



**Summary and comment on the Final Report of the Judicial  
Commission of Inquiry into Allegations of Corruption,  
Maladministration and Violence in the Department of Correctional  
Services - “the Jali Commission”**

**By**

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The aim of CSPRI is to improve the human rights of prisoners through research-based lobbying and advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. The CSPRI supports these objectives by undertaking independent critical research; raising awareness among decision makers and the public; disseminating information, and capacity building.

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## List of abbreviations

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<b>CSPB</b>	-	Correctional Supervision and Parole Boards
<b>CSPRI</b>	-	Civil Society Prison Reform Initiative
<b>CSVr</b>	-	The Centre for the Study of Violence and Reconciliation
<b>DCS</b>	-	Department of Correctional Services
<b>DIU</b>	-	Departmental Investigation Unit
<b>DPSA</b>	-	Department of Public Service and Administration
<b>ICD</b>	-	Independent Complaints Directorate
<b>NGO</b>	-	Non Governmental Organisation
<b>NICRO</b>	-	National Institute for Crime Prevention and the Reintegration of Offenders
<b>POPCRU</b>	-	Police and Prisons Civil Rights Union
<b>PPCCS</b>	-	Parliamentary Portfolio Committee on Correctional Services
<b>PSA</b>	-	Public Servants Association
<b>PSC</b>	-	Public Service Commission
<b>SAPS</b>	-	South African Police Service
<b>SIU</b>	-	Special Investigations Unit
<b>TAC</b>	-	Treatment Action Campaign

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## 1. Introduction

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In August 2001, the State President appointed a Commission of Inquiry to investigate and report on corruption, maladministration, violence, and intimidation in the Department of Correctional Services (DCS).<sup>1</sup> With Mr. Justice T.S.B. Jali, of the KwaZulu-Natal Division, serving as the Chairperson of the Commission, the inquiry became known as the “Jali Commission”. The establishment of the Jali Commission was not an unsubstantiated move on the part of government as it was preceded by numerous other reports and investigations into corruption and maladministration in the DCS.

The Commission set up offices in Durban as its administrative centre. Judge Jali appointed two Commissioners to assist him, namely T.A. Sishi of the Durban Bar and Advocate E.J.S Steyn, a senior lecturer in the Law Faculty of the University of Cape Town. From 2 February 2002 to 12 May 2005, the Commission heard evidence in respect of the nine management areas under investigation. In an attempt to deal with urgent cases of misconduct, the Commission submitted to the Minister of Correctional Services 11 confidential interim reports on the management areas investigated. The Commission handed its final report to President Mbeki on 15 December 2005, but it would take nearly a year, and last-minute pressure from the Correctional Services Portfolio Committee Chairperson and Judge Jali himself, before the Minister of Correctional Services, Mr. Ngconde Balfour, would release the full report to the public in November 2006.

The full report of the Jali Commission is a lengthy document, some 1 800 pages long, and it must be assumed that only the most dedicated researchers and officials will read and study it in its entirety. It is important that the substance of the report be made more accessible to stakeholders, so that the debate arising from the Jali Commission may be sustained. Debating the findings of the Commission is important and ought to involve civil society and oversight structures that have a role to play in ensuring that good governance is maintained and corruption and human rights abuses in the prison system are countered.

This document summarises the findings of the Commission's report in a user-friendly question-and-answer format to allow the reader ease of reference to key issues. The objectives of this report are to:

- summarise selected important issues covered by the Jali Commission;
- provide a plain language document, which is accessible to government departments, academics and civil society; and
- encourage discussion and debate on key recommendations made by the Jali Commission.

Summarising a 1 800-page report into a short and more accessible format, such as this one, is not possible without providing a document that is somewhat limited in its scope and depth compared to the original document. To this end, the following limitations are acknowledged:

- The content reflects a summary of significant issues in the subjective opinion of the author.
- Due to time constraints, no follow-up interviews were conducted to confirm particular issues with reference to progress being made in response to recommendations.
- To ensure the simplicity of the document, the summary focused only on the Jali Commission of Inquiry Final Report as the main source of information. On occasion, other sources are referred to as background information; these are indicated with endnote references.
- A large part of the full report covers the detailed findings of the Commission's work in the nine management areas. These descriptions are not covered in any detail in this summary, but examples from these chapters are used to illustrate particular issues. Please see Appendix 1 for the Table of Contents of the full report of the Jali Commission. The full report is available in PDF-format on the government and CSPRI websites.<sup>2</sup>

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## 2. What was the historical context of the Commission and its Terms of Reference?

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Commissions, by their nature, are established to unearth the complexities of a particular problem or concern. Therefore, the history and mandate given to a Commission are important in contextualising its findings.

In September 1996, the Parliamentary Portfolio Committee on Correctional Services and Health requested an independent national investigation into corruption. The Committee raised concerns regarding allegations of corruption from the then Victor Verster (later renamed as Drakenstein), Pollsmoor and Johannesburg prisons. Two reports, released in 1998 and 1999 respectively, by the Auditor General raised further concerns in respect of corruption. Late in 1999, the Minister of Public Service and Administration ordered a management audit of the DCS, the findings of which were presented to the Parliamentary Portfolio Committee on Correctional Services (PPCCS). Upon reading the damning findings of the audit, members of the Portfolio Committee on Correctional Services expressed concern that the State had indeed lost control over the DCS.<sup>3</sup> The appointment of the Jali Commission was immediately preceded by the assistant commissioner in KwaZulu-Natal's assassination by a colleague.<sup>4</sup> This was a clear indication that corruption in the DCS was out of hand, hence the request from the then Minister of Correctional Services, Mr. Ben Skosana, that President Mbeki appoint a judicial commission of inquiry.

The Jali Commission of Inquiry was appointed on 8 August 2001, allocated a budget of R12 million and given 12 months in which to perform its work. After the hearings began in December 2001, it became apparent that the deadline had to be extended and the budget increased. The initial terms of reference covered eight management areas, namely Pietermaritzburg, Durban-Westville, Ncome, Johannesburg, Pollsmoor, Pretoria, St Alban's and Leeuwkop. Following the screening on national television of a prisoner-made video (the Grootvlei video) depicting warders engaging in a range of criminal and corrupt activities, the Commission's terms of reference were amended to include the Bloemfontein management area.<sup>5</sup>

More specifically, the Commission was required to inquire into and report on alleged incidents of corruption in the DCS with reference to:

- The procurement of goods and services.
- The recruitment, appointment, promotion and dismissal of employees.
- The treatment of prisoners.
- Dishonest practices and illicit relationships between employees and prisoners leading to unlawful activities.
- Alleged incidents of non-adherence to departmental policy and deviation from national norms and standards.
- Alleged incidents of violence against or intimidation of employees.
- The extent of implementation of recommendations of past investigations relating to the Department.

The Commission was also required to recommend steps to be taken to prevent future incidents, as well as appropriate steps to be taken against any improper conduct on the part of employees.

It should be noted that the terms of reference focused on area management level and did not specifically refer to the Head Office, despite the allegations of theft and fraud under which the previous Commissioner, K.Sithole, left the Department. The Commission states that it also investigated the Head Office. The final report does not include a chapter focusing on the Head Office, but throughout the report references are made to the Head Office in commentaries relating to investigations at area management level. In line with the terms of reference, the focus did not cover regional level; essentially, the problem was defined as one existing at area management level. This may be seen as an oversight at the time when the terms of reference were drafted, as the final report clearly indicated abuse of power at Regional and Head Office levels.

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### 3. What was the historical context of the Department of Correctional Services (DCS)?

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In reading and interpreting the contents of the Jali Commission report, it is important to understand the history of the DCS. With hindsight it is possible to describe the macro-conditions contributing to an environment in which corruption, maladministration and human rights abuses could continue with impunity.

Of particular significance is the legislative environment at the time, an issue not dealt with specifically by the Commission. The Correctional Services Act, 1998 (Act 111 of 1998) was accepted by Parliament in 1998, and between 1998 and 2000 a number of chapters were promulgated to make provision for, among other things, the Judicial Inspectorate of Prisons, the National Council for Correctional Services, and internal service evaluations. Nearly six years after first being accepted by Parliament, the remaining chapters of the Act were promulgated in July and October 2004. The uncertain legislative environment must have contributed to the general lack of accountability in the Department.

After 1994, with the onset of democracy, there was macro-level transformation within the DCS that, according to the Commission, would fundamentally change the DCS. Transformation occurred with the introduction of trade unionism, the demilitarisation of the DCS and the implementation of affirmative action.

