

CHAPTER 2

HISTORICAL BACKGROUND

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CHAPTER 2

HISTORICAL BACKGROUND

1. INTRODUCTION

For the purposes of understanding the current problems in the Department, it is necessary for the Commission to sketch the historical background. This section divides the historical period into two stages, pre-1994 and post-1994. Although these are distinctive periods in the history of the Department, aspects of the pre-1994 period remain critical influences in the post-1994 issues that are the subject matter of this investigation.

2. THE PRE-1994 STAGE

After the Union of South Africa, the Prisons and Reformatories Act No. 13 of 1911, which established prisons as part of the Department of Justice, governed the prison system in the four provinces of the Union.

An important institutional factor during this period was the military nature of the Department, which was structured along military lines with members being trained at the South African Police Training College. This structure was put in place after the appointment of General Len Beyers, who was Director of Prisons during the Second World War.¹ The Department was fully militarised with the rewriting of the Prisons Act in 1959. The structure, mode of dress and the institutional culture was military in every respect, indicated by a rank structuring similar to that used in the army and the requirement that members salute other members.

¹ See the evidence of Mr G.J. Fourie in Head Office Exhibit 'A', Transcript Vol. 1 pages 1-93.

The ranks were as follows:

- Probationary Officer
- Warder
- Sergeant
- Warrant Officer
- Lieutenant
- Captain
- Major
- Lieutenant Colonel
- Colonel
- Brigadier
- Major General
- Lieutenant General
- General

This military structure emphasised the safe custody of prisoners and bolstered apartheid separatism in the Department.²

The Department's senior officials later adopted a deliberate strategy of aligning the Department with those sections of Government that made up the "securocracy" as opposed to those providing social services. The reason for this was that there was an opportunity to secure an increased budget and possibly gain full Departmental status if, given the "prevailing political climate", it were seen as a Department protecting the security of the State. Indeed, in 1959, the Department became a full State department when the Prisons Act No. 8 of 1959 was promulgated.

² See A. Dissel: "The Passing-out-Parade: Demilitarisation of the Correctional Services", in *Acta Criminologica* 10 (1), 1997, page 19.

This alignment with the “securocracy,” however, encouraged a culture of secrecy in the way the Department performed its functions, which has carried over into the post-1994 period. This culture had, and continues to have, a bearing on the extent of corruption and maladministration in the Department with the general public being oblivious to its existence.

A second important institutional factor in the prisons’ system during this period was the founding of the Police, Prison and Civil Rights Union (Popcru) in 1989 in the Western Cape. Popcru subsequently became a union with members from the Department of Prisons and the Department of Police, as it was then known, across South Africa. Because of its military culture, the Department did not recognise unions and it became a disciplinary offence for any member to associate him or herself with a trade union.³ As a result, the union operated illegally during the pre-1994 period, although evidence before the Commission is that some officials made attempts to deal or negotiate with the union before 1994.

The pre-1994 period was also defined by its lack of emphasis on the rehabilitation of prisoners.⁴ It has been the Commission’s impression that the only form of rehabilitation encouraged was the use of prisoners as prison labour. However, this often became the use of prisoners as labour for the State generally and even for the personal gain of members. Far from helping rehabilitation, members seem to have been encouraged to distrust prisoners, beat them into submission and ensure that they, at all times “knew their place”.

These regimental and authoritarian attitudes and approaches in the Department created fertile ground for the establishment of gangs, which members either encouraged or overlooked. Indeed, some members saw gangs as an institution

³ See regulations 71(1)(ii)-(kk), which were introduced on 30 March 1990.

⁴ However, some Departmental members appointed before 1994 tried to convince the Commission that rehabilitation was, in fact, a focus.

that ensured prisoners were disciplined and compliant.⁵ The result was that gang activities became rife in prisons; smuggling and general corruption was institutionalised, the sodomising of prisoners became a common occurrence and general lawlessness pervaded prisons.

There is a belief amongst prisoners that some warders belong to prison gangs.⁶ For the gangs to thrive within a prison system, they have to have some form of co-operation from the warders to provide them with contraband. It seems that the warders either actively participate in gang activities or are sympathisers with certain gangs, either unwittingly or because of the benefits they derive from being gang members.

This then was the culture and state of affairs in the Department before 1994, which fed into the post-1994 period.

3. THE POST-1994 STAGE

The 27 April 1994 election brought about a Constitutional State and democracy in South Africa. The advent of democracy resulted in the urgent need to transform Government Departments and other State enterprises, particularly those that had been part of the State security machinery in the apartheid era. Accordingly, the highly militaristic Department of Correctional Services required transformation to bring it into line with the democratic principles enunciated in the Interim Constitution⁷ and again later in the Final Constitution of the Republic of South Africa.⁸

⁵ See the Chapter dealing with gangs for more details.

⁶ See in general the Chapter on Gangs and also the evidence of Mr X at Pollsmoor Transcript page 1 410 and that of Mr David Nkuna at Leeuwkop Transcript Vol. 33 pages 2 604-5.

⁷ Act No. 200 of 1993.

⁸ Act No. 108 of 1996.

This transformation in the Department was to be manifested in three (3) areas:

- (a) Trade Unionism.
- (b) Demilitarisation.
- (c) Affirmative Action.

3.1 Trade Unionism

Section 27 of the Interim Constitution⁹ gave workers the right to join trade unions. The right to trade unionism was also recognised in the Final Constitution of the Republic of South Africa Act.¹⁰ As a result, the Department had to recognize trade unions operating within the Department.

⁹ Section 27 provides as follows:

Labour Relations –

- (1) Every person shall have the right to fair labour practices.
- (2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.
- (3) Workers and employers shall have the right to organise and bargain collectively.
- (4) Workers shall have the right to strike for the purpose of collective bargaining.
- (5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired, subject to section 33(1).

¹⁰ See section 23 which provides as follows:

Labour Relations –

- (1) Everyone has the right to fair labour practices;
- (2) Every worker has the right-
 - (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union; and
 - (c) to strike.
- (3) Every employer has the right –
 - (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right –
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union and every employers' organisation has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

In October 1994, the Department signed a Recognition Agreement with, *inter alia*, the Police, Prisons and Civil Rights Union (POPCRU) and the Public Servant's Association (PSA), thus recognising for the first time trade unions and their right to participate in collective bargaining.

These two unions, which were also organised in other Government departments, were the major players within the Department. The third union, the National Education, Health and Allied Workers Union (Nehawu), was also recognised across the public service. In the Department of Correctional Services, Nehawu organised medical staff within the prisons.

The most powerful union amongst those recognised in the Department was Popcru. At the time of writing this report, Popcru is still the most powerful union within the Department, with a membership of 22 577. This represents approximately 64% of the Department's work force. Popcru is followed by PSA, which had 9 918¹¹ members on 31 January 2005, a decline of two hundred and sixteen (216) members from November 2004.

The Commission has found that it is the influence that Popcru is able to wield that has led to various problems in the Management Areas and in the Department. These issues are dealt with later in the report.

3.2 Demilitarisation

The Department of Correctional Services was thus operating in a military structure with a military-style culture at the advent of democracy in 1994. This culture did not accommodate or encourage the protection of human rights, which

(6) National legislation may recognise union security arrangements contained in collective agreement. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

¹¹ In November 2004, PSA membership was 10 134.

were now enshrined in the Constitution.¹² In fact, the new era of human rights was at odds with a militarised institution accustomed to using force and authority to maintain and exercise its power. The post-1994 era therefore ushered in an urgent need to revisit the culture within the Department.

Responding to this need in 1996, Dr Siphon Mzimela, the then Minister of Correctional Services, resolved to demilitarise the Department through the removal of the various ranks, changing the structure and mode of dress. The removal of the ranks led to changes in the way employees were referred to. This was reinforced by changes in the dress code, including the adoption of a standardised uniform and the removal of insignia, which removed all physical evidence of seniority.

On 21 August 2002, the then Minister of Correctional Services, Minister Ben Skosana, stated the following in a media briefing:

*“Demilitarisation of the Department in 1996 was a first but significant step in our efforts to bring about transformation and a new look at the running of Departmental affairs. Demilitarisation was a sequel to a major redefinition of the character of this Department marked by a change of name from the Department of Prisons to the Department of Correctional Services. This change of name was not just a cosmetic arrangement but it represented taking on a new and broader set of responsibilities that located the Department firmly within the national agenda.”*¹³

The Department therefore clearly regarded demilitarisation as the beginning of its transformation. The descriptions of new positions retained a hierarchy but were no longer linked in any way with military ranking. Instead, they were aligned with

¹² See A. Dissel: “The Passing-out Parade: Demilitarisation of the Correctional Services”, in *Acta Criminologica* 10 (1), page 17.

¹³ See <http://www.pmg.org.za/briefings/briefings>

terminology used throughout the Public Service. The new positions, which are still in place at the time of writing of this report, were described as follows:

- Student Correctional Official
- Correctional Official Grade 111
- Correctional Official Grade 11
- Correctional Official Grade 1
- Senior Correctional Officer
- Assistant Director
- Deputy Director
- Director
- Deputy Commissioner
- Chief Deputy Commissioner
- Commissioner.

There is a view, which is supported by some of the most senior officials within the Department, that the demilitarisation process contributed to a great extent to the problems that subsequently ensued in the Department. According to evidence before the Commission, junior members no longer respected senior members because all members “looked the same”, with seniority not being distinguishable. It was also stated that demilitarisation in itself discriminated against junior members because it deprived them of the opportunity to hold military rank. It also appears that demilitarisation was inadequately planned, resulting in members not knowing what their new responsibilities were in a non-military system.¹⁴

While there may be merit in these arguments about the difficulties which demilitarisation created, the Commission is nevertheless of the view that demilitarisation was an unavoidable consequence of the transformation of the

¹⁴ See Luyt: “The Transformation of Corrections in the new South Africa”, Vol 14 (3), *Acta Criminologica* 2001 at page 27, also J. Sloth Nielsen: “Overview of Policy Developments in SA Correctional Services 1994-2002”, at page 13, CSPRI Research Paper No. 1, July 2003.

Department. It was not possible for the Department to continue functioning as a military machine under a State governed by a Constitution that entrenched human rights. However, the members of the Department were not prepared adequately for the transformation. Examples of this lack of preparation include the absence of training on how senior staff members were expected to deal with junior staff in a non-military environment. It is clear that officials were not capable of disciplining junior staff and that interactions between junior and senior members were strained because senior members could no longer threaten junior members with old military methods of discipline.

