent and/or lacking in training and supervision.
- (iii) In this regard, Mr at C-Max should be charged in terms of the provisions of clause B (2.1) of the Department's Disciplinary Code and Procedure in that the investigation reveals that his work performance has been unsatisfactory due to negligence.
- (iv) The stock clerk at the Central Prison kitchen requires urgent training with regard to the methods and purposes of stock control.

(d) Hospitals

With respect to stock control at hospitals, the Commission recommends that:

- (i) The nurse in charge should properly record the receiving and issuing of normal medicine so that the flow of medicines can be monitored against the prisoners' hospital files.
- (ii) The stocktaking should be done regularly. It should be overseen by senior officials from Head Office or, alternatively, by the Audit Committee referred to earlier in this Chapter.
- (iii) The physical stock control to be implemented at hospitals should follow the same format as the stock count, which is referred to earlier in this Chapter.
- (iv) The recommendation set out above regarding the use of generic drugs at Durban-Westville Management Area is also applicable here.

6.17 PREVIOUS INVESTIGATIONS INTO THE DEPARTMENT⁹¹

In order to ensure that the recommendations of the investigations conducted by Commissions into the Department are not ignored, the Commission recommends that:

6.17.1 The Department be called upon to fully explain to the Parliamentary Portfolio Committee as to why the recommendations, particularly of the Department of Public Service Administration and the Public Service

⁹¹ See Chapter 19, Volume 1 at page 880 of the Report.

Commission reports insofar as they dealt with specific irregularities, were not implemented by the Department of Correctional Services.

6.17.2. An Oversight Committee be established to ensure that the implementation of recommendations of this Commission and other previous Commissions is monitored. The Department should also be required to furnish reasons to this Oversight Committee before electing not to implement recommendations of any independent investigation or Commission.

6.17.3 The Department should establish a dedicated section at Head Office to supervise the collation of all data and information of the Department which would include the supervision of all reports of investigations and Commission conducted into the Department.

7. MISCONDUCT RECOMMENDATIONS

7.1 St Albans⁹²

7.1.1 and

As there is no conclusive evidence that these members assisted the prisoner, Mr Grootboom, to leave prison without lawful authority the Commission

- (a) That they be counselled about having a close relationship with a prisoner;
- (b) The provisions of the Correctional Services Act No. 111 of 1998, in this regard should be brought to their attention.

7.1.2

The Commission recommended

- (a) That she be charged criminally with contravening section 129 of the Correctional Services Act;
- (b) That she be charged criminally with contravening section 31(1)(b) of Act No. 51 of 1992;
- (c) That her conduct in this regard be reported to the Provincial Commissioner of the South African Police Service, Eastern Cape, for consideration of any disciplinary action that should be instituted against her;
- (d) That the record of proceedings in this regard be referred to the Director of Public Prosecutions, Eastern Cape, to consider charging her criminally.

⁹² See Chapter 22, Volume 2 at page 8 of the Report.

7.1.3 Mr

The Commission recommends that he be charged with contravening section 31(1)(b) of Act No. 51 of 1992.

7.1.4 General Recommendations

It is recommended that this matter be referred to the South African Police Service to enable them to conduct further investigations like a D.N.A test for example, which may prove conclusively that Mr is the natural father of the said child.

7.2 Pretoria Management Area

7.2.1 Theft of Prisoner's Food⁹³

The Commission recommends that implicated members be charged inter alia with:

- (i) Clause 4.6 column A of the Department's Disciplinary Code - Use of prison labour for personal purposes.
- (ii) Clause 5.10 column A of the Department's Disciplinary Code - Breaching of internal security arrangements.
- (iii) Clause 4.5 column A of the Department's Disciplinary Code - Theft/Unauthorised possession of Government property.

⁹³ See Chapter 23, Volume 2 at page 24 of the Report.