*Trade Unionism:* In the late 1980s, the Police and Prisons Civil Rights Union (POPCRU) was formed with members from the then Department of Prisons and the South African Police, as it was known then. In October 1994, the DCS signed a recognition agreement with POPCRU and the Public Servants Association of South Africa (PSA). In the years to come, POPCRU would have a profound influence on the DCS; an issue that the Jali Commission investigated thoroughly. The Commission is extremely critical of POPCRU's actions and influence as evidenced in the following extract from its report:

*A culture of lawlessness had been introduced into the Department in that it had become the norm for members to be forcibly removed from their positions and for unlawful actions to*

*happen with impunity. This culture was reinforced by the benefits, which were derived from the unlawful activities. The members were getting appointed on the strength of their influence within the union, and management, which did not have union protection, was intimidated. They ended up resigning and those who remained had to “toe the line” or be forcibly removed. The union’s intentions were not in doubt as this was happening in various Management Areas. It was clear that the union was no longer playing its lawful role in the Department, and appointments, even that of the Commissioner, had to get union approval.<sup>6</sup>*

The Commission also blames union influence for the strategic direction, or lack thereof, in the DCS and bluntly states that the Commissioner and Minister had, at one stage, lost control of the Department.<sup>7</sup>

*Demilitarisation:* On 1 April 1996, the DCS de-militarised in a poorly-planned move that prompted several commentators to describe it as a ‘debacle’.<sup>8</sup> Whatever merits there were in a military command structure, these were discarded and not replaced. Despite the demilitarisation of the DCS, a culture of secrecy and lack of transparency persisted after 1996. The military organisation of the DCS was cosmetically changed in 1996: the various ranks were removed, the organisational structure was altered and the official mode of dress was changed. Some officials testifying before the Commission commented that the demilitarisation of the DCS had created the problems it now faced. In removing the military structure, senior managerial levels were discarded without a new management system being devised to replace it. The Commission was of the view, however, that demilitarisation was an ‘unavoidable consequence’ of the transformation of the Department.<sup>9</sup> The Commission did, however, temper this statement as follows:

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

*Affirmative Action:* The Department accepted the Linda Human Document<sup>10</sup> on affirmative action, amidst opposition from trade unions, whose opinion was that the proposed approach to affirmative action would delay transformation. The Jali Commission concluded that the unions equated transformation with affirmative action, rather than the broader principles of human rights contained in the Constitution. In the view of the Commission, there had been very little **real transformation** in the DCS. Affirmative action and transformation became a major source of conflict between management and the unions, and between union leadership and members, when the latter disagreed with decisions of the former. With staff factions often resorting to illegal means to further their objectives in respect of affirmative action, the Commission observed that “lawlessness had set in”.<sup>11</sup> The DCS had developed no plan nor set up any structures to handle the transformation process (including affirmative action), and demands from unions in this environment only “fanned the flames of lawlessness”.<sup>12</sup>

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#### **4. How did the Department react to previous investigations?**

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Before the Jali Commission was established, the DCS was subjected to numerous investigations into maladministration and corrupt activities. Evidently, recommendations from these investigations were not followed or implemented. This became a matter of major concern to the Commission. The Commission found evidence of 20 previous investigations by various agencies into the affairs of the DCS, whereas the Department was aware of only 12 such investigations. It asked the Department to report on whether it had implemented recommendations made as a result of previous investigations, because investigating this was specifically required of the Commission, as outlined in its terms of reference.

In general, the Commission was not satisfied with the DCS’s response, which distinguished between a general and a specific response. At a general level, the DCS reported, among other things, that:

- Because of the adoption of a new Constitution in 1996, the Department was required to realign its deliverables accordingly.
- The scope of the Jali Commission's recommendations covered a period during which previous Commissioners and senior managers were employed.
- Several investigations were duplicated in respect of the scope of such investigations.

By implication, the response suggests that the current management was evading responsibility, as the transgressions and previous investigations took place prior to their appointments.

The Commission found that the apparently specific responses offered by the DCS failed to be specific and did not contain the required detail. In particular, the Commission found that the Department had failed to implement recommendations made by the Department of Public Service and Administration (DPSA) and the Public Service Commission (PSC) concerning recruitment, overcrowding, merit awards, the parole system and corruption in general. The Commission concluded that in failing to implement important recommendations made by the DPSA, PSC and other agencies, the DCS had shown it had no regard for the taxpayer's money.<sup>13</sup> The Commission expressed concern at the complete lack of regard for these recommendations that the Department exhibited in selectively dealing with certain reports and not commenting on others.<sup>14</sup>

It was apparent from many of the Commission's investigations that senior officials were involved in corruption. This allows one to conclude that even if junior officials were not following procedure, there were no clear checks and balances in place ensure the appropriate conduct of senior officials and there was certainly no measure of transparency and accountability within the Department. The manner in which the DCS dealt with previous investigations must have created a culture of defiance and impunity at senior level that was clearly visible to junior staff.

Moreover, concerns were raised as early as 1996 in respect of corrupt activities occurring within the Department. Despite these concerns, and investigations by other relevant agencies, the Department's leadership failed to take control of corruption in any meaningful or decisive manner. The Commission therefore recommended active parliamentary oversight into why the DCS had failed to implement the recommendations of the DPSA and the PSC. The Commission also proposed the establishment of an oversight committee to oversee the implementation of its recommendations.

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## **5. How was the evidence set before the Commission interpreted and what value can be attached to it?**

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The findings of the Commission are based on the evidence it heard and uncovered, but have not been tested in a South African court of law. It is therefore justifiable to ask what weight can be attached to the evidence. Can it be accepted as reliable, or is it possible, ultimately, to regard it as nothing more than mere allegations?

In undertaking its investigations, the Commission always considered Constitutional imperatives and applied the principles of openness and transparency in its deliberations regarding the evidence set before it. It should be added that the Commission did not enjoy unqualified and wholesale co-operation from the DCS and its employees. The Commission reported intimidation of witnesses, manipulation of evidence, and a generally unco-operative attitude in numerous instances, even at the level of Head Office.<sup>15</sup>

In conducting its investigations, the Commission had to deal with evidence set before it, as well as informal complaints related to the issues at hand. The Commission collected evidence from various witnesses, employees of the Department, civil society and prisoners. The methodology employed by the Commission in gathering evidence and advising the public of its work included placing mass-media advertisements, conducting radio interviews<sup>16</sup>, receiving telephone reports from various members of the public, and receiving reports from members of the public and prisoners via the Commission's toll-free

number. Investigators also met with and interviewed members of prison management and unions, prisoners and staff members. Commission hearings were conducted in open court and in instances where oral evidence could not be led, documentary evidence were tendered.

The Commission evaluated and, in certain circumstances, where it was of the view that particular evidence might be unreliable, corroborated evidence. It is the view of the Commission that evidence was considered in a frank, bold, and impartial manner and that the values of the Constitution were considered first in every instance.

A striking example of how the Commission considered and interpreted evidence can be found in the chapter on prison security<sup>17</sup>, in which the Commission made it clear that it considered all evidence placed before it, whether tested or untested. The Commission substantiated the receipt of untested evidence by stating that the criminal justice system would be the correct forum for testing evidence, and not the Commission hearings. Where people were implicated in committing transgressions, their rights to representation and to challenge the accusations levelled against them, was met with an unusual level of fairness on the part of the Commission. In this regard, it was particularly accommodating.

In interpreting the evidence, it is also worth noting that the Commission consulted research done in other countries and conducted comparative studies so that it could present comprehensive recommendations. One such study was done in respect of prison gangs where the Commission specifically compared American super maximum prisons to the South African model in an attempt to understand how the model serves to control prison gangs.

It is clear that the Commission went to extensive efforts to hear as many submissions as possible and as many opinions as possible concerning every complaint and that it consistently gave the DCS the benefit of the doubt when hearing allegations by considering the Department's circumstances at the time when the allegations were said to have occurred. If anything, the Commission can be criticised for being too accommodating

towards the Department and too sympathetic to the explanations offered by individuals concerning problems that it had uncovered.

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## **6. What is the scope and extent of corruption in the DCS?**

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From the outset it is important to understand that corrupt practices in the Department were evident in all the focus areas covered by the Jali Commission, but that some chapters in the final report revealed more endemic corruption than others did. It is also important to note that the Commission did not, at the beginning of its work, provide a definition of corruption. Perhaps the reason for this lies in the legislative framework at the time. The Corruption Act of 1992 remained in force for most of the Commission's tenure. In 2002, the Act was described as a failure and the need for a new consolidated legislative framework was expressed in the *Public Service National Anti-Corruption Strategy*. The Corruption Act of 1992 was repealed in 2004 and replaced with the Prevention and Combating of Corrupt Activities Act<sup>18</sup>, which provides a definition of corruption. The Commission also did not distinguish between petty and grand corruption.

In several instances the Commission makes remarks to the effect that 'lawlessness had set in'<sup>19</sup> and one has to assume that the Commission would not make such comments lightly. A large part of Chapter 2 is indeed entitled 'Breakdown of law and order' that must in itself indicate the Commission's view on the extent and scope of corruption in the DCS.<sup>20</sup> Of the Commission's seven focus areas,<sup>21</sup> none were found to have been immune to corruption and in all nine management areas that were investigated, evidence of corruption, maladministration, and the violation of prisoners' rights were found.

Concerning the procurement of goods and services, warders were found to be involved in smuggling food, weapons, cigarettes, and drugs. Warders were also complicit in the prostitution of juvenile offenders to other prisoners. It was found that while some warders were involved in gang activity, others were often ignorant to gang culture and hence not in a position to control or prevent such activity.

The Commission's investigations into recruitment, appointment, promotion and dismissal of employees revealed the main corrupt activity as nepotism, with officials appointing friends, relatives and girlfriends who often were not suitably qualified to fill the positions to which they were appointed. Such inappropriate appointments were by and large orchestrated through union influence and in particular through clandestine programmes such as 'Quiet Storm'.

