

# **IN THE MAGISTRATES COURT OF SEYCHELLES**

**EXPARTE: INQUEST REPORT INTO CAUSE OF DEATH AND THE CIRCUMSTANCES  
RELATED AND CONNECTED WITH THE DEATH OF MR ROBERT BANANE**

Dated 16<sup>th</sup> February 2018

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## **Chapter 1:**

### Notice of motion

In accordance with section 347 read along with section 351 of the Criminal Procedure Code, Cap 54 of the Laws of Seychelles, on the 2<sup>nd</sup> June 2015, Assistant Principle State Counsel Vipin Mathew Benjamin of the Attorney General's Chambers, on behalf of the Attorney General, filed an ex-parte Notice of Motion support by affidavit. The Motion intended to move the Court to conduct *an inquest into the death and circumstances related to and connected with the death* of Mr. Robert Banane which occurred on the 19<sup>th</sup> March 2016, at the Seychelles Hospital, after an incident at the Montagne Posee prison on the 18<sup>th</sup> March 2016.

On the 23<sup>rd</sup> June 2016, based on the strength of the affidavit evidence, the motion was granted and therefore in exercise of his powers, the Magistrate by virtue of section 346 of the Criminal Procedure Code commenced the inquest on the 21st September 2016. The inquest proceeded over a number of scheduled dates and was eventually taken over by newly appointed Magistrate Burian. The inquest was finally concluded on the 28<sup>th</sup> November 2017, after 14 months of hearing, in which period the testimony of 47 witnesses were heard by the Court.

## **Chapter 2:**

### Criminal Procedure Code

Section 346 of the Criminal Procedure Code provides a Magistrate power to hold inquests.

Section 348 and 349 state that the Magistrate may at any time during the course of the inquest summon any witness to give evidence, if such evidence is necessary for the purpose of the inquest. After the Magistrate has heard the evidence tendered by or on behalf of the Attorney General, she shall give her findings as to the cause of the death.

Section 350 sets clear guidelines for the Magistrate, in that the Magistrate *shall not express any opinion as to the guilt or innocence or otherwise of any person* who may have been called to give evidence at the inquest, even if that person has not volunteered to give evidence therein.

In this instance, Mr Robert Banane was a convict at the time of his death, and died at the Victoria hospital after an incident which occurred at the Montagne Posee prison, therefore applying section 351 the Attorney General shall be bound to order an inquest.

### **Chapter 3:**

#### List of witnesses and exhibits

A total of 47 witnesses were summoned by the Republic to testify in this inquest as follows:

1. Dr Rosa Maria Sierra Fonseca, Pathologist, Victoria Hospital
2. Dr Rakesh Kumar, SPDF Clinic
3. Dr Raoul Monterro Del Rio, Anse Boileau Clinic
4. Marie-Therese Banane, mother of deceased
5. Detective Sergeant Ronny Malvina
6. NDEA Agent Pierre Servina
7. NDEA Agent Terryna Balthilde
8. NDEA Agent David Bryne
9. Inspector Ivan Esparon
10. Police Officer Samuel Jean Francois
11. Mr. Jefferson Marie, convict
12. Mr. Hugh Estico, convict
13. NDEA Agent Terry Madeleine
14. Mr. Julien Alexis, Senior Land Surveyor
15. NDEA Agent Andy Cesar
16. NDEA Agent Chanel Herminie
17. NDEA Agent Juliette Naiken
18. Sub-Inspector Ralph Agathine
19. Joe Gabriel, Sub-station Officer, Fire Force
20. Selwyn Antoine, Prisoner
21. Police Officer Barry Cadence
22. Ms. Edwige Aglae, Assistant Registrar
23. NDEA Agent Errol Raguin

24. NDEA Agent Marcus Payet
25. Corporal Allen Doudee
26. PSSW Angelin Jean
27. NDEA Ken Jean Charles
28. CI Louina Neamtu
29. PSSW Frank Mondon
30. PSSW Alex Pillay
31. PSSW Stephanio Vidot
32. PSSW Darius Kilindo
33. PSSW ASP Peter D'acambra
34. Jean Alexis Adrienne, Prison Officer
35. Jennes Francine Finesse, Prison Officer
36. PSSW Teddy Emile
37. Assistant Commissioner of Police Romano Songore
38. Lieutenant Colonel Luther, SPDF
39. Serge Labiche, Prison Officer
40. PSSW Sergeant Robin Hollanda
41. Vic Tirant, Superintendent of Prisons
42. CI Jocelyn Ernesta
43. CI Daniel Doogely
44. Raju Kumar, Prison Officer
45. Maxime Tirant, Former Superintendent of Prisons
46. Jannie Van Der Westhuizen, Forensic Firearm and Tool Examiner
47. Chief Superintendent Francois Freminot

Additionally a total of 27 exhibits were produced as per the list below:

1. Ex P1: Notes of post mortem examination of Robert Banane
2. Ex P2: Medical examination report of Ronald Ernesta
3. Ex P3(a) : Medical examination report of Danny Dodin
4. Ex P3(b): Medical examination report of Frank Mondon
5. Ex P3 (c): Medical examination report of David Uzice
6. Ex P4: Letter from Home Affairs
7. Ex P5: Death certificate of Robert Banane
8. Ex P6: Photo album
9. Ex P7: Photo album
10. Ex P8: Video footage report
11. Ex P9(a) & (b) : Video footage disk 1 & 2
12. Ex P10: Video footage disk 3
13. Ex P11: Survey report
14. Ex P12: Survey plan
15. Ex P13: Photo album 1-100
16. Ex P14: Fire and Rescue incident report
17. Ex P15: Warrant of commitment for Robert Banane
18. Ex P16: Log compiled by CI Neumtu
19. Ex P17: Inventory of equipment issued to PSSW on 18/03/16
20. Ex P18: Photographs of Jefferson Marie
21. Ex P19: Examination of firearms
22. Ex P20: Letter dated 19/07/17
23. Ex P21: Letter dated 11/08/17
24. Ex P22 Letter dated 07/09/17
25. EX P23 Log Book
26. Ex P24: Ballistic report
27. Ex P25: Ballistic samples

## 28. EX P26: CSI Freminot's report

A locus was carried out on the 22<sup>nd</sup> November 2017 at the Montagne Pose Prison. Present at the locus were principally the Magistrate and Court Staff, along with Mr. Maxime Tirant, CI Ernesta, CI Neumtu, Chief Super Intendant Freminot, Forensic Fire Arm and Tool Examiner Jannie Van Der Westhuizen, and Inspector Ralph Agathine.



## **CHAPTER 4:**

### **Chronology of Events**

- On the 17<sup>th</sup> March 2016 there was a disruption at the Secure Incarceration Unit (hereinafter 'the SIU') of the Montagne Posee Prison.
- CI Neumtu being in charge in the absence of SOP Maxime Tirant, sought the advice of the Minister and a decision was made for the involvement of PSSW special forces (herein after 'PSSW') to secure the SIU.
- PSSW were stationed at the Montagne Posee prison overnight of the 17<sup>th</sup> March 2016.
- On 18<sup>th</sup> March 2016, additional PSSW and NDEA were stationed at the Montagne Posee Prison.
- After unsuccessful attempts to negotiate with inmates in the SIU, a decision was taken to enter into the block to regain control of the inmates, search the premises and thereafter return the said inmates to their respective cells.
- PSSW, NDEA and prison wardens entered the SIU block at approximately 15.00 hours
- Mission was successful and completed by approximately 18.00 hours.
- At 16 .31 pm, two PSSW along with a prison officer can be seen escorting an inmate into the main block. They are subsequently trapped inside as inmates refuse to allow them to exit.
- At 16.37 pm, numerous PSSW officers are seen running towards main block presumably having heard about the two trapped officers inside. They all run in entering the first gate of the main block.
- At 16.38 pm, a commotion follows with many prison officers and PSSW inside and lined outside the main gate. PSSW ASP Dacambra is seen observing the situation. A prison officer is seen ushering the PSSW officers out of the compound and all exit heading back in the direction of the SIU.

- At 16.40 pm, PSSW ASP Dacambra and several other PSSW officers reenter the main gate and stand near to the passageway that is filled with inmates. ASP Dacambra again exits the main gate and stands outside the compound, observing and awaiting feedback from the prison officers inside the main block.
- At 16.42 pm, the doctor is seen exiting the building and compound. At 16.46pm PSSW ASP Dacambra forces his way past a female prison officer enters the passageway into the main block. Other officers remain directly outside the passage way and the female prison officers tell them to fall back which instructions are ignored.
- At 16.48.50 pm, PSSW ASP Dacambra reappears at the entrance of the passage and is seen in a conversation with a female prison officer, seconds later he storms into the passage way followed by numerous PSSW officers and prison officers close behind. Chaos breaks out in the passage way with many inmates shaking the bars, running and some climbing up onto the roof of the passage way. Within 20 seconds, the PSSW officers led by ASP Dacambra exit the passage way.
- PSSW ASP Dcambra gets into a confrontation with an inmate dressed in a blue vest and at 16.49.46 pm PSSW ASP Dacambra can be seen shoving the inmate onto the passage way gate. The inmate retaliates and two PSSW officers step forward to escort PSSW ASP Dacambra away and out of the main gate.
- The inmate at 16.50.12 pm, follows PSSW ASP Dacambra, and appears to shove him which is when chaos breaks out again with at least five PSSW intervening by shoving, pushing, hitting and principally stomping on the inmate as he is cornered and on the ground.
- At 16.50.34 pm, all PSSW officers retreat away from the main block and can no longer be seen in the camera footage.
- The tear gas disperses and in mates begin reentering the compound and at 16.53.41pm one of the first missiles which appears to be an empty glass bottle is thrown.
- At 16.54 pm, inmates begin climbing up and down the roof of the passageway.
- At 17.32.30 pm, Mr. Robert Banane can be seem climbing up onto the roof of the passageway he also picks up a rock or missile and is seen taking off his shirt.

- At 17.33 pm, the inmates begin throwing missiles in the direction of the SIU and prison officers outside the compound.
- At 17.34.11 pm, Mr. Robert Banane is seen kneeling on the roof of the passageway.
- At 17.36.54 pm, an injured person can be seen being carried off the compound.
- Mr. Robert Banane is transported to the Anse Boileau clinic then subsequently to the Victoria Hospital. He undergoes surgery and at 20.00 hours he is moved to the ward. Unfortunately, at 01.20 am, on the 19<sup>th</sup> March 2016, he is declared dead.

## **Chapter 5:**

### **Analysis and synopsis of statements**

The deposition of those witnesses who testified at this inquest as to the facts of and circumstances surrounding the death of Mr. Robert Banane have been carefully considered. After going through all the depositions, it is clear to this Court that many witnesses could add nothing significant to the evidence already given by key witnesses, and as such the evidence of these individuals will not be canvassed in great detail in this report.

The Key witnesses that assist the Court in establishing a cause of death of Mr. Robert Banane are as follows:

1. Dr Rosa Maria Sierra Fonseca, Pathologist, Victoria Hospital
2. Detective Sergeant Ronny Malvina
3. Inspector Ivan Esparon
4. Mr. Jefferson Marie, convict
5. Mr. Hugh Estico, convict
6. Mr. Julien Alexis, Senior Land Surveyor
7. Sub-Inspector Ralph Agathine
8. Selwyn Antoine, Convict
9. Chief-Inspector Louina Neamtu
10. PSSW Sub-Inspector Frank Mondon
11. PSSW Alex Pillay
12. Jean Alexis Adrienne, Prison Officer
13. Sergeant Jennes Francine Finesse
14. PSSW Teddy Emile
15. Deputy Commissioner of Police Romano Songore
16. Lieutenant Colonel Luther, SPDF
17. Superintendent of Prisons, Vic Tirant

18. Chief-Inspector Jocelyn Ernesta
19. Chief-Inspector Daniel Doogely
20. Inspector Raju Kumar
21. Former Superintendent of Prisons, Maxime Tirant
22. Jannie Van Der Westhuizen, Forensic Firearm and Tool Examiner
23. Chief Superintendent Francois Freminot

This report contains a synopsis of relevant and pertinent information/evidence gathered from my analysis of the exhibits and oral testimony laid before me.

