



# **CORRUPTION IN THE PRISON CONTEXT**

by

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## 1. Introduction

The establishment of the Jali Commission of Inquiry into prison corruption and maladministration (Jali Commission)<sup>1</sup> gave a clear indication at last that government would no longer ignore the continued allegations and findings that something was fundamentally wrong in the Department of Correctional Services (DCS). As early as 2 September 1996, the Parliamentary Portfolio Committee on Correctional Services (PPCCS) and its counterpart on Health signed a joint resolution requesting “*an immediate independent national investigation into corruption*”. The Committees were extremely concerned about allegations emanating from the Victor Verster (now Drakenstein), Pollsmoor, and Johannesburg Prisons and asked the relevant Area and Regional Commissioners as well as the National Commissioner to appear before them to explain what was being done about the situation.<sup>2</sup> The 1998 Report of the Auditor General on the DCS financial statements also raised serious questions about issues that did not necessarily indicate corrupt practices, but undoubtedly contributed to an environment that would facilitate such practices.<sup>3</sup> A further report by the Auditor General investigating alleged irregularities among senior officials in the DCS was released in 1999<sup>4</sup>. Late in 1999, the Minister of Public Service and Administration, in consultation with the Minister of Correctional Services, instructed that a management audit of the DCS be carried out, the findings of which were presented to the Parliamentary Portfolio Committee on Correctional Services (PPCCS) on 14 March 2000.<sup>5</sup> The findings were so damning that it was

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<sup>1</sup> The Commission was duly constituted by the order of the President in terms of Proclamation No. 135/2001 dated 27<sup>th</sup> September 2002, which proclamation sets out the regulations governing the Commission as well as the Commission’s Terms of Reference.

<sup>2</sup> Statement issued by the ANC, 2/9/1996 <http://www.anc.org.za/ancdocs/pr/1996/pr0902b.html>

<sup>3</sup> Report of the Auditor General on the financial statements of Vote 10 for the year ended 31 March 1998 and the Performance Management Audit on the management of Prisons (RP 181/1998).

<sup>4</sup> Report of the Auditor-General on Findings Arising from a Special Investigation into Alleged Irregularities Among Senior Officials of the Department Of Correctional Services, Published by Authority RP 123/1999, ISBN 0-621-29389-X.

<sup>5</sup> PMG Minutes of the Parliamentary Portfolio Committee on Correctional Services, 14/3/2000.

reported that *“members from all parties shared concern that the State had lost control of Correctional Services”*.<sup>6</sup>

Since it started its work, the Jali Commission has attracted substantial media attention with the Commission’s public hearings often producing sensational headlines. It was, however, the video produced by four prisoners serving sentences at Grootvlei Prison outside Bloemfontein that stole the show<sup>7</sup>, so much so that the Jali Commission had to redirect its focus from KwaZulu-Natal to the Free State to address the issues that the video recording raised.<sup>8</sup> The video, when aired on SABC television, gave the public a glimpse into a prison that was evidently not meeting the requirements of safe and humane custody and adhering to the principles of good management and governance. It was evident that corruption was rife and that there was little regard for the rights and protection of prisoners. The Grootvlei video, as it became known, and the Jali Commission hearings (as reported in the media) also provided an intriguing glimpse into prison life in South Africa. This is notwithstanding the fact that the media may have elected to report on the more sensational allegations and findings, even though these did not amount to grand corruption.

In retrospect, we need to take a step back and critically examine the phenomenon of prison corruption. Is it different from corruption outside the prison walls? How does it affect prisoners and warders, and the DCS as employer? What is the nature of corruption in prisons? How pervasive is prison corruption? How does it relate to human rights in prisons? How do we distinguish between corruption and maladministration in prisons? What is grand corruption and what is petty corruption, and how do these categories apply to the prison context? What is the impact of prison corruption?

Simply put, corruption redirects resources intended for public benefit towards private gain, or requires citizens to pay for services that they are entitled to without payment. Corruption therefore affects the rights of citizens by either denying them a service (a right), or making the service (the right) conditional to payment. The impact on individuals can be direct or indirect as will be demonstrated in this paper.

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<sup>6</sup> PMG Minutes of the Parliamentary Portfolio Committee on Correctional Services, 14/3/2000.

<sup>7</sup> Q-online, SAPA 19/6/2002.

<sup>8</sup> Briefing by the Jali Commission to the PPCCS 25/6/2002.

In this sense, the point of departure of this paper is that, in general, corruption is a human rights issue, which is accentuated in the prison context given the nature of imprisonment. Three factors create an intrinsic risk for corruption in prisons. Firstly, the all-encompassing nature of imprisonment regulates every aspect of prisoners' daily lives: from having the most basic necessities to having access to luxury items, or even illegal items and activities. This unavoidably creates a situation where some goods are scarce, and demand and reward exists for their supply. Secondly, the state as the controller, establishes a highly unequal power relationship between the prison bureaucracy (represented by the warder) and the prison population. Thirdly, the closed nature of prisons and their general marginalisation from the public eye and political discourse do not assist in making prisons more transparent. Against this backdrop, poor management, weak leadership or organised crime can have a devastating impact on the overall operation of a prison system and, ultimately, on the human rights of prisoners.

## **2. Purpose and methodology**

This paper is exploratory in nature and should be seen as one of the first tentative steps towards the development of an account of prison corruption in South Africa. The many permutations of prison corruption, the difficulty in obtaining detailed information, and the fact that at the time of writing the Jali Commission had not released its report to the public, place substantial limitations on this analysis.

The research conducted for this paper relied on publicly accessible documents such as government reports, and minutes of parliamentary portfolio committee meetings, but largely on media reports. The reliance on media reports essentially means that many of the instances of corruption reported are in fact allegations made in front of the Jali Commission or following a major event in the DCS, such as an escape. There are very few media or other reports detailing the results of investigations. This in itself would be the basis for a further research project.

Despite these limitations, this paper will aim to clarify certain concepts relating to corruption in an attempt to understand what they mean in the prison context. This will be done by assessing examples of corruption and allegations of corruption according to the different relationships operating in a prison environment, for example between prisoners and

warders<sup>9</sup>, warders and their employer, and prison officials and external agents. An attempt will also be made to categorise different types of corrupt activities in prisons, to explore certain examples that are typically associated with prisons, such as trading in contraband, and others that are not unique to prisons, such as manipulating employment conditions and benefits.

It is also the purpose of this paper to emphasise the fact that corruption is a human rights issue and shed light on how corruption affects the rights of prisoners. International and domestic law describe and confirm the rights of prisoners in detail; moreover, this is well supported by case law. Understanding how corruption prevents the attainment of acceptable standards or erodes the capacity to achieve or maintain them is therefore central to a human rights-based view of corruption in the prison environment.