Other illicit activities that the Commission uncovered included warders helping prisoners to escape. Referring to one particular case, that of Mr. Pobe, the Commission remarks:

*'If not for the consistency of his evidence, one would have been forgiven to think that one was reading a novel because the facts he revealed were facts of which best sellers are made'.<sup>22</sup>*

In illustration of the extent of assisted escapes, in 1999, in the Gauteng region alone, 129 inmates escaped. In 2002, this was reduced to 35 escapes in Gauteng after the DCS implemented measures to reduce escapes<sup>23</sup>. Given the seriousness of this type of offence, the Commission focused on two cases involving Mr. Sydney Thloloe and Mr. Thungulu.<sup>24</sup> Evidence was heard to the effect that Mr. Thloloe had been involved in:

- Facilitating escapes or disappearances of prisoners from Johannesburg prison. Between 1992 and 2003, there were 75 escapes or 'disappearances' from Johannesburg Prison. It is alleged that Mr. Thloloe was involved in the majority of these.
- Armed robberies, together with robbery syndicates, in and around the Gauteng and KwaZulu-Natal provinces.
- The theft and/or hijacking of motor vehicles.
- Drug smuggling.
- Illicit sexual activities at the Johannesburg female prison.<sup>25</sup>

Although Mr. Thloloe had been found guilty of criminal activity, the Department failed to suspend him and instead merely transferred him to a different section. In another case, the Commission concluded that a prisoner, Mr. Thungulu (or better known as McGyver)<sup>26</sup>,

who had escaped from Eastern Cape prisons six times, had been assisted by warders. With good reason, the Commission took a very strong position on officials helping prisoners to escape and castigated the Department's leadership for failing to exercise discipline:

*This lack of control over its employees also shows a complete disregard for the rule of law.*

*Therefore, the Department's failure to act against those correctional service members who, by the use of a single key, undo all the efforts of the National Prosecuting Authority, the Judiciary and the whole criminal justice process, makes a mockery of justice.*

The Commission concluded that in the Thloloe and Thungulu cases it was clear that poor record-keeping and an ineffective disciplinary system had compounded the problems with prison security that the Department had experienced. The Commission

recommended, among other things, to the Department that metal detectors and X-ray scanners be installed at high-risk prisons, that electronic monitoring-devices be used to detect the movement of prisoners, and that warders be trained in the severity of aiding and abetting prisoners in their escapes.<sup>27</sup>

Concerning alleged incidents of non-adherence to departmental policy and deviation from norms and standards, the Commission found that abuse of power by

senior officials was also an area of grave concern. The Department failed to discipline senior officials for misconduct and allowed them to remain employed. This contributed

### **Case example: Grootvlei Video**

Over several months, with the permission of the Head of Prison, four prisoners at the Grootvlei Prison in Bloemfontein secretly filmed, on video, officials engaging in various corrupt and illegal activities. The video was screened during the television programme *Special Assignment*, broadcast by the South African Broadcasting Corporation's national television channel SABC 3. It resulted in a public outcry over the state of the nation's prison system.

The video showed scenes of warders drinking alcohol with prisoners, juveniles being sold to older prisoners for sex, warders smuggling a gun, drugs and alcohol into prison, and food being sold to warders from the prison kitchen. One of the most disturbing scenes included a warder selling a loaded gun to a prisoner to be used in an escape. Another scene showed a prison warder receiving money for bringing a juvenile inmate into a cell so that he could engage in sex with another prisoner.

This video effectively exposed corruption in prisons to the public and angered the DCS. For allowing the prisoners to make the video, the Head of the Prison was subjected to intimidation had the effect of scaring potential whistle-blowers away from assisting the Jali Commission in exposing corruption.

largely to prisoners and other staff members lacking confidence in law and order within the Department.

Clearly, corruption pervaded every area of prison life with lines of accountability having become skewed through warders' involvement in corruption, gang activity, smuggling and illicit dealings with prisoners. Corruption had run so deep within the Department that disciplinary procedures were not taken seriously by those engaging in corrupt activities.

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## **7. What did the Commission find about the Head Office?**

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The Head Office was not specifically named in the Commission's terms of reference, but its interpretation of its mandate was that it was to investigate the Department generally and therefore also the Head Office.<sup>28</sup> The Commission's report does, however, not contain a specific chapter on the Head Office, as is the case with the management areas it investigated, nor a general chapter on this office. Numerous references are made to the role of the Head Office, for example, when it did or did not fulfil its senior leadership function, or when it was complicit in the destabilisation of the Department. It has to be accepted therefore that the Commission's findings do not provide a clear, comprehensive and coherent view of the Head Office; instead, its views on the Head Office are found in its commentaries on other matters, primarily relating to events at the level of management. Historically, it should also be emphasised that the officials at the helm of the Department in the mid- to late 1990s are not the same officials who were in control when the Commission conducted its work. The Commission was cognisant of this transition in leadership and noted that the current Minister (Balfour) and Commissioner (Mti) were working under difficult circumstances, "endeavouring to reverse the situation".<sup>29</sup>

The Commission received several reports (upon guarantee of anonymity as the whistleblowers feared for their lives) of a clandestine grouping in the Head Office referred to as CORE. The origins of CORE apparently can be traced back to 1997 when two or more senior officials in the Head Office met and agreed to approach 'like-minded' officials

who would form a core, hence the title, and drive the process of transformation. The membership of CORE remains uncertain, but that it existed and that it regularly met in secret is certain. According to members involved in CORE who testified before the Commission, CORE's task was to identify areas where transformation had not taken place, determine the obstacles to transformation and overcome them. What followed was a process of appointing the 'right people' into key positions, and of creating and abolishing posts. CORE ensured that all appointments from Director-level upward needed its approval. It ensured that a rival union<sup>30</sup> was dissolved and its membership merged with POPCRU. The Commission remarks that, as with all secret organisations, cracks began to appear in the operations of CORE and indications are that a new core grouping was formed, which turned on the original CORE and 'hounded members out of the Department'.<sup>31</sup> The Commission is not convinced that CORE ended with the departure of its alleged creator, Commissioner Sithole, and the Commission maintains that secret meetings still take place where important decisions about appointments, discipline, and so forth are made.

The Commission was particularly critical of the Head Office's handling of Operation Quiet Storm and its complete failure to discipline members in the Pietermaritzburg area in the late 1990s. Referring to three particular officials who the Commission described as "a law unto themselves" and "running the Department in the province with impunity", the Commission castigated the Head Office for its failure to take action and called it the "the worst form of abdication".<sup>32</sup>

Directing its attention to the current leadership of the Department, the Commission expressed its dissatisfaction with the Commissioner in respect of his report on the Department's responses to the recommendations of previous investigations. With specific reference to the recommendations following the PSC's investigation of 2000, the Commission noted that these (relating to human resource management) were aimed at combating corruption, but that the Head Office had failed to implement them and had not explained why it had chosen this course of action.<sup>33</sup>

Overall, it appears that the problems relating to the Head Office pertain to its failure to provide leadership, improve systems and procedures, and hold transgressing officials accountable. In the final instance, the Head Office remains in charge of the Department and the Commission therefore recommended that either the Portfolio Committee on Correctional Services or a newly-established cluster-based oversight committee actively monitor the recommendations of this Commission, as well as recommendations originating from previous investigations.<sup>34</sup>

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## **8. What conditions allowed corruption to flourish in the Department and were staff trained to adequately deal with it?**

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To answer this question, it is necessary to reflect briefly on the extant literature before dealing with the Commission's findings. Kaufmann argues that it is important to understand the linkages between corruption and governance and that corruption is only one factor that undermines governance; others include poor leadership, non-adherence to procedure and incompetence.<sup>35</sup> Looking more closely at how corruption is possible in any organisation, accountability emerges as the key variable, which can be presented as a formula:<sup>36</sup>

$$\text{Corruption} = (\text{Monopoly} + \text{Discretion}) - \text{Accountability}$$

Corruption occurs when officials have monopoly over something (e.g. appointments, procurement) and the discretion to use it in an environment where accountability is lacking or absent. In the prison context, corrupt factions were able to build monopolies. Within this environment, officials were able to exercise their discretion liberally. They were able to ignore the laws and procedures with which they were familiar by engaging in illegal and unauthorised activities. Given the virtual collapse of the disciplinary system and senior management's disregard for investigative reports and their recommendations, accountability was nearly impossible to maintain.

In overview, three macro conditions facilitated corruption, namely pressures created by overcrowding, the flawed demilitarisation process, and the misdirected affirmative action programme. It cannot be argued that overcrowding causes corruption, but, in this case, it undoubtedly widened the fault lines created by demilitarisation, the affirmative action programme, and the growing influence of the trade unions.

In addition to these general conditions that allowed corruption to flourish, the Commission attached major significance to the power of organised labour. In particular, POPCRU, with membership from all tiers and functions in the Department, became a dominant influence in the DCS. That senior management members were also POPCRU members, and also held union leadership positions, further weakened the ability of the Department to exercise proper management and, in particular, maintain discipline. The Commission aptly describes the inter-relatedness of key transformation issues as follows:

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

Through an organised campaign, POPCRU appointed its members to senior positions and removed those incumbents who were not aligned to the union's objectives. POPCRU further influenced the appointment of unqualified people into senior and technical positions. In this way, POPCRU ensured that it monopolised power and thereby compromised accountability in the DCS. POPCRU's negative influence on motivation within the Department was so great that the Jali Commission equated it with gangsterism, because the union's activities were often violent and illegal.

Despite policies and procedures regulating recruitment processes being in place, the Department had not adhered to the requirements of the Correctional Services Act that described appointments, promotions and transfers of members in the Department. Some of the problems listed included the fact that during recruitment drives, applicants who had already been interviewed were re-interviewed and those who were not short-listed were interviewed and recommended for appointment. For example, the Acting Provincial Commissioner, Mr. Nxele, interfered with the process by removing the names of recommended people and generally acting in an irregular manner in interview and recruitment processes.<sup>37</sup>

Both earlier investigators and Jali Commission investigators experienced resistance from senior officials at the Head Office in that they delayed the investigations. The Commission found that fear and intimidation among officials increased corruption because officials were often afraid to enforce Departmental rules and regulations. The Commission also found a lack of visionary leadership and of capacity to deal with maladministration and corruption. The Commission found that in certain management areas there was no clear distinction between the roles of management and trade unions, which created further confusion. In addition, poor record keeping in most management areas contributed to misconduct and mismanagement on the part of officials. It is apparent from the above discussion of recruitment and management practices, that officials used their discretion irregularly in appointing unsuitable candidates, which contributed to inadequate management capacity and a general lack of accountability within the Department.