7.2.2 Supply of Drugs By Warders⁹⁴

The Commission recommends that the implicated members be charged with, Inter alia:

- (i) Clause 4.1 Column A of the Department's Disciplinary Code – Bribery and Corruption.
- (ii) Clause 4.7 Column A of the Department's Disciplinary Code – Receiving or claiming money from a prisoner.
- (iii) Clause 5.10 Column A of the Department's Disciplinary Code – Breaching of internal security arrangements.
- (iv) Clause 6.1 Column A of the Department's Disciplinary Code – Trading in prohibited drugs.
- (v) Clause 6.3 Column A of the Department's Disciplinary Code – Being in possession of prohibited drugs on Departmental premises.
- (vi) Clause 6.4 Column A of the Department's Disciplinary Code – Permitting a prisoner to be in possession of prohibited drugs.
- (vii) Section 118 (2)(b) of the Correctional Services Act – Pecuniary dealings between warders and prisoners or members of their family.
- (viii) Section 119 of the Correctional Services Act – Supplying certain articles to prisoners.

⁹⁴ See Chapter 24, Volume 2 at page 51 of the Report.

7.2.3 Assaults at C-Max ⁹⁵

The Commission made various recommendations against the numerous members which were implicated in the assaults. Some of the recommendations included the members being charged:

- (i) contravening Clause 5.7 column A of the Department's Disciplinary Code.
- (ii) criminally for assault.
- (iii) for contravening clause 2.1 Column A of the Department's Disciplinary Code – Gross negligence.
- (iv) A copy of the record of the proceedings regarding these officials be sent to the Director of Public Prosecutions Gauteng, for his decision.

The Commission also made the following general recommendations:

- (i) 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.
- (ii) 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.

⁹⁵

See Chapter 25, Volume 2 at page 69 of the Report.

7.2.4 Misuse of Exam Centres⁹⁶

The Commission recommended that the implicated members be charged for contravening

- (a) Clause 4.3 column A of the Department's Disciplinary Code – Furnishing a false statement.
- (b) Clause 2.1 column A alternatively, Clause 2.1. column B of the Department's Disciplinary Code – Unsatisfactory work performance.

The Commission recommends that the Department should establish a system of accountability whereby documents from Head Office, especially policy documents, are properly acknowledged and recorded when they are received by various officials.

7.2.5 Illegal Transactions with Prisoners⁹⁷

Recommendations were made that the implicated members be charged with contravening:

- (a) Clause 4.1 Column A of the Department's Disciplinary Code – Bribery and Corruption.
- (b) Clause 4.7 Column A of the Department's Disciplinary Code – Receiving or claiming money from a prisoner.
- (c) Clause 4.5 Column A of the Department's Disciplinary Code – Theft of money from prisoners.

⁹⁶ See Chapter 26, Volume 2 at page 97 of the Report.

⁹⁷ See Chapter 27, Volume 2 at page 119 of the Report.

- (d) Section 118, 2(b) of the Correctional Services Act 111 of 1998 (pecuniary dealings between warders and prisoners).
- (e) Section 119 of the Correctional Services Act 111 of 1998 (supplying articles to prisoners).

7.2.6 Micro-Lending Schemes⁹⁸

The Commission, *inter alia*, made the following recommendations against individuals, that they be charged:

- (a) with contravening Column A, clause 5.10 of the Department's Disciplinary Code – Misuse of position for personal gain to the disadvantage of the employer;
- (b) Contravening Column B, clause 5.17 of the Department's Disciplinary Code – Operating a money lending scheme without permission for his own benefit during working hours or from the Department's premises;
- (c) Contravening clause 8.3 Column B of the Department's Disciplinary Code – Unauthorised use of Departmental/government property for person gain;
- (d) Contravening clause 5.14 Column B of the Department's Disciplinary Code – Performing work during office hours for compensation without written approval in a private capacity for another person or organization.

⁹⁸ See Chapter 28, Volume 2 at page 129 of the Report.

- (e) Contravening section 30 of the Public Service Act 1994 – Performing work during working hours for compensation in a private capacity for another person without approval from the executing authority;
- (f) Contravening section 1(b) (i) of the Corruption Act.
- (g) Contravening Column B, clause 5.10 of the Department's Disciplinary Code – Misuse of position for personal gain to the disadvantage of the employer;
- (h) The signing of the Z56 forms by members authorising the change of members' banking details for the purposes of allowing micro-lenders to deduct their collections from members' salaries should be stopped immediately.
- (i) That the Department exercises proper control over such applications and that all approved applications to do remunerative work outside public service be reviewed and all those applications that do not comply with Departmental policy in any respect be cancelled with immediate effect;
- (j) That only officers of the rank of Director or above be tasked with this responsibility of approving applications by members to do remunerative work outside public service and that such power or authority should not be delegated to officers below that rank;
- (k) That the Department keeps a proper register of approved applications as required by the policy;

