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SUBMISSION BY THE INSTITUTE FOR SECURITY STUDIES:
**Progress made by the Department of Correctional Services in
implementing the Jali Commission of Inquiry's recommendations**

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1. INTRODUCTION

The Crime and Justice Programme (CJP) of the Institute for Security Studies is a policy research unit that works to inform and influence policy and public discourse on crime, its prevention and criminal justice by conducting research, analysing policy, disseminating information and providing expertise as a contribution towards a safer and secure society. More information about the ISS can be found on our website: www.issafrica.org.

We would like to thank the Portfolio Committee on Correctional Services for the invitation to make a submission about the progress made by the Department of Correctional Services (DCS) in implementing the recommendations of the Jali Commission of Inquiry ('the Commission'). The Jali Commission of Inquiry spent five years and millions of Rands investigating and reporting on serious shortcomings in the functioning of the DCS.

The shortcomings identified by the Commission related to, amongst other things, corruption, maladministration, ill-treatment of prisoners, and dysfunctional relationships between staff and inmates. The Commission described a toxic environment in which it was most difficult, if not impossible, for staff to deliver the quality of service required by the White Paper on Correctional Services. This being the case, it was clear that fundamental changes were necessary in DCS at all levels to overcome the sub-culture of corruption and human rights abuses that existed in many correctional facilities.

It would be a disservice to staff of the department, inmates, and taxpayers if the findings and recommendations of the Commission were not implemented. This notwithstanding, given the depth and seriousness of the problems identified by the Commission, it is unlikely that all the challenges highlighted by the commission would have been addressed, particularly those relating to the appointment and management of staff, after the five years since the report was made public. In this respect civil society and civilian oversight structures such as this Committee have an important role in assessing the extent to which there is ongoing improvement.

2. BACKGROUND

The Jali Commission was established in 2001 following a number of official reports indicating that there was widespread corruption, fraud, nepotism, maladministration and general 'lawlessness' in the Department of Correctional Services (DCS).¹ These reports

included the Auditor-General's Report of 1998, the results of which were presented to the Standing Committee on Public Accounts² and a management audit by the Department of Public Service and Administration in 1999.³

The Commission was initially given 12 months to perform its work, which was to "investigate and report on corruption, maladministration, violence and intimidation in the Department of Correctional Services."⁴ It soon became apparent that 12 months was not sufficient time to investigate and report on the extensive problems in relation to nine management areas of the Department of Correctional Services.

The Jali Commission investigated and reported on several matters with a particular focus on the management of staff and the care of inmates. It was unfortunate that the Jali Commission's mandate did not include an investigation of maladministration and corruption at Head Office specifically, given the important role that this executive structure plays in determining how the department executes its functions at all levels in terms of the Correctional Services Act and the White Paper.

We would like to remind the Committee that the DCS spends 26% of its budget on Programme 1: Administration⁵ which provides "the administrative, management, financial, information and communications technology, research, policy co-ordination and good governance support functions necessary for all service delivery by the DCS and in support for the functions of the Ministry." With such a significant percentage of the budget being spent on these functions it is essential that systems responsible for ensuring good management and employment practices, as addressed in the Commission's report, be robust.

This submission focuses on the following issues:

- Management of staff and offenders
- Principles and practical steps for monitoring implementation of the Jali Commission's recommendations

3. MANAGEMENT OF STAFF AND OFFENDERS

The very nature of prisons is such that wardens wield an enormous amount of power over inmates. The Correctional Services Act requires the Department and its staff to ensure the detention of inmates in conditions that uphold their dignity and promote social

responsibility and human development.⁶ It is therefore up to staff of the department to ensure the safe custody of inmates, which includes the absence of corrupt practices and the availability of opportunities for inmate development. Since prisons are closed institutions, what takes place on a daily basis inside prison walls is not readily open to scrutiny. In order for conditions to be created that meet the requirements of the Act, and White Paper, an ethos of compassion and integrity amongst Correctional Services staff is essential. The situation in the nine prisons investigated by the Jali Commission report is the very antithesis of this.

In some respects this problem can be traced back to the shortcomings of the post-apartheid transformation of the DCS. The Jali Commission found that the transformation of the DCS, in particular the demilitarisation of the DCS, had been poorly executed with serious negative consequences. In particular the Commission found that “when demilitarisation was implemented, no new management principles and procedures were put in to replace the military system staff were familiar with.” The Commission went on to say that “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 a drop in the morale of senior members”.⁷

The findings of the Judicial Inspectorate for Correctional Services in 2008/9 and 2009/10 in relation to the level of inmate-on-inmate violence and member-on-inmate violence suggest that these problems have yet to be overcome. It also suggests that staff still do not have the tools to deal with inmate indiscipline in a humane way. In 2008/9 the Judicial Inspectorate recorded 2884 incidents of inmate-on-inmate assault and 2010 cases of member-on-inmate assault.⁸ A year later the number of recorded incidents of assault in both categories had increased, in 2009/10 there were 3756 cases of inmate-on-inmate assault recorded by the Judicial Inspectorate and 2189 cases of member-on-inmate assault.⁹ In other words, it would appear that any efforts undertaken by the DCS to address these problems have not been sustainable and have not resulted in fundamental changes in the way in which staff at prison level relate to inmates.