**Dr Rosa Maria Sierra Fonseca, Pathologist, Victoria Hospital:**

Dr Rosa Maria Sierra Fonseca testified that on the 21<sup>st</sup> March 2016, she performed a post-mortem together with Dr Alvarez on the deceased. She produced the signed post-mortem report jointly made with Dr Alvarez, which report was produced, marked and exhibited as **P1**.

External examination showed surgery had been performed on the deceased with a 21cm stitching. Further, she observed an irregular wound on the left side of the body about 3.3cm in length and a small wound measuring 1 cm at the back near the spine.

Internal examination revealed fracture to the 9, 10 and 11<sup>th</sup> ribs of the left side and a hematoma i.e. collection of blood as a result of the fracture and the irregular wound found outside. Multiple areas of hematomas and stiches were found. Excessive hemorrhage was also found in the outer layer of the stomach. Kidneys were pale, spleen removed maybe during surgery and hemorrhage in the pancreas with areas of stitches.

***The cause of death was due to hypovolemic shock, multiple intra-abdominal injuries probably due to a gunshot wound. Other findings of cause of death were moderate brain edema, retroperitoneal hematoma, multiple rib fractures and kidney shock.***

The gunshot wound entered from the back and exited from the left side at the irregular wound.

**Detective Sergeant Ronny Malvina:**

Detective Malvina is attached to the Scientific Support and Crimes Records Bureau (SSCRB) and he produced an album of photographs that he took at the scene of the incident at Montagne Posee prison on the 19<sup>th</sup> March 2016, as well as during the post-mortem conducted on the 21<sup>st</sup> March 2016 which album was exhibited as **P6**. A further set of photographs taken at the scene of the incident at the Montagne Possee Prison was exhibited as **P7**.

**Inspector Ivan Esparon:**

Inspector Ivan Esparon is attached to SSRCB and has been a police officer for 11 years. His duty is to extract digital evidence from digital devices and to assist investigators so that the evidence is admissible in Court. In respect of this case, there was digital footage that was extracted from the cam-recorder at Montagne Possee prison on the 21<sup>st</sup> March 2016 at 14.00hours, for the day of the 18<sup>th</sup> March 2016 15.00 to 19.00 hours. There were three cameras facing the direction where the incident happened, but only one camera was working. The camera that was working was on tower 1. The two cameras not working were affixed on the main prison block facing where the incident happened, and according to the prison authorities they had not been working for 1½ months, and looked as though they were not maintained. Inspector Esparon produced two disks with video footage. Disc 1 contains footage from cameras 11 (camera on tower one facing incident) and 12 (facing road along the wall of SIU) and disk 2 contains footage from camera 15 (inside the guard room).

Upon viewing the footage on disk 1 (camera 12), I observed Robert Banane being carried by 3 persons and placed on the ground presumably waiting for an ambulance. At 17.41 pm the doctor and nurse on duty can be seen bandaging up Mr. Robert Banane's chest, and at 17.44.15 pm the footage shows Robert Banane being picked up and carried away.

Footage from camera 11 shows inactivity for the first 30 minutes, then at 16 .31 pm two PSSW along with a prison officer can be seen escorting an inmate into the main block. At 16.37 pm numerous PSSW officers are seen running towards the main block presumably having heard about the two trapped officers inside. They all run in entering the first gate of the main block. At 16.38 pm, commotion follows with many prison officers and PSSW inside and lined outside the main gate. PSSW ASP Dacambra can be seen observing the situation. A Prison Officer can be seen ushering the PSSW officers out of the compound and all exit heading back in the direction of the SIU. PSSW ASP Dacambra remains observing outside the main gate and appears to be speaking to the prison officers presumably in regards to the two PSSW remaining trapped inside the main block.

At 16.40 pm, PSSW ASP Dacambra and several other PSSW officers reenter the main gate and stand near to the passageway that is filled with inmates. Some inmates can be seen outside of the passageway in the compound near PSSW officers. PSSW ASP Dacambra again exits the main gate and stands outside the compound observing and awaiting feedback from the prison officers inside the main block.

At 16.42 pm, the doctor is seen exiting the building and compound.

At 16.46 pm, PSSW ASP Dacambra is seen forcing his way past a female prison officer and entering the passage way into the main block. Other officer remain directly outside the passage way and the female prison officers are seen telling them to fall back which instructions are ignored.

At 16.48.50 pm, PSSW ASP Dacambra reappears at the entrance of the passage and is seen in a conversation with a female prison officer and seconds later he storms into the passage way followed by numerous PSSW officers and prison officers close behind. Chaos can be seen

breaking out in the passage way with many prisons shaking the bars, running and some climbing up onto the roof of the passage way. Within 20 seconds the PSSW officers led by PSSW ASP Dacambra exit the passageway.

PSSW ASP Dcambra gets into a confrontation with an inmate dressed in a blue vest, and at 16.49.46 pm PSSW ASP Dacambra can be seen shoving the inmate onto the passageway gate. The inmate retaliates and two PSSW officers step forward to escort PSSW ASP Dacambra away and out of the main gate. The inmate at 16.50.12 pm follows PSSW ASP Dacambra and appears to shove him, which is when chaos breaks out again with at least five PSSW intervening by shoving, pushing, hitting and principally stomping on the inmate as he is cornered and on the ground.

At 16.50.34 pm, the PSSW officers are escorted away from the inmate by a Nepalese officer in riot gear, and one PSSW officer can be seen attempting to restrain his colleague who wants to continue to aggress the inmate, tear gas is also released and the inmates retreat into the main block. All PSSW officers retreat away from the main block, and can no longer be seen in the camera footage.

The tear gas disperses and inmates begin reentering the compound at 16.53.41 pm, and one of the first missiles which appears to be an empty glass bottle is thrown. At 16.54 pm, inmates begin climbing up and down the roof of the passageway and at 16.56 pm inmates can be seen behind the passageway breaking concrete slabs and pieces of wood.

At 17.01 pm, a masked man is seen standing on the roof of the kitchen/bakery, and for the time being the inmates are observing. For the next 30 minutes the inmates are back and forth on the roof observing what can be seen from this vantage point in the direction of SIU. On occasion there are no inmates on the roof, the situation appears calm and controlled. However at around 17.31 pm, a group of 10-11 inmates climb onto the roof.



At 17.32.30 pm, Mr. Robert Banane can be seen climbing up onto the roof of the passageway he also picks up a rock or missile and is seen taking off his shirt. At 17.33 pm the inmates begin throwing missiles in the direction of the SIU and prison officers outside the compound.

At 17.34.11 pm, Mr. Robert Banane is seen kneeling on the roof of the passageway, the camera then turns to the other inmates on the roof who are running and appear to be retreating backwards presumably because of the gunfire, and Mr. Robert Banane is not seen again in this footage.

At 17.36.54 pm, an injured person can be seen being carried off the compound. At 17.39 pm, at least 14 inmates remain on the roof of the kitchen throwing missiles. At 17.44 pm, tear gas is released which disperses the crowd temporarily. At 17.56 pm, an ambulance arrives at the main block compound and an inmate is escorted to the ambulance. I note that this is not Mr. Robert Banane as he has already been taken out of the compound and transported to the clinic at 17.44 pm as can be seen on camera 12.

According to Inspector Ivan Esparon, the person in charge of the CCTV on the 18<sup>th</sup> March 2016 was Ram Prashad Shrestha.

I have viewed the footage on disk 2, camera 15, which is footage of inside the guardroom, and I have made several observations. At 15.20 pm, the prison officers are seen preparing for the mission and getting into riot gear. Later at 15.37 pm, a rifle is handed out to an officer without any log and the officer who appears in charge of the guard room gets into a safety vest. At 15.43 pm, and again at 16.07 pm AK-47 rifles are being handed out to Nepalese prison officers by the officer on duty in the guard room ***without any entry in the log book as required. Prison officers can be seen taking guns and ammunition without signing off upon exiting in the room. At 16.10 pm, the officer who appears in charge of the guard room himself is seen taking an AK-47 rifle from the cabinet without any record in total four guns can be seen handed out to officers without any account. I note that is brings the number of rifles to a total of 12 (including the 8 on the towers) which matches the number of rifles handed over and seized by the investigating team.***

At 16.49 pm, at least 5 detachable box magazines containing 30 rounds of bullets were taken and handed out to prison officers. At 16.57 pm, another prison officer came and collected another 2 magazines from the cabinet. At 17.13 pm, the officer on duty in the guard room is seen returning to his desk. During his absence, four different prison officers have been seen accessing the cabinet in which the rifles and ammunition are stored. At 17.34 pm, the officer in duty is seen changing into his prison officer uniform and leaving his office. At 17.39 pm the officer on duty and another prison officer are seen filling another four magazines with ammunition and again at 18.03pm.

Apart from CCTV footage, five videos that were uploaded to Facebook by the inmates, were exhibited as **P10**. These videos were taken from inside the main block, and in my opinion do not add any value to the inquest, as they were filmed after Mr. Robert Banane had been shot and transported to the hospital.

**Mr. Jefferson Marie, inmate:**

Jefferson Marie was a convict on the 18<sup>th</sup> March 2016, having just been relocated from Marie Louise to Montagne Possee the day before the incident. He was outside by the gate of the main block, when the two injured inmates from SIU were escorted to the clinic. The two PPSW officers who escorted the inmates were being kept hostage by the inmates inside the main block. The inmates in the main block were upset that their fellow inmates at SIU were being injured. He confirmed that inmates were throwing rocks and bottles at the officers. When missiles were being thrown, he was watching, he saw Robert Banane on the roof of the passageway. ***The Nepalese were firing blank shots in the air and during the commotion someone fired shots from the top floor above SIU.*** Robert Banane was shot and he fell down and he was picked up by the guards. ***Mr. Marie confirmed that he too had sustained a bullet graze on his head and the injury was treated at Anse Boileau Clinic.***

**Mr. Hugh Estico, inmate:**

Hugh Estico, an inmate on remand at Montagne Possee prison on the 18<sup>th</sup> March 2016. He was standing outside near the gate of the main block. He stated that the inmates who were outside of the kitchen could see what was happening at the SIU. They had access to empty bottles of tomato sauce, and when they saw the PSSW coming out of the main prison they began to throw missiles at them. Even though the inmates were throwing bottles at the officers, it did not reach them because of the fencing. The inmates had broken concrete slabs, and began throwing broken pieces at the PSSW officers, the situation deteriorated and teargas was fired. There appeared to be no control as the teargas was affecting the wardens. The inmates took control of everything, tension increased and stones and bottles were being thrown at officers outside the gate. There were inmates climbing the fence and some had gone up on the kitchen roof, others were shouting and throwing stones and bottles.

