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24 August 2011

**SUBMISSION BY THE CIVIL SOCIETY PRISON REFORM
INITIATIVE (CSPRI) ON THE RECOMMENDATIONS OF
THE JALI COMMISSION OF INQUIRY¹**

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Introduction

1. The Civil Society Prison Reform Initiative (CSPRI) is grateful to the Portfolio Committee on Correctional Services for the opportunity to make a submission in respect of the recommendations of the Judicial Commission of Inquiry into Allegations of Corruption, Maladministration and Violence in the Department of Correctional Services (hereafter Jali Commission). The final report of the Jali Commission became available to the public in November 2006, nearly a year after it was handed to then President Mbeki.
2. When debating the Jali Commission, it is necessary to briefly pause at the historical context. In September 1996, the Parliamentary Portfolio Committees on Correctional Services 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 Portfolio Committee on Correctional Services. 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.² The appointment of the Jali Commission was immediately preceded by the assassination of the assistant commissioner in KwaZulu-Natal by a colleague.³ 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.
3. The terms of reference for the Jali Commission defined the problem at hand in a particular manner, locating the problem of corruption, maladministration and rights

¹ This submission relies in part on earlier research commissioned by CSPRI and published as Van den Berg (2007) *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"*, CSPRI Research Report No. 13. Bellville: Community Law Centre.

² PMG Minutes of the Parliamentary Portfolio Committee on Correctional Services, 14 March 2000.

³ Sloth-Nielsen J (2007) "The State of the nation's prisons" in Buhlungu S, Daniel, J, Southall R and Lutchnan J (eds) *State of the Nation - South Africa 2007*, HSRC Press, Cape Town, p. 380.

violations at management area level.⁴ It is thus important to note that the Jali Commission did not investigate the entire DCS but focussed on a sample of nine management areas of the total of more than 50 management areas. Importantly, 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.⁵ 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 management area level. 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.

4. It should furthermore be emphasised that the terms of reference for the Jali Commission covered not only corruption, although this is the focus it is frequently associated with. The terms of reference covered the following:

1. To inquire into and report on –

(a) alleged incidents, of corruption relating to –

- (i) the procurement of goods and services for the Department of Correctional Services;
- (ii) recruitment and appointment, promotion and dismissal of employees for the Department of Correctional Services;
- (iii) the treatment of prisoners;
- (iv) dishonest practices and illicit relationships between employees and prisoners leading to unlawful activities;

(b) alleged incidents of non-adherence to departmental policy and deviation from national norms and standards;

(c) alleged incidents of violence or intimidation against employees of the Department which affect the proper functioning of the Department;

(d) the extent of implementation of recommendations of past investigations relating to the Department.

5. This submission will deal briefly with a description of corruption and the requirements of an effective response. The bulk of the submission deals with a limited number of core indicators aimed at assessing if the DCS had made headway in improving the situation in the prison system. The emphasis is placed here not so much on what the DCS has done to address problems (in-put indicators) but rather on what

⁴ The following management areas were targeted by the Commission: Durban-Westville; Pietermaritzburg; Bloemfontein (Grootvlei); St Albans; Pollsmoor; Leeuwkop; Johannesburg; Pretoria; and Ncome.

⁵ The Jali Commission Report p. 10