A further condition which must have contributed significantly to corruption taking hold and flourishing within the Department was the weak legislative framework. Although the Jali Commission did not review the legislative framework, it must be assumed that this must have had an influence on corruption in the DCS. As noted earlier, government admitted that the Corruption Act was a failure, hence the *National Public Service Anti Corruption Strategy* was adopted in 2002. The *Minimum Anti Corruption Capacity Requirements* were released by the DPSA only in 2006. The absence of important legislative

and policy imperatives such as these clearly contributed to corruption because a suitable regulatory framework within which officials could operate was not provided. The Commission's work may have been enriched by a clearer exploration of these issues.

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## 9. Have the Department's disciplinary processes been effective in addressing misconduct?

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When reviewing allegations of corruption, it is important to assess the existing mechanisms designed to prevent and combat corruption. Human resources and disciplinary policies and procedures would be the best place to begin to determine whether or not fair administrative action ought to have taken place within the Department.

The Jali Commission identified a lack of discipline and the inadequacy of disciplinary procedures and practices as the gravest problems in the DCS. The Commission states clearly that the Department *"failed in the very first steps (towards reaching its objectives) and that is to discipline those involved in corruption and those that were grossly negligent"*.<sup>38</sup> Not only did the Commission find that the disciplinary procedures had not been adhered to, but it was also clear that officials did not

### **Case Study: Sexual Harassment of staff**

The Commission heard evidence from three female employees stationed at St Alban's Prison in the Eastern Cape concerning complaints about sexual harassment by a male colleague that they had lodged. The Department had a clear policy for dealing with sexual harassment at the time, but despite this, the three female employees were victimised to such an extent that one resigned, the second was medically boarded due to the trauma she had experienced, and the third, who remained in the employ of the Department, found herself to be the subject of disciplinary proceedings.

The Commission found that when the three employees laid formal complaints, instead of being punished, the offenders were promoted and the complainants were harassed and moved to a different section within the Department. Investigators were found to be insensitive in their handling of these cases, supervisors acted inappropriately and complaints were ultimately taken to the criminal courts due to the lack of faith in the Department's disciplinary system. The Commission stated that all supervisors should be trained and sensitised regarding the DCS's sexual harassment policy and all managers should be tasked with implementing the policy.

have the requisite capacity to conduct disciplinary processes in a fair and open manner. Disciplinary processes were manipulated, undermined and frustrated by corrupt officials and were unfair in respect of Departmental staff, as well as in respect of prisoners' complaints. Often those officials guilty of offences were never disciplined appropriately and in instances when hearings were held, official procedures were not followed and, most importantly, the offenders were seldom punished. Instead, the accusers were often punished by being transferred to other places of employment and left with a sense that justice had not been served. In the case of prisoner complaints against staff, disciplinary proceedings were often delayed or when heard, the accused would be promoted.

It was also found that Heads of Prison<sup>39</sup> did not follow up on criminal cases against officials. In one case (Mr. Pobe), the perpetrator made 'a full and frank disclosure' to the police regarding his criminal activities while he was employed by the Department, but he has never been criminally charged.<sup>40</sup>

The Commission also expressed concern that no evidence had been placed before it to indicate the status of what it called 'renegade members', referring to officials who, in the preceding years, had become a law unto themselves in the Department.<sup>41</sup>

The Department's disciplinary code and procedures were adopted in February 2001, but the Commission found that in most management areas no disciplinary hearings were taking place or charges were being withdrawn due to the Department's failure to institute proceedings within the three-month time limit for doing so. In most instances, the chairpersons allowed offenders to go unpunished, investigators did not account to anyone and managers failed to monitor and oversee the process. In addition, the disciplinary system had no definite procedure to guide investigations and to form the basis upon which to hold officials accountable in the case of non-performance. In some instances matters remained pending for two years. There was also evidence that chairpersons of disciplinary hearings were shop stewards or senior union officials. Under such circumstances it was unlikely that the employer's case would be given a fair hearing.

When disciplinary hearings were held, and the employee found guilty, sanctions were extremely light, even when the offence was serious. The Commission was shocked to find that officials found guilty of excessive force resulting in the death of a prisoner had merely received written warnings.<sup>42</sup>

The Commission repeatedly cites the virtual collapse of the disciplinary system as a critical problem; Chapter 15 of the report deals with this issue in detail. In its recommendations, the Commission goes so far as to propose that the responsibility for disciplining staff be removed from the Department and entrusted to an external agency, and failing that, to the PSC.<sup>43</sup> The report also includes six pages of detailed recommendations for addressing the DCS's disciplinary system. It is evident that addressing disciplinary issues in the Department lies at the heart of the Department's accountability problem. In fact, the Commission states that the Department "*will have to develop a special and effective strategy to reclaim its power and authority, which will necessitate a major change in the mindset of most employees*".<sup>44</sup> The disciplinary system has to be seen as part of this 'special and effective strategy'.

To conclude, it is apparent that if disciplinary processes had been adhered to and if senior officials had conducted themselves as proper custodians of justice, many offenders would have been punished. The non-adherence to policy and procedure compounded corruption, misconduct and maladministration within the Department in a fundamental way. It sent out the message to other staff members "*that they can proceed in their wrongdoing because nothing will happen to them*".<sup>45</sup>

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## 10. What did the Jali Commission find about the treatment of prisoners?

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Section 35 (2) of the Constitution provides that everyone who is detained, including every sentenced prisoner, has a right to, among other things, conditions of detention that are consistent with human dignity, including at least exercise and the provision, at State expense, of adequate accommodation, nutrition, reading material and medical treatment.<sup>46</sup> Further, the Constitution provides that the prisoner or detained person has a right to communicate with and be visited by his or her spouse or partner, next of kin, chosen religious counsellor and chosen medical practitioner.

Aside from explicit human rights violations (e.g. assault and torture), corrupt activities by officials have a direct bearing on whether their Constitutional rights are upheld or not. South African jurisprudence has confirmed on numerous occasions that prisoners retain all rights, save for those that need to be curtailed to implement the sentence imposed by the courts.<sup>47</sup> The fact that offenders and alleged offenders are imprisoned is therefore no justification for unduly limiting or diluting their rights.

Despite these prescripts, the Commission found ample evidence of officials treating prisoners as though they had no rights. While the Commission acknowledged that overcrowding in prisons compounds the problem, it did not accept this as an excuse for

### Case study: Louis Karp

Karp, a transsexual, was presented as a woman but placed in a male prison (Pretoria Local). Officials did not investigate Karp's sexual orientation at the time of his admission. Karp was an awaiting-trial prisoner and had to sleep on the floor due to overcrowding at the time of his admission.

In one incident, Karp was sold for sexual purposes by a warder to four other prisoners and consequently raped by them. Out of fear, Karp never reported the incident. In a later incident, Karp was forced to have oral sex with a warder in front of fellow inmates. In yet another incident, Karp was raped by another prisoner. He testified that he received no proper medical attention, no counselling or even HIV testing thereafter. Karp was only tested for HIV three weeks later, after laying a formal complaint with an Independent Prison Visitor. The Head of the Prison placed Karp in solitary confinement, but the perpetrators received no punishment.

The Commission was extremely disturbed by the manner in which Karp's case had been dealt with by both medical personnel and the Department's officials (See Chapter 8).

torture and the ill-treatment of prisoners. The Commission found that prisoners were subjected to torture, assault, and abuse and made to perform duties that infringed upon their dignity. It appeared to the Commission that warders' general opinion was that prisoners were in prison 'for punishment' and not 'as punishment'. In addition, prisoners expressed dissatisfaction with the manner in which the Office of the Inspecting Judge dealt with their complaints. According to the Commission, prisoners had lost faith in the Judicial Inspectorate and Independent Prison Visitors complaints system, as their complaints were not dealt with effectively and offending warders remained on duty without being punished.

The Jali Commission agreed with the widely held view that solitary confinement is one of the worst forms of torture.<sup>48</sup> The Commission therefore was appalled to find that this form of punishment was used extensively in many of the management areas investigated. While the Prisons Act of 1959 and the Correctional Services Act of 1998 allowed for the detention of inmates in isolation cells, the Commission found that the size of the cells and the practices and procedures used effectively reduced the punishment to solitary confinement. In addition, when prisoners were subjected to solitary confinement, Heads of Prison failed to provide adequate amenities for such prisoners. The use of solitary confinement was found to be irregular in most instances, as Heads of Prison were ill-equipped to deal with problems and often used solitary confinement for prisoners who needed protection and not discipline.

The Commission was particularly perturbed by the fact that warders guilty of improper action were not reprimanded, which enabled them to continue their misconduct with impunity.<sup>49</sup> The Commission further questioned the need for super-maximum prisons, such as C-Max, and concluded that no evidence was placed before the Commission to justify the existence of such facilities.<sup>50</sup> In an apparent response to the argument that such super-maximum prisons are required to reduce escapes, the Commission remarked:

*The high rate of escapes in South African Prisons is not due to the physical infrastructure of South African Prisons, but is largely due to collusion between members and prisoners, which amounts to corruption and/or negligence on the part of the members.*<sup>51</sup>

The Commission found evidence that sex in prisons was traded regularly between prisoners, as well as between warders and prisoners. Prison warders were also guilty of being homophobic towards gay and transsexual prisoners. The Commission said that warders who failed to protect prisoners from sexual abuse were guilty of contravening Section 12 (1) and (2) of the Constitution. The participation of warders in the trafficking of prisoners is a clear illustration of the convergence of corruption and human rights violations in South African prisons.