Mr. Estico was standing close to the passageway, he glanced at the roof and ***he saw Robert Banane squatting on the sloppy roof holding the edge and as he was looking he heard firing and he ducked, he saw Mr. Robert Banane in his squatting position go backwards and fall down near where he was on his backside.*** Mr. Robert Banane turned sideways, and crawled towards the guardroom, as he was crawling Mr. Estico noticed that there blood oozing from his back. He went to the guardroom to see what had happened, inmates panicked and he told them to carry Mr. Robert Banane to the outside gate for him to get treatment as the ambulance was outside. The inmates were in shock, so Mr. Estico and Derick Payet carried Mr. Robert Banane outside. They had wanted to carry him straight to the ambulance, but they were instructed by the warden to leave him outside and were ordered back inside.

Mr. Estico went back inside to where Mr. Robert Banane had fallen so as to ascertain from where he had gotten the injury. The place where he had fallen was a concrete floor, and Mr. Estico saw nothing that could have injured Mr. Robert Banane on the ground. He therefore assumed it was

a bullet that injured Mr. Robert Banane. He examined the wall and saw bullet holes. ***On the 18<sup>th</sup> March 2018 he had noticed a Nepali stationed in the under construction area above SIU.***

**Mr. Julien Alexis, Senior Land Surveyor:**

Mr. Julien Andrew Alexis was a senior land surveyor at the MLUH. He confirmed that on the 8<sup>th</sup> April 2016, he received a request to survey the Montagne Posse Prison. The survey was conducted on the 19<sup>th</sup> May 2016, and a Survey plan was exhibited as **P11**.

I note from observing the plan that the key buildings at the Montagne Posse prison are demarcated along with positioning of the prison wardens who claimed to have fired their weapon on the 18<sup>th</sup> March 2016. Pictures 1-3 of Exhibit P13, illustrate the position of the Nepalese prison wardens who fired AK-47's on the 18<sup>th</sup> March 2016. The scale of the survey plan was 1 to 200 which is 5 times smaller than the normal scale.

**Sub-Inspector Ralph Agathine:**

Sub-Inspector Ralph Agathine of SSRB. He was assisting Chief Superintendent Freminot with the investigation. The first time he visited the Montagne Possee prison was on the 21<sup>st</sup> March 2016. On the first visit, he went around the compound and took photographs of the area including the eight towers. They searched the compound in order to locate cartridges and bullet projectile. On the 22<sup>nd</sup> March 2016, they returned to search the area, they found a bullet hole on the roof in the location where the victim was allegedly standing at the time of the shooting, so they used a laser beam to establish the trajectory of the bullet. This examination occurred in the presence of CSI Freminot and the ballistics expert.

The following day, they conducted a search in the area with a metal detector. On the 28<sup>th</sup> March 2016, he accompanied the ballistics expert to the mortuary for the re-examination of the body of Mr. Robert Banane, and photographs were taken of the injuries.

On the 30<sup>th</sup> March 2016, in the company of CSI Freminot he went to the PSSW headquarters and took photographs of some of the weapons and ammunition that the officers were using on the day of the incident.

On the 2<sup>nd</sup> April 2016, upon a re-visit to the prison they discovered an empty cartridge in the gutter outside the SIU. Upon another visit, they found bullet marks on the fence and on the main prison wall and photographs were taken of the same. Nine bullet holes were found; seven on the wall, one on the passageway roof and one on the fencing of the gate.

The twelve firearms that were used were seized and later photographed. The firearms were brought to the Barbarons firing range for testing, and the ballistic samples were taken by the ballistics expert for further examination. After the examination had been completed the rifles were handed back to the armourer at the PSSW headquarters.

Mr. Agathine also took photographs of inmate Jefferson Marie on the 21<sup>st</sup> March 2016 at around 16.20 hours. The photographs showed the injury sustained by the inmate on the 18<sup>th</sup> March 2016, presumably by a gunshot from an AK-47. The six photographs were collectively marked as exhibit **P18**.

The walther pistol which had been in the possession of SI Frank Mondon was seized, and given to Mr. Agathine for safe keeping. He confirmed that he was not requested to do any further examination on the pistol, but confirmed that it had been fired that day. The pistol was later returned to the armourer at PSSW.

He ***confirmed that he had used a metal detector to search for bullets, and cartridges at the prison, but that they had only managed to find one casing in the gutter outside of the SIU***. He found it strange that they only found one casing. He queried with the prison officers, but they stated that they did not pick up any cartridges. ***He confirmed that in normal circumstances he would have expected to find cartridges. He further stated that they had gone to the top of SIU***

*under construction, but that the area had already been cleaned. From the investigation he could determine that the AK-47's were handed over to other colleagues during shift and not properly recorded, therefore he could only state from whom he took possession of the AK-47's but not with accuracy as to who was in possession of those guns on the 18<sup>th</sup> March 2016.*

**Selwyn Antoine, inmate:**

Selwyn Antoine, 19 years of age and a convict on the 18<sup>th</sup> March 2016. He was working in the kitchen in the male block. At around 16.30 pm he witnessed PPSW, NDEA and other prison officers enter the SIU. He heard tear gas and later observed two inmates from the SIU being escorted to the clinic in the main block. The inmates in the main block became aggressive, and began throwing empty bottles at the officers outside. ***He went to the gate near the kitchen to better observe what was happening, and saw Robert Banane on the roof, he witnessed him fall backwards and immediately saw a prison officer pick him up, the officer told the people firing to stop but they did not.*** He could not see who was firing the rifles. ***He saw a Nepalese firing his rifle but up in the air and not at inmates.***

**Ms. Edwige Aglae, Assistant Registrar:**

The Assistant Registrar confirmed that Mr. Robert Banane, was in prison after the execution of a warrant of commitment for the non-payment of a fine in the sum of SR 3000/-, which was imposed after he was convicted and sentenced for the offence of unlawful possession of stolen property. The warrant of committal was exhibited as **P15**.

### Chief-Inspector Louina Neamtu:

CI Neamtu has been a Chief Inspector at the prison since May 2014. She was on duty both on the 17<sup>th</sup> and 18<sup>th</sup> March 2016. On the 17<sup>th</sup> March 2016 she was the most senior officer at the prison, but on 18<sup>th</sup> March 2016, she had resumed her normal duties.

On the 17<sup>th</sup> March 2016, she received a report that some inmates had attempted to escape from the SIU, so she went on scene and saw that the barbed wire of the perimeter wall of the SIU had been crushed, and a mattress and some cloth had been placed on the barbed wire. The juvenile being kept in the baby unit informed her that he had seen three inmates jump over the wall. She attempted to call the SOP Maxime Tirant, but he could not be reached.

Upon further investigation it was discovered that the inmates had broken the gate and jumped over the wall, the CCTV footage was reviewed and it appeared that the inmates had jumped back into the SIU. She contacted Serge Labiche who was in charge of the SIU, who informed her that the back gate was broken and the inmates were all out of their cells. A roll call was performed, and all the inmates were accounted for.

In 2016, there was no officer in charge of operations, and therefore CI Neamtu attempted to get in contact with SOP Maxime Tirant, as he would have been the person with the authority to contact the police. The Minister became aware of the situation, and he called for an update. The Minister then organized for NDEA and PSSW to come up to the prison, and she was informed that the operation would be led by ASP Songore. No intervention was done that night, and all officers were told to stand down until morning.

During the day of the 18<sup>th</sup> March 2016, CI Neamtu kept a log of the events as they unfolded and she kept the Minister and SOP Maxime Tirant updated. The log was exhibited as **P16**. CI Neamtu also identified Hari Rai in the CCTV footage from camera 15 located in the guardroom. He is seen at the beginning of the footage, and then later he can be seen putting on his riot gear and leaving the office.

**PPSW Sub-Inspector Frank Mondon:**

Sub-Inspector Frank Mondon was part of the response team within the PPSW that attended to the disruption in the SIU at the Montagne Posse Prison. ***He stated that the operation took approximately 2 ½ hours, and that ASP Songore was in charge of the operation.***

He further stated that two PPSW officers had accompanied two inmates to the clinic located in the main block for treatment and had subsequently been prohibited by the inmates from exiting. As he and another officer stood outside, the inmates began throwing rocks, bottles and other items in their direction. There were about 5-6 inmates standing on the kitchen roof. They were ordered to use tear gas on those inmates attempting to break the exit gate.

***He claimed that once the two PPSW officers were able to escape from the main block, they went to the office upstairs with his team, which is where he heard the gun shots. He claimed to have been standing upstairs outside the office.*** He claimed to have heard 3 gunshots from an AK-47, he is trained in firearms and can identify the type of gun used from the sound it makes. A prison guard later informed him that an inmate had fallen from the roof and had been transported away for medical treatment, he heard the next day that the man had died. ***He categorically denied firing his walther pistol on the 18<sup>th</sup> March 2016.***

**PPSW Alex Pillay:**

Alex Pillay was also part of the team that conducted the operation at the SIU at the Montagne Possee Prison on the 18<sup>th</sup> March 2016. He was issued with a federal gun containing rubber bullets. They were given orders by ASP Songore to release tear gas and enter the SIU, the compound was searched and inmates removed and placed outside. According to Mr. Pillay during the operation the inmates at the main block began to riot as they could see the operation in the SIU. The



inmates were using obscene languages, threatening the officers, throwing pieces of wood and ketchup bottles, they started climbing up the fence to jump out, so more tear gas was released.

Later when the situation had calmed somewhat, he returned to the administrative block. ***When he was standing near the office he saw inmates on the kitchen roof, there was a Nepalese in the newly constructed floor above SIU with an AK-47, and he heard gunshots then shouting at the officer. PSSW officers and others were shouting at him not to fire, he heard gunshots but was unsure as to how many, it was rapid fire but the shots were towards the kitchen.*** He later confirmed that he did not see the Nepalese but was told that he had been situated above the SIU.

**Jean Alexis Adrienne, Prison Officer:**

Mr. Adrienne has been working at the prison for 27 years in total. In March 2016, he was in charge of general supervision of subordinates and general maintenance. On the 17<sup>th</sup> March 2016, there was problem with the SIU whereby inmates were complaining and protesting, refusing to enter their cells. Normally, they are unlocked in the morning then at a certain time they are to go back in their cells. On this day, they refused to go back in their cells. They were complaining about ill treatment and conditions at SIU. They wanted more time outside of their cells. The matter was brought to the attention of prison management. The inmates wanted to see SOP Maxime Tirant who was on leave at that time. They were waiting for the reply of SOP Maxime Tirant as to what to do with the inmates. At this point, nothing was happening and supervision was being made on the outside gate of the SIU.

During the afternoon, a group of PSSW officers came into the prison vicinity, they were on observation on instruction of SOP Maxime Tirant and the Minister. The next morning, CI Neumtu informed the prison staff, that they would be receiving assistance to put the situation under control. Three warnings were issued to the inmates in SIU then the PSSW team took over the operation. He was standing by the entrance during the operation, and he heard PSSW give 3

warnings to the inmates before entering the SIU compound. PSSW used tear gas upon entering the compound, and then the inmates were taken out one by one, handcuffed and placed in the yard. Some inmates were aggressive, and were throwing items at the gate. All inmates were handcuffed, and some were suffering the effects of the teargas. Two inmates had to receive medical assistance from the medical team on site. There was a medical team outside and an ambulance on standby but it was later called back to the Anse Boileau Clinic, and therefore the two inmates were transferred to the prison clinic inside the main block. **He does not know who gave this directive, and he did not hear any directives from any prison authority.**

PO Finesse informed him that the inmates were agitated because two PSSW officers had entered inside the clinic with the inmates. She had informed the PSSW officers to stay outside, but they had barged in. It took around 20 minutes for the inmates in the main block to calm down enough to enable the prison staff to remove the two PSSW officers. He was accompanying the two PSSW officers out, and upon reaching the entrance gate there were inmates throwing stones in the direction of the main entrance of the compound where other PSSW officers were standing on the outside. **The inmates who were throwing stones were located on the roof of the kitchen, and passageway to the dining hall.** He could not see them as he was positioned in the passage way but he could hear the inmates.