This lack of preparation was also exacerbated by the new presence of trade unions that were on hand to protect junior members' rights. Many senior members felt that they had lost the tools they'd had to exercise discipline and control and were simultaneously being threatened by the sudden power junior members had to challenge their decisions.

Compounding matters was the reality that the backgrounds of most senior staff members did not facilitate their transition to working in a democratic environment. In addition to this, the Department of Public Service and Administration, in its report on the investigation into allegations of corruption, maladministration, bribery and sexual harassment at the Department of Correctional Services, dated August 2000, made the following findings:

“Staff assume that the process of demilitarisation was embarked upon to create a humane environment conducive to rehabilitation of prisoners but view the process now as being reduced to the abolishment of the military style rank structure in the internal operations of DCS. Many blame this process for the poor state of professionalism and discipline. Other staff members argue that the decay cannot be put at the door of demilitarisation only and that other factors such as the abolishment of strict appointment/promotion criteria, specifically the abolished promotion

examinations and the poor delineation between management responsibility and union involvement, contributed more to the prevailing situation.”¹⁵

It became clear to the Commission that when the demilitarisation was implemented, no new management principles and procedures were put in to replace the military system staff were familiar with. There is scant evidence of attempts to train members in better ways of dealing with the demilitarised environment or to develop new civilian methods to maintain order and discipline. This unstructured approach led to workplace tension, unhappiness and eventually to a drop in the morale of senior members.

3.3 Affirmative Action

The Interim Constitution of the Republic of South Africa recognised the need to implement affirmative action.¹⁶ While it regulated in favour of equality, it went on to state that measures put in place for purposes of rectifying old discrimination problems would be recognised. This was then referred to as the Affirmative Action Clause. This spirit was also carried into the Final Constitution.¹⁷ As a result, affirmative action became a constitutional imperative as the country sought to transform the work force.¹⁸ The Department of Correctional Services was no exception, given that management was predominantly white while black members were found mostly in junior positions, even though they make up almost 90% of the country’s population.

The Department’s reaction to affirmative action was tabled in the 1994 White Paper, which stated:

¹⁵ See page 22 of the Public Service and Administration Report.

¹⁶ See section 8 of Act No. 200 of 1993 and section 9(2) of Act No. 108 of 1996.

¹⁷ See section 9(2) of Act No. 108 of 1996.

¹⁸ See section 195 (1)(i) of Act No 108 of 1996. It has also become a business imperative in South Africa.

*“[The Department] recognizes the principle of establishing a personnel corps broadly representative of the SA community and on a practical level to accept the Linda Human Document on Affirmative Action”.*¹⁹

However, the Linda Human proposal on affirmative action did not meet favour with the unions, who argued that it would delay the transformation of the Department. It has become clear to the Commission that the unions equate the transformation of the Department with affirmative action rather than with the broader principles of human rights contained in the Constitution. There has been no attempt on their side to consider the transformation of the Department in any other way.

Indeed, there has been very little transformation of Departmental culture and work ethic generally. The approach to corrections, rehabilitation and the issue of human rights, as well as the delivery of services to the public, *per se*, have not been considered as transformation priorities. This will become apparent in the rest of the report as the various issues are discussed individually.

This combination of changes, namely, demilitarisation, union dissatisfaction with the Department's affirmative action proposal and the new rights workers now had to protect themselves from a management accustomed to military-style discipline, led to a radical work force ready to make demands on the Department. If their demands were not met, workers resorted to illegal means to achieve what they sought, which resulted in a breakdown of law and order that manifested itself in various forms. The most notable form the Commission has come to recognise was the unions' refusal to recognise any legitimate structure the Department set up or to respond positively to such initiatives. Members sought only to respond to the instructions of the trade union leadership and indeed this appears to have continued to be the trend to date.

¹⁹ See 1994 White Paper at page 19.

Whereas a military culture existed prior to 1994, this culture has changed, with union influence, to one of demand since 1994. The unions have demonstrated this attitude in their responses to this Commission, whose staff received little or no co-operation from them.

But the demand attitude that flowed from unionisation in the context described was not the only problem. It seemed that some union members were also happy to disregard the instructions of their own union when they did not agree with these instructions.

Clearly, lawlessness had set in. This situation was the consequence of the Department not thinking through its transformation programme properly and therefore it was not in a position to implement transformation in any systematic and managed way, compounded by the Department's failure to communicate this transformation plan to the broader public, employees or, indeed, even to this Commission.

The absence of a coherent approach to transformation in the Department at the time allowed the unions and various members of the Department, acting on or outside of union instruction, the opportunity to press for their demands and views with respect to transformation. The Department had no processes or structures in place to deal with these demands, which only fanned the flames of lawlessness raging through the Department.

The Commission will now deal with a number of operations, which various members embarked upon with or without the approval of the trade unions with a view of imposing their own views about transformation on the Department. It is also interesting to note that all of these operations had to do neither with transformation, as envisaged in the new democratic order, nor with issues of human rights or the safe custody of prisoners, which is the core business of the Department.

4. BREAKDOWN OF LAW AND ORDER

When one scrutinises the problems the Department experienced across the country and particularly in KwaZulu-Natal, the Eastern Cape and Gauteng, it is clear that the problems originated as early as 1996 and are still in existence. The failure to deal decisively and timeously with these compounding problems has exacerbated the situation. The Department became dysfunctional and this led to increased levels of corruption within the Department.

In the evidence before the Commission a number of factors were identified as causes of the general lawlessness within the Department. Some of these factors were also identified in previous investigations into the Department, including, amongst others, the introduction of trade unionism, demilitarisation and the conflict between the different political parties, especially in the KwaZulu-Natal Province.²⁰ It is, however, the Commission's view that while these factors created a state of confusion within the Department, the main catalyst for the general breakdown of law and order were the operations that certain organisations or renegade members of such organisations within the Department embarked upon.

4.1 Operation Quiet Storm

Operation Quiet Storm, together with all the other Operations that were brought to the attention of the Commission, and which will be dealt with later in this report,²¹ were the "strategic initiatives" of Popcru. These "initiatives" were meant to push the Department in a particular strategic direction, which had been

²⁰ The African National Congress (ANC) and the Inkatha Freedom Party (IFP) fought for the control of the management structures within the Department of Correctional Services. This was a spillover from the political conflict within the broader community, which was divided between the two parties. This obviously had a negative effect on the general running of the Department.

²¹ These initiatives included Operation Thula, the role played by CORE, Amagqugula and other garage meetings in the various provinces.

decided by Popcru. It is clear from the evidence led before the Commission that it was at secret meetings where decisions were made about to which positions Popcru members should be appointed. The positions targeted were strategic senior positions. Accordingly, Popcru influence was infused in that fashion into the Department.

The existence of Operation Quiet Storm first emerged in the Pietermaritzburg Management Area and was extended to other Management Areas in the KwaZulu-Natal Province. It is the Commission's view that this Operation provides a better understanding of the problems the Department experienced.²² Specifically, it casts light on why there was a sudden upsurge in violence and intimidation within the Department after 1996 and on the management crisis experienced in KwaZulu-Natal and later in the rest of the country.

Operation Quiet Storm has had a wide-ranging and negative effect across the entire spectrum of the Department of Correctional Services. It is the Commission's view that this operation provides answers to earlier allegations made before other Commissions that union affiliation influenced the appointment of staff.²³ It also gives insight into what went wrong in the province of KwaZulu-Natal and later other provinces where prisons were plagued by problems, which several inquiries had failed adequately to identify the causes of. Instead, the various inquiries and investigators were "sent around in circles" without reaching any root cause as to why there was so much lawlessness in the Department.

In dealing with the question of Operation Quiet Storm, the Commission heard evidence from (a) Mr Philemon Ntuli, (b) Mrs Thandi Kgosidintsi, (c) Mr Raphepheng Ephraim Mataka; and (d) Mr Derrick Bembuhle Nyandu.

²² See the Chapters on Trade Unionism and Pietermaritzburg Management Area for a general picture of union activity and the relationship between Operation Quiet Storm and Popcru objectives.

²³ See, for example, DPSA Report at page 25 "In particular allegations are rife that union affiliation and the 'profile' of staff members within such unions influenced employment decisions."

4.1.1 The Evidence

The witness Mr Philemon Ntuli, the former Provincial Liaison Officer in KwaZulu-Natal and an office bearer of Popcru, identified the nub of the problems when he testified before the Commission. He 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. The plan developed from the strategy, which was hatched in 1996,²⁴ following a meeting at the Pietermaritzburg Offices of Popcru. The plan had as its aim, the transformation of the Department. Mr Philemon Ntuli testified that the aim of the plan was to remove “reactionary forces” from positions of authority and replace them with “progressive people”²⁵.

The aforesaid meeting was attended by Popcru officials, paid up members and sympathisers from various regions around KwaZulu-Natal as well as a representative from the national office of Popcru.²⁶ Discussions at the meeting were led by Mr Ngubo, Mr Nhlanhla Ndumo and Mr Nhlanhla Zondi²⁷ and a plan, which was code-named Operation Quiet Storm, was formulated.

Mr Ntuli states in his affidavit to the Commission:

²⁴ Although Mr Ntuli testified that the meeting was held in 1997, it is apparent from other evidence that the meeting most likely took place before October 1996. October 1996 was the month during which the Waterval Prison was taken over by Popcru under the auspices of Operation Quiet Storm.

²⁵ “Progressive people” in this context obviously was a euphemism for “Popcru members”.

²⁶ Mr Mataka, who was then the Secretary General of Popcru, tried to deny that they attended such a meeting.

²⁷ Messrs Ndumo and Ngubo appeared before the Commission and also tried to deny the existence of Operation Quiet Storm.

“In essence, ‘Operation Quiet Storm’ entailed the forcible removal of ‘reactionary forces’ from their positions of power. This aim was to be achieved in stages, which followed one another rapidly. Certain strategic and influential posts were to be targeted. Once the incumbents were removed, our choice would be deployed to the vacant post. In order to ensure the speedy implementation of ‘Operation Quiet Storm’, among the strategies which would be employed were the following:

- 8.1 We would engage in long and arduous meetings with management – making certain demands. The idea was to frustrate management to the point where they would simply cave into our demands.*
- 8.2 In certain instances, we would take management personnel as hostages – refusing to allow them to leave the rooms in which we would detain them.*
- 8.3 In other instances, we would prevent management from entering their offices: we would lock the doors and ban entry by the use of doorstoppers.*
- 8.4 We would embark on protest action and go-slows.*
- 8.5 Some members would woo the secretaries of senior officers so that we would gather inside information.’²⁸*

The people attending the meeting identified candidates for the positions of National Commissioner (Mr Khulekani Sithole) and KwaZulu-Natal Provincial Commissioner (Mr Maxwell Ntoni). In addition, the following people were identified to be Mr Ntoni’s lieutenants in KwaZulu-Natal in order to strengthen the capacity of management:

- a) Mr Ngubo, who would be in charge of the inspectorate.
- b) Mr Ndumo, who would be in charge of personnel and matters such as appointments, recruitment and promotions.