- (l) That the Department should stop deducting monies from employees' salaries for the purposes of paying these monies to money lending schemes, with immediate effect. The Department acts as debt collectors for these money lending schemes, which is contrary to the objectives of the Department.
- (m) that the system of recovering money from employees by micro-lenders, namely, virtual accounts, be declared illegal by the Department;
- (n) that the penalty provision be attached to such declaration.

7.3 NCOME

7.3.1 The Arsenal⁹⁹

The Commission recommended that members be charged with:

- (a) the contravention of clause 2.1 Column A in that they were grossly negligent in their duties.
- (b) The contravention of clause 4.3 Column A of the Disciplinary Code in that they failed to account for government property.
- (c) The contravention of clause 2.1 Column B of the Disciplinary Code in that they failed to account to comply with the Departmental regulations and directives.

⁹⁹

See Chapter 29, Volume 2 at page 161 of the Report.

- (d) in that they were negligent in the performance of their duties and failed to take reasonable steps to prevent the loss or theft of the firearm while the firearm was under their direct control and accordingly should be charged in terms of Section 120(8)(6) of the Firearms Control Act 60 of 2000.

7.3.2 Unlawful Percunlary Dealings With Prisoners¹⁰⁰

The Commission made recommendations that members implicated be charged for contravening Section 118(2)(b) of the Correctional Services Act No. 111 of 1998 and also clause 4.7 Column A of the Disciplinary Code in that they received money from a prisoner.

7.3.3 The Mavundla Matter¹⁰¹

The Commission recommended that be charged criminally with a Contravention of Section 118(2)(d) of the Correctional Services Act No. 111 of 1998 and in terms of clause 4.7 Column A of the Disciplinary Code in that he received money from a prisoner.

7.3.4 The Gonondo Matter¹⁰²

The Commission recommends that all the aforementioned warders be charged for having contravened:

- (a) clause 5.10 Column A of the Disciplinary Code, which is a breach of security arrangements; and
- (b) clause 4.7 Column A of the Disciplinary Code, which is the receipt of monies from prisoners.

¹⁰⁰ See Chapter 30, Volume 2 at page 173 of the Report.
¹⁰¹ See Chapter 31, Volume 2 at page 184 of the Report.
¹⁰² See Chapter 32, Volume 2 at page 194 of the Report.

7.3.5 Withdrawal of Assault Charges¹⁰³

The Commission found and made the following recommendations in respect of the members mentioned below:

(a)

That he be charged with contravening clause 2.1 Column A of the Disciplinary Code in that he was grossly negligent in the execution of his duties in that:

- (i) He acted irrationally, conducting several fruitless searches in one day. It would seem that the allegations of a vendetta are not far-fetched. Such conduct violated the prisoners' constitutional rights to human dignity and also exposed the warders conducting the searches to danger, as the prisoners were obviously irritated with the continued and unnecessary disturbance.
- (ii) He failed to take proper precautions before conducting this massive search, and the ensuing violence bears testimony to that fact. He also failed to oversee the operation.
- (iii) During the assault itself, he "hears" what sounds like a scuffle or prisoners being beaten but is satisfied with the explanation from Mr [redacted] that he should not interfere as the prisoners are being interrogated and that the interrogation is yielding the required results.
- (iv) He abused his powers by orchestrating the transfer of some of the key complainants.

¹⁰³

See Chapter 33, Volume 2 at page 207 of the Report.

(b)

The Commission finds that _____ had connived in having the matters withdrawn in that:

- (i) He failed properly to furnish the initiators with the required documents and claimed to have no authority over the matter. His inaction resulted in the matters exceeding the stipulated time frames.
- (ii) He failed properly to apply his mind to the matters and recommended the withdrawal of the matters.
- (iii) He did not follow-up on the recommendations of the investigation.
- (iv) He was totally unhelpful to the initiators whose queries he either ignored or referred to the investigators.
- (v) He deliberately misled the new Area Commissioner, _____ into authorising the withdrawal of the charges against the prison warders.
- (vi) He conceded having failed to consider the matter fully. He should therefore be charged with gross negligence and contravening clause 2.1 of Column A of the Disciplinary Code in that he was grossly negligent in the execution of his duties.