**As he was waiting with the officers for the perfect time to get them out of the entrance gate, he heard shots being fired and tear gas was released. As a result of the gunfire, the inmates stopped throwing stones, and the two PSSW officers were able to get out through the main entrance.** He remained in the passageway, speaking to the officers in the male block who were trying to calm down the inmates, and it was at this moment that **he saw Robert Banane fall from the roof of the passageway, about 5 feet away on the inside of the fencing.** When Mr. Robert Banane fell, other inmates came and helped him up, he could not walk on his own. The inmates carried Mr. Robert Banane to the guardroom, and then took him to the main entrance gate for medical attention. He could not walk, and was holding his side; there was blood on the ground. He did not link the gunshots with the fall of Mr. Robert Banane at that point in time. **He has never heard gunshots being fired at the Montagne Possee prison during his employment at the prison.**

Mr. Adrienne confirmed that the Nepalese officers are issued with firearms. They guard the watchtowers and carry with them AK-47'S. He did not see any gunshot marks on the prison wall nor did he see any cartridges. He was not aware that Mr. Robert Banane had been shot and only found out on the 19<sup>th</sup> March 2016. He confirmed that there is a procedure in place for the use of weapons and all senior officers know of the procedure. ***No officer is to fire any firearm in the presence of a senior officer without instructions with the exception if there is a risk of losing a life. Mr. Adrienne also stated that Hari Rai was the senior officer in charge of the Nepalese and he was present that day.***

**Sergeant Jennes Francine Finesse:**

Ms. Finesse has been working at the Montagne Posee Prison for eight years and now holds the position of Sergeant. She is currently in charge of the archive office, collecting all daily information and everything concerning the prison. In March 2016 she was working at the Prison as a prison officer. Usually female officers must work with female inmates, but sometimes with the lack of manpower, a female officer is needed to keep account of the occurrence book in the main block.

Prior to the incident of 17<sup>th</sup> March 2016, there have been incidents of cutting and fighting at the prison but on a small scale. In March 2016 the clinic was located in the main block but has now been reallocated to the Vulnerable Prisoners Unit (VPU).

On the 17<sup>th</sup> March 2016, she was on duty 8.00 am until 17.00 pm. At some time between 14.00 pm going on 15.00 pm she saw Nepalese officers running down the stairs of the administrative block. She asked them what was wrong, and she was told that they thought inmates had escaped, so she informed CI Neumtu. They checked the location of the suspected escape, and saw that the fence on the top of the SIU had been bent. The juvenile being kept in the baby unit informed them that he had seen two men climb up on the fence. Upon watching the CCTV, it was discovered that the two masked men had not escaped but had returned to the SIU. It was at this point that Sergeant Labiche informed CI Neumtu that there had been problems in SIU since the

morning, and that the inmates were refusing to return to their cells. CI Neumtu called SOP Maxime Tirant to inform him of the situation, but he could not be reached, and she was only able to make contact with the then SOP at 18.00 pm.

When SOP Maxime Tirant was informed of the situation help was sought from outside the prison to secure the unit. PSSW and NDEA arrived after 6pm, and Nepalese officers who were off duty were called in to stand by.

On a daily basis the prison has 12-14 Nepalese on post or escort duty and if they are posted on one of the right towers they are equipped with AK-47'S. ***In 2016 the Supervisor of the Nepalese was Hari Rai and he was directly under the supervision of SOP Maxime Tirant.*** She is aware that if a prisoner is attempting to escape the Nepalese are allowed to fire three warning shots in the air, but she does not know the procedure in the case of a riot. ***She confirmed that neither she nor her other colleagues have received training as to how to handle riot situations at the Prison.***

On the 18<sup>th</sup> March 2016, she was posted to the guard room in the main block. The situation remained calm until approximately 10.00-11.00 am, which is when the inmates saw PSSW and NDEA on the premises. She called CI Neumtu to inform her that tension was increasing in the main block. Some inmates climbed on the roof of the passage way to get a better view, this was not usual behaviour and she told them to come down but they ignored her demands. ***There were only four officers managing the main block that housed 450 inmates.*** Some inmates were swearing at and commenting on the PSSW's presence at the prison.

After lunch, more inmates started to climb onto the roof of the kitchen, bakery and passage way. She was informed by the inmates that there were more PSSW coming, she could not see from her office and did not want to leave her position unguarded. At around 16.00 pm, PSSW and NDEA entered the SIU, when inmates saw gas coming from the SIU they started screaming and shaking the gates of the passageway, climbing up onto the roof of the passage to get a better view.

At around 16.15 pm, an ambulance approached the main block transporting two injured inmates. Two PSSW officers accompanied the inmates and she ordered them to stay outside but they continued and entered the main block and subsequently became trapped inside the clinic.

Outside, the situation intensified, and inmates were shouting with more than 20 of them on the roof of the kitchen and passage way. PSSW stationed at SIU came to the main block to see about their trapped officers. She briefly saw a Nepalese officer open the gate allowing the PPSW officers to come inside. She saw inmates interacting with the PSSW officers by pushing and fighting. One PSSW officer had hit an inmate, which caused the commotion and inmates became more aggressive. They began breaking the man-holes and taking pieces of wood, empty tomato ketchup bottles and pieces of rock to throw at the officers standing outside the fence. PSSW ASP Dácambra attempted to force his way inside the prison, he pushed Officer Lorna Forte aside, and he was aggressive and demanded that Sergeant Finesse allow him inside the main block, he stood there for about one minute then he decided to leave.

After PSSW ASP Dacambra had left, Inspector Adrienne came and was able to remove the two PSSW officers who were trapped inside the main block. At this point, there were around 20 inmates on the roof and the PSSW outside were throwing teargas over the fence into the main block. When the inmates saw the prison wardens trying to remove the PSSW officers, they began to throw pieces of wood but luckily there was a fencing that blocked the attack.

***Once the PSSW officers had been safely removed, she went back to the guard room as she took a call from the administrative block, she heard a loud noise, and at that moment she saw Mr. Robert Banane fall from the roof of the passage way close to gate number two. She called his name, and she saw a bulge on his side with a small amount of blood.*** She was maybe 5 meters away. She was looking at him through the window, he tried to crawl and was holding his side but he collapsed, so she told two inmates to go and put him inside for cover. She presumed maybe something had hit him. The two inmates put Mr. Robert Banane inside the guardroom in front of her desk. Mr. Robert Banane turned to Sergeant Finesse and told her that he was dying, she advised him otherwise and then called the administrative block to tell them that an inmate had been injured, and that she needed assistance. She was informed that assistance would be sent to her, but with the disturbance outside, she did not think that they would be able to enter the main block, therefore two inmates present offered to carry Mr. Robert Banane outside. They carried him straight out to the nurse and Sergeant Finesse remained in the guardroom.

Sergeant Finesse stated that she had begun coughing as a result of the teargas and inmates had to help her. She stated that despite requesting for assistance, no one came and that the staff remained in the administrative block despite the fact that she was alone in the main block. Later, an officer came to open the gate for her to exit, but ***the night shift officer did not take over the shift, which was when the inmates took over the guard room, burnt all the papers and started a fire outside the guard room. They additionally destroyed the clinic, stole injections and damaged the office of the welfare officer.***

**PSSW Teddy Emile:**

Mr. Emile was part of the operation led at the Montage Possee prison to secure the SIU on the 18/03/2016. ***He stated that he heard an AK-47 being fired.*** He could identify the sound as he used it every day in the army. He did not know where the sound came from and did not see anyone with an AK-47. ***He confirmed that no PSSW had AK-47's as they had only been issued with riot gear and non-lethal weapons.***

**Deputy Commissioner of Police Romano Songore:**

In March 2016, Mr. Romano Songore was head of visible policing and Response Services. He stated that PSSW have strict guidelines to follow during riot incidents. This is in the Public order guidelines for the police force. It is contained in a booklet that holds information on training and measures that need to be followed. On the 17<sup>th</sup> March 2016, he was on duty at Petit Paris Camp when he received a telephone call from the Commissioner of Police requesting a platoon to proceed to the Montagne Posee Prison. He was told that the prison officers were having difficulties with the inmates in the SIU. On the 17<sup>th</sup> March 2016, a platoon of 12-15 officers along with some police officers from Anse Aux Pins went up to the prison at approximately 22.00 to 23.00 hours. They met with CI Neumtu in order to get a report on the reasons for the disruption.

From the information that they received, it appeared that the inmates were unhappy that a jammer blocking telephone signal had been installed, and as a result an inmate had used a mattress to climb up the fence and exit the SIU compound in an attempt to break the jammer. That night, he briefed the then Commissioner of Police (hereinafter 'the COMPOL') and it was decided not to intervene as the inmates were aggressive, and as it was nightfall therefore not safe to undergo the operation. Some PSSW officers were therefore left at the prison to stand guard.

The next day, he was informed by CI Neumtu that some inmates in SIU were not allowing prison warden's access inside the SIU, and were continuing their disruptive behavior. He advised CI Neumtu to inform the SOP of the situation, and was told that the SOP was on sick leave and therefore not coming for duty. CI Neumtu was unable to control the situation and he therefore informed the COMPOL and he was instructed to stand by.

At around noon, he was instructed to head to the prison, he debriefed 20-25 of his officers at camp and upon arrival he was updated as to the situation in SIU. PSSW's purpose was to restore order inside the SIU, and the NDEA's duty was to conduct a search inside. The inmates were given numerous warnings to stand down, and co-operate but they refused, an ambulance and fire brigade were called on site, a final de-briefing was given to the commanding officers.

***Mr. Songore remained at the administrative block during the operation as he had to maintain contact via telephone with the Commissioner. He maintained that the operation on the 18<sup>th</sup> March 2016, was a joint operation between police, NDEA and prison authority. He was in charge of the police entity, but that the overall command remained with the prison authority.*** He was not ordered to take over command of the prison by the COMPOL, and CI Neumtu and CI Ernesta were there on behalf of the prison authority. Mr. Songore confirmed that PSSW ASP Dacambra was the tactical commander of the operation.

After the intervention was completed the atmosphere was calm, and he was not aware that two PSSW officers were going to escort two inmates to the clinic within the main block. He was notified by CI Ernesta that the two PSSW officers were stuck inside the main block, but as the operation in SIU was still underway the PSSW could not intervene in the main block and therefore

he asked CI Neumtu to have someone speak to the inmates, and to ask them to let the two PSSW officers exit the block. He was aware that the two officers were eventually able to exit, but he was not sure how they managed to escape. He confirmed that he had given orders to use teargas, and rubber bullets if any inmates attempted to escape.

Mr. Songore stated that when he had gone outside the administrative block in order to telephone the COMPOL, he saw inmates on the roof of the kitchen. He was concerned of an escape and felt it was best to keep the inmates in the perimeter, which is why he ordered the release of tear gas.