²⁸ As per Durban Exhibit “QQ”.

- c) Mr Thami Memela, who would take control of security.
- d) Mr Nhlanhla Zondi, who would deal with staff issues.
- e) Mr Philemon Ntuli, who would handle the communications section.
- f) Mr King Khumalo, who would handle health and social matters.

It was also agreed at the meeting, according to Mr Ntuli's evidence, that Operation Quiet Storm would immediately target Pietermaritzburg, Westville, Waterval, Empangeni, Ncome and Sevontein prisons.

The members decided that the then chairperson of the Parliamentary Portfolio Committee for Correctional Services in the National Assembly, Mr Carl Niehaus, would be approached. The purpose of this meeting was to set out Popcru's view of transformation and indicate that for such transformation to succeed it was necessary for Mr Sithole to be appointed as National Commissioner and Mr Ntoni as Provincial Commissioner. He further testified that "a censored version" of the plan was presented to Mr Carl Niehaus, who approved of it as a pilot project, provided that the Popcru members went about their action in a disciplined manner. Mr Ntuli explained in detail that the people who went to see Mr Niehaus were himself, Mr N. C. Ndumo and Mr R. E. Mataka, the then Secretary General of Popcru.

Within a day of the plan being hatched, Popcru members began to force officials to leave the Provincial Office and to hold senior officials hostage, among other things. It was Mr Ntuli's evidence that when faced with such actions, most senior staff at the prisons simply never returned to work and were then replaced by Popcru appointees.

The large majority of the selected appointments were made in the course of the following months. However, Mr Ntuli states that there were also a number of problems that arose after the implementation of Operation Quiet Storm. These included:

- i. A conflict of interest between Popcru members who had become managers and Popcru union leadership.
- ii. A number of Popcru members felt resentful towards Popcru management whom they accused of not doing enough for them, despite the fact that they owed their positions to the sacrifices made by the general Popcru membership.
- iii. Some managers who had ascended to their positions on a Popcru ticket began abusing their positions, both in management and in Popcru, to promote their own selfish ends. Some of them were corrupt and were involved in cover-ups.
- iv. Some managers were charged with criminal offences and they used Popcru resources and money to fund their defence.
- v. Some managers appointed their relatives and associates to positions in the Department.
- vi. Some people were granted promotions through two or three ranks a year.
- vii. Some managers were allegedly receiving bribes to appoint persons to positions.
- viii. There was a split in Popcru in KwaZulu-Natal when some members supported appointments but the “clique”²⁹ opposed them.

The appointments did not always occur in the manner in which those who orchestrated Operation Quiet Storm intended. This resulted in friction between the parties involved. For example, Mr Funukubusa Alfred Mbanjwa told the Commission that Popcru allocated him a position but when his superior left, he acted in the superior’s position and was subsequently appointed to that post. Popcru officials were unhappy because Mr Mbanjwa had accepted a more senior position, which had not been “allocated” to him.

²⁹ The reference to the “clique” by the witness was to Messrs Ngubo, Ndumo, Memela and others. (See also the Pietermaritzburg Management Area where management ‘cliques’ are discussed).

Describing the outcome of Operation Quiet Storm, Mr Ntuli states in his affidavit:

“The split in Popcru has weakened the organisation. As a result, it is unable to play its rightful role in ensuring that the management is held accountable. By the same token, some of those who benefited from the implementation of ‘Operation Quiet Storm’ have entrenched their power. With no foil to keep this unbridled power in check, not surprisingly, corruption is rife. So is nepotism, favouritism and bribery. So powerful are these persons that the entire work force serves in absolute terror of them. People are too afraid and intimidated to challenge their actions – no matter how unlawful, wrongful, irregular or improper. They rule with an iron fist. No one dares challenge them.”³⁰ (Own emphasis).

It was also apparent that even though Quiet Storm was conceived and driven from the Pietermaritzburg Management Area, it spread to the rest of the Province because the end result was that there were forced removals and strike actions all over KwaZulu-Natal. As a result, the Department had to embark on litigation to try and stop this spate of unlawful actions that were taking place in the Province. The Management Areas that were mainly affected by Operation Quiet Storm were Pietermaritzburg, Ncome, Eshowe, Durban Westville, Sevontein, Waterval, Empangeni and Stanger.

When Messrs Ndumo and Ngubo appeared before the Commission, they tried to deny the existence of Operation Quiet Storm. Theirs, however, was a bare-faced denial, and Mr Ndumo even denied that he had ever heard of “Operation Quiet Storm”. His denial, however, had no merit as it will be shown later in this Chapter. Accordingly, the Commission rejects his denial.

³⁰ As per Durban Exhibit “QQ”.

Mr R.E.Mataka,³¹ the former Provincial Commissioner of the Eastern Cape and the former Secretary General of Popcru, also testified before the Commission.³² The main thrust of his evidence was that he had known Mr Ntuli since 1996. He denied everything Mr Ntuli testified about, claiming that it was false. He also denied that he traveled with Mr Ntuli to Cape Town to consult with Mr Carl Niehaus and discuss the Popcru plan for KwaZulu-Natal prisons.

Contrary to all the evidence before the Commission, Mr Mataka testified that the transformation of prisons in the country was an “orderly affair” and that Popcru had played a “responsible” role in making prisons more “progressive”. According to him, the union acted at all times within its constitution. It was Mr Mataka’s contention that the national leadership of Popcru only heard of Operation Quiet Storm when it was already happening and did not, even then, endorse it. In fact, Mr Mataka testified that such strong-arm tactics as displayed by some union members in KwaZulu-Natal were confined to isolated incidents in the province itself and were in direct conflict with the union’s objectives.

However, he did confirm that after the incident at Waterval, he met the two (2) members whom he regarded as leaders of Popcru in the Province, namely Messrs Ndumo and Ngubo, and had a lengthy discussion with them about the problems in KwaZulu-Natal.

The fallacy of Mr Mataka’s evidence was brought to light by the evidence of Mr Derrick Thembokuhle Nyandu, an organiser for Popcru. Mr Nyandu testified that he had heard of Operation Quiet Storm but that he could not remember whether he wrote about it. His evidence was that he was never present at any meeting where it had ever been discussed. In fact, according to his testimony, he only heard about the Operation in the office and considered it to be a rumour. The

³¹ He was the Provincial Commissioner of the Eastern Cape Province at the time he appeared before the Commission.

³² At the time of writing the final report, the Department no longer employed Mr Mataka. He was dismissed for having committed fraud. For more details refer to the Commission’s Sixth Interim Report.

collapse of Mr Nyandu's version will be best illustrated by the proven facts regarding the Waterval Prison take-over incident.

The existence of "Operation Quiet Storm" as a Popcru campaign is, in itself, not an issue that this Commission needs to concern itself with, 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 Operation Quiet Storm. Furthermore, faced with a barrage of denials from Mr Mataka, the Provincial Commissioner of the Eastern Cape at the time, of his testimony and Mr Charles Ndumo,³³ a senior officer in the Department, the Commission needs to make a finding on whether Operation Quiet Storm existed or was as Mr Ndumo commented in his evidence in Durban, a "figment of Mr Ntuli's imagination".

4.1.2 The Waterval Siege

The evidence points to the fact that the Waterval Prison was taken over by approximately sixty four (64) members of Popcru, on 24 October 1996, which included, amongst others, Messrs Russell Ngubo and Charles Ndumo. They remained at Waterval overnight, that is until 25 October 1996.

At all relevant times, Mr Derrick Nyandu, (also known as Babah Nyandu), was an employee of the Department who had been appointed as an Organiser in 1993 and later as a Provincial Organiser for Popcru in 1996. Mr Nyandu testified and confirmed this fact. He also confirmed that he was the owner of the diary, extracts of which were filed as an exhibit in the Commission.³⁴ The said diary had the name "Babah Nyandu". Mr Nyandu confirmed that he was also known as Babah Nyandu. Inside the diary there were the following inscriptions;

³³ Both Messrs Mataka and Ndumo are senior Popcru members.

³⁴ See Exhibit 'WWWW9'.

1. Under the date 24 October 1996, it was written “Waterval Meeting – N.C. and B.R”. Mr Nyandu confirmed that “N.C.” referred to Mr Nhlanhla Charles Ndumo and the letters “B.R.” referred to Mr Russell Ngubo.;
2. The entry of 4 November 1996, had the following inscription – “Sevontein Prison – Operation Quiet Storm”.

It is interesting to note that the date of 24 October 1996, is the date when Waterval was invaded by members of Popcru. It is also of significance that Mr Nyandu, who denied any knowledge of Operation Quiet Storm, had this entry in his diary for 4 November 1996.

When the police went in to arrest the members of Popcru who were inside the Waterval Prison, they found a note, which was filed as an exhibit with the Commission.³⁵ Mr Nyandu confirmed that the note was in his handwriting. It read as follows:

“Press Alert – Press Alert

Press Conference – Operation Quite (sic) Storm

We invite your association/organization to attend our press conference scheduled to be held on 25 October 1996.

Venue :

Time : 13H00.

Background

Seeing that the Department of Correctional Services is dragging its feet in affirming our members to managerial positions, POPCRU has embarked on an operation called “OPERATION QUITE (sic) STORM”. This operation’s purpose is to make sure that before the end of November

³⁵ Exhibit ‘WWWW8’.

1996, in six prisons we have successfully managed to place our members in positions.

Your presence will be highly valued.

Regards.”

The note purported to allocate the various senior positions at Waterval Prison to different members as follows:

“Waterval Posts Allocation

The Commander – Mbongwa

Head – Management Services – Nkumzwayo (Assisted by Venter)

Head – Personnel Services – Buthelezi

Head of Prison Med. B – Ndlovu

Head of Prison Med. A – Sibisi

Assistant Head Med. B – Mhtingo³⁶

Assistant Head Med. A – Mthethwa

Internal Custodial Services – Musekini (Own emphasis)³⁷

It is once again interesting to note that Mr Nyandu, who was an organiser of Popcru who alleged in his evidence, under cross-examination, that he had never heard of Operation Quiet Storm, although he had “Operation Quiet Storm” written not only in his diary, but also in the press release, which he had prepared to send off either to “Press Alert”³⁸ or to read out in a press conference. It was also clear from the entry in his diary, that he was to meet Messrs Ngubo and Ndumo at Waterval Prison, which was the same day that the prison was taken over by members of Popcru. This was quite a coincidence.