(c)

should be charged with gross negligence in that he contravened clause 2.1 Column A in that:

- (i) He had been newly appointed as Area Commissioner at the time he authorised the withdrawal of the charges and was acting on the advice of
- (ii) He, however, failed to make an informed decision in that he did not seek any clarification from Mr Smit but merely approved the recommendation.
- (iii) He was the one who made the decision to withdraw the charges.
- (iii) He conceded that he made the recommendation without fully reading the report and acquainting himself with the facts.
- (iv) It is recommended that should undergo a management training course referred to in the recommendations under the Management Areas below.

(d)

should be charged with contravening clause 2.1 Column A of the Disciplinary Code for the following:

- (i) Failure to comply with procedure by authorising the search on a large scale without further inquiries and not involving the EST.
 - (ii) Having been formally advised of the assault on the same evening by _____ she neither inquired into the number of prisoners injured or the extent of their injuries.
 - (iii) Failure to take any steps towards the implementation of the report.
 - (iv) Not dating the report, having signed it.
 - (v) Not taking any steps to implement the recommendations in the report, but keeping it in her office for over four (4) months.
 - (vi) Failure to raise the queries and or concerns she had about the report.
 - (vii) Not following up the process of initiating the disciplinary inquiry, but claiming (before the Commission) that she thought the matter was being handled exclusively by the Provincial Office, which the Commission found to be untrue.
- (e) _____
- (i) He assisted _____ with conducting the search throughout the prison.
 - (ii) It is evident he was aware that the prison warders were assaulting prisoners but did nothing to stop further assaults.

- (iii) He advised Mr not to interfere with the interrogation of prisoners, thereby indirectly encouraging the assaults.

. should therefore be charged with gross negligence in terms of clause 2.1 Column A of the Disciplinary Code.

7.3.6 Prisoners' Private Cash¹⁰⁴

The Commission recommends that the Department immediately:

- (a) Appoint a task team from outside the Ncome Management Area with the necessary skills and experience relating to prisoners' cash to investigate fully the cash shortfall in the prisoners' private cash at Medium B.
- (b) Such task team should attempt in the shortest possible time to determine:
 - (i) the precise extent of the shortfall, and
 - (ii) if any member can be held responsible for such shortfall.
- (c) Pending the finalisation of the investigation by the task team, the Department should:
 - (i) Take immediate steps to ensure that sufficient funds are paid into the Medium B ABSA Bank Account in Vryheid, to ensure that prisoners are not financially prejudiced by the shortfall.

¹⁰⁴ See Chapter 34, Volume 2 at page 239 of the Report.

- (ii) Ensure that a completely new set of books is put in place at Medium B.
 - (iii) Place a competent member to take charge of the section.
- (d) To avoid a recurrence of this problem, the Department should always ensure that all members working in this section of Medium B are fully conversant with all the accounting procedures as set out in the regulations. In the event of such skills being found to be lacking, then an intensive training programme must be implemented for such members to acquire the necessary expertise.

8. MANAGEMENT AREAS¹⁰⁵

The Commission having considered all the evidence, which was led with regard to the above-mentioned Management Areas would like to make the recommendations as set out hereinafter:

8.1 General Management

The Department should consider the improvement of the general management of each management area. In this regard, the Department should consider improving the performance by its members in respect of the management issues, which have been highlighted in this report, including:

- (a) Providing training on management issues, including:
 - (i) planning;
 - (ii) finance and budgeting;
 - (iii) human resource management;
 - (iv) negotiation and mediation skills;
 - (v) managing information systems.

- (b) The Department should provide ongoing training to its management within each management area in regard to the following:
 - (i) departmental rules and regulations;
 - (ii) human rights as enshrined in the Bill of Rights;
 - (iii) labour relations;
 - (iv) mediation skills.

¹⁰⁵

See Chapter 45, Volume 2 at page 405 of the Report.

