



9 September 2015

Latiefa Mobara
Public Advocate
The South African Press Council
By email: mobara@ombudsman.org.za

Dear Ms Mobara,

Re: Response to Complaint from Department of Correctional Services on Mail & Guardian published article “Prison Inmate ‘Tortured to death’”

Thank you for bringing the above-mentioned complaint to our attention. Please find below the response of the Wits Justice Project (WJP) to the issues raised before the Council in the Department of Correctional Service (DCS) letter dated 7 September 2015.

Background to the Wits Justice Project

The (WJP) is a project of the Journalism Department at the University of the Witwatersrand in Johannesburg South Africa. It WJP uses journalism, law, research, education and advocacy to expose miscarriages of justice and abuse in the criminal justice system.

The WJP editorial guidelines were developed to protect our journalists and uphold the integrity of our work. As journalists working in South Africa, the members of the WJP are bound by the South African Press Code. The WJP editorial guidelines are there to reinforce the ethical standards by which we work. You can read our editorial guidelines [here](#).

Background to the Mangaung Investigative Series

The WJP has, since October 2013, been publishing results of a multi-year investigation, by its senior journalist Ruth Hopkins, into the treatment of inmates at the Mangaung Correctional Centre in Bloemfontein.

Hopkins investigated allegations that the prison – run by private security company G4S – had been placing inmates in isolation cells for unlawful periods ranging from three months to four years, forcibly injecting inmates with anti-psychotic medication, as well as electro-shocking and torturing them. She conducted interviews with approximately 100 inmates, 30 warders and a range of other sources, including DCS and G4S officials, in order to corroborate the allegations, during the course of a methodical investigation which received local and international attention. The investigation yielded multiple folders of hard evidence as well as many hours of filmed footage.

The first story to detail these allegations was published, on 25 October 2013 (Appendix 1), as a 3-page spread in the weekly [Mail and Guardian](#) newspaper – as well as a photograph relating to the story





featuring prominently on the front page of the edition. Shortly thereafter, the story was also covered by [The Guardian UK](#) and the [BBC](#), as well as featuring as a 15 minute long [Carte Blanche](#) video report. Other media coverage has included SABC news, SAFM, Sky News, CNN, AP, AFP, Reuters Television, to name a few.

After the initial allegations were uncovered, then minister of correctional services, Minister Sbu Ndebele, committed to a full investigation being carried out and a report being made public within 30 days (see Appendix 2). Since then, the WJP has made regular follow-ups regarding both the investigation and the report,

In addition, the WJP continued to investigate the information and evidence it was receiving regarding current and past circumstances at Mangaung. It was able to collate a full dossier on the deaths of two inmates, Tebogo Bereng and Isaac Nelani. Having satisfied the requirements of the WJP editorial guidelines (see above), and having sought input and advice from the head of the journalism department, Professor Anton Harber, and a media lawyer, it was able to publish in the Mail & Guardian, and the UK Telegraph newspapers.

Before publication, the WJP sought and received answers, from DCS, to specific questions arising from the investigation. The full trail of correspondence between Hopkins and the departmental spokesperson, Logan Maistry, are included here as Appendix 3.

The word limit given to the WJP for the print edition (Appendix 4) of the M&G story was 1500. The online version (Appendix 5) was not limited and the full version of the piece was able to be placed there, along with the full versions of the responses from the DCS (which was 568 words long), as well as that from G4S.

Due to space limitations, some of the lengthier responses from the DCS had to be summarized (but the meaning not altered), in the print edition. Hopkins selected a verbatim quote which was placed in a prominent pull-out box at the top right of the page by that newspaper. The full story, as sent by Hopkins to the M&G, is included as Appendix 6. The section that was used as the text in the side-bar is as follows:

"The Department of Correctional Services (DCS) has, most importantly, succeeded in stabilizing the situation at the centre, and in restoring effective control, discipline and rehabilitation programmes," Said departmental spokesperson Logan Maistry in response to the allegations. "In terms of the Correctional Services Act and other relevant legislation, any person/s found guilty of any violation/s must face the consequences of their actions. To this end, DCS is ensuring that no stone is left unturned in this investigation and any person/s found guilty will face the full might of the law". He could not however, indicate when the investigation report will be finalised or if it will be made public. He said both Isaac Nelani's and Tebogo Bereng's deaths have been referred to the South African Police Service, but the police told the Wits Justice Project they do not have any record of these cases.

Meanwhile British security firm G4S told the justice project last week that it is a law abiding security provider. "G4S is confident that it complies with all the laws and regulations which





stipulate in detail how investigations are conducted following the death of a prisoner and are committed to fully cooperate with the[department of correctional services] .” “We strive at all times to uphold the rights of inmates and treat them accordingly,” said G4S spokesperson, Elanie Kruger.