The Commission found that because the reporting system required that forms and documents that were not easily available to prisoners had to be completed, prisoners were not easily able to report complaints about officials to the SAPS. In most cases, prisoners who identified warders as offenders were punished instead of the offending warder. Looking closer at the role of the SAPS in investigating prisoner abuse, the Commission identified three impediments:

- continuous interference by DCS staff in investigations
- investigations not being done in confidence due to the presence of DCS officials and their knowledge of the prisoner and the complaint
- intimidation of witnesses and victims by DCS officials<sup>52</sup>

The Commission heard evidence that visits between prisoners and family or friends were often shortened from 45 minutes to 5 or 10 minutes due mainly to overcrowding and limited staff to oversee these visits. It was also reported that in some instances prisoners had to pay for visits, which is clear evidence of corruption impacting on prisoners' right to have contact with their families and friends.

The Commission also paid particular attention to the disciplinary procedures for prisoners and identified substantial flaws in the current legislative and regulatory framework.<sup>53</sup>

The Commission found consistent and widespread evidence that the minimum standards of humane detention were violated on a wide scale and that victims' complaints or their

efforts at lodging complaints, were actively undermined or prevented. The Commission made numerous recommendations in this regard and emphasised the need for warders to be trained in prisoners' rights and conflict resolution.

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## **11. How effective were oversight bodies in ensuring openness, transparency, and accountability?**

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Accountability and transparency are cornerstones of democracy, but often are undermined and diluted in several ways. Oversight bodies such as the Judicial Inspectorate is one of those agencies established to ensure that true meaning is given to these democratic ideals.

Prior to an amendment in 2001, Section 85(2) of the Correctional Services Act required that the Judicial Inspectorate report on the treatment of prisoners, conditions in prison and *any corrupt or dishonest practices in prisons*. These objectives were then amended to exclude 'corrupt or dishonest practices' because, according to the testimony of the Judicial Inspectorate of Prisons, it would compromise the relationships between Independent Prison Visitors and officials, with the former relying on the latter's co-operation in resolving complaints. It is important to note that the mandate to inspect prisons with reference to corruption was removed from the Judicial Inspectorate, but the Inspecting Judge may still report on corrupt and dishonest practices. The Commission concluded that this placed a significant limitation on the Office of the Inspecting Judge as it can only 'report on' and not undertake investigations of its own accord.<sup>54</sup>

The Commission had a real and substantive expectation that the Office of the Inspecting Judge would be a watchdog, but the Commission found that the Office was not using its pro-active powers to conduct its own investigations and to hold a Commission of Inquiry in terms of S90 (5) and (6) of the Correctional Services Act. For the Commission, the treatment of prisoners is inextricably linked to corruption, and it therefore could not accept the Judicial Inspectorate's motivation for the 2001 amendment to the Correctional Services Act. The Commission regarded the amendment as ill-conceived.

Prisoners testifying before the Commission expressed their dissatisfaction with the manner in which their complaints were dealt with by the Judicial Inspectorate. In particular, prisoners did not feel that the Office of the Inspecting Judge was dealing with the Department effectively. Independent Prison Visitors, on the other hand, also complained of a lack of co-operation from officials and even physical assaults on Independent Prison Visitors by officials. The Commission also noted that the Office of the Inspecting Judge was not mandated to enforce its decisions on the Department, unlike the Netherlands' Complaints Committee, which can make binding judgments concerning prisoners' complaints.<sup>55</sup>

In the Jali Commission's opinion, the independence of the Judicial Inspectorate of Prisons was further undermined by the fact that special assistants to the Judicial Inspectorate had to be appointed after and not in consultation with the Commissioner, which allowed the Commissioner to veto the Inspecting Judge's appointments in this regard. The Commission noted that the Department being responsible for all expenses of the Judicial Inspectorate of Prisons presented a further structural flaw in the independence of the Judicial Inspectorate of Prisons.

In 1997, a departmental anti-corruption unit was set up in the Department of Correctional Services. The Commission identified major problems with the unit in that it was understaffed and had a limited budget. In August 2003, the Department implemented a plan to set up a new unit to investigate corruption. The Department restructured its legal and special operations unit, which is now called the Departmental Investigation Unit (DIU). The Commission commended the DCS for establishing an internal anti-corruption unit, but retained the view that there should nevertheless be an independent anti-corruption agency. The Commission substantiated this argument by saying that it was clear that the Department did not have the capacity to address corruption comprehensively by means of the DIU. It was recommended therefore that a 'prison ombudsman' or a similar independent body be set up to complement the work of the DIU.

The Commission further recommended that a toll-free anti-corruption hotline be set up. The Commission found this service to be beneficial in its investigations, because prisoners and staff felt free to call and lay complaints via this service without fear. The Commission also recommended that the Department devise a programme concerning witness protection. Such a programme would encourage prisoners to report corruption without fear of intimidation or injury.

There are a number of agencies that the Commission makes reference to but does not discuss. These include, for example, the Special Investigations Unit (SIU) and the PSC.<sup>56</sup> The Jali Commission refers to this structure insofar as medical aid fraud, fraudulent travel claims, assistance in escapes, theft of kitchen stock and theft from the Department's workshops are concerned, but not in its discussion of oversight bodies. Although the PSC<sup>57</sup> conducted earlier investigations into the DCS, the Jali Commission did not discuss this institution in any detail. Instead it focused its recommendations on the establishment of a new anti-corruption agency.

The Commission also did not reflect in any detail on the Portfolio Committee on Correctional Services. It is the writer's opinion that compromised parliamentary oversight contributed significantly to the depth of the problem in that Parliament took no action when the Department failed to implement the recommendations made by independent agencies previously. In one incident, the then Chairperson of the Portfolio Committee on Correctional Services was implicated in irregularities in a recruitment drive by the Department.<sup>58</sup>

Lastly, the DPSA is responsible for the overall service conditions of all public officials. As a result of its investigations, the DPSA had made many important recommendations before the Jali Commission was established. On closer inspection, the Jali Commission found that the DCS had not implemented many of the recommendations made by the DPSA, as noted earlier.

Sticking strictly to its terms of reference, the Jali Commission did not engage in a review of these institutions insofar as their relationship with the DCS. The recommendation for the establishment of another agency, possibly an ombudsman, should therefore be seen in this context.

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## **12. How did the conduct of officials deepen and entrench corruption?**

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Despite systemic weaknesses, the conduct and integrity of individual officials remain the last bulwark against corruption. The Commission found evidence of minute and insidious examples of corruption and maladministration. In an environment characterised by a lack of accountability and deep-seated tensions, the opportunity was created for less than honest officials to exploit the situation.

The Commission investigated various counts of misconduct such as the maintenance of arsenal records in the Ncome management area. The Commission found the absence of records for the arsenal shocking. It was unable to find a particular firearm, which the Commission concluded could have been used in criminal activities. No clear explanations were given for the lost firearms and officials cited 'lack of training' as the reason for improper record-keeping.

The Commission further heard evidence of unlawful pecuniary dealings with prisoners despite regulations prohibiting such behaviour as well as the 'cashless system' implemented to counter this.<sup>59</sup> The major problem in these cases of misconduct was that the Head of Prison took no action against the transgressors.

Further hereto, the Commission heard evidence about assaults on prisoners at Ncome and how the charges against the warders were withdrawn. Investigators were given insufficient time to conduct thorough investigations into assaults and received no assistance from management. The Commission concluded that although there were clear

incidences of negligence, the disciplinary system itself was poor and that understaffing within prisons was a contributing factor as prison warders had a heavy workload. In short, corrupt and dishonest officials were exploiting the situation to the hilt.

At both Pollsmoor and Durban-Westville, the Commission found that members colluded with one another, causing losses to the Department and resulting in misconduct.

Maladministration was found to be rife in procurement and logistics, particularly in the Pollsmoor management area. It was found that certain companies were consistently being awarded tenders, the required number of quotations for work was not adhered to, and officials were issuing orders without them having the authority to do so. The Commission found that the Department suffered substantial financial losses. It is worth noting that the Commission found procedures and systems to be inadequate and that the staff lacked the requisite knowledge to use the existing systems appropriately.

In its investigations into the workshops, the Commission found that there were no proper checks and balances in place to monitor officials and that this enabled members to do private work in the prison workshops. In Pollsmoor, it was found that no control was exercised over the outer gate which meant anyone had free access to the prison workshop and could use it for their own benefit and remove material and equipment from it.

Misconduct was also evident in respect of overtime procedures and practices within the Department insofar as senior officials were allowed to perform warder duties over weekends and were paid overtime at their higher salary levels. This was found to be contrary to the overtime policy, which allowed for weekend overtime, but the remuneration was for additional services rendered to compensate for limited personnel. The Commission found this particular policy to be misinterpreted and grossly exploited by various officials within the Department.

It is clear from the above that individual officials misused Departmental resources for their own benefit and for financial gain. In most cases the misconduct contributed to and increased corruption in an insidious way, so as to render many prisons ungovernable.