³⁶ The spelling is not clear on Exhibit ‘WWWW8’.

³⁷ The rest of the note is not clear as to whom the other positions were allocated.

³⁸ Press Alert was a system or organisation which was used during or about 1994/95/96 to distribute information to various media organisations in the country.

One should also take cognisance of the fact that they took over the prison from 24 to 25 October 1996. The said note, which was to be read out at the press conference was referring to a conference which was scheduled for 25 October 1996.

The Commission received other affidavits that supported the evidence about Operation Quiet Storm. An affidavit from a member of the South African Police Service, Inspector Godfrey Thembinkosi Nyembe, who was called to Waterval Prison as a hostage negotiator on 24 October 1996 because Popcru members were holding management hostage, states:

“At about 21:40 I also got involved in the negotiations with the POPCRU delegation which was led by Mr Ndumo from Pietermaritzburg where he made mention to me that they are busy with ‘Operation Quiet Storm’ whereby they were demanding keys to the Prison from the Commanders, this was done for them to get higher posts in the Correctional Services.”³⁹
(Own emphasis)

Mr Nyandu confirmed that he and Mr Mataka communicated but according to him, not regularly. Mr Nyandu was very vague when questioned as to whether he had told Mr Mataka on 28 October of the work stoppage at Waterval Prison and about the rumours of Operation Quiet Storm. In contrast to his earlier testimony, he could not confirm the nature of the conversation that he had with Mr Mataka nor that he would have said that Mr Ndumo and Mr Ngubo were involved in the Operation.

When asked whether he had been at Waterval Prison at the time of the hostage situation, he responded that he had no recollection of a hostage situation but that he remembered that he had asked for a meeting with the management to address the problems at Waterval. According to him, the said meeting had

³⁹ As per Pietermaritzburg Exhibit ‘WWWW3’.

carried on until the union managed to persuade management to agree to some of the demands. It was his testimony that the individuals who were arrested at Waterval Prison had paid their bail themselves and that the union only assisted where the members were short of money.

The cumulative effect of the aforesaid evidence clearly points to the fact that Mr Nyandu, as the organiser of Popcru, was fully aware of the taking over of the Waterval Prison. This was part of Operation Quiet Storm. Similarly, the organisation Popcru was aware of Operation Quiet Storm. It is even stated in his own “press release” that it was a Popcru operation. It clearly was not a figment of Mr Ntuli’s imagination.

4.1.3 Were Popcru members on a frolic of their own?

Another question that needs to be asked is whether Popcru knew about Operation Quiet Storm. In this regard, the Commission will refer to the minutes of a meeting, which was held to try and resolve the issue of the various interdicts, which had been obtained by the Department.

The meeting, which was a Continuation of Workshop, was held on 20 November 1996 at the Tennis Lounge Recreation Hall in Durban.⁴⁰

According to these minutes there were seven (7) items on the Agenda, which were proposed by Popcru.⁴¹ Item No. 6 of the Agenda is of interest. It reflects the following:

“6. Chasing away of commanders (operation quietstorm).”

⁴⁰ The minutes were filed with the Commission as Exhibit ‘WWW12’.

⁴¹ It is apparent from the minutes that POPCRU was represented by Messrs Nxele, Ndumo, Ntuli, Makhatini and Zondi. The four (4) were senior members of Popcru.

It is appropriate to quote from the minutes so as to understand what was discussed under this particular item:

“Mr Sithole informs the meeting that management has been negotiating all along, and the actions taken came as a direct instruction from the President. ...

What commanders and management want is to continue with their work in harmony. Nobody wants to see colleagues with interdicts and criminal charges, but unfortunately POPCRU laughs at issues such as “quietstorm”, yet during last week a member informed management that “quietstorm” will continue.....

POPCRU say that they do not regard their actions as illegal actions, they feel that management broke an agreement, which caused the actions taken by POPCRU...” (Own emphasis).

The parties then went on to discuss the issue of the withdrawal of the interdicts and the payment of costs. After much discussion, it was clear that Popcru was not prepared to take full financial responsibility for the eviction of the various senior managers from the different management areas, and the interdicts which followed thereafter. It was, therefore, finalised as follows:

“Mr Sithole asked to what extent conflict can be paid for, looking at the time spent etc., the only thing that will allow parties to reach anything, the final offer is department pays 70% and POPCRU pays 30%.

Mr Nxele acknowledges the commitment by both parties and they settle with the percentage of 70% and 30%.”

It is clear from the above that the Department would pay seventy (70%) per cent of the costs for the interdicts and Popcru would pay thirty (30%) per cent, and not the individuals who were involved.

After discussing the issue of transformation and the transformation forum, they then went on to discuss the issue of Operation Quiet Storm. The minutes record the said discussion as follows :

“OPERATION QUIETSTORM

Mr Sithole appeals to POPCRU to stop with this action. It is something which is not attainable, and forums have now been put into place, fortunately it is not accompanied by any cost, so negotiation will be quick.

POPCRU : Agree that a commitment should be made and also agree that “operation quietstorm” should be stopped, however they ask for a commitment from management that they will sincerely consider the withdrawal of criminal charges. They request further that POPCRU and Management, at National level, visit commands such as Stanger, Waterval etc in order to investigate the situation. Fruthermore, they request that commanders ensure a good and acceptable working environment for members, and that they not intimidate members by means of their position, political affiliations etc.”

Besides the fact that management capitulated in these negotiations, for reasons which will become apparent later in this report,⁴² it was clear that Popcru accepted financial responsibility for the actions of their members, which had been taken in the name of Operation Quiet Storm. Obviously they accepted responsibility because it was their initiative to transform the Department in this unlawful manner. If the members were on a frolic of their own, the Union would have refused to pay the costs.

⁴² See the section dealing with CORE and the role played by Sithole and also the chapter dealing with Trade Unionism.

In the light of the foregoing, it is clear that Operation Quiet Storm was a Popcru operation and the individual members were not on a frolic of their own.

If one takes the evidence of Mr Ntuli and the evidence with which Mr Nyandu was confronted, it is clear that Operation Quiet Storm was real. This is also confirmed by the various newspaper articles where Mr Ndumo himself referred to Operation Quiet Storm as a Popcru initiative.

The Echo (supplement to the *Natal Witness*) of 31 October 1996 quoted Popcru spokesman, Mr Nhlanhla Ndumo as calling for then President Nelson Mandela to intervene in the KwaZulu-Natal prisons crisis. The article states:

“According to Ndumo, three months ago POPCRU embarked on Operation Quiet Storm where the union went on to forcefully replace five prison commanders in Sevontein, Stanger, Westville, Ncome and Empangeni prisons.

Ndumo described the situation in prisons in KwaZulu-Natal as out of control and said that as long as management resists change POPCRU will force it to happen.

Change is taking place in prisons in other provinces and only this province is refusing to effect affirmative action.” (Own emphasis)

In the light of the foregoing, Mr Mataka’s evidence was rejected by the Commission as being false and an attempt by him to distance Popcru from the activities of the KwaZulu-Natal (Midlands) branch of Popcru in implementing Operation Quiet Storm. It became apparent that Popcru had never distanced itself from the operation and had never done anything to discipline Messrs Ndumo and Ngubo for their actions if Mr Mataka was to be believed. In actual fact, it has been clearly shown in this report that Popcru knew everything and

Operation Quiet Storm was its initiative. Even if one were to believe that Operation Quiet Storm was not sanctioned by Popcru, the national leadership condoned and encouraged it by knowingly remaining silent as events, which were well publicised, unfolded.

Mr Mataka's denials, as the Commission has already stated, were a mere attempt to distance the union from this operation because it has consequences for the union that are adverse both legally and financially. However, such denial is contrary to the union's statement in 1996 and the union's failure to distance itself from the "mutiny".⁴³

Lastly, if one considers Mr Nyandu's testimony regarding the payment of bail for some arrested members at Waterval, it has to be asked why the union would have paid their bail if the members were on a frolic of their own? Either the members were participating in a union initiated operation or the union condoned their unlawful actions and hence the payment of the bail of the arrested members.⁴⁴ The same principle applies with regard to the payment of legal costs, referred to above.

4.1.4 The Findings

Despite the vehement denials from Mr Mataka and other Popcru members, on proven facts above, the Commission finds overwhelming evidence that:

- (a) Operation Quiet Storm was conceived in 1996 as part of Popcru's transformation plan.

⁴³ See articles which appeared in the *Natal Witness* dated 30 October 1996. See articles which appeared in the *Natal Witness* of 17, 19 and 26 October 1996, where the union's role is explained. In the *Natal Witness* of 17 October 1996, Mr Ntuli, who was then the Popcru Provincial spokesman, was quoted as this this was "a popular revolt by Popcru."

⁴⁴ After the evidence of Mr Nyandu, Mr Dutton formally withdrew as his legal representative. Mr Dutton also handed in a statement by Mr Wills, which was marked as Exhibit 'WWWW13'. The Evidence Leader also submitted a statement made by Mrs Graham, which was handed in and marked as Exhibit 'WWWW11'.

- (b) It was spearheaded by senior Correctional Services members, Mr Russell Ngubo and Mr Nhlanhla Charles Ndumo, in KwaZulu-Natal.
- (c) Mr Mataka and Mr Nyandu, both senior officials of Popcru, had full knowledge of Operation Quiet Storm and its illegal nature.
- (d) The campaign was carried out with the full knowledge and support of Popcru.
- (e) The unlawful taking of hostages at the prison at Waterval Management Area was not a labour matter.
- (f) The illegal nature of Operation Quiet Storm was known or foreseeable to all those who were involved, including Popcru.

Questions which need to be asked, however, are what impact did it have on the Department of Correctional Services and what can be done to prevent such tactics in the future?

4.1.5 Impact of Operation Quiet Storm

The main feature of the Operation was that there was a lot of violence or threats of violence against employees of the Department in all the Management Areas. The plan the union approved was not only highly risky in its implementation but also criminal in nature. The campaign's objectives were to be achieved by calculated action intended to render the prisons ungovernable. Sit-ins were organised and unwanted personnel were systematically targeted and hounded out of office by either intimidation or violence. In some cases, the unwanted individuals were removed by force from their offices and never again allowed to enter the prison premises.