Allegation of Contravention of the Press Code

In the DCS letter of 7 September (Appendix 7), the Department asks the Council to take “necessary action” as it alleges that the article in question “is in violation” of the South African Press Code as the WJP had “presented the story with intentional, and negligent, departure from the facts”.

To support this argument, the Department provides, under cover of a separate email (Appendix 8) from Deputy Commissioner Logan Maistry, the following explanation: “the gist of our complain is that, despite providing a detailed response, and various follow-up responses, as attached, the Wits Justice Project presented the story with intentional and negligent departure from the facts”. The email then sets out the following statements (reproduced in bold font), to which we respond thereafter:

- 1. The story mentions “slow progress in leaving ‘no stone unturned’”, despite the fact that reasons for the delays were provided to the journalist but were conveniently omitted from the story. We clearly mentioned in our response that we completed a preliminary investigation, and the preliminary investigation draft report confirmed the necessity for further investigation into a number of areas.**

The WJP broke the story on allegations of electroshock treatment, forced medication with anti-psychotic drugs and lengthy isolation of inmates at Mangaung prison on 25 October 2013 in the Mail and Guardian. Then minister of Correctional Services S'bu Ndebele announced an investigation into the allegations, which he said would take 30 days. Now, nearly two years later, DCS has been unable to tell Hopkins what their findings have been, when the report will be published and if it will be made public. As indicated above, Hopkins included in their quote that there is an ongoing investigation that aims to ‘leave no stone unturned’. That covers the preliminary investigation and the need for further investigation mentioned by the Department.

- 2. Our response clearly states “The Department is going all out to ensure that the investigation is finalized as soon as possible. However, the Department has to also ensure that, as part of the investigation process, all legal provisions are fully complied with. It is unlikely that the report will be made public if there is a potential for litigation between the parties as per the PAIA. However, this will be assessed and a decision will be made once all related matters are completed”. However, the story states “He could not, however, indicate when the investigation’s report will be finalised or if it will be made public”.**

Hopkins asked DCS when the report will be finalised and if it will be made public. Their response (as listed above) does not provide an answer to those questions, therefore the following was used to



summarize the response: "He could not, however, indicate when the investigation's report will be finalised or if it will be made public".

We are unclear what is meant by "potential for litigation between the parties in terms of PAIA", in reference to this question, as neither the Wits Justice Project, nor Hopkins nor the Mail and Guardian have requested the report under PAIA. We do not know who is being referred to as 'parties'.

3. According to the story "He said both Isaac Nelani's and Tebogo Bereng's deaths have been referred to the South African Police Service,.....". In respect of Nelani, DCS provided a CAS number - Bloemfontein CAS 266/05/2005. In respect of Bereng, DCS repeated: "As stated in our previous response regarding Tebogo Bereng, the National Commissioner has appointed a Task Team to look into all unnatural deaths at MCC. In this regard, all necessary documents have been requested from the Contractor. Where these documents have not been submitted (and should be in terms of the Contract), the matter is referred to the Supervisory Committee in terms of the Contract. Any possible criminal investigation will be referred to the SAPS".

After a request to specify which police department was looking into the mentioned deaths (to enable fact-checking), DCS said it had referred it to the detective services at National Headquarters. Hopkins contacted the spokesperson for the South African Police Service (SAPS), Solomon Makgale, who asked for a CAS number (a police docket number). DCS then provided her with a 2005 CAS number of the Bloemfontein police station. The Bloemfontein police station is the police station nearest to the prison, in Bloemfontein. The CAS number dates back to 2005. In 2005, the Bloemfontein police arrived at the prison and transported the body to the state pathologist. Their investigation in 2005 is mentioned in the 2010 magistrate's inquest. However, what Hopkins had asked DCS for was further information on the current investigation into Isaac Nelani's death, which DCS stated the detective services at Head-quarters are looking into this death. They failed to provide this.

Furthermore, Hopkins sent Makgale an email (Appendix 3) with follow up questions about the cases of Nelani and Bereng case. The questions included whether the cases had been referred to the SAPS, and the status of any current investigation into the deaths. Makgale did not respond to Hopkins.

Hopkins also asked Maistry and Makgale, whether Tebogo Bereng's death was part of an SAPS investigation. Both failed to confirm the investigation or to produce any leads by which Hopkins could fact check the DCS assertion.

Hopkins refers to the task team into unnatural deaths in the article. However, Bereng's death was registered by G4S as a natural death, so the WJP is unable to confirm that it is part of the unnatural deaths investigation. DCS did not provide this evidence.