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### **13. Did the nine management areas investigated exhibit the same trends or are there regional differences?**

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The Jali Commission focused its investigations on the nine management areas mentioned earlier and identified important general trends across the nine areas, namely:

- Divisions in management, as well as political division among members. In many instances, management was divided into two camps, with one camp being the more dominant one and often linked to the trade union and the other camp fearing the dominant camp. This same division between managers was also evident in respect of their political affiliations and caused tension among members.
- A general lack of discipline and inadequate disciplinary action taken.
- Smuggling of contraband by warders and prisoners.
- Misconduct and mismanagement in respect of workshops and logistics.
- Warders assaulting prisoners.
- Nepotism in respect of appointments and general abuse of power by senior officials.
- Inadequate security measures observed in most management areas, which contributed to misconduct on the part of officials insofar as warders would elicit money from prisoners in exchange for irregular visits.
- Members participating in illegal gang activity thus contributing to the culture of gangs and violence within prisons.

The Commission noted the following specific trends in respect of the nine management areas:

- Many senior officials turning a blind eye to transgressions
- Unwillingness on the part of officials to confront problems head on, whether relating to a warder or a prisoner, preferring instead to transfer the problem to another prison or management area
- A lack of security consciousness among prison warders that generally contributed to the high incidence of escapes from the prisons, and,

- A state of anarchy prevailing in some management areas where, in some instances, it was difficult to differentiate between the proverbial puppet and the master, or the warder and the prisoner.<sup>60</sup>

More specifically, the Commission highlighted the following in respect of the different management areas:<sup>61</sup>

- *Durban Westville*: The Commission noted that KwaZulu-Natal Region was the most difficult region to investigate and though it received co-operation from the Durban Westville senior management, the Commission's investigators as well as witnesses were subjected to intimidation as well as threats to their lives. In evidence before the Commission, POPCRU stated that it was not aware of any corrupt activities in the region.
- *Pietermaritzburg*: This management area was the locality of the assassination of the regional assistant commissioner as well as as the birthplace of Operation Quiet Storm. It proved to be a difficult area to investigate due to the entrenched nature of this operation.
- *Bloemfontein*: The Grootvlei video and the ensuing publicity it enjoyed gave this management area a unique character in the Commission's work. The Commission also expressed its frustration with the interference from the Head Office in the investigation.
- *St Alban's*: Secret meetings held by union leadership and the large-scale manipulation of appointments set this management area aside from others. It was also at St Alban's that senior DCS managers walked out of Commission hearings for the first time.
- *Pollsmoor*: The Commission described this management area as the most difficult to investigate and was struck by the *laager mentality* of the managers and staff.
- *Leeuwkop*: The Commission expressed its gratitude for the positive attitude and approach it experienced from the provincial leadership in respect of this management area.
- *Johannesburg*: Six months prior to the Commission's arrival at Johannesburg, the SIU had been there. The Commission noted that fear and intimidation were rife, and it was struck by a general attitude of 'money talks' at Johannesburg.

- *Pretoria*: The Commission found corruption to be endemic in this management area and was struck by the presence of ethnic or tribal tensions between Nguni and non-Nguni speakers. The abuse uncovered at C-Max influenced the Commission significantly.
- *Ncome*: This was the last management area investigated and many of the prisoners had been transferred to other prisons due to a severe drought in the area. It appears that the Commission had a more positive experience at this management area.

To conclude, it appears that some of the general problems included strained relationships between officials within the Department, overcrowding and a general disregard for and non-adherence to disciplinary processes and procedures. The specific trends observed by the Commission covered the irregular behaviour of officials and their inability to maintain professional relationships among themselves and with prisoners.

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#### **14. What is the Commission's position on the process of rehabilitation, given the high levels of corruption?**

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In many instances in its report, the Commission referred to rehabilitation and how it had been compromised as a result of the actions of corrupt officials. In the conclusion to its report, the Commission speaks not only to the rehabilitation of prisoners but, ironically, refers to the rehabilitation of officials as well.

The Commission noted that in terms of the Constitution prisoners were entitled to be treated with dignity, to exercise, and to adequate accommodation, nutrition, reading material and medical treatment. The Commission revisited the rights of prisoners and confirmed that even though these are enshrined in the Constitution, prisoners by virtue of imprisonment do lose some of their dignity. However, the Commission was deeply dissatisfied with the manner in which prisoners were being treated. The Commission found that this amounted to a situation that fundamentally undermined the rehabilitation

objective. It was evident that warders required training in order to fulfil their functions properly, but such training would achieve nothing unless prisoners' complaints were taken seriously and addressed adequately by warders and the Judicial Inspectorate of Prisons.

The Commission acknowledged that the Department had finally realised that its responsibility was not only to incarcerate individuals, nor merely to enforce punishment. Its responsibility was to correct offending behaviour in a safe, secure and humane environment, in order to facilitate rehabilitation and prevent re-offending. The Commission stated that the White Paper on Corrections stipulated that rehabilitation and correction was one of the Department's main objectives and placed it at the centre of the Department's activities.

The Commission went on to state that the duty placed on the Department to rehabilitate prisoners was compromised by the disciplinary processes employed by the Department. It stated that the manner in which prisoners' complaints were dealt with gave an indication of how the system did not have a positive effect on them nor served to rehabilitate them, because an important aspect of rehabilitation is to teach offenders to have respect for the law.

In respect of overcrowding in prisons, the Commission was of the view that prisoners who had been rehabilitated should not remain incarcerated. In this regard, the Commission recommended that prisoners should be assisted in applying for their sentences to be converted to correctional supervision. The Commission was of the firm view that such conversions would also assist in reducing the prison population.<sup>62</sup>

Despite rehabilitation being a cornerstone of the Correctional Services Act, as enunciated in the White Paper on Corrections, rehabilitation was not evident in the manner in which prisoners were being treated. If prisoners have lost faith in this system, there is very little chance of true rehabilitation taking place whilst corruption is rife and survival is the order of the day. In what must be perceived as a crisis of integrity, the corrections system in

South Africa, as an expression of society's moral disapproval of crime, had taken on a hollow clang instead of ringing true to a belief in what is right and what is wrong.

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## **15. What did the Commission identify as the major gaps in legislation and policy?**

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In its deliberations the Commission, identified some important gaps in legislation and policy which, it argued, if remedied would provide the legal framework within which to start correcting the situation.

One of the major gaps in policy identified by the Commission related to gangs. The Commission was of the view that the White Paper merely confirms the existence of gangs and it called upon the Department to develop a gang management- strategy. Two civil society submissions to the Commission also focused on gangs. The Centre for the Study of Violence and Reconciliation (CSV) emphasised the need for the development of a proper strategy to create a safe environment for prisoners, especially at lock-up time when they are at their most vulnerable to threats, violence and coercive behaviour. In addition to these measures, the CSV stated that staff members had to be trained to protect vulnerable prisoners and to separate potentially threatening prisoners from the others.

The Civil Society Prison Reform Initiative (CSPRI) questioned why the Department had not conducted research into prison gangs since 1994. The Commission agreed with the CSPRI that the Department should take a more rigorous approach to gangs in the White Paper on Corrections.

In addition, the Commission recommended that the powers of the Office of the Inspecting Judge be increased to include search and seizure, and that the recommendations of the Office within the Department be enforced. The amendments are concomitant to the proposal that the Judicial Inspectorate's mandate to report on corruption and dishonest practices be restored. The Commission also proposed the expansion of the mandate to

include “*the Department, including its management areas and the prisons*” and that it not be restricted to prisons only.

Another important legislative amendment that the Commission recommended concerned the Correctional Supervision and Parole Boards (CSPB). The Commission specifically recommended that to avoid interference from employees of the DCS, CSPBs should be accountable to the Minister of Correctional Services only. In addition, the Act should be amended to reflect that officials of the DCS can not act as chairpersons and vice chairpersons of the CSPBs.

Throughout its investigations, the Commission was sensitive to the needs of victims of crime. Therefore, it agreed with a proposal by Kgomo J in *S v Van Rooyen*<sup>63</sup> that in applications for conversion of sentence, as provided for in section 276A(3) of the Criminal Procedure Act, the victim should also receive a copy of the application.<sup>64</sup> The Commission proposed that such amendment should be similar to that of the provisions found in section 105(A) of the Criminal Procedure Act pertaining to plea bargaining.

Due to the amount of evidence found in respect of improperly managed and conducted disciplinary hearings, the Commission, more particularly in respect of the ineffectiveness of the policy, the process and ultimately the failure to remove transgressors, recommended that Section 24 of the Correctional Services Act be changed to stipulate and require that:

- o Disciplinary hearings be fair and be conducted by a disciplinary official, head of prison or an adjudicator, in serious cases;
- o At a hearing before a disciplinary official or adjudicator; a prisoner be informed of the allegation in writing, be present throughout the proceedings and have the right to be represented by a legal practitioner of his/her choice.

Due to the countless problems experienced by DCS in successfully disciplining staff, the Commission also recommended that the responsibility for discipline be entrusted to an

outside agency or to the PSC. The Commission suggested that the Department's Disciplinary Code of Conduct be amended to include:

- a specific offence of assault on prisoners by members as a dismissible transgression under Column A.
- an offence of sexual assault under Column A of the Disciplinary Code. Sexual assault should include a range of offences ranging from indecent assault to the rape of a prisoner and/or a staff member.
- a transgression of failure to conduct a search while on duty as a dismissible offence under Column A of the Code.
- as a dismissible offence under Column A of the Disciplinary Code the act of allowing a prisoner to have sexual intercourse with a visitor on prison premises.