A media release issued by the Department of Correctional Services on 18 October 1996, describes the Department's response to the "illegal sieges" at various prisons in KwaZulu-Natal:

“These actions are nothing less than mutiny ... It is astonishing that POPCRU members can arrogate themselves the right to remove the legitimate management and replace them by (sic) persons enjoying union favouritism. It is extremely arrogant.

The Department can simply not allow a situation whereby a trade union or staff members cripple management by hi-jacking the command and control of prisons and thereby placing the well-being of fellow employees, prisoners and the community at risk. Under no circumstances can a trade union be allowed to dictate to the Department which employees should be appointed to managerial positions.

Many attempts to normalize the situation (sic) at the affected prisons by means of constructive negotiations and dialogue have been in vain. In a further attempt to normalize the situation, starting today at the Ncome Area of Command, the Department has send (sic) a high-level delegation of management to the affected prisons. The objectives are to regain command and control and to restore the legitimate management of the prisons into their positions. The regaining of control is not negotiable whatsoever.”⁴⁵

Notwithstanding the Department’s assertion regarding the Union being “arrogant”, or seeking to “dictate to the Department” about appointments, the will of the union eventually prevailed.

Operation Quiet Storm, however, was not only confined to KwaZulu-Natal. Whilst the Commission was sitting in Gauteng, the then Provincial Commissioner of Gauteng, Mr M. Z. I. Modise testified that when he was based in the Northern Cape, he had received information about a meeting that the union, Popcru in Bloemfontein, Free State had called. Only a few selected Provincial Correctional

⁴⁵ As per Pietermaritzburg Exhibit ‘WWWW1’.

Officials (PCO's) were invited but he was not included. He learned afterwards, however, that Operation Quiet Storm was discussed at the meeting. According to this evidence, it is clear that Operation Quiet Storm was meant to be a national operation, which union members countrywide were to embark upon.⁴⁶

Operation Quiet Storm introduced a culture of lawlessness in the Department in that it became the norm for unwanted members to be forcibly removed from their positions and for unlawful actions to occur with impunity. This culture spilled over to other provinces.⁴⁷ It should have been obvious to the Department that these actions were bearing fruit from a poisoned tree.

The general workforce in the Department began to perceive senior management as condoning this lawlessness due to the number of unlawful and illegal activities emanating from Operation Quiet Storm. Law and order had broken down in the Department, as neither senior management nor the Department took decisive action against those who transgressed the law. Even disciplinary inquiries were no longer effective.⁴⁸

It also bears mentioning that with regards to the Waterval forced removal and the taking over of the prison by Messrs Ndumo, Ngubo and sixty two (62) others, the Department intervened when the Director of Public Prosecutions sought to prosecute all the people involved and charge them with "sedition" and other charges. The then Commissioner of Correctional Services met with the Director of Public Prosecutions and negotiated that the matter be treated as a labour issue and thus that the members not be criminally prosecuted.

On reading the record referred to, it became clear to the Commission that referring to this as a labour matter was far from the reality of what had occurred.

⁴⁶ See the evidence of Mr Modise in the Leeuwkop transcript – Volume 10 at page 868.

⁴⁷ Operation Quiet Storm was rolled out nationally to, at least, Eastern Cape, Free State and Gauteng Provinces.

⁴⁸ See Chapters on Disciplinary Inquiries and the Pietermaritzburg Management Area.

It was clearly a criminal matter and such charges should have been pursued against those who were involved.⁴⁹

The main impact or by-product of Operation Quiet Storm was that members of the union were never reluctant to forcibly remove appointed members of senior management if they were not happy with the appointments. Clear evidence of these Operation Quiet Storm activities was demonstrated to the Commission in the example of union members removing Mrs Thandi Kgosidintsi from the Provincial Head Office at Pietermaritzburg while she was the Provincial Commissioner. Mrs Kgosidintsi's evidence, for example, demonstrated the naked barbarism and violence to which those who were victims of Operation Quiet Storm were subjected by the members of Popcru. In addition to being threatened and spat upon, the degree of barbarism is best demonstrated by the following evidence of Mrs Kgosidintsi before the Commission:

“And was any other unsavoury things done in your office?

Yes there were.

What were they?

At least one person urinated on the carpet, on the floor.

In your presence?

In my presence, yes. I couldn't recall who it was now but one of the people did.

And in the vicinity of your office, was anything similar to that done?

Afterwards when we were leaving, it was reported to me that some of the groups that left my office went to Mr M G Buthelezi's office and defecated on his carpet – on the carpet in his office and wrote on the wall. That I also saw. There was writing on the wall with faeces.

Eventually your torture ended, thankfully.

Yes.⁵⁰

⁴⁹ See *Utrecht* Cas No. 93/10/96 (Exhibit 'WWWW 6'.) See also Pietermaritzburg Transcript – Volume 25 at page 2 447.

It should not be forgotten that all of the aforesaid was done in the name of appointing “progressive people” into the Department.⁵¹

Other examples include the removal of Mrs Nokulunga Tseane, while she was the Provincial Commissioner of the Eastern Cape Province, the removal of Mrs Grace Molatedi, while she was the Area Manager at the Bloemfontein Management Area⁵² and the removal of Mr David K. M. Baloyi when he was appointed Area Manager of the Bloemfontein Management Area.⁵³ In addition, there were many other people who were removed from their posts in other parts of the country.

Hostage taking of senior officials by junior members of the Department was another by-product of Operation Quiet Storm. This by-product of Operation Quiet Storm was adopted and carried out in other provinces as well. For example, members of the Department in Gauteng held the Gauteng Provincial Commissioner, Mr Zacharia Modise⁵⁴ and other senior officials, hostage.

While KwaZulu-Natal Popcru implemented Operation Quiet Storm, other provinces⁵⁵ also went on similar operations. Some had different names and some were not named at all. However, it is clear that the *modus operandi* was the same and the intentions were similar. This then corroborates the evidence of

⁵⁰ See the Chapter on the Pietermaritzburg Management Area and Mrs Kgosidintsi’s evidence, Pietermaritzburg Transcript, Volume 13 pages 1 240-1 241.

⁵¹ The Department did not pursue the High Court Application it had instituted against the members who committed these crimes. Thus most of them are still in the State’s employ.

⁵² See Bloemfontein Transcript, Volume 16, pages 1 467-1 470 and Chapter on Bloemfontein Management Area.

⁵³ See Mr Baloyi’s affidavit in Head Office Exhibit ‘T’ and Chapter on the Bloemfontein Management Area.

⁵⁴ See the Transcript dealing with Mr Modise’s evidence at the Leeuwkop Management Area, Volume One.

⁵⁵ The other Management Areas outside KwaZulu-Natal which had unrest resembling Operation Quiet Storm were: Upington, Bloemfontein, St Albans, Johannesburg, Modderbee, and Krugersdorp.

Mr Modise, who said that he had heard that Quiet Storm was meant to be a national operation.

4.2 Operation Thula

Operation Thula, which was conducted in the Bloemfontein Management Area, was also a Popcru-driven campaign, aimed at influencing management and rendering the prison ungovernable. The timing of its commencement in relation to Operation Quiet Storm is still not clear to the Commission.

According to the evidence of Mr Kosana,⁵⁶ who testified at the Bloemfontein Management Area, Operation Thula was to achieve its objectives by:

- (a) Ignoring instructions from senior management.
- (b) Proliferating contraband into the prison.
- (c) Ignoring escapes.
- (d) Organising members to take leave simultaneously to make it difficult to run the prison.
- (e) Turning the prison into a “G Hostel”.⁵⁷

As can be seen from the objectives, Operation Thula was clearly aimed at making the Department ungovernable.

However, the Commission never received evidence from any other member of the Department to corroborate Mr Kosana on Operation Thula. This, however, was not unique to Operation Thula. There were also only a few witnesses who were prepared to testify on Operation Quiet Storm. This confirmed to the Commission that Popcru had instructed that a code of silence be maintained

⁵⁶ Bloemfontein Transcript Volume 20 pages 1 932-2 040 and Volume 21 pages 2041 – 2150.

⁵⁷ “G Hostel”, according to the evidence, is a hostel in Welkom, which is filthy and ungovernable.

around these operations, as the witnesses had informed the Commission.⁵⁸ The Commission's attempts to corroborate the evidence were met either by denial or refusal to discuss the operation. Many of the members/informants who wanted to divulge information became unwilling when they heard that their identity would have to be revealed in order to act against those implicated. Vital leads were lost in the process.

Furthermore, as already indicated in this Chapter, management's lack of intervention with regard to unlawful activities led to members being reluctant to talk about matters discussed at various meetings that were considered confidential, whether or not the union sanctioned the meetings.

4.3 Secret Management Meetings

It also became clear to the Commission that most of the decisions taken at management level within the Department were not decisions taken at such management meetings but had been decided upon at other secret venues. This was a main feature of the way the Department operated and, possibly, still operates.

In order for discipline and order to prevail in any organisation it is imperative that appointees to positions have the necessary qualification and experience for the relevant post. Appointees who are the outcome of clandestine meetings and whose appointments are based on union loyalty or any other patronage will never enjoy authority or the respect of those under them.

As it was at such secret meetings that posts were discussed and allocated to various people, it is not surprising that these secret meetings led to dissatisfaction and contributed to the lawlessness within the Department.

⁵⁸ It was evident that there was a "code of silence" borne out either by members' loyalty to the organisation or fear of reprisals for their own involvement in some of the actions. The code of silence in the Department is enforced through intimidation and assault.

A more detailed account of the effect of these secret meetings is given later in the report in the Chapter on recruitment problems. This section, however, summarises evidence that surfaced about the key aspects of two (2) very important secret structures that appear to have made management decisions in the Department, namely “Amagqugula” and CORE.

4.3.1 Amagqugula

At the St Albans Management Area hearings, evidence was led about the existence of secret or garage meetings (Amagqugula) held at the various shop stewards’ homes to discuss the management of the Department. In particular, these meetings were held to discuss vacant posts that had been advertised and their allocation to the various members of the union. These related mostly to positions of influence within the Department. This effectively rendered the formal selection process redundant since they became a mere rubber-stamping of decisions already taken elsewhere.⁵⁹

They held secret meetings where policy and practice was resolved and the fate of individuals determined. They removed people from positions by intimidating them or manipulating the disciplinary process to ensure that some people were protected while others were targeted. When they did not like someone who was occupying a position and they could not get the person out by manipulating the system, they simply sent in their “storm troopers” and bypassed any legitimate process to achieve their own ends.