4. The story stated: "Despite the evidence that it uses force and torture, and incorrectly handles deaths in custody, G4S was handed back control of the prison a year ago". DCS provided a



response to the effect that: "Until investigations have been completed, DCS is unable to comment in this regard. DCS certainly takes any allegations of deaths in custody seriously. Hence, the appointment of the Task Team. However, the non-availability of documentation cannot always be said to be the fault of the Contractor, and, hence, the need for an investigation".

G4S was handed back control of the prison, DCS was and is aware of all the allegations of illegal use of force and despite that knowledge, decided to hand back control of the prison to G4S. The task team on unnatural deaths was mentioned in the article, as was the ongoing investigation that aims to 'leave no stone unturned'.

5. The allegations mentioned in the story are not "new claims" that "formed part of the justice project's investigation into allegations of abuse at the Bloemfontein prison.....". These allegations also form part of the investigation by DCS, are mentioned in the draft report which Wits Justice Project states in the inquiry ".....which the WJP has in its possession". However, in the story, there is no mention of ".....which the WJP has in its possession".

The WJP was first told about Nelani's death when Hopkins began her investigation in 2012. She heard about Bereng's death during her research, after his death in March 2013. The WJP did not go to print about these deaths in October 2013, as there was not enough proof, at that time, to justify such serious allegations. The claims are 'new' in the sense that it was only recently (about a month before the article went to print) that the WJP was provided with supporting documents and eyewitness accounts that corroborate the allegations and provide the extra evidence needed to go to print.

The WJP does have, in its possession, a section (but not the entirety) of a draft DCS report, leaked by an anonymous source. In the online version, there is mention of this section of the draft report (it refers to a pathology report on Nelani which mentions a head wound, which contradicts the magistrate's inquest's findings). This detail was left out of the newspaper version because of space constraints. The section of the draft report that WJP has in its possession refers specifically to Nelani's death and generally to unnatural deaths in prison. But, the claims contained in the section of the draft DCS report were not included in the newspaper article, so therefore there was no mention of it.

6. With regards to action taken, DCS stated "In terms of the Correctional Services Act, Section 112 was instituted against the Contractor. Should there be a finding in any case that the procedures/policies or terms of contract have not been adhered to by the Contractor, DCS refers the case to the Supervisory Committee for a ruling on penalties against the Contractor. As stated above, DCS can only act in terms of the contract and cannot initiate a criminal investigation. However, where DCS becomes aware of possible criminal liability, the matter is referred to the SAPS". This was omitted from the story.

As stated above, it was not possible to include DCS' entire response, verbatim, in the newspaper. The M&G did, as per our request, include the entire response online. Hopkins chose the most





compelling part (quoted above) that referred to an ongoing investigation that aims to 'leave no stone unturned' and G4S officials possibly facing the might of the law. Other parts of DCS' response are included in the text in summary. Section 112 was mentioned in the article, as this is the legal basis for the take-over by DCS (it invoked section 112 of the Correctional Services Act when it took control of the prison in October 2013). Hopkins specifically asked Maistry in a follow-up question (Appendix 3) what kind of fines and what amounts have been levelled against G4S. His response: "DCS refers the case to the Supervisory Committee for a ruling on penalties against the Contractor" does not provide any concrete facts, as requested, and therefore it was omitted.

Conclusion

As we have made clear, there has been no departure from the facts, whether intentional or negligent. Our investigation took place over a number of years and we have only gone to print when our allegations can be supported with hard evidence. This shows an exceptional commitment to care and accuracy.

The nub of the DCS complaint is that we have failed to carry every element of their lengthy response, even though elements of it are vague and would give no assistance to the reader in understanding what happened. We demonstrated our goodwill - and our policy of offering a right of reply to all allegations - by returning to DCS for clarification on these vague elements of their response, and received no satisfactory clarification from them. By offering a 568-word response, DCS ensured that some editing had to take place. We acted with due care to ensure that the important points were carried in print, carefully summarised, and the full DCS statement was carried online. We believe, therefore, that within the constraints of the media we are working with, we have gone to great lengths to be fair to DCS and to cover their point of view as fully as possible, as required by both the Press Code and our own editorial guidelines. We hope that the above outline serves to reassure the Council that every reasonable step was made to both verify and seek fair comment from DCS.

Our goal, as an independent, non-partisan organization, operating in both the academic and civil society space, is to improve the criminal justice system in South Africa. We use the results of our investigative journalism to inform and uplift our efforts in changing public discourse and the policy environment. We continuously seek ways to positively engage with those in authority and have maintained that cordial working relations and joint cooperation are crucial to identifying and rooting out miscarriage of justice in the country.



Nooshin Erfani-Ghadimi
Project Coordinator of the Wits Justice Project