Another important amendment to the Disciplinary Code was in respect of clause 5.12 for it to read as follows:

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

A further proposed amendment was to clause 7.4 of the Disciplinary Code as follows:

*'If the employer without good reason fails to institute disciplinary proceedings within the period of three (3) months after completing the investigations, the employee may make representations to the Head of Prison to oversee the implementation of a disciplinary hearing.'*<sup>65</sup>

The Commission recommended that the Department must be able to reopen a case after it has been withdrawn due to the timeframe having lapsed, or for any other reason.

These recommendations in respect of the Disciplinary Code sought to address issues related to misconduct, abuse of power, and illicit relationships between employers and prisoners. The recommended amendments by the Commission seek to ensure that irregular actions and activities by officials can indeed be dealt with firmly. The

Commission also recommended that failure by area managers to institute disciplinary action against errant members in itself be made a disciplinary offence.<sup>66</sup>

The recommendations in respect of legislation and policy should assist, if implemented, in ensuring that a legal framework exists to root out corruption, maladministration and misconduct. Further hereto, the Commission, as previously mentioned, made no reference to anti-corruption legislation, the *National Anti-Corruption Strategy* or *Minimum Anti-Corruption Capacity Requirements*. The Commission's work may have benefited from an examination of these.

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## **16. What are the most important recommendations made by the Jali Commission?**

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The Commission made approximately 114 recommendations in respect of focus areas and 11 in respect of the management areas investigated. Many of these have been discussed in this document. There are, however, a number of recommendations that deserve to be emphasised.

- As many of the problems uncovered by the Commission could be attributed to poor management and weak systems, the Commission recommended that staff members get training in:
  - planning;
  - finance and budgeting;
  - human resource management;
  - negotiation and mediation skills;
  - managing information systems.
- In respect of HIV/Aids, the Commission recommended that the Antiretroviral Therapy roll-out programme of the Department of Health be extended to the entire prison system.
- The Department was advised to introduce an effective disciplinary system, because respect for law and order is fundamental to the proper functioning of prisons. The

Commission made comprehensive recommendations regarding the Department's Disciplinary Code of Conduct.

- The Department should classify awaiting-trial prisoners as first offenders, repeat offenders, or gang members. This ought to assist in ensuring the safety of first offenders and awaiting-trial prisoners. When admitted to prison, all first-time offenders should initially be held separately from other prisoners to protect them from abuse.
- The Department should develop a gang management strategy in consultation with NGOs.
- Recruitment should be outsourced to an independent service provider. This recommendation was motivated by the multitude of problems the Commission uncovered in its investigations into recruitment; such as nepotism, irregular appointments, and senior officials' involvement in influencing recruitment decisions.
- Walk-through metal detectors and X-ray machines must be installed at all prisons to enhance the detection of unauthorised items and contraband.
- Members of the Department must to be sensitised so that they are better able to humanely deal with and assist rape victims.

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## **17. What did the Department do to implement the Commission's interim recommendations?**

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During its investigations, and because of misconduct and corrupt activities that could not be allowed to continue, the Commission released 11 confidential interim reports on the nine management areas to the President and Minister of Correctional Services. These interim reports sought to deal with problems as a matter of urgency and to correct offending behaviour during the course of the Commission's investigations. The first three interim reports dealt with the Durban Westville Management Area, and the subsequent interim reports with each of the other management areas, save for Interim Reports 10 and 11 that both dealt with the Pretoria Management Area.

In its first interim report it recommended the appointment of a special task team, consisting of independent experienced individuals, to attend to disciplinary inquiries. The Commission noted that despite this recommendation, the Department had allowed an inexperienced person to chair the hearings, which led to technical errors being made. The Department also failed to allow experienced, independent people to attend such proceedings, which led to prosecutions being unsuccessful.

The Commission's second interim report reflected on the existence of large-scale medical aid fraud in the Department, and recommended that the Scorpions take up the investigation. The Scorpions and the SIU took over the investigation and the Department took steps by appointing forensic auditors, KPMG. In the time since the recommendation was made, action was taken against members of the Department, and the SIU conducted an extensive investigation into medical aid fraud.

Fed-back from the Department on the Third Interim Report indicated that final written warnings had been given to certain members. The Commission did not have much comment to make on progress made in respect of this report as it did not possess the evidence pertaining thereto. The hearings referred to in the fourth interim report had been finalised, members had been dismissed and a few arbitration hearings were still pending. Once again, the Commission did not have much comment save to say that the matters had been referred to the South African Police Service for investigation and criminal prosecution.

The fifth interim report concerned the Grootvlei investigations, prompted by the release of the prisoner-made video. The Commission felt that the former Provincial Commissioner of the Free State had not been dealt with as recommended. The Commission also found that the Department had demonstrated vindictiveness towards whistleblowers in respect of the Grootvlei video and that Mr. Setlai, the Head of Grootvlei, had been victimised. The Commission further found the SIU to have acted irregularly in many instances in this investigation. The Commission found that affidavits which had been taken by the SIU in

this case had been repudiated because those who originally made them had been unduly influenced. The Commission therefore was of the view that the SIU had victimised whistleblowers, possibly on instruction from the Department, because the whistle-blower, in this instance Mr. Setlai, had embarrassed the Department.<sup>67</sup> The Commission was of the view that the Department's actions caused a great deal of damage, both to the reputation of the Department and the Commission's investigations as other whistleblowers were most likely no longer willing to come forward and expose corrupt activities.

In respect of the sixth interim report, which dealt with charges against the former Commissioner of the Eastern Cape, the Commission concluded that there was a lack of willingness on the part of the Department to discipline him. In respect of the seventh interim report, dealing with the Pollsmoor Management Area, the Commission noted that it had no comment with regard to the disciplinary inquiry as the Commission had not received any evidence from the DCS.

The 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> interim reports were submitted to the Department in February 2004. The Commission was dissatisfied with the manner in which the recommendations had been dealt with. The Commission found that the Department had failed to fulfil its recommendations, because members who were guilty of criminal offences had not been disciplined and continued to be employed by the Department under the protection of senior officials. The Commission held further that those who had been guilty of not implementing the recommendations should be charged with negligence.

In conclusion, the Commission found the general attitude of members of the Department to be self-defeating in that they believed that outsiders could not tell them how to run their prisons.<sup>68</sup> It concluded that this in itself was not conducive to ensuring that corruption was taken seriously or dealt with appropriately by the Department:

*This is a sad state of affairs because it is this very attitude that discourages any input from people who might be experts in other areas, which would be of assistance to the Department. The Department cannot operate in isolation. It is not an island but an integral part of the South African society. The manner in which it conducts its affairs has a bearing on the lives*

*of all South Africans, who expect the Department to consult and interact with experts and relevant stakeholders to ensure that correctional facilities in our country are competently run so that they compare with the best in the world.<sup>69</sup>*

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## **18. What was the role of civil society with regard to the Jali Commission?**

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Civil society was called upon to contribute in a number of instances during the Commission's investigations and deliberations, specifically concerning gangs, sexual violence and HIV/Aids. In its investigations into gangs, the Commission recommended that the Department conduct research into gangs and their culture and develop an anti-gang strategy. To this end, the Commission recommended that civil society be consulted to assist with the development and implementation of a comprehensive anti-gang strategy.

The Commission also advised that the Department contact NGOs who have the necessary experience and skills to assist the DCS with its rehabilitation programmes. The Commission argued that NGOs could assist gang leaders to change for the better. The Commission used the SAPS as an example of how co-operating with NGOs had improved practice and enhanced community involvement in policing.

To address the issue of overcrowding, the Commission investigated the incarceration of awaiting trial and sentenced prisoners and found generally that awaiting-trial prisoners should be incarcerated closer to their homes, while sentenced prisoners could be accommodated within driving distance of their families. To this end, the Commission recommended that the Department consult with and draw on the experiences of the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) that provides transport to the families and friends of prisoners.

On the issue of sexual violence, and more specifically in respect of HIV/Aids, NGOs criticised the DCS's HIV/Aids policy and stated that it would be ineffective in the absence of proper prison management. It was argued that the causes of HIV/Aids transmission in prison included high-risk sexual activity, sexual assault and the use of contaminated needles by drug-users.

The Aids Law Project and the Treatment Action Campaign (TAC) made further submissions that gangs, corruption and overcrowding compounded the problem of sexual violence and victimisation in the prison context. It was submitted that prison warders who were involved in the trafficking of prisoners to supplement their income were aggravating the problem. In addition, the Aids Law Project reported that prisoners were incarcerated in cells containing fewer beds than there were prisoners, thus forcing prisoners to share beds and creating opportunities for sexual exploitation.

NGOs also submitted that an oversight on the part of the Department in addressing the problem was that it lacked knowledge about the prevalence of HIV/Aids in its prisons and therefore was ill-informed to take appropriate action to prevent the transmission of the virus, and also not proactively manage the problem.

The Lesbian and Gay Equality Project, which made a submission on the treatment of gays and lesbians within the prison context, submitted that as a part of their duty to protect all prisoners prison warders have a duty to understand homosexual lifestyles. The Lesbian and Gay Equality Project further prioritised preventive measures to provide protection to effeminate male prisoners, as they were at greater risk of sexual exploitation in prisons. The Commission accepted all of these submissions and made several recommendations based on them.

In a number of instances, the Commission encouraged the Department to work more closely with civil society organisations that had knowledge in specific areas of concern. The Commission noted with concern the Department's perceived resistance to the

opinions of outsiders. It encouraged the Department to engage external experts to assist it in its work.

It is somewhat worrying that civil society was not represented in the Commission's composition and not invited to participate in the Commission's investigations, save for the opportunity to make submissions. Civil society organisations are often well-placed with the necessary expertise for government departments to draw upon to address specific problems.