It is not the purpose of this paper to develop solutions for prison corruption, but rather to come to a better understanding of how corruption works in prisons and how it affects prisoners. A number of questions will remain unanswered and these are identified as areas for further research.

### **3. Defining corruption and other key concepts**

This section deals with defining the prison context, corruption, the reasons for corruption and the notion of state capture as an extreme result of grand corruption.

#### **3.1 The prisons context**

Prisons are unique contexts of interaction as they are highly controlled environments and are not exposed to the same societal influences (positive and negative) as other sites of government service delivery. The daily interaction over years between individual warders and individual prisoners is a central feature of imprisonment and permits the development of a sub-culture that is unique and not experienced in other sectors of the public service. No

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<sup>9</sup> The term “warder” is used to refer to officials in the DCS who are responsible for day to day operations at implementation level. They are the staff members who are in daily contact with prisoners, but the term is not restricted to security staff as other categories of staff (for example maintenance) have also been guilty of corruption.

other sector of the public service provides such a prolonged and intense service to its clients on such a scale.

Due to the nature of prison work, staff members depend on each other for safety and security, especially in times of emergency. Similarly, prisoners depend on staff for safety and security, and access to services and communication. Being engaged in such close relationships probably discourages the reporting of improper practices to management and oversight bodies as this may result in marginalisation and possible victimisation.<sup>10</sup>

A significant measure of prison corruption (in the relationship between prisoners and warders) is the consequence of the commodification of the control function of the state over imprisoned individuals. The corrupt prison warder effectively re-sells his time (and function) to the highest bidder. The ease and regularity with which this is done follows from the features normally associated with the causes of corruption, such as a lack of ethical guidelines, poor salaries, weak control systems, and a lack of transparency.

As institutions established specifically for purposes of social control, prisons have a special connection with crime. Prisons are not hospitals or offices of the Department of Home Affairs that deal with a fairly representative cross-section of society. Prisons hold a range of offenders and suspected offenders who do not necessarily cease their criminal activity because they are imprisoned. Organised crime syndicates, in particular, continue their business in prison. Steinberg describes Cape Town's Pollsmoor Prison as follows:<sup>11</sup>

*Pollsmoor prison is legendary because it is the central railway station of the Western Cape's criminal underworld. Located less than twenty kilometres from the endless drug wars of Cape Town's ghettos, it is the prison in which most of the city's criminals await trial. Everybody who is anybody in the city's underworld passes through there; it is the nerve centre of the Western Cape's illicit economy.*

In seeking to understand corruption in the prison environment therefore, three distinguishing characteristics are important:

- the sub-culture of imprisonment that makes it distinct and separate from other sectors of the public service

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<sup>10</sup> Queensland Prison industries – A Review of Corruption Risks, Criminal Justice Commission, 2000, p. 1.

<sup>11</sup> Steinberg J (2004) *The Number*, Jonathan Ball Publishers, Cape Town, p. 8.

- the commodification of control when the control function of the state is re-sold to the highest bidder
- the established association prisons have with crime and the external criminal world.

## 3.2 Defining corruption

### 3.2.1 The legal definition

Corruption in the public service is defined as: *“The use of public office for private gain”*.

However, as the Public Service Anti-Corruption Strategy notes, this definition needs to be expanded to reflect the essential characteristics and components of corruption, namely:

- the abuse of power and trust
- the fact that it occurs in the public, private and non-profit sectors, and
- that private gain is not the only motive.<sup>12</sup>

The same strategy document also describes the various dimensions of corruption:<sup>13</sup>

- bribery
- embezzlement
- fraud
- extortion
- abuse of power
- conflict of interest
- insider trading and abuse of privileged information
- favouritism
- nepotism.

The Anti-Corruption Strategy document cautions that this list is not exhaustive and that corruption occurs in many permutations and varies in intensity from taking the occasional bribe to bribery being “the accepted way of doing business”.

With this in mind, it is not altogether surprising that the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) goes to great lengths to define corruption. It firstly provides for the general crime of corruption:

*3. Any person who directly or indirectly –*

<sup>12</sup> Public Service Anti-Corruption Strategy, Department of Public Service and Administration, 2002, p. 10-11.

<sup>13</sup> Public Service Anti-Corruption Strategy, Department of Public Service and Administration, 2002, p. 7-8.

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner -

(i) that amounts to the-

(aa) illegal, dishonest, unauthorized, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or function arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules;

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corruption.

The Act then proceeds to define corrupt activities relating to:

- public officers [Section 4]
- foreign public officials [Section 5]
- agents [Section 6]
- members of the legislative authority [Section 7]
- judicial officers [Section 8]
- members of the prosecuting authority [Section 9]

The Act further defines corrupt activities as they relate to:

- offering or receiving unauthorised gratification [Section 10]
- specific matters, [Section 11] and
- possible conflict of interest and other unacceptable conduct [Section 17-19].

Making this legalistic definition more accessible, the DPSA booklet on Minimum Anti-Corruption Requirements describes it as follows : *Where one person (A) gives someone in a position of power (B) something (called gratification<sup>14</sup> in the Act) to use that power, illegally and*

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<sup>14</sup> Gratification is defined in the Act as (a) money, whether in cash or otherwise; (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage; (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation; (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; (f) any forbearance to demand any money or money's worth or valuable thing; (g) any other service or favour or advantage of any description.

*unfairly, to the advantage of A*.<sup>15</sup> For the purposes of this paper, this working definition of corruption will be used. There are, however, some contextual distinctions to be made in relation to defining corruption in the prison context.

### 3.2.2 Perceptions of corruption

Testifying before the Jali Commission in April 2003 the Gauteng Provincial Commissioner for the DCS, Zacharia Modise, explained that corruption was a new concept to the department and that officials had difficulty in understanding it:

*"The term corruption is a new word in the Department of Correctional Services and officials have serious difficulty in understanding it. . . . There is, however, a word that everybody is familiar with and it is the word 'smuggling'."*<sup>16</sup>

He explained that "smuggling" was pervasive and referred to trading in contraband, and also to stealing prisoners' food and money, or asking them to perform certain duties such as polishing shoes or altering their uniforms. It was his view that warders caught "smuggling" had always been treated leniently by the DCS. He maintained that other transgressions such as sodomising or assaulting prisoners had always been regarded in a serious light. While Mr Modise's testimony must have raised some eyebrows, he had highlighted an important dimension of prison corruption, namely that on the part of management there had been a measure of tolerance for acts or behaviour that were based on the abuse of power.

Furthermore, he had also raised awareness that these acts or behaviour were not regarded as corrupt, and thus not criminal. They were probably regarded as disciplinary infractions at worst. Euphemistically called "smuggling" or more likely "smokkel" in the *lingua franca* of Afrikaans, according to Mr Modise, corruption had been de-criminalised. His observations may in fact have been more astute than initially assessed for they explain in many regards the pervasive nature of corruption in the prison system as will be reported later in this paper.