The Commission heard evidence from Correctional Official Mr Thembile Goodman Matshoko, who was a shop steward for Popcru until 1999. He was subsequently expelled from the union. Mr Matshoko testified before the

⁵⁹ Port Elizabeth Transcript, Volume 14.

Commission on condition that the information that he provided was not used to incriminate himself.

Mr Matshoko said that from 1994 Popcru's role was to transform the Department of Correctional Services to be representative and to make sure that those who were disadvantaged in the past were given opportunities. Mr Matshoko said:

"After [national commissioner] Mr Sithole took over the department then definitely we were engaged as a union in a programme where we were shifting the power from whites into blacks. So, what happened is that we used different strategies there, because what happened is that black managers started now to surface and be in positions of power and what happened is that it was one of our strategies as a union which was introduced by Mr Nweba and Mr Mpemva, the strategy of secret meetings which were called 'amagqugula'.⁶⁰

Mr Nweba and Mr Mpemva chaired the meetings and gave instructions to the shop stewards who were in attendance.

Mr Matshoko said that the first meetings were held in about 1996/1997 when Mr Nweba, who was Deputy Director responsible for the Inspectorate, and Mr Mpemva, who was the Provincial Head of Personnel, were appointed to the Eastern Cape provincial office. The appointment of Mr Mpemva to head personnel was key because it enabled him to influence merit awards and promotions and have a broad influence over personnel. His appointment was discussed at a secret meeting about a month before he was appointed to the post. Mr Matshoko said:

"POPCRU had played a vital role in influencing that appointment of Mr Mpemva ... What happened is that after his appointment there it was

⁶⁰ See Port Elizabeth transcript at page 1 427.

*welcomed that now for the first time we have got our own blood or brother who's in that position, so everything will go well with us in terms of promotions and in terms of merit awards and all matters pertaining to personnel.*⁶¹

Mr Matshoko told the Commission that the meetings were not exclusively an activity of Popcru in the Eastern Cape. Instead they stemmed from Popcru's national office where there was a national alliance called "igqugula" where people would hold secret meetings to discuss how the department should be run nationally.

In addition, Mr Matshoko told the Commission that the president of Popcru, Mr Cebekhulu, during a visit to Gwamagqaki Hall, said: "You can have whatever qualification, but if we don't want to put you in the post you won't get there and we will just appoint people as we screened them."⁶² He later clarified his comments during cross examination:

*"The point that I'm making is that even though the requirements were set by the department, but POPCRU had an indirect influence over those as the president of POPCRU stated in his national tour that you can have whatever qualifications, but if we don't want you in a post you won't get there ... What he intended to mean is that people will not be appointed in positions within the department without the approval of POPCRU and that's what transpired after the meetings, because people having those RVQ15s and so on, they never got promotions."*⁶³

It was not only people who were anti-Popcru who became the victims of the Amagqugula. Even Popcru members who questioned Mr Mpemva or Mr Nweba were seen as threats. "Mr Nweba and Mr Mpemva were prominent in this

⁶¹ See Port Elizabeth transcript at page 1 439 – 1 440.

⁶² See Port Elizabeth transcript at page 1 879.

⁶³ See Port Elizabeth transcript at pages 1 880 and 1 926.

province and what happened is that anyone who would question their power or their authority will be dealt with accordingly.”⁶⁴

The Union Popcru, appointed a legal representative to cross-examine Mr Matshoko and represent the individual Popcru members, who were implicated. The line taken by the said legal representative cross-examining Mr Matshoko, was the denial of the existence of the garage meetings. However, when the time came for Popcru and the various members of Popcru who were implicated by Mr Matshoko to testify, they walked out of the Commission’s hearings.

In the light of the foregoing, the Commission accepted Mr Matshoko’s evidence as truthful. Mr Matshoko performed very well under cross-examination and convincingly withstood the cross-examination by Popcru’s Attorney. He was frank in the manner in which he disclosed the events and it was clear to the Commission that his testimony was reliable and was not a fabrication.

It became clear to the Commission that the secret meetings to allocate vacant posts had become a generalised practice in the Department even though no one was prepared to come forward to testify about the existence of such meetings or discussion groups in other Management Areas. The forced removal of management had become the order of the day. The union was doing as it pleased in this regard. The result of this erosion of formal management authority in the Department, particularly over recruitment, is that formal processes could not be seen as anything other than a sham.

It is clear that the lawlessness had now penetrated all the provinces and had become the order of the day within the Department. The Head Office of the Department was not isolated from the activities taking place at the various Management Areas in the provinces. In fact, the evidence points to the fact that

⁶⁴ See Port Elizabeth transcript at page 1 493.

the then National Commissioner was sometimes consulted about these discussions.

4.3.2 CORE

The Commission received several complaints about the existence of a powerful group of senior officers who effectively took control of the Department of Correctional Services.

Several people were approached for information. The majority of members spoke on condition that their identity is not revealed for fear that they might be killed. It is for this reason that only a few written statements or affidavits were obtained. In addition, many of these witnesses refused to testify in the hearings, even if they were able to take place behind closed doors. The information the investigators obtained was given to them with the assurance that it was correct. The Commission will deal with this information in so far as it has been corroborated by other evidence.

The picture that emerges from the information given is sketched out below. The origins of Core can be traced to certain meetings held late in 1997. It would appear that two or more senior officials met informally and decided to approach other like-minded persons in the Department. Evidence led before the Commission, at the time of Commissioner Sithole's reign in the Department of Correctional Services, shows that a body of hand picked members of staff would meet after hours in secret to discuss the management of the Department. It would appear that these individuals met to determine what each of the sections of the Department was doing about transformation. They felt it was necessary to establish a Core of persons who would drive the transformation process forward. Not surprisingly, the group became known as Core.

The informants were quite coy about who the real brain was behind the group that was eventually called Core. Some say it was Mr Zwi Mdletshe,⁶⁵ the former President of Popcru, while others say it was Mr Lucky Mathebula,⁶⁶ who was based at Head Office. Still others think it was Mr Khulekani Sithole, who was the National Commissioner at the time. Whatever the dispute about the “father” of Core, there is unanimity that all three (3) were important members of the group, which met after hours in the Department to discuss management issues.

However, the evidence shows differences in the details of who belonged to Core, how Core emerged and even what the group that met secretly was called. For instance, some of the members gave the Commission the names of the members of the group⁶⁷ but this may not be a closed list. Some members also referred to Core as Commissioner Sithole’s “kitchen cabinet.”⁶⁸ The evidence also suggested that in addition to the Core group, there were those members who were only consulted on issues coming out of the discussions.

Further evidence of the existence of Core and the issues discussed emerged from the details given of the debates. For instance, evidence shows that some of the Core members favoured asking Mr Steven Korabie⁶⁹ to become a member of Core while others opposed this. Those opposing felt that if Mr Korabie did join Core, he would be appointed the next Commissioner because of his status in the Department when Mr Mataka had already been earmarked as the next Commissioner.

⁶⁵ He was then a Deputy Director in the Department.

⁶⁶ He was then the Director of Corporate Planning.

⁶⁷ See Head Office Exhibits “D” to “G”.

⁶⁸ See the evidence of Mrs Kgosidintsi (Pietermaritzburg Transcript Volume 13 page 1 186)

⁶⁹ Even though he never became a member, one of the informants said he was regularly consulted on issues emanating from Core meetings.

The existence of Core and the secret meetings was thus never in dispute. Even some of the senior Departmental officials, who were not invited to these meetings, were aware of the existence of the group.⁷⁰

However, it needs to be kept in mind that no formal meetings were held, not even after Core was formed, nor were minutes kept. In light of the fact that there was no legal basis for such meetings, this approach was not surprising. Nor was it entirely unexpected that these meetings were shrouded in secrecy and were also completely closed, except to those specifically invited.

The difference between the formal decision-making processes and these meetings was the role the management team, which met after hours, played.⁷¹ Despite the secrecy, some of the members of this management team said in evidence that the meetings were ordinary advisory meetings and there was nothing sinister about them.⁷²

Those involved with Core justified its existence on the following basis:

A group of dedicated persons had to ensure that the transformation process in the Department of Correctional Services was accelerated. The task of Core's members was to identify areas in the Department of Correctional Services where transformation had not taken place, determine what the obstacles were, work out how they could be overcome and map the way forward.

The eight (8) officials involved were based at the Head Office of the Department of Correctional Services or within close proximity of that office. Their task was to provide "natural leadership" for transformation but they were aware that they needed "representatives" in the various provinces. To this end, a network of

⁷⁰ See the evidence of Mr G.J. Fourie, filed as Head Office Exhibit "A".

⁷¹ See the role of this management team as set out in the *Sunday Times* article "Rotten to the Core" dated 5 March 2000.

⁷² See Head Office Exhibit "E".

“provincial leaders” was created in the provinces. Again, the criterion was perceived commitment to the transformation process. One of the original founders of Core was the main contact person for the provincial leaders. It should consequently come as no surprise that most, if not all, of the provincial leaders were “powerful” in Popcru, whether because they held positions in the union or were highly regarded because of their past contributions to the strength of the union.

One of the more important tasks of both the national and provincial leadership was to identify persons who would drive the transformation in the direction determined by Core. These identified individuals then had to be placed or deployed into powerful positions, through which they could exercise control of the section concerned. At the same time, those individuals who were seen as obstacles to transformation had to be rooted out.

However, there is a different view, expressed by those Departmental members who make reference to the sinister intentions⁷³ of the group. Some members also described Core as a group akin to the “Broederbond”.

Further investigations by the Commission also revealed that the reference to the meetings as being simple advisory meetings without any sinister motives was not how other members of the Department viewed Core. According to these members of the Department, Core existed to ensure its members occupied strategic positions within the Department.⁷⁴

Thus began a process in which key appointments, promotions and removals were determined at these secret meetings. Invariably, the Core leaders refused to restrict themselves to existing posts and positions. To the extent that it was necessary to promote their ends, they created and abolished posts as well.

⁷³ See the evidence of Mr Moloi – Head Office Exhibit “B”.

⁷⁴ The Commission’s investigations pointed to people occupying the former Minister’s and Commissioner’s Administrative offices, Human Resources section, Finance section etc.

Implementing such decisions was not difficult since one of the Core members headed the work-study section in the Department and would act in terms of the resolutions taken at these secret meetings. Not only were the members of Core intelligent, they were also scheming and ruthless.