(c) Notwithstanding the main recommendations in the chapter on Disciplinary Inquiries, the Department should as an interim measure arrange with an independent specialist organisation to train an identified group of members on how to:

- (i) conduct disciplinary enquiries;
- (ii) Investigate labour relations matters;
- (iii) present evidence before the labour relations tribunals;
- (iv) tender of evidence in disciplinary matters.

8.2. Pietermaritzburg Management Area

With regard to the Pietermaritzburg Management Area it is recommended that the Department should:

- (a) Internally charge the member, [REDACTED], for assault on the members of the 26 gang based on his own evidence;
- (b) Direct Mr [REDACTED] to undergo training as set out in paragraphs 8.1(a)(iii) and (iv) and paragraph 8.1 (b) above;
- (c) Direct Mr [REDACTED] to undergo training as set out in paragraphs 8.1(a) and 8.1(b) above;
- (d) Direct [REDACTED] to undergo training as set out in paragraphs 8.1(a) and 8.1(b) above;
- (e) Direct Mr [REDACTED] to undergo training as set out in paragraphs 8.1(a) and 8.1(b) above;

- (f) Diffuse the tension between managers at Pietermaritzburg Management Area by appointing dispute resolution experts to intervene and try to bring the warring parties within the management area together. In particular, the so-called 'A' team and 'B' team.

8.3 Johannesburg Management Area

There was a general state of chaos in regard to the keeping of records in the Johannesburg Management Area, which caused the Commission concern, as one would have expected that the records would have been up to date in the light of the fact that there are people who are in custody and thus, the Department should at all times be in a position to account for each and every inmate incarcerated.

It is recommended that:

- (a) The information systems be updated and that the Department conduct an audit of the management of information within this management area;
- (b) The Management should be vigilant in dealing with fake warrants and in particular develop a system or plan in consultation with the Department of Justice and Constitutional Development and Department of Safety and Security to detect and safeguard against same;
- (c) [redacted] should be directed to undergo training as set out in paragraphs 8.1(a) and 8.1 (b) above.

8.4 Durban-Westville Management Area

With regard to this Management Area, having considered the evidence which is dealt with in the chapter dealing with this Management Area, It is recommended

that Mr [redacted] should be charged with gross negligence (Column A – clause 2.1) for failing to do his work properly.

8.5 St Albans Management Area

With regard to this Management Area, having considered the evidence which is dealt with in the chapter dealing with this Management Area, it is recommended that:

- (a) The records at St. Albans were in no better order than those at Johannesburg and the Commission recommends that the Department also carry out an audit of the information systems at St Albans. Due regard should be paid to the fact that precise information keeping should be held regarding each prisoner and warrants pertaining to the detention of prisoners.

8.6 Pretoria Management Area

With regard to this Management Area, the Correctional Services Act provides that sentenced and unsentenced prisoners should be kept separately. There has been further evidence that the unsentenced juvenile prisoners tend to be a vulnerable group and thus, they should not be incarcerated together with sentenced prisoners.

In light of the foregoing, it is recommended that:

- (a) notwithstanding the state of overcrowding, the management in Pretoria should ensure that every effort is made to separate sentenced and unsentenced juvenile prisoners;

- (b) the Department should make every effort not to keep children under the age of eighteen (18) years in prison. However, those who are in prison should be provided with programmes to enable them to have some form of rehabilitation.

8.7 All Nine Management Areas

- (a) Department should embark upon a task of translating the various rules and regulations into the other official languages. It has become apparent to the Commission that almost all manuals are either in English or Afrikaans. There are eleven (11) official languages in South Africa. Whilst it might not be possible to translate the manuals into all the official languages immediately, an attempt could be made to translate the said manuals into official languages in a staggered manner. The Department might run into a situation where one of the officials might raise as a defence to a serious transgression the fact that he did not understand the manual or regulation because it was not in his or her language.

In particular, consideration should be given to immediately translating the following:

- (i) The A-Orders;
 - (ii) The B-Orders;
 - (iii) The Department's Provisioning Administration Systems Manual.
- (b) Whilst the Commission only found the over stating of kilometres travelled in their investigations in respect of _____, there is a general view within the Department that a number of senior officials are doing the same.