Mr. Songore was in the administrative block on the phone to the COMPOL when he heard shots being fired. He went down to speak to PSSW ASP Dácambra, and he was told that the Nepalese had fired shots. Mr. Songore confirmed that he can identify the sound of an AK-47 as it is an automatic weapon, and a pistol sounds completely different. A shot from an AK-47 also sounds completely different from any sound made by any riot weapons. ***He went to speak to the Nepalese supervisor to see what had happened and when he was outside shots were still being fired. He also spoke to Mr. Frank Mondon as he had also drawn his walther pistol.*** The Nepalese supervisor left to go to speak to his officers, and to tell them to seize the use of their firearms. He could not tell from which direction the shots were coming from and confirmed that he did shout out at the Supervisor to tell him that no firearms should be used. ***He had not been given authority to use any firearms and CI Neumtu herself did not know why shots were being fired.***

***He spoke to the Supervisor and had asked for a report on the use of the firearms, to which he was told that there was no proper record of the issuing of the firearms nor was there a record of how many bullets had been used.*** In the opinion of Mr. Songore, it was the SOP or his delegate who had been issued the firearms to ensure proper records were being kept.

Mr. Songore confirmed that whilst he was updating the COMPOL of the events, CI Neumtu came to inform him that one inmate had fallen from the kitchen roof and had been injured. From the information he had received, it was thought he had fallen on an object causing him to bleed heavily and lose consciousness. At that point in time, he did not know that the prisoner had been shot, and it was only the next day during the briefing that he was informed that the inmate had passed away in the hospital, and that his injuries were suspected to have been caused by a



gunshot wound. Mr. Songore produced the inventory compiled by Corporal Hollanda who is in charge of the PSSW armoury which was exhibited as **P17**.

***Lastly, Mr. Songore described the situation on the 17<sup>th</sup>-18<sup>th</sup> March 2016, as a very aggressive riot which called for the use of reasonable force, but that in his opinion the situation did not require the use of firearms.***

**Lieutenant Colonel Luther, SPDF:**

Lieutenant Colonel Luther has over 30 years' experience in the force and has received numerous technical training in firearms overseas. On the 22<sup>nd</sup> March 2016, he received a request from Sub Inspector Ralph Agathine of the Police Department to examine some AK -47's. SI Agathine wanted to know whether the firearms had been fired and if they were serviceable. All 12 firearms were examined by technicians under his supervision, and they certified that only three of the firearms had been fired. These were the firearms with serial number **1338, 0952** and **9694**. A report was generated dated 28/03/2016 and it was exhibited as **P19**.

**PSSW Sergeant Robin Hollanda:**

***Sergeant Hollanda confirmed that according to his inventory Sub-Inspector Frank Mondon had fired his walther pistol as there were two rounds missing.*** He took a statement from Sub-Inspector Frank Mondon, and was instructed by ASP Songore to seize the pistol. ***Unfortunately before he could seize the pistol, Sub-Inspector Frank Mondon cleaned the weapon. It is the opinion of Sergeant Hollanda that Sub-Inspector Frank Mondon should not have cleaned his weapon prior to the investigation.***

I note that no examination of the walther pistol was done and I presume this was because the weapon had already been cleaned by PSSW Mondon.

In regards to the use of AK-47's, Sergeant Hollanda confirmed that they are issued by the PSSW to the Prison Authority. ***He stated that the officers who were handed possession of the AK-47 did not receive training from the PSSW, and he was unaware as to whether any certification had been provided by the prison authorities to confirm that the officers had received training prior to being handed possession of the AK-47'S. He is unaware as to whether the prison authorities provided these officers with any weapons training.***

The Inventory was produced and exhibited as **P17** and it confirmed that no AK-47 rifles were issued to PSSW on the 18<sup>th</sup> March 2016.

**Superintendent of Prisons, Vic Tirant:**

Mr. Vic Tirant was the SOP from November 2016. He confirmed that on 19<sup>TH</sup> July 2017, he received a letter from the Counsel conducting the inquest requesting for arrangements to be made for the six Nepalese officers to give evidence. Letter dated 19<sup>th</sup> July 2017, was exhibited as **P20**. The request was made for the attendance of the following officers:

- Man Begha
- Hari Rai
- Pura Basant
- Be Bahadur Tamang
- Ganesh Shrestha
- Bom Pokharel

He was advised by the current supervisor Raju Kumar that all six officers no longer worked for the prison authority, and had returned to Nepal. A letter in reply was therefore sent to the AG's office dated 11<sup>th</sup> August 2017, which was exhibited as **P21**. He subsequently received an email dated 7<sup>th</sup> September 2017, in which inquiries were made as to whether arrangement could be

made for the officers to be brought down from Nepal to testify. The email was exhibited as **P22**. Raju Kumar made further inquiries, and advised him that the prison authority no longer had any contact with the six Nepalese, and therefore it was not possible for arrangements to be made for their repatriation to Seychelles for the purpose of the inquest.

**Chief-Inspector Jocelyn Ernesta:**

CI Jocelyn Ernesta has been working for the prison authority for the past 23 years. She was informed on the 17<sup>th</sup> March 2016, that there was an incident at the SIU. She was told some inmates had tried to escape, others were refusing to go back into their cells and they were making problems with the staff. The prison officers attempted to speak to the inmates, they were given warnings but were refusing to comply and return to their cells. The Minister was contacted and he informed the prison authority that he would get in touch with the police force and send some officers to assist the prison wardens. The officers arrived in the evening and the prison authority was advised to stand down until morning.

On the 18<sup>th</sup> March 2016, the PSSW and NDEA were still on the premises and the situation remained the same. In the afternoon a briefing occurred and instructions were given for an intervention. CI Ernesta stayed outside the SIU as the inmates were being brought out, they were given water and a search was conducted. She performed certain duties in the female block, and upon her return she observed inmates on the roof of the kitchen throwing stones and empty bottles. Whilst she was in CI Neumtu's office, PO Finesse called to inform them that Mr. Robert Banane had sustained an injury in the abdomen, and arrangements were then made for him to be transported to the hospital.

***CI Ernesta confirmed hearing gunshots, but she did not recall if it was after or before the telephone call from PO Finesse.*** She did not know at the time as to how Mr. Robert Banane had sustained injury. She confirmed that there were 8 towers at the Montagne Posee prison, and that they are guarded by Nepalese. She stated that she did see some firearms being given out to the Nepalese in the office of the Nepalese by Hari Rai.

**Chief-Inspector Daniel Doogely:**

CI Daniel Doogley has been working at the prison for seven years. He stated that on the 17<sup>th</sup> March 2018, he had received instructions from the SOP by telephone, and he had been asked to go to the SIU to negotiate with the inmates who were causing trouble, to ask them to return to their cells for lockdown. He tried to talk to the inmates, but they refused to co-operate, and were insisting on speaking to the SOP. That night, no intervention was done, and all officers including PSSW and NDEA who had arrived on scene observed the inmates until morning. He went home the next day as he was off duty, and only became aware of the situation that evening upon watching the news. On the 19<sup>th</sup> March 2016, cleaning was undertaken at the prison as there was a lot of debris to collect. The inmates also helped and none of the prison officers were working normal shift as they were all helping and taking on additional duties. ***He maintained that no bullets or cartridges were found during the cleaning of the Montagne Posee premises. He stated that during the cleaning process, they had avoided the area where Mr. Robert Banane had fallen, and that he had noticed bullet holes on the wall and a small hole on the roof of the passage way.***

**Inspector Raju Kumar:**

Inspector Kumar has been working at the Montagne Posee prison for 5 and half years. In March 2016, he held the rank of sub-inspector and there were more than 20 Nepalese working during the day shift. He confirmed that only Nepalese officers who are posted at the guard towers are assigned AK-47's. In March 2016, Hari Rai was the supervisor of all the Nepalese. He was responsible for the assignment of rifles. He stated that the officers who were assigned rifles were given training in Nepal but not upon their arrival in Seychelles. ***He further confirmed the existence of a log book which contains the information of the posting of Nepalese officers and the assignment of rifles for that shift. Each officer must sign the log book upon being assigned***

**a rifle.** Copies of the log book for 17/03/2016 and 18/03/2016 were exhibited as **P23**. Abbreviations were used to indicate the location of each guard as follows:

- M-Tower post
- G-gate
- SR-Source room
- CR-Control room
- CG-Coast Guard

Inspector Raju Kumar unfortunately was unable to identify the following abbreviations MD and BM, but they were later identified by then SOP Maxime Tirant as SIU and Male Block respectively. Further, he confirmed that according to the log book for the 18<sup>th</sup> March 2016, Ram Karki was assigned AK-47 O952 at tower seven and ***Tilak Tamag weapon what appears to be 1838 as the writing is not clear, positioned on top of SIU.***

Inspector Raju Kumar confirmed that he heard many gunshots, and saw some inmates climbing onto the roof of the kitchen and throwing bottles and glass. He did not however see anyone shooting an AK-47 rifle. He confirmed that he is the only remaining Nepalese who was present on the 18<sup>th</sup> of March 2016, in the Seychelles, as all other officers have gone back to Nepal. He further confirmed, that he does not have any contact with those officers anymore.

**Former Super Intendant of Prisons, Maxime Tirant:**

Mr. Maxime Tirant is currently serving as a technical advisor to the SOP. He himself served as the SOP from February 2010 until late October 2016. On the 17<sup>th</sup> March 2016, he was at home on sick leave as he had recently undergone eye surgery. Often during sick leave he would come to the Montagne Posee prison, but on this occasion he was also suffering from kidney stones, and therefore was resting at home. In the late afternoon he received a telephone call from CI Neumtu

who informed him that a group of inmates had forced their way out of the prison block known as SIU. According to the information that he received, the inmates had climbed over the wall, but were intercepted by officers, and therefore had jumped back into the SIU compound. It was believed that they were attempting to break the jammer, which was interfering with the mobile phone network. CI Neumtu expressed her concern given the rainy weather that day, and also indicated that the Minister had been informed of the ongoing situation. Therefore as has been the practice, assistance had been sought from the Police.

Sometime later around 20.00 pm, he was informed that the inmates inside SIU had somehow managed to damage all the lock systems, however they were still contained inside the compound. A decision was taken that force would be used to get into SIU and regain control. The then SOP was being briefed as to what was going on, and he was advised that the police had assumed responsibility to regain control, and to carry out a search. He was further told that all negotiations with the inmates had proven unsuccessful, and that a joint task force would go into the SIU sometime the next day.

On the 18<sup>th</sup> March 2016, the operation went ahead at around 17.00pm. ***His instructions were that Mr. Songore was the one leading the joint operation.*** From what he was informed, the mission was a success, and the desired results were accomplished as all inmates were removed, a search conducted and the inmates were returned and secured in their cells. Unfortunately, he received a call sometimes after 18.00 pm, from CI Neumtu who informed him that the disruption had spilled over into the main block, with certain inmates standing on the roof of the kitchen, dining hall and passage way throwing missiles, and that therefore his presence at the prison was urgently required. He immediately drove to the Montagne Posee prison, and upon arrival he observed that the prison premises had been cornered off. As he walked towards the main block, he heard a lot of shouting, and abuse directed at personnel, but he did not observe any inmates on the roof. He requested that the security forces pull back, and he went to speak to the inmates.

***The main comment from the inmates was that the problems would not have occurred if he had been present.*** After approximately an hour, he was able to successfully calm down the inmates, and persuade them to go back to their cells. He was also informed by the inmates that a fellow

inmate had been injured, and had fallen from the roof of the passage way. He had been transported to the hospital. He was informed at around 21.00 pm that Mr. Robert Banane had undergone surgery, that he was stable and his injuries were not life threatening. Unfortunately sometime after 01.00 am on the 19<sup>th</sup> March 2016, he was informed that there had been a change in circumstances, and that Mr. Robert Banane had passed away. Mr. Maxime Tirant confirmed that Mr. Robert Banane was serving a very short sentence for the non-payment of a fine, and he had barely a month left of his sentence to serve when the incident occurred.