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Including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; (h) any right or privilege; (i) any real or pretended aid, vote, consent, influence or abstention from voting; or (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

<sup>15</sup> Anti-corruption Capacity requirements – Guidelines for Implementing the Minimum Anti-Corruption Capacity requirements in Departments and Organisational Components in the Public Service, Dept of Public Service and Administration, p. 3.

<sup>16</sup> 'Corruption a new concept', News24.com, 10/04/2003

That there are indeed widely differing interpretations of corruption was confirmed by a survey of DCS staff and prisoners in 2003 on the issue of corruption.<sup>17</sup> The survey found that a range of unethical forms of behaviour were regarded as corruption by the respondents. To some extent, this provided a counter view to that of Mr Modise. The survey reflected a very broad, rather than narrow understanding of corruption, ranging from nepotism and bribery to being rude and sleeping on duty. Both the survey and Mr Modise's testimony indicate that addressing corruption in the prison system would require that the concept first be clarified at all levels in the system.

### 3.2.3 Corruption and maladministration

Following from the survey discussed above, it is important to identify what corruption is not. Delineating corruption from maladministration and mismanagement is central to this. Using the concept "corruption" interchangeably with maladministration, incapacity, and inefficiency simply because all relate to the use of public resources provides too broad an ambit to be useful for analysis.<sup>18</sup> The following will serve as an example in this regard. A management audit of the DCS in 2000 conducted by the DPSA made the following findings:<sup>19</sup>

*"The holding of young offenders in custody under conditions that clearly violate UN Conventions on the Rights of the Child, the Beijing Rule and other international instruments. For young offenders, the generally poor alignment between departments of this sector (especially in relation to policy), the lack of co-ordinated and synchronised strategy, and the lack of prison population control result in the:*

- *late arrival of young offenders in court so that hearings are missed and children are kept in the custody of correctional services for unduly long periods;*
- *inability to trace children under correctional services supervision as children 'get lost' within the system due to poor administrative control;*
- *remanding into custody of non-scheduled offences for long periods;*
- *blocking of access for Welfare and NICRO officials to correctional services facilities;*
- *slighting of the role of probation officers in the assessment of young and petty offenders and the lack of a shared ethos regarding justice and reform between the departments of*

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<sup>17</sup> Painter-Morland M et al (2003) Final Consolidated Report – focused assessment of anti-corruption capacity within the Department of Correctional Services, UNODC, Pretoria, p. 37.

<sup>18</sup> Public Service Anti-Corruption Strategy, Department of Public Service and Administration, 2002, p. 9

<sup>19</sup> Management Audit of the Department of Correctional Services, Department of Public Service and Administration, Presented to the Portfolio Committee on Correctional Services, 14 March 2000, p. 28

*Welfare and Justice, result in a reduced impact of diversion programmes for the system;*

- *lack of training amongst magistrates and their resultant insensitivity and ignorance in dealing with young offenders;*
- *long delays in children's court inquiries;*
- *inappropriate placement of young offenders in correctional facilities;*
- *difficulties in identifying and determining ages of young offenders."*

It is evident from the above quotation that children's rights were being violated as a result of poor performance, incompetence and bad management. It is also evident that public funds were being wasted and that children were not receiving the services to which they were entitled. There was, however, no indication that this was being motivated by private and illegal gain, or any other activity that may be construed as corrupt. Corruption therefore should be seen as separate and distinct from maladministration and mismanagement although corruption is often associated with these maladies.

### **3.2.4 Governance**

Corruption is also not the complete antithesis of governance, for corruption is but one corrosive agent undermining governance. Poor leadership, non-adherence to procedure, or incompetence all affect governance, but they are not corruption, as noted above.

Understanding the linkages between corruption and governance will indicate that corruption is often symptomatic of weak institutional capacity. In general, governance can be defined as:<sup>20</sup>

*" . . . the exercise of authority through formal and informal traditions and institutions for the common good, thus encompassing the process of selecting, monitoring and replacing governments; the capacity to formulate and implement sound policies and deliver public services; and the respect of citizens and the state for the institutions that govern economic and social interactions among them."*

In a recent study on examples of good practice in governance in the DCS, Tapscott applied the following description of governance:

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<sup>20</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

*Good prison governance is to a large extent determined by the existence of an enabling policy framework, necessary resources and the extent to which prison management has the ability to implement these policies on a day-to-day basis in a transparent, accountable and ethical manner. In the context of this research, however, the notion of governance is understood to encompass not only issues of administrative efficiency and probity, but also the extent to which the basic human/constitutional rights of offenders are recognised and respected. This relates both to the manner in which offenders are treated in the prison system and the opportunities which they are afforded to re-orientate their lives towards a more constructive future in society.*

Tapscott's description highlights the fact that in the prisons context governance means adherence to human rights standards and compliance with legislative requirements, and that deviation from these has a direct influence on how prisoners experience imprisonment on a daily basis.

Accountability is an important ingredient of governance as noted by Tapscott and Kaufmann. Hassan takes this further and gives the notion of accountability a direct relationship to corruption in a formulaic style:<sup>21</sup>

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

This formula has particular significance in the prison environment for the following reasons: The prison management holds monopoly over every aspect of prison life and it has an express mandate to maintain and not relinquish this monopoly, in terms of its security mandate. Whilst there are laws, regulations and orders in place, prison management and individual warders have an enormous amount of discretion with regard to what happens when on the prison floor on a day-to-day basis. Allowing prisoners to move between different sections, extending lock-up times, dealing with incidents of conflict, or citing disciplinary infractions are examples of such discretion. Accountability in the prison environment, as well as any other facility where people are deprived of their liberty, has always been notoriously difficult to enforce. The closed nature of the institution just does not facilitate these objectives by the very nature of its business. Based on Hassan's formula, it has to be concluded that prisons characteristically will always present a high risk in relation to corruption.

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<sup>21</sup> Hassan S (2004) Corruption and the Development Challenge, Journal of Development Policy and Practice, Volume 1 No. 1, p. 11.