Many of the staff behavioural problems were compounded by the fact that the rules and regulations imposed by the Department had little impact, as individual staff members were not held accountable for them. The Commission found that “employees consciously and deliberately flouted regulations relating to security, searching of members, searching

of visitors, visitation rights, procurement of goods for the prisoners, the relationship between prisoners and warders, recruitment and appointments, promotions, merit awards, transfer, parole, disclosure of private work, treatment of prisoners, use of State assets and others. This appeared to be done with impunity in that there was little evidence of disciplinary action being taken against the transgressors.”¹⁰

Finding solutions to these problems, and reversing the consequences of the failed transformation process (from a militarised to de-militarised prison service), while creating a new ethos in the Department is a complex and difficult task. Such an undertaking requires at least strong leadership characterised by integrity with a clear focus on addressing the problems at all levels. Unfortunately, allegations of corruption, maladministration and tender fraud amongst the highest levels of leadership continued to plague the department until very recently. In addition, organisational stability has not been served by the fact that the Commissioner of Correctional Services has been changed on three occasions since the Jali Commission’s findings were made public.

Effecting the kind of fundamental change in the Department that is necessary to overcome the problems identified by the Jali Commission has been made even more difficult by the multiplicity of management process issues the Department has had to deal with in the interim, including the implementation of the two-shift system. Indeed, in 2009/10 the Judicial Inspectorate found that “the implementation of the so-called two shift system has had a negative effect on staffing at operational levels within most correctional centres which in turn has affected the treatment of inmates in that recreational and rehabilitative programmes have been suspended.”¹¹

We do not underestimate the enormous task facing the DCS. We are also conscious of the fact that the DCS is not the only Department that has to deal with problems of this nature and magnitude. The South African Police Service has also battled to deal with police corruption, and poor staff morale while undergoing massive organisational restructuring while experiencing mismanagement and corruption at the highest levels. The challenge facing both the police and DCS is to affect fundamental change in the integrity of the organisation, as well as in the behavior and attitudes of staff and managers at all levels.

4. Principles and practical steps for monitoring implementation of the Jali Commission's recommendations

Monitoring the implementation of the recommendations of the Jali Commission and the provisions of the Correctional Services Act at prison level requires a high level of transparency. It is very difficult for Parliament and civil society to hold the Department and its officials at all levels accountable on the basis of the aggregated data that is presented in the annual reports from the DCS and the Judicial Inspectorate. The information provided does not allow for a clear assessment to be made as to what takes place, what works and what needs to be fixed at prison-level. Media reports about problems in prisons suggest that managers at head office level are themselves not entirely in touch with prison-level activities.

It is however our assessment, on the basis of the findings of the Jali Commission, and of subsequent reports by the Judicial Inspectorate and the media, that fundamental change still needs to be effected both at prison level, and head office level before we can be confident that the problems of corruption, human rights abuses and mismanagement have been addressed. Indeed, in 2007/8 the DCS noted that while 'Implementation of Jali Commission recommendations' was a performance indicator for effectively dealing with corruption and fraud into the nine management areas,¹² the department was unable to provide frequent reports on progress 'due to the fact that Management Areas have to be given time to implement recommendations made.'¹³ It would be useful to know from the Department how the recommendations have been converted into performance indicators, and whether the recommendations are regarded as being applicable only to the nine management areas or are applied across the DCS. It is our understanding that the recommendations should apply to the DCS as a whole.

It is not our wish to use this submission to merely criticise the Department. We are deeply aware of the enormous challenges that an effective change management process poses. We are also aware of how difficult it is to achieve a fundamental change in the way in which work is done in a huge and complex organisation, like DCS. As such, we should be mindful of the need for civil society and oversight structures to do more than stand on the sidelines and point to the problems without offering solutions.

We suggest to the Committee that fundamentally changing the way in which prisons operate will require a comprehensive change management process starting at the head office and regional offices, and including all correctional facilities. This is important since head office and regional offices have a key role in ensuring that staff at all levels have adequate managerial and policy tools, and receive sufficient training and mentoring to do their jobs effectively. Such a change management process should aim to involve prison-level staff in articulating a vision for their facility informed by the Correctional Services Act; ensure that all staff understand their own role in implementing the Act and know what needs to be done to ensure that their facility reflects the objectives of the Act. It should identify barriers to change and seek ways in which to deal with those problems. Such a process would require concerted support from head office.

Further, we propose that a set of core indicators be developed and agreed on, against which it would be possible for the Committee and civil society organisations to assess progress at prison level. Quarterly reporting against these indicators at prison level would allow us to monitor progress and hold staff at prison level accountable. It is proposed that these indicators be jointly developed in a consultative process that involves civil society, oversight structures and the DCS. One such indicator might relate to the training of staff, not only at the time of initial recruitment, but also refresher training for existing staff.