Mr. Maxime Tirant recalls attending a briefing on the 19<sup>th</sup> March 2016, whereby he was informed that Mr. Robert Banane had been shot with live ammunition. As a result of this development, a police investigation was undertaken, and he confirmed that he is yet to be informed of the findings. He stated that he has conducted his own investigation on an internal level. ***As part of his investigation he spoke to Supervisor Hari Rai who never gave him the impression that prison officers had fired ammunition as no instructions for its use were given.*** He later discovered that more than one Nepalese officer, stated that on the 18<sup>th</sup> March 2016, they had fired warning shots into the air without instructions from Hari Rai.

Mr. Maxime Tirant further stated that under his leadership, and as a matter of routine, only Nepalese prison officers at guard stations are issued firearms. ***He went on to state that since he was appointed SOP, he has been guided by a handbook entitled 'Human Rights approach to prison management', in which it says very clearly that no army or police should be involved in prison operation as far as practicable. It is therefore his view, that the Prison should have its own response team.***

Another problem raised by the then SOP, was the difficulty with the communication between the Nepalese and Seychellois, as the majority do not understand English. He stated that he was promised that the quality of the officers would improve with the new recruitment, but confirmed that this has not been the case. Mr. Maxime Tirant stated that it was the Minister of Home Affairs, Mr. Charles Bastienne who had handled the recruitment of the Nepalese officers who were working at the prison in March 2016. ***Mr. Maxime Tirant had at the time of recruitment, voiced***

***out his concern that senior prison management ought to be consulted during the recruitment process.***

Mr. Maxime Tirant confirmed that the prison premises was cleaned on the days following the 18<sup>th</sup> March 2016. He lastly testified that he had taken the decision to construct an additional level on top of the SIU, to house the Nepalese workers. He confirmed that on the 18<sup>th</sup> March 2016, there may have been an armed guard posted on the top of SIU and also on top of the VPU.

**Jannie Van Der Westhuizen, Forensic Fire Arm and Tool Examiner:**

Mr. Westhuizen is an independent Forensic fire arm and tool mark examiner with more than 24 years' experience having consulting in case work, crime scenes, court testimony and presenting training in all aspects of forensic firearms and tool mark examinations. His extensive summary of qualifications, and certification can be viewed in his report, which is exhibited as **P23**.

Mr. Van De Westhuizen test fired a number of firearms allegedly used on the 18<sup>th</sup> March 2016, he also did a reconstruction of the crime scene, examined the body of the deceased and reviewed video footage. He was informed that a number of persons had fired shots on the 18<sup>th</sup> March 2016, from different locations and he revisited the Montagne Posee prison on a number of occasions whereby he used laser beams to mark the trajectory of bullets from each location. He examined a bullet entry, and exit point on the roof of the passage way, and the point of impact was used to determine the trajectory of the bullet with the use of the laser beam. He noted that at the time of his arrival, the area had already been cleaned, and all ballistic evidence collected from the scene, but he is unsure by whom.

Mr. Van De Westhuizen then took the Court through the content of his report in detail, and the pertinent points are rehearsed below.

On the 29<sup>th</sup> March 2016, he was commissioned by the Seychelles Police Department to attend to a shooting incident that occurred on the 18<sup>th</sup> March 2016 at the Montagne Posee prison.



On the 1<sup>st</sup> April 2016, he met with the then Commissioner of Police, and other high-ranking police officials to discuss the finer details of the shooting. Later that morning, he was introduced to the Mortuary Assistant, and Dr Aleksandr Bondor who had performed the surgery on the deceased, Robert Banane. ***Dr Bondor informed Mr. Westhuizen that he was more concerned with saving the patient's life than being focused on what could have caused the injury and that Mr. Robert Banane had been alive after surgery but had later passed away on 19<sup>th</sup> March 2016 at 1.20am.*** He then met with the two pathologists who performed the autopsy on Mr. Robert Banane. ***Dr Alvarez had informed him that she was under the impression that the external and internal wounds sustained by the deceased were caused by a single fired projectile with entrance wound, located on the 'back region' and the exit wound on the 'left lower chest'.*** Her findings are published in her post-mortem report exhibit P1. Mr. Westhuizen then proceeded to re-examine the deceased under the supervision of the mortuary assistant. He observed that the class characteristics of the entrance wound to the 'back area' display an abrasion ring that was consistent with an entrance wound. He is of the opinion that ***the entrance and exit wound was caused by a 7.62 caliber fired bullet that perforated the body from a distance.***

At 13.50 pm, on the 1<sup>st</sup> April 2016, Mr. Westhuizen arrived at the Montagne Possee prison with Superintendent Francois Freminot, Assistant Superintendent Jemmy Bouzin and Sub-Inspector Ralph Agathine, all attached with the Seychelles Scientific Support and Crime Bureau. Superintendent Freminot pointed out areas of interest to him from information obtained as to where the prison wardens discharged their firearms, where Mr. Robert Banane fell off the passage way roof, along with the apparent projective damage and bullet damage to the passage roof which indicated to him that the apparent bullet damages to the roof was caused by a fired projectile being fired in the direction of the main prison building. ***A laser beam was used to establish the position of the shooter based on the evidence observed at the crime scene, and the position was traced back to a window in the newly built upper floor of the SIU building of the prison.***

On the 2<sup>nd</sup> April 2016, he returned to the crime scene to take photographs, with the established point of aim, towards the prison roof from the upper level window of the SIU prison, from where the firearm was discharged. No fired cartridge cases were observed within this area. The team proceeded to search the front exterior side of the SIU building, and that is where he noticed a cartridge case. Assistant SI Bouzin collected the cartridge case, from the water drain covered with a metal grid in the area below the window on the top floor of the SIU prison building, and handed to Sub-Inspector Agathine. Mr. Westhuizen visually examined the cartridge, and confirmed it was a 7.62 mm x 39 mm caliber fired cartridge case. Additionally, apparent projectile damages were observed on the gated area of the main prison building and these were photographed.

On the 5<sup>th</sup> April 2016, Mr. Westhuizen collected all the relevant firearms to be test fired at the Barbarons shooting range. 13 firearms in total were collected for testing purposes 12 of which were AK-47's seized at the prison, and the walther pistol which was fired by PSSW Mondon. All the firearms were test fired by Mr. Westhuizen, and the known test fired cartridges were collected, bagged, and sealed by Sub-Inspector Agathine. The sealed envelope containing the known test fired cartridges, and the one questioned fired cartridge case collected from the prison area were all individually packaged, and sealed for transportation to South Africa. ***On the 7<sup>th</sup> April 2016, Mr. Westhuizen performed a microscopic comparison and upon comparing the known 7.62 x 39mm caliber test fired cartridge case in exhibit 9 with serial number 1338 against the questioned 7.62 x 39mm caliber fired cartridge case recovered from the prison area, he microscopically identified it as being fired from exhibit 9.*** His findings were based on the striations and contour variations of the cartridge that can be observed microscopically. These markings on the questioned cartridge were reproduced in the test marks.

Annexed to the report is photo album A with photographs as follows:

- Photographs 1-5 are of the deceased and his wounds during re-examination.
- Photographs 6-7 show the direction of the projectile and the prison passageway roof on which the deceased stood.

- Photographs 8-12 depict a closer view of the passageway roof, bullet damage on the metal sheet roof.
- Photograph 13 is taken from inside the window on the upper floor of the SIU building from where the firearm or firearms were discharged which caused damage to the metal sheet roof.
- Photo 14 is taken down stairs from outside the window where the firearm or firearms were discharged from in the direction of the passage way roof
- Photo 15 is a close-up of the drain from which the questioned cartridge was collected
- Photo 16 depict the sealed plastic bag in which the test and questioned cartridge were packaged and sealed
- Photo 17 is a microscopic comparison of the positive identification of the test and question Cartridge
- Annex B is the compact disk on which contained 27 digital photographs of the firearms tested and the 26 digital photographs of the sealed plastic and paper envelopes containing known fired cartridge cases.

### **Chief Superintendent Francois Freminot**

CSI Freminot was the lead investigator in the case of the death of Mr. Robert Banane. He was assigned to the case after the post-mortem on Mr. Robert Banane was conducted. Initially, it was decided that there would be a board of inquiry, but then the Minister decided that the police would conduct the investigation. He was assisted by a team of 6-7 investigators including Sub-Inspector, John Antat, Corporal Jerina Julienne, WPC Betty Adela, Sub-Inspector Ralph Agathine, WPC Aisha Uzize, and Inspector Ivan Esparon.

They tried to conduct an in depth investigation as far as possible into the matter. They started by reviewing the crime scene, and after reviewing the scene they decided to start questioning most of the officers and inmates, PSSW, NDEA, and all persons that had been present on the day of the incident. He stressed that in regards to the prison wardens they had difficulty with the

language barrier, so they were not at liberty to question them in the manner they would have liked. Most of the wardens could not speak English, and the assistance of a translator was required.

What they established from their line of inquiry, is that on the 17<sup>th</sup> March 2016, the SOP Maxime Tirant was not at the prison, and the inmates in the SIU were complaining of ill-treatment. They signed a petition, refused to return to their respective cells and started to vandalize the premises within the SIU. At the initial stage of the investigation, they managed to view footage within the SIU, but unfortunately during the investigation process the team omitted to obtain this footage. On the same night of the 17<sup>th</sup> March 2016, PSSW officers were called to the prison and were directed to remain on standby. The next day the PSSW officers obtained further assistance from the NDEA and prison wardens, and at 3pm ***the decision was given for intervention in the SIU under the responsibility of Mr. Songore.*** The task was to search the unit, remove contrabands and place inmates in their respective cells. ***The operation was conducted successfully, and the inmates were secured but teargas had to be used.*** Some inmates were injured during the course of the intervention, and they needed to be transferred to the main block for medical treatment. The transfer was done by two PSSW officers. The inmates in the main block were outside the building but within the perimeter so could notice what was happening in the SIU. The prison wardens were in conflict with the PSSW officers in regards to penetrating the main prison. ***This escalated the situation as the inmates came in conflict with PSSW officers, and one inmate had direct conflict with PSSW ASP Dacambra. The inmates' started throwing things that they could get their hands on, and even got on to the roofs of the prison buildings. It was clear that at this time no one was assuming control of the situation.*** The two PSSW officers were stuck for some time in the main block but eventually managed to exit. ***The investigation team deduced that because of the lack of control, and rising tension the prison wardens started to fire shots from the AK-47 rifles.***

The team tried to conduct an investigation into the use of the AK-47's or any other live ammunition weapons, and four Nepalese assumed responsibility for firing AK-47's. One warden claimed he fired a shot from tower 1, which is located at the north end side of the prison. Another warden claimed he fired 7 rounds, standing close to the sewage pump on ground level between

SIU and VPU. Another warden claimed he fired 11 rounds, also standing close to the sewage pump. One claimed he fired close to tower 7. In total they could gather that 20 rounds were fired from AK-47's, and one misfire. ***Unfortunately they could not pick up any projectile or cartridges, and therefore believe that those must have been picked up by either prison wardens or others after the incident occurred.***

They seized 12 AK-47'S that the warden claimed had been issued that day, and they tried to match the rifles with the wardens who had been in possession of those particular rifles on the 18<sup>th</sup> March 2016. ***Unfortunately, some wardens claimed that they left weapons on the table, and others picked up the weapons. Man Bahadur Begha claimed he took an AK-47 from the table in the guard room, he further claimed he fired from the ground, but he did not recall the serial number of his weapon. It was established through investigation, that the rifle in possession of Man Bahadur Begha was AK-47 serial number 1338, which was used in the newly constructed area above the SIU.*** The investigating team did a further interview with Man Bahadur Begha, and he claimed that he never fired from on top of the SIU. He did however state that he is usually posted on top of the SIU, but categorically denied firing from that location on the 18<sup>th</sup> March 2016.