### 3.2.5 Petty and grand corruption

The distinction is often made between petty and grand corruption to distinguish the scale and level of corruption:<sup>22</sup>

*High level or "grand" corruption takes place at the policy formulation end of politics. It refers not so much to the amount of money involved as to the level at which it takes place: grand corruption is at the top levels of the public sphere, where policies and rules are formulated in the first place.*

Petty corruption is defined thus:

*Small scale, bureaucratic or petty corruption is the everyday corruption that takes place at the implementation end of politics, where the public officials meet the public. Petty corruption is bribery in connection with the implementation of existing laws, rules and regulations, and thus different from "grand" or political corruption. Petty corruption refers to the modest sums of money usually involved, and has also been called "low level" and "street level" to name the kind of corruption that people can experience, more or less, daily, in their encounter with public administration and services like hospitals, schools, local licensing authorities, police, taxing authorities, and so on.*

The individual prison warder asking the family of a prisoner for cash so that they can visit their imprisoned family member for longer than the allotted time is, in all likelihood, guilty of committing petty corruption. When senior-ranking officials manipulate staff appointment procedures in order to ensure that family members rather than better qualified applicants are appointed they commit grand corruption. The incidence of prisoners being assisted by bribed warders in escaping from prison would most likely fall in the category of grand corruption as it subverts the core business of the prison system.

To develop tight and clear definitions of grand and petty corruption may not be possible as corruption takes many forms, and cases should rather be assessed on their own merits to determine what level of corruption is involved. When assessing a case at hand, four variables may assist in categorising a particular corrupt act. Firstly, questions pertaining to scale should be asked to determine the value of a corrupt transaction. Smaller value normally tends to indicate petty corruption and larger amounts grand corruption. However, small

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<sup>22</sup> Utstein Anti-corruption Resource centre, Glossary on corruption, <http://www.u4.no/document/faqs5.cfm#pettycorruption>

bribes can affect national security as was the case with suicide bombers boarding planes in Russia in 2004 after bribing security guards with \$30.<sup>23</sup> Secondly, petty corruption tends to be more opportunistic, less planned or pre-meditated, and probably more reactive. Grand corruption on the other hand tends to be more co-operative, collusive, and less extortive.<sup>24</sup> Thirdly, the seniority of officials involved can play an important role as higher ranking officials yield more power and therefore control more resources. The impact of their corrupt decisions, actions, or inaction therefore tends to be wider than the low ranking official who has a far smaller locus of control (e.g. controlling visiting hours at a prison). Fourthly, the impact of the corrupt act on the business of the department needs to be examined. In the case of prisons, security is an over riding concern and escapes therefore reflect very negatively on the public image of the department and its ability to perform its core business. A corrupt warder assisting a prisoner to escape has a highly negative effect on the core business of the department. The fact that relatively small amounts of money may have changed hands is of little importance in this case. History has shown that escapes from prison had huge internal repercussions for the DCS, but also on public perceptions of the prison system and its ability to contribute to public safety<sup>25</sup>.

The term “petty corruption” should also be used with caution as it may be construed as a trivialisation of this category of corrupt acts. Estimating the size in monetary value of petty corruption is almost impossible but victimisation surveys do provide a glimpse of the extent of corruption. The 2003 Institute for Security Studies Victimisation Survey found that after housebreaking, corruption was the most frequent form of victimisation in South Africa.<sup>26</sup> Of the total group of respondents, 7.5% reported being victims of housebreaking in the preceding twelve months, and 5.6% reported being victims of corruption.<sup>27</sup> The same survey also found that 5% of respondents were asked to pay a bribe when visiting a prison, compared to the 29% who were asked to pay a bribe in relation to traffic offences. Of the 5% who were asked to pay a bribe, 49% actually paid the bribe.

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<sup>23</sup> What is petty corruption? U4 Utstein Anti-Corruption Resources Centre: “Petty corruption and shadow economies”, <http://www.u4.no/helpdesk/helpdesk/queries/query72.cfm> , p. 2.

<sup>24</sup> What is petty corruption? U4 Utstein Anti-Corruption Resources Centre: “Petty corruption and shadow economies”, <http://www.u4.no/helpdesk/helpdesk/queries/query72.cfm> , p. 2.

<sup>25</sup> Oppler S (1998) Correcting Corrections: Prospects for South Africa’s Prisons, ISS Monograph No 29, “Prison escapes” <http://www.iss.co.za/Pubs/Monographs/No29/Prison.html#Anchor-Prison-6751>

<sup>26</sup> Van Vuuren H (2004) Small bribes, big challenges – extent and nature of petty corruption in South Africa, SA Crime Quarterly, No. 9 September 2004, p. 12

<sup>27</sup> The survey asked specifically about the payment of bribes and used an expansive definition of what a bribe constitutes.

Research indicates that there is a strong convergence of poverty and corruption, and that corruption has a disproportionate effect on the poor as opposed to the more affluent in society.<sup>28</sup> Not having the means to exercise choices exposes poor people to direct corrupt acts, such as payment of bribes, as well as the longer term and more enduring results of grand and petty corruption. Seen in this light, comparisons may be made with prisoners who are dependent on one state agency for all their needs and have very limited choice about what happens on a daily basis. Prisoners also do not have the means to acquire alternatives in terms of basic needs, with a few exceptions.<sup>29</sup> As noted above, monopoly is a primary ingredient for corruption. The deprivation of freedom, choice and alternative sources effectively creates the effect of poverty and thus, by definition, a demand for alternatives and ameliorating mechanisms and resources. It may therefore be argued that in a similar manner that the poor in society have limited resources and thus limited choices, prisoners as a result of their deprivation of liberty, are also disproportionately subjected to bribery and corruption. The difference is perhaps the nature of commodities that characterises prison corruption, for example drugs, alcohol, weapons, firearms and assisted escapes.

The pervasive influence of even the smallest acts of corruption should not be underestimated. All acts of corruption are serious because *“they lead to the establishment of patterns of undesirable behaviour, patterns that cannot be undone easily, and which thereby lower the ethical standards within a society however incrementally”*.<sup>30</sup> For the purposes of this report and specifically the classification of corrupt acts, as will be done in Section 4, the distinction between grand and petty corruption will not be made. This is motivated by the fact that a particular corrupt act cannot be classified as categorically and inherently petty or grand; such a decision should rather be made on a case-by-case basis.

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<sup>28</sup> Corruption that affects the poor U4 Utstein Anti-Corruption Resources Centre: “Tackling forms of corruption that affect the poor most” <http://www.u4.no/helpdesk/helpdesk/queries/query62.cfm>

<sup>29</sup> Prisoners can, for example, at their own expense see their own medical physician. See Correctional Services Act (111 of 1998) Section 12(3).

<sup>30</sup> Hassan S (2004) Corruption and the Development Challenge, Journal of Development Policy and Practice, Volume 1 No. 1, p. 6.

### 3.3 The reasons for corruption and factors contributing to it

The risk of corruption is created by the following characteristics that need to be in place and acted upon for a corrupt act to occur:<sup>31</sup>

- There must be a target, such as cash, equipment and consumables
- Access and opportunity must be available to the officials concerned and this may vary according to particular functions in a department
- Motivation to commit the corrupt act must be present; this will be greed in most instances, but could also be revenge or political dynamics.