As a result of the power they ended up wielding in the Department, any disagreement with their views led to victimisation of the person who disagreed. The *modus operandi* followed was that any progress in the careers of the dissenting individuals, would be brought to an immediate halt. They would be punitively transferred or they would be disciplined and inevitably dismissed from the Department. In this regard, evidence refers to a number of people the group had dealt with in such a manner.⁷⁵

What Mr Moloi found out about Core is succinctly put in paragraph nine (9) of his affidavit, setting out the general state of fear within the Department and how members of the Department feared Core specifically. The fear was also exacerbated by the fact that the unions failed to protect their members against the actions of Core or failed to enforce their rights against the Department when they were being victimised more effectively. He went on to state:

“When complaints are made to us about corruption, irregularities or malpractices in human resources matters, these are made in very general terms. As to why they did not ascertain all the facts, they say CORE prevents them from doing so. In the same vein, they say, with a shrug of the shoulders, that CORE is even more powerful than the legal remedies available to them. So, there is no sense in protecting themselves through the use of such remedies. It will only lead to more victimization, as evidence by the litany of CORE’s victims.”

⁷⁵ See the evidence of Mr Sipiwe Moloi, one of the Commission investigators, in the affidavit filed under Head Office, Exhibit “B”.

It is this state of fear and intimidation within the Department that those who allege Core was merely an advisory body to the Commissioner of Correctional Services at the time do not refer to.

The ruthlessness of the members of Core can best be illustrated by the manner in which they engineered the removal of Ms A and Mr B⁷⁶ from the Department. In this connection, the following background is worth noting:

- Ms A was seen as a “transformation blocker”.
- Mr B was seen as her protector. You could not touch her without touching him.
- At the time, suspicions had been raised about Core’s secret existence. People in the Department, especially whites, could see a pattern in the decisions taken by the Department, particularly those of the Commissioner.
- Ms A began questioning a number of decisions the Commissioner had taken.
- This suited whites, who began rallying behind her.

At the time, Ms A had clearly become an obstacle to the union’s transformation plans and had to go. She had done nothing dismissible by promoting views Core disapproved of, so some other means had to be found to get rid of her. Because Mr B was her protector, the same applied to him.

Investigations were done to find something to pin on Ms A. Very few Department of Correctional Services employees go through life without doing something or the other that can come back to haunt them. In this case, investigations revealed that Ms A and Mr B had abused their travel claims. They were confronted with

⁷⁶ Ms A and Mr B were both senior officials who were employed in the Department. Their names are known to the Commission.

these and given a choice either to leave the Department without sullyng their reputations or face inquiries and criminal charges with respect to the fraud.

It was common knowledge that staff abused their transport claims and it would seem it is a practice that continues to date.⁷⁷ Given that such activities are illegal and are further subject to the sort of additional abuse described above, the Commission is of the view that the Department must take the abuse of transport claims much more seriously than it does.

Neither Mr B nor Ms A was willing to fight back. The only issue left was to find a means for them to leave the Department of Correctional Services. In Ms A's case, it was agreed that she would simply resign, but to protect her reputation, it was further agreed that the reason given would be irreconcilable differences with the Commissioner, which was there for all to see from the frequent clashes between them. In Mr B's case, he was given the option of either being exposed for fraud or taking a severance package. Not surprisingly, he opted for the latter.

Core ensured that it had people in key positions so that its plan could be implemented. For example, one member⁷⁸ was asked to be the facilitator of all the strategic sessions held by Department of Correctional Services. He, in fact, used those occasions to gather information for Core.

As regards appointments, Core had to approve all these from Director level upwards. Interview and appointment procedures were merely processes that had to be complied with but they did not shape outcomes. Core produced the lists in terms of which appointments were made.

Among the more prominent senior employees affected by the decisions made by Core were the following:

⁷⁷ See the investigation by this Commission into Mr Mataka's fraudulent claims in its Sixth Interim Report.

⁷⁸ The member's name is known to the Commission.

- The appointment of Mr Mataka as the Provincial Commissioner of Limpopo;
- Member Z's⁷⁹ appointment as a Director at Modder Bee prison;
- The removal of the Area Manager of the Johannesburg Prison.

The decision with respect to senior employees was not made by Core itself but was “delegated” to the “provincial leadership”, which Core had identified in respect of posts below Director level. Again, interviews were held and short lists compiled but these were simply sham formalities to create a sense of propriety. Notwithstanding the delegation, Core retained the right to approve or reject lists drawn by the “provincial leadership”.

As already stated, Core's members were master strategists and manipulators. A further basis for this conclusion was the manner in which they dealt with Correctional Officers Union of South Africa (COUSA). This was the union that had broken away from Popcru. It was beginning to be seen as a serious rival to Popcru. Something had to be done to protect Popcru. Core came to Popcru's rescue. They decided that COUSA should be dissolved and merge with Popcru. The other terms of the merger could only be achieved because of their close association with the then National Commissioner.

Clearly there had to be a close link between Popcru and Core. Popcru was by far the most powerful union in Department of Correctional Services. It had similar aims to Core as far as transformation went and some of its members were also members of Core.

⁷⁹ Member Z was a senior official in the Department and Member Z's name is known to the Commission.

However, whilst Popcru was a “public” body, Core was a “secret group”. So when non-Department of Correctional Services people wanted things done they approached Popcru. For example, if public figures wanted relatives appointed by the Department of Correctional Services, they approached members, who then requested Core to approve such requests. Often this could be done without much difficulty but sometimes posts had to be created. Given their positions in the Department, it was easy for Core members to perform these tasks.

On one occasion, during a recruitment drive, because of all these requests, the intake exceeded the Department’s capacity to train recruits. It then became necessary to reduce the training course to three (3) months. The Department of Correctional Services was also forced to get the University of South Africa (Unisa) to develop short courses for training purposes and, to cater for the training, the Department bought a Protea Hotel.

Core made all these decisions. The Management Board merely rubber-stamped what Core had already determined.

As often happens with secret organisations, cracks began to appear in Core. Envy, resentment and other vices no doubt played a role. The original Core no longer operated as a unit. In fact, a different Core, which took over the real decision-making, was formed but the pretence was maintained that the original Core was still intact and in control. This charade could, however, not last. Those excluded from the new Core soon got a taste of their own medicine. They were hounded out of the Department over a period of time after being removed from their positions of power.

Dr Sithole had been removed as Commissioner but the notion of a group of persons who have *de facto* if not formal control over the Department, notwithstanding that the power should rest with the Management Board, survives even today.

It could be argued that since this was a body set up by the former Commissioner of Correctional Services, Dr Sithole, who no longer holds this position, it may no longer be effective. However, the evidence before the Commission suggests that Core has not disbanded. While the Commissioner may not convene it, the members appear still to be meeting secretly to make certain decisions, which need to be attended to by members of Core within the Department. This is clearly demonstrated by the manner in which some decisions, which should have been implemented years ago, have been frustrated simply because they go against the views of members of Core union policy.⁸⁰

Regarding decisions that were frustrated because they went against members of Core, officials of the Department often quote Mr Mataka's case as an example. According to the evidence collected, it was clear that the Department of Public Service and Administration had identified him as early as 1999 as being involved in corrupt activities. However, instead of being disciplined for these actions, he was moved from the Head Office to become the Provincial Commissioner of Limpopo and later to become the Provincial Commissioner of the Eastern Cape.

According to the members, it was an open secret that he was "the heir apparent" to the "crown" of being the National Commissioner. This was going to be achieved because of his affiliation with Core and it was going to be achieved at all costs, despite transgressions he may have committed within the Department.⁸¹

However, as noted, a few employees at Head Office who were Core members gave the impression to the investigators that there was nothing unbecoming

⁸⁰ See the chapters dealing with Recruitment, Disciplinary Inquiries, Overtime Payments, Transfers of Staff etc.

⁸¹ See the manner in which the Department dealt with his transgressions, which were uncovered by the Commission. In this regard, refer to the section dealing with the Department's response to the Sixth Interim Report in the Chapter on the Implementation of Interim Reports hereinafter.

about Core's meetings. In light of this, it is necessary that a thorough investigation of Core, its strategies and its role be done so as to bring the Department back under the control of the legal decision making body, its Management Board and not some secret structure.

4.4 Failure To Discipline Perpetrators

The Department's failure to deal with the people involved in Operation Quiet Storm⁸² exaggerated the power of the founders and increased the fear of them throughout the Department. This fear, unfortunately and to the amazement of the Commission, was evident even at national government level. As a result of the Department's inaction, the organisers of Operation Quiet Storm lost all respect for law and order.

It is apparent from the evidence led that Messrs Ngubo, Ndumo and Memela, the original organisers and supporters of Operation Quiet Storm⁸³, have no respect for law and order or any authority in the Republic. It may be this approach to law and order, which has led to their current situation.⁸⁴ The failure by the State to

⁸² The same would apply to Core members and the participants in Amagqugula and Operation Thula insofar as their actions were unlawful.

⁸³ Mr T.O. Memela was not mentioned as one of the founders of Operation Quiet Storm but all the evidence points to the fact that he was one of its supporters and operated with Messrs Ndumo and Ngubo in a number of matters. Mr T. O. Memela in the Pietermaritzburg Management Area was regarded as Mr Ngubo's right hand man. According to the evidence before the Commission, notwithstanding the fact that other people were part of the "A" team, the most trusted lieutenants of Mr Ngubo were Messrs Memela and N. C. Ndumo. (Refer to the chapter on Pietermaritzburg Management Area for more details.)

⁸⁴ Mr Russell Ngubo and Mr T.O. Memela were convicted and sentenced on 22 July 2005, by the Judge President of KwaZulu-Natal as follows:

1. Mr B.R. Ngubo was convicted of:
 - (i) defeating the ends of justice by attempting to intimidate a witness not to give information to the police;
 - (ii) the murders of Mr Nash Ngubane and Mr Mshengu.

prosecute them after the take-over of the Waterval Prison, may have contributed to this attitude.

This disrespect for authority and the law generally is evidenced in the following incidents regarding Correctional Services:

- (a) During or about 1998, the then Minister of Correctional Services, Dr Siphon Mzimela, was quoted in the press as telling members of the Pietermaritzburg Prison that he was considering closing the prison. It is generally reported that Mr Ngubo⁸⁵ responded that the prison would not be closed and threatened Minister Mzimela with death. This was clear insubordination. *The Natal Witness* reported:

“Ngubo insisted The Natal Witness publish the following statement which he verified twice:

‘This old man (Mzimela) is about to die. His days are numbered. He is mad and he is too old. He must go to hell. There is no one who is going to be transferred from this prison - no prisoner and no warder will be transferred.’

Mr Ngubo denies this and no action was taken against him.