We would also like to draw the attention of the Committee to the commitment of the Department to using the electronic monitoring tool developed by the Department to monitor and track implementation of the Correctional Services Act. This tool was referred to in the DCS Annual Report of 2009/10¹⁴ but is unfortunately not publicly available. We propose that the Committee request the Department to report on the implementation of this monitoring tool, as one way in which to hold the DCS accountable for ensuring compliance with the Act. Such a tool can offer civilian oversight structures with valuable information and we encourage the Committee to request the Department to make the tool available to civil society.

The DCS is to be commended for having concluded a series of contracts with the Special Investigating Unit to investigate corruption in response to the Jali Commission recommendations, that *that a special task team be set up by the Department to deal with those guilty of misconduct*.¹⁵ The findings of both SIU reports were subsequently presented to this Committee in 2008 and 2009, respectively.¹⁶ Further, in 2011 the Portfolio Committee 'interrogated' some of the findings of the reports. We urge the

Committee to seek clarity on intention of the DCS in relation to its on-going relationship with the SIU, and for detail about cases dealt with by the Departments' Investigating Unit (DIU) since the last contract with the SIU ended in 2009. The Committee should also seek information about progress in the investigations against the officials implicated in corruption uncovered by the SIU.

Since the prison system is largely closed to external scrutiny whistle-blowers have an important role to play in bringing incidents of corruption and human rights abuses to the attention of the authorities. It is therefore essential for the Department to encourage and protect whistle-blowers. We urge the committee to ask the DCS to report on measures it has put in place both to encourage and protect whistle-blowers since the closure of the department's ant-corruption hot-line.

In conclusion, we recognize that the Portfolio Committee has done a great deal to hold the department accountable, and in encouraging civil society input to assess and report on aspects of the Department's work. We thank the committee for this opportunity and remain available to assist the Committee in its important work.

¹ Commission of Inquiry into alleged incidences of corruption, maladministration, violence and intimidation into the Department of Correctional Services Appointed by Order of the President of the Republic of South Africa in terms of the Proclamation No. 135 of 2001, as amended. Access: 16 August 2011. Website: <http://www.info.gov.za/otherdocs/2006/jali/index.html>.

² Report of the Auditor-General on findings arising from a special investigation into findings arising from a special investigation into alleged irregularities among senior officials of the Department of Correctional Services. Access: 16 August 2011. Website: <http://www.polity.org.za/polity/govdocs/reports/agcorrects.html>

³ Management Audit Report: Discussion. 19 April 2000. Portfolio Committee on Correctional Services. Parliamentary Monitoring Group. Access: 17 August 2011. Website: <http://www.pmg.org.za/minutes/20000418-management-audit-report-discussion>

⁴ Anthea van der Berg, "Summary and comment on the Final report of the Judicial Commission of Inquiry into Allegations of Corruption, Maladministration and Violence in he

Department of Correctional Services – the ‘Jali Commission’”, Civil Society Prison Reform Initiative Research Report No 13, 2007, 1.

⁵ Expenditure Trends and Spending Priorities of the Department of Correctional Services. Civil Society’s Report to the Portfolio Committee on Correctional Services, 20 April 2011, p7.

⁶ Chapter 2 of the Correctional Services Act (Act 111 of 1998).

⁷ van der Berg, “Summary and comment on the Final report of the Judicial Commission of Inquiry”, CSPRI, 10.

⁸ Hlengiwe Mnguni, ‘Concern over prison violence’, News 24, 26 May 2010. Available at <http://www.news24.com/SouthAfrica/News/Concern-over-prison-violence-20100526>

⁹ Annual report of the Judicial Inspectorate of Correctional Facilities for the period 1 April 2009 – 31 March 2010, 37.

¹⁰ Commission of Inquiry into alleged incidences of corruption, maladministration, violence and intimidation into the Department of Correctional Services Appointed by Order of the President of the Republic of South Africa in terms of the Proclamation No. 135 of 2001, as amended. Access: 16 August 2011, 17-21. Available at <http://www.info.gov.za/otherdocs/2006/jali/index.html>.

¹¹ Annual report of the Judicial Inspectorate of Correctional Facilities for the period 1 April 2009 – 31 March 2010, 38.

¹² Department of Correctional Services Annual Report 2007/8.

¹³ Ibid, p 12

¹⁴ Annual Report of the Department of Correctional Services 2009/10, 52.

¹⁵ Commission of Inquiry into alleged incidences of corruption, maladministration, violence and intimidation into the Department of Correctional Services Appointed by Order of the President of the Republic of South Africa in terms of the Proclamation No. 135 of 2001, as amended. Access: 16 August 2011, 710. Available at <http://www.info.gov.za/otherdocs/2006/jali/index.html>.

¹⁶ Special Investigations Unit findings on investigation into the Department of Correctional Services, 17 November 2009. Available at: <http://www.pmg.org.za/report/20091117-special-investigations-unit-findings-their-investigation-department-c>

Interrogation of Special Investigations Unit reports: South African Social Security Agency & Department of Correctional Services, 5 August 2010. Available at: <http://www.pmg.org.za/report/20100805-hearing-department-social-development-south-african-social-security-a>