Citing Steinberg and Austern, the DPSA regards the following as the reasons for unethical behaviour in the public service:<sup>32</sup>

**Good intentions** - Some public officials do things that they are not supposed to do (or fail to do things that they are meant to do) in an attempt to help others.

**Ignorance of laws, codes, policies and procedures** - Many public officials simply do not know the laws and directives that deal with what is right and wrong in their work.

**Ego power trips** - Some employees think they know what is best, regardless of what the department has decided.

**Greed** - Some individuals exploit their position at work to enrich themselves.

**It comes with the territory** - Some staff feel there is nothing wrong with using opportunities at work to enrich themselves.

**Friendship** - In some cases, employees abuse their position in the public service to assist their friends out of a misplaced sense of loyalty.

**Ideology** - People with strong ideological convictions might believe that any means can be justified as long as it leads to the right outcome for them.

**Post-employment "revolving door"** - Some public servants engage in unethical behaviour in an attempt to secure a job outside the public service – for example, awarding tenders to certain companies that they hope will employ them in future.

**Financial problems and pressures** - People with financial problems at home sometimes engage in unethical practises to cope with their problems.

**Exploiting the exploiters** - Some staff feel that they are being exploited by their bosses and so believe that they are entitled to do anything to turn the tables on their exploiters'.

**Going along** - Some people feel that, since others act unethically at work, they are entitled to join in.

**Survival** - Some would do anything to ensure that they maintain and defend their current positions.

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<sup>31</sup> Queensland Prison industries – A Review of Corruption Risks, Criminal Justice Commission, 2000, p. 13.

<sup>32</sup> Department of Public Service and Administration (2006) Anti-Corruption Capacity Requirements – Guidelines for Implementing the Minimum Anti-Corruption Capacity Requirements in Departments and Organisational Components in the Public Service, DPSA, Pretoria, p. 24

The above are general reasons for unethical and corrupt behaviour and not specific or unique to prisons. Painter-Morland *et al* conducted survey research at Pollsmoor and Durban Westville prisons and their findings provide further description of the reasons for corrupt behaviour at ground level in the DCS. They found that:<sup>33</sup>

- there is a lack of respect between staff and prisoners
- staff members lack respect for rules and regulations
- senior personnel do not lead by example
- prisoners threaten staff who do not help them to “beat the system”
- there is peer pressure (amongst staff) to participate in corrupt activities
- there is a lack of buy-in into the DCS’s strategic direction
- there are many gaps and loopholes to be exploited
- prisons gangs negatively affect discipline
- staff members have informal relationships with prisoners.

The same study also found that, apart from these particular issues raised at the two prisons, there were general contributing factors to corruption and unethical behaviour in the department:

- physical conditions and overcrowding
- a lack of buy-in into the DCS code of conduct
- inconsistency in discipline and performance appraisals
- policies and procedures were not well communicated
- whistle blowers were not protected
- there was a lack of skills and capacity in general
- there was uncertainty and a lack of training in the new approach to rehabilitation
- low morale and a lack of professional ethics
- personal variables (e.g. financial trouble)
- mutual lack of respect between staff and inmates.

### **3.4 State capture**

In the Introduction mention was made of Portfolio Committee members expressing their concern that the state may have lost control of the DCS.<sup>34</sup> Their concern at that stage was not

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<sup>33</sup> Painter-Morland M et al (2003) Final Consolidated Report – focused assessment of anti-corruption capacity within the Department of Correctional Services, UNODC, Pretoria, p. 7-8.

<sup>34</sup> PMG Minutes of the Parliamentary Portfolio Committee on Correctional Services, 14/3/2000.

unfounded as information gathered by the Jali Commission would demonstrate later. The notion that the state may lose control to a power elite is known as state capture:<sup>35</sup>

*[ . . . ] the undue and illicit influence of the elite in shaping the laws, policies and regulations of the state. When institutions of the state are “captured”, powerful groups with vested interests exert undue influence in shaping the rules of the game for their own benefit, take advantage of the various deteriorating governance mechanisms, and resist demands for change even as per capita income rises.*

The concept is useful for it assists in understanding how corruption can become endemic and undermine virtually every function in a prison or prison system. As will be reported below, at one stage there was an orchestrated campaign by factions in organised labour to wrest control from management in some parts of the DCS and this was allegedly done with the support of the then National Commissioner.

#### **4. Types of corruption reported**

From the late 1990s onwards, there were reports in the media and also by oversight structures of alleged and confirmed corruption cases in the DCS and its prisons. Despite their bias as primarily media reported data, these reports provide a substantial body of information to assist in better understanding the phenomenon of prison corruption in South Africa. In the following section an attempt will be made at developing a classification system and describing typical cases for each of the categories.

Three relationships are applied in categorising the data, namely:

- between warders and prisoners
- between warders (as employees) and the DCS as employer
- between external agents, officials and the department

Based on the reports analysed, specific categories of corrupt activities are created, such as trade in contraband or manipulation of service benefits, as shown in Appendix 1. It should further be noted that one incident of corruption can be multi-dimensional by, for example, involving both officials and prisoners and being aimed at achieving various objectives.

The multi-dimensional character of corrupt acts is a function, at least in part, of the multiple identities that role players hold in the prison environment. For example, warders can act as

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<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. 7

individual warders but also as organised labour, and as individual officials in an employer-employee relationship. Similarly, prisoners are individuals but can act or be acted upon as a collective group, for example as prison gangs. Prisoners may also belong to organised structures external to the prison context. The DCS simultaneously represents the employer of all officials, the management of the department, and the provider of all services to prisoners. Understanding prison corruption would require that it be established from the outset who acts in what capacity, does what, and with what objective in mind. The fluid nature of these relationships and the changing of agendas strongly favour a dynamic analysis of prison corruption.

#### **4.1 Corruption relating to the warder-prisoner relationship**

This category describes examples of corrupt practices between prison warders and prisoners.

##### **4.1.1 Trade in contraband**

The security objective of the prison system prohibits the possession of a range of goods in addition to those usually considered illicit. The prohibition of these goods and substances therefore creates a market with warders being logical suppliers. Lifestyles and addictions developed prior to imprisonment create further demand for a range of commodities. Goods and substances include, but are not limited to, drugs<sup>36</sup>, alcohol<sup>37</sup>, prescription medicine<sup>38</sup>, food<sup>39</sup>, weapons<sup>40</sup>, firearms<sup>41</sup>, cell phones<sup>42</sup> and explosives<sup>43</sup>.