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## **19. What are the positive results of the Jali Commission Report?**

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The Jali Commission's report has served to highlight many failures on the part of the DCS, but it is often the stark reality and honesty of such a report that will kick-start change. In the final instance, the report is that of a senior judge of the High Court. Given this status, there is little purpose to argue that it is inaccurate or biased. It is accepted therefore that the report gives a reliable account of events (and their reasons) in the DCS. It should be borne in mind that as early as 1996, Parliament expressed concern about the DCS. Since then numerous allegations have been made and rumours about what was going on in the DCS were rife. Therefore, the Jali Commission's Report is an important historical account and is, despite its limiting terms of reference, the most comprehensive report on corruption and maladministration in the DCS to date.

Some critics may argue that the Jali Commission was merely a 'fact-finding mission' and that it had no power to oversee the implementation of its recommendations. This is the nature of judicial commissions, but in the case of the DCS it was important to send out a fact finding mission to establish the facts. For the DCS to demonstrate progress, but more importantly for Parliament to know what it is measuring progress against, the Commission fulfilled a critical function.

The Commission succeeded in investigating difficult areas and topics that have plagued the Department and contributed to corruption. In its quest to investigate corruption, the Commission made some positive recommendations which, if followed and implemented by the Department, should reduce corruption and improve the treatment of prisoners. In addition, the Commission highlighted rehabilitation as a cornerstone of Correctional Services and by documenting the treatment of prisoners it reaffirmed the constitutional imperatives protecting prisoners. The report serves to reaffirm that prisoners do have rights and that those rights have to be protected if democracy is to be upheld. At the same time, the Commission acknowledged that officials who work for the Department now, came from an environment in which human rights were disregarded. The Commission found that unless the mindsets and attitudes of officials change, rehabilitation will not become a reality for prisoners.

The Jali Commission's findings and recommendations together with the five qualified audits by the Auditor General of the Department of Correctional Services have also jolted the Portfolio Committee on Correctional Services into action. The Department of Correctional Services now has regular reporting meetings with the Portfolio Committee on Correctional Services to monitor progress made in respect of the recommendations of the Jali Commission and the Auditor General.

The Jali Commission also had significant symbolic value in that government demonstrated its commitment to fighting corruption when it appointed the Commission. At least it created the perception that "government is doing something". The work method of the Jali Commission was, however, a double-edged sword as the public (and honest, hard-working officials) had to endure revelation after revelation of dishonest, criminal and corrupt acts by officials of the DCS. There is little doubt that this had an extremely demoralising effect on the staff of the DCS. It will also be some time before public perceptions about the DCS are not immediately associated with corruption; not that this is an entirely unjustifiable perception. In addition, government has upheld the Constitution by highlighting the rights of prisoners and reaffirming social justice. By building transparency and accountability, government set in motion the true workings of a

democracy. The Jali Commission should, therefore, be regarded as an important component in the transformation process of the South African prison system. Its true value will, however, depend on its findings and recommendations being kept alive in the minds of the leadership of the DCS, officials in the Department, oversight structures and stakeholders in civil society.

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## Appendix 1

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## Endnotes

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<sup>1</sup> Proclamation No.135 of 2001.

<sup>2</sup> At <http://www.info.gov.za/otherdocs/2006/jali/index.html> and <http://www.communitylawcentre.org.za/Projects/Civil-Society-Prison-Reform/publications/cspri-publications/> .

<sup>3</sup> PMG Minutes of the Parliamentary Portfolio Committee on Correctional Services, 14/3/2000.

<sup>4</sup> Sloth-Nielsen J (2007) "The State of the nation's prisons" in Buhlungu S, Daniel, J, Southall R and Lutchman J (eds) *State of the Nation – South Africa 2007*, HSRC Press, Cape Town, p. 380.

<sup>5</sup> The "Grootvlei Video" was produced by 4 prisoners, recording warders engaging in human rights violations, corruption, trafficking in prisoners and trade in contraband and firearms, amongst others. .

<sup>6</sup> The Jali Commission Report pp. 114-115

<sup>7</sup> The Jali Commission Report p. 116

<sup>8</sup> Sloth-Nielsen J (2007) "The State of the nation's prisons" in Buhlungu S, Daniel, J, Southall R and Lutchman J (eds) *State of the Nation – South Africa 2007*, HSRC Press, Cape Town, p. 381.

<sup>9</sup> The Jali Commission Report p.49.

<sup>10</sup> In February 1995, the Department of Correctional Services announced the formation of a representative advisory forum to advise the Department on principles and mechanisms for establishing a more representative personnel corps. The forum was chaired by Professor Linda Human, hence the "Linda Human" document. Found at <http://www.csvr.org.za/papers/paparade.htm>, accessed 11 April 2007.

<sup>11</sup> The Jali Commission Report p. 53

<sup>12</sup> The Jali Commission Report p. 53

<sup>13</sup> The Jali Commission Report p. 905

<sup>14</sup> The Jali Commission Report p. 907

<sup>15</sup> The Jali Commission Report p. 25

<sup>16</sup> The Jali Commission Report p.10. Radio interviews were conducted with a number of radio stations listed in the Jali Commission Report.

<sup>17</sup> The Jali Commission Report Chapter 6.

<sup>18</sup> Act 12 of 2004

<sup>19</sup> See The Jali Commission Report p. 53 and p. 349.

<sup>20</sup> See The Jali Commission Report pp. 54 -98.

<sup>21</sup> The seven focus areas include the following: The procurement of goods and services, recruitment and appointment, promotion and dismissal of employees, the treatment of prisoners, dishonest practices and illicit relationships between employees and prisoners leading to unlawful activities, alleged incidents of non-adherence to departmental policy and deviation from national norms and standards, alleged incidents of violence or intimidation against employees, the extent of implementation of recommendations of past investigations relating to the Department.

<sup>22</sup> The Jali Commission Report p. 292

<sup>23</sup> The Jali Commission Report p.281.

<sup>24</sup> The Commission also investigated 17 other individuals in respect of assisted escapes, including a captain in the SAPS.

<sup>25</sup> The Jali Commission Report p.283.

<sup>26</sup> Referring to a character from a popular 1980's television series of the same name, known for his ingenuity.

<sup>27</sup> The Jali Commission Report p.319.

<sup>28</sup> The Jali Commission Report p. 10

<sup>29</sup> The Jali Commission Report p. 116

<sup>30</sup> Correctional Officers Union of South Africa (COUSA)

- <sup>31</sup> The Jali Commission Report p. 90
- <sup>32</sup> The Jali Commission Report p. 96
- <sup>33</sup> The Jali Commission Report p. 203
- <sup>34</sup> The Jali Commission Report p. 907
- <sup>35</sup> Kaufmann D (2004) *Corruption Matters: Evidence-Based Challenge to Orthodoxy*, Journal of Development Policy and Practice, Volume 1, Number 1, December 2004, p.3.
- <sup>36</sup> Hassan S (2004) *Corruption and the Development Challenge*, Journal of Development Policy and practice, Volume 1 No.1, p.11.
- <sup>37</sup> The Jali Commission Report p.206
- <sup>38</sup> The Jali Commission Report p. 312
- <sup>39</sup> The Jali Commission Report p. 765
- <sup>40</sup> The Jali Commission Report p. 299
- <sup>41</sup> The Jali Commission Report p. 97
- <sup>42</sup> The Jali Commission Report p. 706
- <sup>43</sup> The Jali Commission Report p. 770
- <sup>44</sup> The Jali Commission Report p. 99
- <sup>45</sup> The Jali Commission Report p. 717
- <sup>46</sup> The Jali Commission Report p.328.
- <sup>47</sup> See for example: *Whittaker v Roos and Bateman, Morant v Roos and Bateman* 1912 AD 92; *Minister of Justice v Hofmeyer* 1993 (3) SA 131 (A); *Goldberg and Others v Minister of Prisons and Others* 1979 (1) SA 14 (minority judgment of Corbett J).
- <sup>48</sup> The Jali Commission Report p.334.
- <sup>49</sup> The Jali Commission Report p. 333
- <sup>50</sup> The Jali Commission Report p. 354
- <sup>51</sup> The Jali Commission Report p. 365
- <sup>52</sup> The Jali Commission Report p. 424-425
- <sup>53</sup> The Jali Commission Report p. 368-373
- <sup>54</sup> The Jali Commission Report p. 573
- <sup>55</sup> The Jali Commission Report p. 578
- <sup>56</sup> The SIU is a state agency, responsible for investigating fraud, corruption and maladministration and to institute civil litigation to recover losses suffered by the State or to prevent further losses.(Muntingh L, *Investigating Prison Corruption in South Africa*, CSPRI, Research Paper No. 12, 2006, p.29)
- <sup>57</sup> The PSC is a Chapter 9 institution and responsible for investigating, monitoring, evaluating, communicating and reporting on public administration. The PSC also hosts the national anti-corruption hotline.
- <sup>58</sup> The Jali Commission Report p.217.
- <sup>59</sup> The Jali Commission Report p.175.
- <sup>60</sup> The Jali Commission Report p.404.
- <sup>61</sup> The Jali Commission Report pp. 30-38
- <sup>62</sup> See Chapter 10 The Jali Commission Report
- <sup>63</sup> 2000(1) SACR 372(NC)
- <sup>64</sup> The Jali Commission Report p. 559
- <sup>65</sup> The Jali Commission Report p. 775.
- <sup>66</sup> The Jali Commission Report p. 772
- <sup>67</sup> The Jali Commission Report p.926.
- <sup>68</sup> The Jali Commission Report p. 944 -945
- <sup>69</sup> The Jali Commission Report p. 945