The Commission recommends that the Department should, on a regular basis, do audits of the claims filed by senior management in the various provinces and compare that with the actual kilometers travelled by the motor vehicles. This could further be compared with the service records of the various motor vehicles. Such audits would serve as measure to combat corruption.

- (c) The Health of Prisoners is one of the challenges facing the Department. It is recommended that:
- (i) All prisoners should be medically examined on their admission to combat the spread of serious or contagious diseases to the general prison population, which might be costly for the Department to treat at a later stage; and
 - (ii) A full plan should be developed by the Department as to what precautionary measures will be taken by the Department as soon as a prisoner with a contagious disease is identified, particularly with reference to the awaiting trial prisoners;
- (d) It is the Commission's recommendation that the Department should learn from the valuable experience of the Waterval siege and sabotage incidents. It is evident that the conduct of managers might be setting precedents in the Department, whereby the withdrawal of serious criminal charges against members translates into a message, to members that crime is an acceptable bargaining tool in the Department.

The Department is reminded of the fact that the negotiations regarding the Waterval siege, led to a settlement whereby it was agreed on behalf of the

Department that the legal costs incurred in respect of all the interdicts would be shared between the Department and the Union. The Department committed itself to pay seventy per cent (70%) of the legal costs.

It is recommended that in matters of this nature:

- (i) Management should seek legal opinion before committing the Department to contractual obligations that have severe legal and financial implications for the Department.
- (ii) The Department should draw a distinction between labour and criminal matters.

The Commission refrains from making any recommendations regarding the criminal acts committed in 1996 due to the lapse of time.

- (e) Evidence has been led before the Commission that anti-retroviral drugs are not being provided to prisoners in the Pretoria Management Area.¹⁰⁶ Furthermore, the Commission received information that in the Durban-Westville Management Area,¹⁰⁷ the prisoners who are living with HIV/Aids and would, under normal circumstances, be receiving anti-retroviral drugs, are not being provided with the drugs.

The Department has a responsibility for the safe custody of prisoners. This is a legal responsibility, which includes amongst others providing

¹⁰⁶

See Pretoria Exhibit 'FFF'.

¹⁰⁷

Sunday Tribune of 27 November 2005 at page 5.

medical care for any sick prisoner. Provision of medical care to sick prisoners creates a responsibility for the prevention of the prisoners contracting any infectious and contagious diseases, including HIV/AIDS. In executing its responsibility in this regard, it will be necessary for the Department to have preventative measures¹⁰⁸ and also curative measures to those who are already infected by the Aids virus.

Pursuant upon the Constitutional Court judgment in the matter of *The Department of Health and Others v The Treatment Action Campaign and Others*.¹⁰⁹ The Department of Health has started a roll-out programme of HIV treatment to the South African public. The said roll-out should also be extended to the prison inmates. Some prison medical facilities have been accredited by the Department of Health.

In the light of the foregoing the Commission shall recommend that:

- (i) The Department enter into consultation with the Department of Health for purposes of getting more prison hospitals for the Department of Correctional Services to be accredited for purposes of dispensing anti-retroviral therapy.
- (ii) If the Department of Correctional Services has entered into such negotiations with the Department of Health, every endeavour should be made to speed up the aforesaid negotiations to get accreditation for an appropriate number of prison hospitals per province for purposes of providing anti-retroviral therapy as soon as possible.

¹⁰⁸ The Department is currently providing condoms for purposes of preventing the transmission of the Aids virus.

¹⁰⁹ 2002 (10) BCLR 1033 (CC) at page 1 062F the court said:
"The rights that the State is obliged to 'respect, protect, promote and fulfill' include the socio-economic rights in the Constitution.."

- (iii) In consultation with the Department of Health identify suitable prison hospitals as anti-retroviral treatment sites.
- (iv) Ensure that appropriate sites are prepared for prisoners so that they can be provided with anti-retroviral drugs and treatment.
- (v) Liaise with the Department of Health to ensure that a suitable roll-out programme is implemented to provide treatment for the prisoners who need anti-retroviral drugs.
- (vi) The Department should give consideration to establishing a plan for the moving, with their consent, of the prisoners who need anti-retroviral drugs to prison hospitals within each province, which have been identified as suitable sites and accredited by the Department of Health for providing anti-retroviral drugs and treatment.