Trading in drugs and alcohol is undoubtedly very rewarding financially for those involved. A warder at Grootvlei prison allegedly made an average profit of R9 000 per month from selling brandy to prisoners at hugely inflated prices.<sup>44</sup> A former prison warder, KL Pobe, testified before the Jali Commission about how he and a colleague smuggled drugs for payment for a prisoner, Biza, who would also get them to buy food and liquor for him. Pobe and his colleague used to collect Mandrax from Biza's wife in Tembisa. Biza also paid them

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<sup>36</sup> Jali Commission briefing to the PPCCS, 20/8/2002

<sup>37</sup> IOL 19 June 2002, Dispatch Online 16/7/2002

<sup>38</sup> Behind the Mask, 4/2/2004

<sup>39</sup> iafrica.com, 17/2/ 2004

<sup>40</sup> IOL 19/6/2002, news24.com 14/11/2002

<sup>41</sup> Jali Commission briefing to the PPCCS, 20/8/ 2002

<sup>42</sup> The Herald Online 15/11/2004

<sup>43</sup> news24.com 14/11/ 2002

<sup>44</sup> Dispatch Online 16/7/ 2002

R50 to R100 daily not to report that other prisoners were being robbed. He also testified that, on occasion, Biza would pay them cash amounts of between R1 000 and R5 000 each.<sup>45</sup>

The now infamous Grootvlei video showed how a firearm was sold inside the prison.<sup>46</sup>

Changing one's diet is also possible. A former prisoner reported to the Jali Commission that at Pretoria Central Prison there was a warder who would bring in Kentucky Fried Chicken for prisoners at a price.<sup>47</sup> The value of the bribe involved was not reported, however.

Looking at the prison system as a whole, trade in contraband must be worth millions of rand every year and smuggling these items will probably always be part of any prison system. It should also be noted that trade in contraband can be connected with other corrupt activities, such as not reporting other illegal activities, as the example involving prisoner Biza demonstrates.

#### **4.1.2 Trafficking in people**

Although allegations of trafficking in people in prisons have surfaced from time to time in the past, the Grootvlei video demonstrated with horrific clarity the nature of the practice. The video showed how a young prisoner from the juvenile section was brought to an older prisoner by a warder for payment, who then proceeded to have sex with the young prisoner.<sup>48</sup> This was not an isolated incident as the Jali Commission found evidence at Grootvlei prison that the sale of young prisoners for sex with older prisoners was commonplace, and that a sex ring involving juvenile prisoners existed amongst warders.<sup>49</sup> Evidence of this was provided by a 20-year old Grootvlei prisoner who testified before the Jali Commission, stating that he was repeatedly raped by warders and other prisoners. According to him, warders would pretend to take him out of his cell on the pretext that he had to help with throwing out the garbage but would instead take him to other prisoners for sex.<sup>50</sup>

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<sup>45</sup> This Day, 1/4/ 2004

<sup>46</sup> news24.com 14/11/ 2002

<sup>47</sup> iafrica.com, 17/2/ 2004

<sup>48</sup> IOL 19/6/2002

<sup>49</sup> Jali Commission briefing to the PPCCS on 20/8/2002

<sup>50</sup> News24.com 23/7/2002

In a remarkable study on sex in South Africa's male prisons, Gear and Ngubeni also found consistent evidence that some warders were part of an organised trade in sex in prisons.<sup>51</sup> The study makes allegations of warders who run their own gangs inside prisons. The study found that the most prevalent form of this trade was "selling" prisoners to other inmates:

*You give [the warder] money and tell him that you want a certain boy in your cell . . . He will agree and he will tell the other warders some story.*<sup>52</sup>

And

*There are some [prisoners who] . . . live a nice life, they have the money . . . They tell the warders to do them favours, saying, . . . 'I like that boy' and they give the warders a bribe, maybe R10.00 to buy Coke. The warders will make sure that they lead you to that prisoner's hands so that he can use you for sex.*<sup>53</sup>

Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol) defines trafficking in persons as:<sup>54</sup>

*. . .the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

The Protocol also states (in 3(b)) that the consent of the victim is irrelevant where any of the means described above have been used. The fact that a young prisoner, as was shown in the Grootvlei video, apparently willingly submits to the sexual exploitation and accepts monetary compensation makes no difference to the fact that the crime of trafficking was committed by the warder who used his power, in exchange for money, to bring him there.

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<sup>51</sup> Gear S and Ngubeni K (2002) Daai Ding – Sex, Sexual Violence and Coercion in Men's Prisons, Centre for the Study of Violence and Reconciliation, Johannesburg, p.67

<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Trans-national Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 (not in force)

South Africa is still without legislation that criminalises trafficking and there remain numerous definitional issues in this regard that need to be resolved.<sup>55</sup>

As “pimps” and traffickers, corrupt prison officials are ideally placed to regulate the movement of people between sections in a prison based on the discretionary powers that they have.<sup>56</sup> They can also arrange for privacy as required. Collusion between warders and prisoners (as the clients) also ensures that complaints by victims will not go very far and will be smothered by either the warders or by accomplice prisoners through bribes, intimidation and coercion. Ensuring the cooperation and silence of prison warders can occur prior to the crime as Gear and Ngubeni found and means that the complaint falls on deaf ears, even when reported to the police.

The secrecy surrounding trafficking in people in the prison system makes it extremely difficult to determine the size of the problem. For the purpose of protecting the rights of prisoners, it would be safe to assume that the problem is more common rather than isolated.

#### **4.1.3 Access to services and utilities**

The Correctional Services Act sets out the minimum requirements of detention in prisons and further describes the services to which prisoners are entitled. These are dealt with primarily in Sections 4 to 21 of the Act and further supported by Chapter 2 of the Regulations.

Requiring that prisoners pay for services or amenities to which they are entitled would be corrupt. Equally so would be to require payment from prisoners to have expanded, additional, manipulated or lengthened access to a right or privilege.

Because imprisonment limits communication both in the prison system and with the outside world, access to resources and information flow are at risk of corruption as the following two examples illustrate:

- Former prisoner Jacob Maartens testified at the Jali Commission that prisoners had to pay warders R2.00 each time if they wanted to make a phone call.<sup>57</sup>

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<sup>55</sup> It is expected that in the first half of 2006 the SA Law Reform Commission will bring out draft legislation on trafficking following from the discussion paper that was released in 2004.

<sup>56</sup> This was confirmed in Gear S and Ngubeni K (2002) *Daai Ding – Sex, Sexual Violence and Coercion in Men’s Prisons*, Centre for the Study of Violence and Reconciliation, Johannesburg, p.67

<sup>57</sup> iafrica.com 17/2/2004

- One of the 22 accused in the Boeremag trial submitted to the court a wad of “receipts” for the 30c he had to pay warders each time he sought a response to his complaints.<sup>58</sup>

In August 2002, the Jali Commission reported to the Portfolio Committee on Correctional Services that at Durban-Westville Prison the extortion of money from prisoners or former prisoners by warders was prevalent. Such extortion could be for the purposes of obtaining remissions of sentence, the conversion of sentences to periods of correctional supervision, or for the simple purpose of allowing an inmate privileges to which he or she would not normally be entitled. Warders were also extorting money from inmates or their families to ensure the safety of the inmate.<sup>59</sup>

Gear and Ngubeni also found evidence that lodging complaints in prison can be difficult, with such complaints summarily dismissed or with responses that prisoners are not worthy of access to justice:<sup>60</sup>

*You’re a criminal. If you were a person, you would not be here, so we are not going to take your complaint.*

Ensuring the safety of prisoners, access to the means of communication, access to justice and receiving feedback on complaints are basic rights that all prisoners must enjoy without having to bribe an official.