- (b) Mrs Kgosidintsi, who had been appointed Commissioner of Correctional Services in KwaZulu-Natal, was assaulted, humiliated, spat upon and

He was sentenced to an effective sentence of twenty five (25) years’ imprisonment; and

2. Mr T.O. Memela was effectively sentenced to twenty (20) years’ imprisonment for kidnapping and murder of Mr Nash Ngubane.

They were convicted and sentenced together with a Mr Thulani Xaba, who was a member of the VIP Protection Unit of the South African Police Service when the crimes were perpetrated. The main State witness, in the case, who was an accomplice, Mr Nhlanhla Ngubane, was also a member of the South African Police Service (VIP Protection Unit). The abovementioned crimes were committed during or about September 1995.

⁸⁵

As he was quoted in the *Natal Witness* “Warders defy prison closure” dated 8 June 1998.

chased out of KwaZulu-Natal by a group led by Mr Ngubo. This incident was widely publicised in the media. It was also conveyed to the Department. The action preferred was a high court application for an interdict.⁸⁶ The matters were, however, settled in a manner that creates a bad public impression of the Department in that it showed lack of courage and weak leadership. Effectively, the Department capitulated to the forces of Mr Ngubo and others and no effective disciplinary action was ever taken against the perpetrators.⁸⁷

- (c) Similarly, in response to Operation Quiet Storm storm-troopers taking over prisons, the Department lodged a number of interdicts against the members who were participating in Operation Quiet Storm. However, when it came to the crunch, the Department capitulated and agreed to:
- (i) withdraw the interdicts;
 - (ii) withdraw the suspensions of the perpetrators; and
 - (iii) pay seventy (70%) per cent of the legal costs, which had been incurred in trying to protect law abiding employees.

Once again it was a clear capitulation by the Department in favour of people who had committed criminal acts against the Department's employees. Obviously, this encouraged the current state of lawlessness within the Department.

- (d) Mrs Kgosidintsi also testified that when the new Minister, Mr B. Skosana, who, at the time, had recently been appointed, came to introduce himself to the members of the Department at Durban-Westville in 1998, a group led by Mr Ngubo assaulted Dr Sithole, the National Commissioner at the

⁸⁶ See *Minister of Correctional Services and Another v Russell Ngubo and 33 others* (NPD Case No. 616/1999)

⁸⁷ See the Chapter on the Pietermaritzburg Management Area, on how she was humiliated by junior members of staff. See also Pietermaritzburg, Volume 13.

time.⁸⁸ Once again, no sanctions were brought against Mr Ngubo and others. However, Minister Skosana issued a statement to the effect that the assault on Commissioner Sithole had nothing to do with him but was related to the issues between the Commissioner and those who attacked him.

- (e) The various Commissions or investigations that the Department has sanctioned have not received any co-operation from Messrs Ngubo, Memela and Ndumo. Even this Commission, which is a Judicial Commission of Inquiry appointed by the State President, has not received any meaningful co-operation from these three (3) men.⁸⁹

The failure of the Department to deal properly with the allegations of Mrs Kgosidintsi, a very senior official, discourages good labour relations and does not enforce a sense of discipline within the Department. Indeed, it reinforces the belief right or wrong that senior officials, and indeed the Minister at the time himself, feared the three (3) men. This, in the view of the Commission, is a clear indictment of the Department, which failed to act decisively. It is either that the then Minister was not being properly advised or there were individuals still operating within Departmental structures who owed their allegiance to the “achievements” of Operation Quiet Storm or any other secretive structure.

The conclusion reached by the Commission that Messrs Ngubo, Memela and Ndumo have no respect for any law or authority applies also to their attitude to their own union. According to the evidence, for example, at the height of Operation Quiet Storm, the then President of Popcru called the executive of the union in KwaZulu-Natal together with the three (3) men, to a meeting. Their response to this invitation was to be contemptuous of their then President.

⁸⁸ Mrs Kgosidintsi could also identify a certain Mr Mnguni who was the Chairperson of Popcru in Pietermaritzburg. (Pietermaritzburg Transcript Volume 13, pages 1 178-1 184).

⁸⁹ There are other examples of their disrespect for the law, which are dealt with in the Chapter dealing with the Pietermaritzburg Management Area.

The fear engulfing the Department also extended to the national level. When the Minister of Correctional Services called a meeting to try and resolve the KwaZulu-Natal problems, he was intimidated and was forced to hold the meeting dealing with the problems of Pietermaritzburg outside the district of Pietermaritzburg.⁹⁰ The three (3) men were thus effectively running the Department in the province with impunity and had clearly become a law unto themselves with even the Minister not being welcome in Departmental premises at Pietermaritzburg. In the Commission's view, this was the worst form of abdication of responsibility by the National Office of the Department of Correctional Services, which had the effect of entrenching the importance of these men and affirming a culture of intimidation within the Department. The failure to prosecute them for, inter alia, sedition and intimidation after the Waterval siege, was a dereliction of duty by the senior management.

Similarly, in the other provinces, those who committed criminal acts of intimidation, assault, crimen injuria and even theft, against senior officials like Mrs N. Tseane, Mrs G. Moletedi, Mr D. Baloyi, Mr M. Z. I. Modise and other senior officials, were never disciplined by the Department. Even those who were disciplined by law abiding members who sought to enforce the law, were later reinstated by senior government officials on the basis of what was referred to as "humanitarian grounds".⁹¹

It is interesting to note that the humanitarian consideration only applied to members of Popcru and did not apply to the victims of their unlawful actions.

To date, the Commission has not heard any evidence to indicate that there was any form of apology or counselling or any acceptable form of social or restorative

⁹⁰ The meeting was held at Majuba Lodge, Newcastle. (See Pietermaritzburg Transcript Volume 14, pages 1 252-1 255).

⁹¹ For more details on this see the chapter dealing with the Bloemfontein Management Area and the Chapter dealing with Disciplinary Inquiries.

justice or an humanitarian gesture by the Department to the victims of the aforesaid actions. These renegade members are still in the Department and reining them in must be the most difficult task for any manager. Thus, the same level of mismanagement and corruption, still prevails.⁹²

The Commission is of the opinion that as a result of the Minister and Commissioner of Correctional Services failing to stamp their authority and defusing the situation in the affected Management Areas, any senior Government official who tried to deal with renegades in the Department was disregarded and treated with contempt. It was clear that the union reigned and that Departmental management were merely tolerated as long as they did not interfere with the plans or objectives of the union.

Instead of dealing with the problems emanating from the various management areas, the Department has been caught up in an “investigation paralysis”. Decisive action to address the general lawlessness that was clear to everyone was avoided by the Department, which chose rather to appoint Commissions of Inquiry or Investigative Boards whenever there was a crisis that required tough decisions. In total there have been more than twenty (20) investigations into the Department in the last ten (10) years. Of these twenty (20), this Commission has identified that seven (7) were concerned with issues that arose because of undue union influence.⁹³

The Department’s failure to deal with the culprits through the criminal justice system can in itself be seen as “protection” of members, who should have been disciplined and dismissed.

⁹² One should not forget that these acts of violence referred to in this report are merely a sample of everything that has happened in the rest of the country, which begs the question, how many of these renegade members are still in the Department?

⁹³ See Appendix ‘D’ for a breakdown of these previous investigations. See also the chapter dealing with Previous Investigations.

The paralysis in the Department fueled the corruption and criminal conduct taking hold, as the Department failed to send out a clear message to the perpetrators that they needed to respect law and order and that they were not above the law.

5. CONCLUDING REMARKS

Unions were apparently in control of the day to day running of the Department of Correctional Services, with Popcru being the most powerful and influential. The power of the Department's management had been successfully emasculated by the union, which had succeeded in ensuring that union sympathisers were appointed to almost all strategic positions. As a result, the Department found itself in a position where it could not make and enforce decisions regarding work conditions or that might affect employees because these were likely to be frustrated by union sympathisers in the higher echelons of the Department.⁹⁴

As a result of this distribution of power, the entire management system of the Department, including the capacity to exercise discipline, was ineffective. Employees did not have to comply with the rules and regulations of the Department. Instead, their survival in the Department depended merely on currying favour with the union.

For the Department to succeed in implementing the Government's vision with regard to Corrections, it is imperative that management retake control of the entire Department and acts in the interests of the Department.

The power wielded by the union has resulted in corruption festering because control systems protecting the Department's interests are being ignored, with

⁹⁴ For example, see the chapters dealing with the implementation of the Seven Day establishment (overtime ban) and Disciplinary Code.

those who are corrupt taking advantage of the absence of proper discipline and the lack of enforcement of the various control procedures.

The ineffectiveness of management in the Department has also created opportunities for gangs to prosper and further insinuate themselves into the Department,⁹⁵ with the role played by members in this regard being destructive.

Accordingly, it is the Commission's view that the primary challenge for the Department is the unbridled negative influence by members especially those belonging to the majority union. To deal with this, the Department will have to develop a special and effective strategy to reclaim its power and authority, which will necessitate a major change in the mind set of most employees.

Any strategy for reclaiming power and authority will have to address the main factors that have led to the emasculation of Departmental management and

consequently to incompetence and ineffective rehabilitation programmes within the Department. These factors include:

- 5.1 The appointment of not suitably qualified personnel (or people who lack strategic and visionary leadership qualities), which was the product of interference with a fair recruitment process.
- 5.2 Appointments based on loyalty to the union instead of competency for the job.

⁹⁵ The role of the gangs will be shown clearly in the chapters on Sexual Violence in Prisons and Gangs in Prison.

- 5.3 The Department's failure to recruit and bring in outside skills at management level. It has been clear to the Commission that the officials within the Department believe that for anyone to be promoted to a senior position, one must have come up through the ranks. Officials have been heard to say that anyone who has not worked in a prison does not know anything about prisons. This attitude limits the pool of possible management recruits to the Department and excludes fresh blood from outside the Department that may bring new and innovative ideas to meet the challenge of Corrections in the future. In these circumstances, even the transformation process is restricted to former employees, whose knowledge of dealing with prisoners is limited to what they were taught during their training to be Correctional officials.
- 5.4 The Department has perceived the transformation process as the replacement of white officials with black officials. Transformation of the mindset of the members to incorporate a human rights culture and to adopt new procedures and processes required by this, has taken time to settle in, if it has settled at all.
- 5.5 Re-introducing an effective disciplinary system. Respect for law and order is a fundamental component of any Correctional system in any open and democratic society.

The Chapters, which will be dealt with hereinafter, are an attempt by the Commission to address the lawlessness and mismanagement in the Department, which has permeated almost all operational areas.