The second interview was undertaken after the cartridge had been discovered, and once the ballistic report had linked this cartridge to AK-47 serial number 1338 fired from the top of the SIU.

***They have also deduced that there was no protocol established for the taking, and handing over of weapons, and all officers who had fired shots had claimed that they had fired without any specific order.*** The Supervisor Hari Rai was also interviewed as part of the investigation, and he stated that normally officers are assigned to posts, and they will proceed to a tower, the weapon is handed over to them, then someone would go around and take down the serial number of the rifle, and name of the warden, at the end of the shift the rifle would be returned to the guard room, but that there was no signed handover of the rifle upon return.

**Mr. Songore claimed that the Nepalese had received two weeks training prior to working at the prison, but the investigating team could not establish any record of such training.** When the Nepalese officers were themselves questioned they stated that they had not received any specific instructions to fire their weapons, that there was no proper protocol for handover of weapons, nor the use of such weapons. **The investigating team could not establish why the AK-47's and live ammunition were handed out to the wardens on the 18<sup>th</sup> March 2016.** These weapons are issued by PSSW to the prison authority, and they should not be assigned to a warden unless he has been certifiably trained to use such weapons.

**The investigating team also reviewed the protocol of PSSW, and they determined that they had no established protocol or standard procedure for riots and as to how to respond in a prison environment.**

Sub-Inspector Frank Mondon from PSSW was in possession of a walter pistol, and he claimed that he stood in front of the SIU, and fired twice with his pistol when he heard shots being fired.

It was at the time of the commotion that Mr. Robert Banane fell from the roof of the passageway. He was picked up by prison wardens and assisted by inmates he was carried outside for medical assistance. He was initially brought to Anse Boileau clinic but due to the seriousness of his injuries he was transferred to Victoria Hospital. At the hospital he was treated and placed on the ward but unfortunately at 1.20am on the 19<sup>th</sup> March 2016 he passed away.

The situation at the Montagne Posee prison calmed down after 18.30 pm. When the investigating team heard of the death of Mr. Robert Banane, some officers including CSI Freminot visited the scene, and they could notice that some of the areas had already been swept. PPSW had stated that no live ammunition weapons were used, and following the necessary post-mortem procedures it became known that Mr. Robert Banane may have passed away as a result of a gunshot wound.

**From the investigation they have been able to establish that the gunshot wound was caused by an AK-47 rifle, however the investigating team could not establish which weapon was used.**

The services of the Ballistic expert, Mr. Van De Westhuizen were sought after the initial post-mortem. They had gone to the prison with a metal detector, and the only cartridge found was located in the drain under the SIU. ***The remaining cartridges and bullets that would have proved crucial to the investigation were not found, and the prison wardens were unable to give a concrete answer as to what happened to all the projectile (cartridges and/or bullets) that should have been present at the scene of the incident.***

CSI Freminot further stated that the occurrence book was allegedly destroyed by the fire set by inmates, however the investigating team were not shown any remains of the occurrence book.

A search was also conducted at the SIU on the 18<sup>th</sup> March 2016, and from what he could gather tablets, phones pen drives and other contrabands were seized. These items were photographed for the purpose of media coverage, and he was further informed that the photographs were taken by the SSRC but upon verifying with Mr. Bouzin no such records of any such photographs taken were found.

Two interviews were also conducted with the surgeon who had treated Mr. Robert Banane, and he claimed that he was of the opinion that Mr. Robert Banane had been stabbed with a sharp object, and as a result he had done the necessary intervention and when he thought the patient was stable he was transferred to the ward.

The post-mortem examiner on the other hand was of the opinion that the injuries may have been caused by a gunshot wound, and this was confirmed by the ballistics expert.

***CSI Freminot was not aware whether an investigation was done by the hospital into whether there could have been any mal-practice or negligence on the part of the surgeon, which may have contributed to the death of Mr. Robert Banane.***

CSI Freminot explained that they have concluded the investigation, but that it was conducted in a rush as the team were under pressure to submit a report. He further stated in his report that the officers assigned to the case were also involved in other tasks, hence resulting in a lack of total dedication and commitment to the investigation.

***They concluded that the intervention lacked proper planning and control.*** This was deduced due to the fact that no one assumed responsibility for the loss of control in the main block. The raid was conducted by PSSW, but when the situation escalated there was a clash between the PSSW, and the prison wardens, and the lack of control triggered some officers to panic which resulted in the unnecessary use of the AK-47's and walther pistol.

None of the officers claimed to have received any directive to fire their weapon. PSSW Mondon also claimed to have decided upon himself to fire his walther pistol. That said ***they could conclude that the use of the firearms were not legal and the use was not proportional to the situation at the prison that day.***

***It was recommended by the investigating team, that in the future, there should be a standing order procedure in regards to the use of firearms in interventions by PSSW, and at the prison.***

***He concluded to note that Mr. Robert Banane was only in prison for two months for the non-payment of a fine, and his shooting and subsequent death was an unfortunate incident that should not have happened.***

A report of the findings of the investigation was submitted by CSI Freminot to the Attorney General's office and this report was exhibited as **P22**.



## **Chapter 6:**

### Findings and Conclusion

I have carefully analyzed all the evidence produced during this inquest by all 47 witnesses with special emphasis on those who I feel assist me in my role in determining the cause of death of Mr. Robert Banane and circumstances related to and connected with his death.

- It has been established that on the 17<sup>th</sup> March 2016, there was a disruption in the SIU with inmates complaining of ill-treatment, refusing to go back into their cells for lock down, and insisting on speaking to the SOP Maxime Tirant, who at the material time we are informed was on medical leave.
- The PSSW's directive was to regain control in the SIU and according to Mr. Songore who in charge of the operation, he had no such directive to interfere with the main block. The position of Mr. Songore remained that the operation on the 18<sup>th</sup> March 2016, was a joint operation between police, NDEA and prison authority. He was in charge of the police entity, but that the overall command remained with the prison authority.
- After hearing the oral testimony and considering the evidence as laid out before me, I am convinced that the intervention lacked proper planning, and control with neither PSSW nor the Prison authority willing to accept responsibility when the situation got out of hand.
- Two PSSW officers entered into the main prison without proper authority or directive from their superior Mr. Songore. The prison authorities also deny giving any such

directive. It is clear that the moment the two PSSW officers entered into the main block the situation deteriorated and the prison authorities lost control. They were under staffed and with insufficient manpower they were unable to control the inmates.

- It is evident that the prison wardens were in conflict with the PSSW officers outside, regarding their entry into the main block to retrieve their two officers. The situation escalated as the inmates came in conflict with PSSW officers, and the video footage has confirmed that one inmate had direct conflict with PSSW ASP Dacambra. During this period, Mr. Songore was in the administrative block, and upon viewing the video footage he stated that he was not aware that any PSSW officers had entered into the main block. He confirmed that in his absence on the scene, it would have been ASP Dacambra who was in charge of operations that would assume responsibility of the operation.
- Unfortunately, prison staff are not trained to tackle a situation of an outbreak of a mass violence, nor are they able to gauge the tension that may building up among the inmates. Both the oral testimony of witnesses on scene, and the video footage confirm that the inmates' started throwing empty bottles, pieces of broken concrete slab and other items at the officers and even climbed onto the roof of certain prison buildings. Mr. Robert Banane can be seen in the video footage standing on the roof of the kitchen, and also passage way. It is clear that at this point in time, no one was assuming control of the situation. I note, that the PSSW officers had exited the main block, however they remained outside the premises, and their presence aggravated the inmates in the main block, and some inmates continued to throw missiles from the roof of the kitchen, bakery and passage way. It is my opinion, that because of the lack of control and rising tension, the Nepalese prison wardens panicked and started to fire shots from their AK-47 rifles.
- PSSW Frank Mondon claims to have been standing upstairs outside the office when he heard gunshots. He categorically denied firing his weapon on oath, but during the course of the investigation it has been established that PSSW Mondon fired two rounds up into the air with his Walter Pistol. This pistol was seized, but not before PSSW Mondon had

the opportunity to clean his weapon. It was therefore not examined by Lieutenant Colonel Luther.

- Mr. Robert Banane was not the only prisoner to sustain injury as a result of the gunfire. Mr. Marie confirmed that he too had sustained a bullet graze on his head and the injury was treated at Anse Boileau Clinic.
- The cause of death of Mr. Robert Banane, as per the post mortem was due to hypovolemic shock, multiple intra-abdominal injuries probably due to a gunshot wound. Other findings of cause of death were moderate brain edema, retroperitoneal hematoma, multiple rib fractures and kidney shock.
- The investigation conducted by the team led by CSI Freminot, and assisted with the expertise of Jannie Van Der Westhuizen, Forensic Firearm and Tool Examiner have concluded that the gunshot wound sustained by Mr. Robert Banane was caused by a 7.62 caliber fired bullet that perforated the body from a distance from an AK-47 rifle. All the evidence heard during this inquest has confirmed without a doubt that the only persons issued with AK-47's were the Nepalese prison wardens stationed on the 8 towers plus the 4 additional rifles handed out on the 18<sup>th</sup> March 2016.
- All twelve rifles were seized and examined by Lieutenant Colonel Luther, SPDF and technicians under his supervision, and they certified that only three of the firearms had been fired these were fire arms with serial number **1338, 0952** and **9694**.
- Mr. Van De Westhuizen test fired a number of firearms allegedly used on the 18<sup>th</sup> March 2016, he also did a reconstruction of the crime scene, examined the body of the deceased and reviewed video footage. A bullet hole was found on the roof of the passage way, which was examined and the point of impact was used to determine the trajectory of the bullet with the use of the laser beam. The laser beam was used to establish the position

of the shooter based on the evidence observed at the crime scene and the position was traced back to a window in the newly built upper floor of the SIU building of the prison.

- On the 2<sup>nd</sup> April 2016, the investigating team including Mr. Van De Westhuizen proceeded to search the front exterior side of the SIU building and that is where a cartridge case was discovered from the water drain covered with a metal grid in the area below the window on the top floor of the SIU prison building. Mr. Westhuizen visually examined the cartridge and confirmed it was a 7.62 mm x 39 mm caliber fired cartridge case.
- On the 7<sup>th</sup> April 2016, Mr. Westhuizen performed a microscopic comparison and upon comparing the known 7.62 x 39mm caliber test fired cartridge from rifle serial number **1338** against the questioned 7.62 x 39mm caliber fired cartridge case recovered from the prison area, he microscopically identified it as being fired from the AK-47 rifle with serial number **1338**.
- The team tried to conduct an investigation into the use of the AK-47's or any other live ammunition weapons and four Nepalese assumed responsibility for firing their assigned AK-47's. Through further investigation it has been established that Man Bahadur Begha was assigned the AK-47 serial number **1338**, however he denied shooting the said rifle from the top of the SIU building. I note that numerous witnesses however maintain to have witnessed a Nepalese stationed on the top of the SIU.
- Copies of the log book for 17<sup>th</sup> March 2016 and 18<sup>th</sup> March 2016 were produced as evidence. All three weapons **1338, 0952 and 9694** were assigned to officers on the 17<sup>th</sup> March 2016 on towers 7, 8 and 2. On the 18<sup>th</sup> March 2016, rifle 0952 was assigned to the officer stationed at tower 7. There is no record of rifle 1338 and 9694 being assigned to any officer on the 18<sup>th</sup> March 2016, despite ballistics confirmation that they were fired. Further according to the log book, Man Begha was assigned to SIU on the 17<sup>th</sup> March 2016, however there is no record on him being assigned to any post on the 18<sup>th</sup> March

2016, nor any record of any assignment of a firearm to him despite him confirming in his interview that he was in possession of rifle 1338.