#### **4.1.4 Abuse of power**

Abuse of power is a particularly wide category as nearly all forms of corruption reflect some expression of the abuse of power. Using prisoners to perform menial tasks that have no other purpose than to serve the official concerned can be seen in this light as in the following example. It was alleged by evidence leader for the Jali Commission, Advocate Vas Soni, that a Mr Kosana, a warder at Grootvlei, used prisoners to cut his toenails and remove corns from his feet and make coffee for him.<sup>61</sup> Advocate Soni called this “*a gross violation of human dignity*”.

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<sup>58</sup> This Day 25/2/2004

<sup>59</sup> Jali Commission briefing to the PPCCS on 20/8/2002

<sup>60</sup> Gear S and Ngubeni K (2002) *Daai Ding – Sex, Sexual Violence and Coercion in Men’s Prisons*, Centre for the Study of Violence and Reconciliation, Johannesburg, p.70.

<sup>61</sup> SABC news 31/7/2002

In a case that exemplifies the convergence of different aspects of corruption, an ex-prisoner and transsexual, Louis Karp, told the Jali Commission that one of the warders at Pretoria Prison sold him to a gang of four men in the prison who sodomised him over a period of two months. After he laid a charge against the prisoner who allegedly raped him in his cell in November 2002, he was placed in leg shackles and solitary confinement for 23 hours a day. He stated that no action was taken against the alleged rapist despite the charge being laid and when released from solitary confinement, he was placed back in the same cell with him.<sup>62</sup> The abuse of power in this case was evident in that the prisoner was placed in isolation instead of receiving the necessary support and having his complaint taken seriously.

#### **4.1.5 Sexual assault and exploitation of prisoners**

The preceding discussion dealt with trafficking and described collusion between warders and prisoners to ensure the silence of victims. Sex in prisons is shrouded in secrecy and very little information ever reaches the outside world. According to Gear and Ngubeni, the issue of sex in male prisons raises two taboos in our society, namely homosexuality and male rape.<sup>63</sup> Reports of sexual exploitation and assaults in female prisons have not been found in the literature reviewed for this report, but it should not be assumed, however, that such practices do not occur in female prisons.

The secrecy surrounding sex in prisons is even greater when warders sexually exploit prisoners. Media reports in the wake of Jali Commission hearings reflected on two such cases where ex-prisoners provided testimony in this regard. In the first case, a 20-year old Grootvlei Prisoner testified before the Jali Commission that a certain warder, S Mohanoe, initially gave him toiletries and fruit as well as dagga in exchange for sexual favours, which he refused. When he still refused sex, Mohanoe allegedly assaulted him with a truncheon and raped him.<sup>64</sup> In the second case, ex-prisoner Louis Karp, referred to above, testified before the Jali Commission that he was forced to perform oral sex on a warder.<sup>65</sup>

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<sup>62</sup> Behind the Mask 4/2/2004

<sup>63</sup> Gear S and Ngubeni K (2002) *Daai Ding – Sex, Sexual Violence and Coercion in Men’s Prisons*, Centre for the Study of Violence and Reconciliation, Johannesburg, p.2.

<sup>64</sup> News24.com 23/7/2002 and IOL 19/6/2002

<sup>65</sup> Behind the Mask 4/2/2004

Prisoners find themselves in an extremely vulnerable position when they are sexually victimised by staff, as reporting the crime frequently results in further victimisation by either fellow prisoners or officials, or both.

#### **4.1.6 Theft from prisoners**

Previously (see 3(b)(ii)) reference was made in this paper to “smuggling” and the examples given to the Jali Commission referred to warders eating prisoners’ food and confiscating their money.<sup>66</sup> Two notable cases were reported in the media in 2003 and 2004. In the first case, an Assistant Director at Pretoria Central, Ms Mgwebu, admitted to the Jali Commission that she stole R6 000.00 from a prisoner. The prisoner, S Makwena, came into an inheritance of roughly R6 000.00 and asked Mgwebu for permission to open a bank account. She arranged transport and an escort for him to go to the bank. Upon his return, he entrusted her with the bank card and personal identity number (PIN). Mgwebu admitted that she and her daughter withdrew all the money from the account; some R6 000.00.<sup>67</sup> The case reflects several dimensions, for it is not only the theft of the money that occurred, but also the abuse of the trust that the prisoner placed in the official on a personal level. The official also stole the money over a period of time and withdrew it from the prisoner’s bank account in a premeditated manner. Hers was not an opportunistic crime. The crime also reflects the abuse of power and official position that enabled the official to gain access to a prisoner’s confidential and personal information which she then exploited.

Upon admission, all prisoners have to hand over all cash, valuables and personal items.<sup>68</sup> These items must be duly recorded. Prisoners have access to the cash and a record is kept of the balance as prisoners use it.<sup>69</sup> Visitors may also make deposits into this account to enable the prisoner to have access to cash to purchase needed items. At Tzaneen Prison, a warder allegedly exploited this system in order to steal prisoners’ money. His job function was to collect and register valuables and money from new prisoners when they were admitted to the prison. Visitors would also make deposits with him. He allegedly recorded different amounts

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<sup>66</sup> News24.com 10/4/2003

<sup>67</sup> The Cape Times 11/11/2003

<sup>68</sup> Regulation 2(1)(a)

<sup>69</sup> On 1 January 2003 the DCS introduced a “cash-less society” to address problem created with the availability of cash in prisons.

to the amounts actually deposited by both prisoners and visitors, and stole the balance. According to the police, he was charged with fraud to the value of R2 700.00.<sup>70</sup>

Both cases demonstrate a level of planning on the part of the alleged offender who misused his and her official position for private gain. In the second case, both prisoners and their visitors were defrauded of money. Whilst the amounts involved are relatively small, the effect on prisoners may be significant, apart from being infuriating. Given the closed nature of the prison, such cases may have a severely detrimental effect on the general relationship between prisoners and staff.