- I find the log book lacking in detail as it is unclear as to when the weapons were handed back or whether they were ever handed over to any other officer. Purna Basnet claimed to have fired 11 rounds, Ganesh Shrestha claimed to have fired once, Bom Pokharel claimed to have fired once and one shot misfired and Man Begha claimed to have fired 7 rounds. However when I compare the log book, there is no record of Purna Basnet being on duty of the 18<sup>th</sup> March 2016. Ganesh Shrestha was on duty on the 18<sup>th</sup> March 2016 and was assigned to tower 1, however the weapon which he was allegedly assigned was AK-47 serial number 9745 and there is no evidence of this weapon being fired. Bom Pokharel was on duty on the 18<sup>th</sup> March 2016, and was assigned to tower 2 with AK-47 serial number 6775 and there is no evidence of this weapon being fired. Man Begha was only on duty on the 17<sup>th</sup> March 2016, and there is no record of him being assigned any weapons. Further according to the log book Ram Karki was assigned AK-47 O952 at tower seven and Tilak Tamag weapon 1838 and Araya Khadka weapon 2655 both positioned on top of SIU but there is no evidence of these weapons being fired.
- Analysis of the information as laid out above, would lead me to the conclusion that the log book is inaccurate, and cannot assist in the investigation. It is clear that the officers were in possession of weapons which were not specifically assigned to them, nor to any prison warden on the 18<sup>th</sup> March 2016, and therefore it is impossible to come to a conclusive determination as to who fired the three AK-47's, nor is it possible to determine location at the time of the shootings. Further, an examination of all twelve rifles seized at the prison concluded that only 3 rifles were fired however four prison wardens have stated they fired rifles. This would lead the Court to question whether all the rifles in possession of the prison authority on the 18<sup>th</sup> March 2016, were in fact seized.

- Six Nepalese Officers who were on duty on the 18<sup>th</sup> March 2016 were unavailable to give oral testimony as they had already left the jurisdiction and their current whereabouts are unknown. It is unfortunate that their evidence could not be heard and as a result there remains many unanswered questions as to what really transpired on the 18<sup>th</sup> March 2016.
- In total the investigators could establish that 21 rounds were fired from AK-47's but unfortunately they could not pick up any projectile or cartridges, and therefore believe the area was cleaned and all projectiles including cartridges, and bullets must have been picked up by either prison wardens or others after the incident occurred.
- The Prison authority has confirmed that the area was cleaned after the incident, but maintained that no cartridges or bullets were collected during the clean-up.
- The services of the Ballistic expert, Mr. Van De Westhuizen were sought after the initial post-mortem. They had gone to the prison with a metal detector and the only cartridge found was located in the drain under the SIU. This cartridge can be linked to a particular rifle, but it cannot be established whether this rifle shot Mr. Robert Banane. The remaining cartridges and bullets that would have proved crucial to the investigation were not found and the prison wardens were unable to give a concrete answer as to what happened to all the projectile (cartridges and/or bullets) that should have been present at the scene of the incident.
- It is clear that there was no protocol established for the taking and handing over of weapons, and all officers who had fired shots had claimed that they had fired without any specific order. Mr. Songore claimed that the Nepalese had received two weeks training prior to working at the prison, but the investigating team could not establish any record of such training.

- The investigating team could not establish the purpose of the issuing of weapons with live ammunition. I have viewed the video footage taken from the guard room, and observed AK-47 rifles are being handed out to Nepalese prison wardens by the officer on duty in the guard room without any entry in the log book as required. Prison wardens can be seen taking guns and ammunition without signing off upon exiting in the room. It is my observation that there was also a significant amount of ammunition being handed out to prison wardens without any accountability.
- According to all the senior staff at the Prison, no officer is to fire any firearm in the presence of a senior officer without instructions, with the exception if there is a risk of losing a life. Mr. Hari Rai was the senior officer in charge of the Nepalese at that material time and he confirmed to the investigating officers, the SOP and to Mr. Songore that he gave no directive to any officers to fire any weapons.
- Mr. Songore stated in his testimony that PSSW have strict guidelines to follow during riot incidents. The investigating team however also reviewed the protocol of PSSW, and they determined that they had no established protocol or standard procedure for riots and as to how to respond in a prison environment.
- Prison wardens, and senior staff have confirmed that they have never received training as to how to handle riot situations at the Prison. I note that after the incident no training was initiated nor was any counselling provided to any staff or inmates who were directly impacted by the incident or who witnessed the shooting. One prison officer claims to have been alone in the main block during the commotion and that despite requesting for assistance no other staff came to help her. Later, night officer did not take shift, which was when the inmates took over the guard room, burnt all the papers and started a fire outside the guard room, and they destroyed the clinic, stole injections and damaged the office of the welfare officer.

- To conclude therefore, it has established that the gunshot wound sustained by Mr. Robert Banane was caused by an AK-47 rifle, however, I cannot determine which weapon fired the bullet which injured Mr. Robert Banane nor which warden fired the shot. No shrapnel or bullet was found in the body of Mr. Robert Banane, the crime scene had been compromised and only one cartridge was discovered on scene, the log book inaccurate and certain crucial witnesses were unavailable and possibly unforthcoming during the investigation. The experts have therefore been unable to conclude their investigation.
- I feel it is important also to point out, that the Surgeon who operated on Mr. Robert Banane was interviewed twice by the investigators, and he claimed to have thought that the injuries sustained by Mr. Robert Banane were caused by a stab wound. It appears that Mr. Robert Banane was expected to make a recovery, and was placed on the ward but unfortunately died 5 hours after his surgery. I am unaware as to whether any investigation was done by the hospital into whether there could have been any mal-practice or negligence on the part of the surgeon contributing to the death of Mr. Robert Banane. I note that despite my request that the surgeon be called to testify the AG's office were unable to secure his appearance, and therefore his testimony could not be obtained.
- Responsibility and blame for the incident cannot be placed on a sole individual but it as a result of a collection of failings. It can however be concluded that the use of the firearms was unauthorized and not proportional to the situation or threat level at the prison on the 18<sup>th</sup> March 2016. Mr. Robert Banane was only in prison for two months for the non-payment of a fine and his shooting and subsequent death was an unfortunate incident that should not have happened.



## **Chapter 7:**

### Recommendations

- I note from the report of CSI Freminot, that pressure was put on the investigators to conclude the investigation in a short period of time, which led to certain aspects of the investigation being ignored or neglected. The officers assigned to the case were also involved in other tasks, hence resulting in a lack of total dedication and commitment to the investigation. I therefore recommend, that in the event of future investigations of incidents at the prison or involving the police force that a special task force shall be established and those officers on the investigating team should not be assigned any other duties and should be at liberty to conduct and conclude their investigation without any external pressure.
  
- The initial stage of the investigation lacked expert guidance. For example, I note that during post mortem the entrance and exit wound on the deceased was opened up which should not have occurred. The post mortem report concluded that the injury was probably as of a result of a gunshot wound but this was not confirmed until the arrival of the ballistics expert on the 1<sup>st</sup> April 2016, which I note was 14 days after the incident occurred. I would therefore recommend, that in future autopsies on bodies suspected of unnatural death are carried out by a forensic pathologist rather than an anatomical pathologist.
  
- The crime scene was contaminated and the area was cleaned within hours of the incident occurring, which could have led to the collection and disposal of crucial evidence. In future, I would recommend that specific instructions as to the preservation of the crime scene must be given prior to the arrival of the police on scene.

- I note that the translator used during the investigation was the Supervisor of the Nepalese prison wardens, Hari Rai. I would recommend, that in criminal investigations of this magnitude an external interpreter is sought with no connection or interest in the case under investigation.
- It is clear that the presence of external forces such as the PSSW caused increased agitation amongst the inmates. I would recommend that the Ministry of Home Affairs look into the possibility of establishing a separate security force for the prison authority rather than relying on the use of the police force during situations of conflict at the prison.
- It is recommended that counselling is provided for both staff and inmates in events of trauma at the prison.
- Medical services at the prison should as far as possible, not be located inside any of the units in which inmates are housed and should rather be in a location accessible to only prison wardens.
- Inmates frequently steal tools and equipment that belong to the prison. These may then be used to assist with escapes or in instances of riot. It is critical that each prison has in place procedures for the control of tools and equipment. The security department should have ready access to up-to-date inventories of all equipment and tools held in the prison and must arrange frequent but irregular checks of all tool cupboards and tool stores in the prison, and record the outcome of those checks in auditable form.
- Further it is recommended that regular searches are undertaken at the prison to eliminate the possession of weapons and contrabands which can then later be used as weapons against other inmates or prison wardens.

- I further recommend, that in the future there should be a standing order procedure in regards to the use of firearms in interventions and for the use of such weapons at the prison. The correctional system must place tighter restrictions on the use of firearms. A prison firearm policy must be established to control the issuing of firearms at the prison and a clear account of the assignment of arms and ammunition must be kept. Officers may carry guns while patrolling the perimeter but the prison must ensure that all weapons are stored in secure armouries in case of riots or hostage situations.
- The Prison is severely lacking in man power and the ratio of warden to inmate makes the environment dangerous and volatile, with the wardens being outnumbered and unable to control the inmates in situations of riot. The physical structure of a prison is also extremely important. The role is twofold: to keep society out and to keep inmates in. Therefore, high walls or fences and detection systems are essential when building a prison. The layout, design, age and level of maintenance of prisons have a direct impact on the level of security. On the 18<sup>th</sup> March 2016, many of the CCTV cameras were broken and inmates from the SIU were able to climb over the fence to gain access to the jammer. It is clear that the level of security at the prison needs to be increased. I therefore recommend that more funding is allocated to the prison authority designated to strengthening the security of the Montagne Posee prison, which would include maintenance on all CCTV cameras, alarms, secure locking systems in SIU and more manpower amongst others. I further recommend, that in the immediate future, the government allocate a plot of land for the reallocation of the prison. This future prison should be designed by a professional with experience in prison layout and should leave room for expansion.
- The intervention in the SIU appeared to have some structure but there are certain aspects which were overlooked. Under no circumstances should inmates from SIU have been transported by the two PSSW officers into the main block and there also appeared to be no contingency if the situation spilled over to the other parts of the prison. There was a lack of control, with neither PSSW nor the Prison authority willing to accept responsibility when

the situation deteriorated. It is therefore recommended, that it should be clear at all times who is in total command of the prison during an intervention. I would recommend, that a procedure and standard protocol is established for riots and intervention in a prison environment and drills should be carried out on a regular basis at the prison to ensure that all staff are familiar with the procedure.

- It is clear from the investigation that bad practices were employed on the side of some individuals acting for and on behalf of the police force and the prison authority. Such as officers abusing power by using more force than was necessary in the circumstances and the issuing of firearms without any accountability. I propose that the both the police force and the prison authority conduct their own internal investigation into the actions of their officers and that disciplinary action is taken accordingly.
- The Ministry of Health should be requested to set up an internal board of inquiry into whether there could have been any mal-practice or negligence on the part of the surgeon that may have contributed to the death of Mr. Robert Banane.
- Lastly, I would recommend that a copy of the report be sent to the Commissioner of Police, the Superintendent of Prisons, the Minister of Home Affairs and the Minister of Health.

Signed, dated and delivered at Victoria on 16<sup>th</sup> February 2018



Natasha Burian

**Magistrate**