#### **4.1.7 Assistance in escape and irregular releases**

Escapes are regarded as a significant indicator of the effectiveness of security in the DCS and any escapes are regarded as extremely serious. When warders help prisoners to escape or facilitate irregular releases, it reflects even more negatively on the department than when prisoners escape unassisted. Available information indicates various sub-categories of escapes and irregular releases:

- Warders directly assisting escapes
- Irregular releases
- Allowing escapes for ulterior motives
- Illegally leaving prison

##### *Direct assistance*

Assisting prisoners in escaping can take various forms such as providing equipment, transporting prisoners, and allowing firearms into the prison. The following are examples of this:

- On 17 September 1999, 21 prisoners escaped from the new Pietermaritzburg Prison after they cut a hole through the wall by means of an angle grinder. However, 22 prisoners remained behind in the cell even though they had the opportunity to escape.<sup>71</sup>
- In September 1999, a warder assisted a prisoner in escaping from the Rooigrond Prison by driving him out of the prison complex in a car and informing the gate guard

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<sup>70</sup> Lowveld Info 9/9/2004

<sup>71</sup> PMG Minutes of the Correctional Service Portfolio Committee meeting of 15/10/1999

that he was taking the prisoner to the automatic teller machine. He did not return with the prisoner.<sup>72</sup>

- A former prison warder testified before the Jali Commission how he ran an escape racket and drug smuggling ring together with a prisoner and earned nearly R60 000.00 between 1998 and 2000. He also told the Commission of an earlier syndicate that allegedly involved the payment of R200 000.00 for an assisted escape. He received R30 000.00 to help two prisoners to escape. Nobody was charged after the escape. He was caught after assisting two prisoners in escaping, for which he received over R14 000.00.<sup>73</sup>
- On 6 November 2005, five sentenced prisoners were escorted by a warder (G Mtinkulu) under false pretences from C Unit to the hospital section at Zonderwater Medium A Section. It is reported that despite passing through two access gates, they were able to carry with them a .38 calibre revolver. When they arrived at the hospital (at approximately 11:15) they took several officials hostage and demanded firearms and a vehicle. At 18:20, they took six hostages into a vehicle and drove towards the gate. The SAPS who were stationed along the route opened fire. The prisoner who had the initial firearm was fatally wounded. The vehicle was halted and the hostages freed. Another prisoner was wounded, as was the Acting Head of the Centre.<sup>74</sup>
- On 27 November 2005, at Zonderwater Prison four prisoners went to the visitors' area at 11:15; one was carrying a radio with him that concealed two toy pistols. Upon reaching the visitors area, they took several female visitors and their children hostage and exited the building. Once outside, they succeeded in robbing an official of his firearm. DCS officials pursued the escapees. One was shot dead in an exchange of fire. The three other escaped prisoners were recaptured on the same day. The investigation revealed that the two toy pistols were smuggled in on or about 5 November 2005 due to staff not performing proper searches.<sup>75</sup>

#### *Irregular releases*

Manipulation and corruption of the parole and release system is another manner of escaping. In these instances, the role of the parole board and evidence placed before parole boards are

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<sup>72</sup> PMG Minutes of the Correctional Service Portfolio Committee meeting of 15/10/1999

<sup>73</sup> This Day 1/4/2004

<sup>74</sup> PMG Minutes of the Correctional Service Portfolio Committee meeting of 1 February 2006

<sup>75</sup> PMG Minutes of the Correctional Service Portfolio Committee meeting of 1 February 2006

undermined by corrupt activities. In 2004, the SAPS uncovered a syndicate at Barberton Prison that was facilitating early parole releases for R7 000.00.<sup>76</sup>

At Durban Westville Prison, the Jali Commission uncovered evidence of another variation on this theme:<sup>77</sup>

*It became apparent that the Parole Board was being used merely to rubber stamp sinister decisions made elsewhere with the Board itself appearing not to apply its mind to the merits of the applications before it.*

And

*Sentence remissions procedures were found to be open to abuse with reports of good conduct by prisoners being at times mere fabrications or having been done by some other inmate other than the inmate applying for remission.*

*Using escapes for ulterior motives*

Tension between management and organised labour factions in the DCS resulted in escapes becoming a political tool for disaffected employees. From KwaZulu-Natal and the Free State it was reported that it was a deliberate Popcru tactic to engage management in various distracting activities but also to turn a blind eye to escapes.<sup>78</sup> At the Jali Commission hearings in Port Elizabeth in 2002, it was alleged that escapes were arranged by warders in order to embarrass the Commissioner after he promised the public improved safety and a reduction in escapes.<sup>79</sup>

*Illegal leaving of the prison*

Helping prisoners to leave prison temporarily without approval is, technically, escape. The difference here is that prisoners are helped to leave the prison and return. The Jali Commission found evidence of this at Durban Westville:<sup>80</sup>

*This [leaving the prison] was being done with the full knowledge and assistance of warders. One inmate enjoyed endless conjugal visits to his spouse, another stayed at various city hotels while still a prisoner and also left the prison with a warder to retrieve an engine to be installed in the same warder's vehicle at the prison.*

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<sup>76</sup> The Star 9/2/2004

<sup>77</sup> PMG Minutes of the Correctional Service Portfolio Committee meeting of 20/8/2002

<sup>78</sup> The Herald 1/8/2002

<sup>79</sup> The Herald 18/4/2002.

<sup>80</sup> PMG Minutes of the Correctional Service Portfolio Committee meeting of 20/8/2002

Collusion between warders and prisoners can also be traced back to possible previous allegiances, as in the case of prisoner Godfrey Grootboom, an ex-police officer, who was smuggled out of St Alban's Prison in a vehicle owned by a police officer with the assistance of warders to meet his female partner for conjugal visits in secret localities.<sup>81</sup>

#### **4.1.8 Contract killings**

Apparently, contract killings are engaged in for different purposes. In the first example, prisoners were allegedly contracted by a group of warders to kill the Head of Middledrift Prison with a firearm smuggled in by warders. Intervention by the National Intelligence Agency averted the assassination a day before it was scheduled.<sup>82</sup> The planned assassination allegedly was motivated by conflicts between the DCS and a section of organised labour.

The second example relates to a case where a warder contracted ex-prisoners to kill a colleague in order to avoid debts created through assisted escapes. The ex-warder from Johannesburg testified before the Jali Commission how six former inmates were hired by a colleague to assassinate him and recover a vehicle that was given to him, for an outstanding debt relating to an assisted escape. The ex-warder, Shozi, told how he got the vehicle after his supervisor Sidney Biza Thloloe failed to pay him after the assisted escape. He explained how he was accosted by six men (ex-prisoners) and how one, whom he recognised, confessed that Thloloe sent them to kill him and recover the vehicle. He never reported the matter to the police.<sup>83</sup>

The two cases illustrate the blurring of lines between prisoners and warders, and the creation of temporary alliances for criminal purposes.

#### **4.1.9 Assault, intimidation and killing of prisoners**

Assault and intimidation are undoubtedly serious human rights violations. When assault, intimidation, torture, and even murder are committed for the purposes of private gain, these should be regarded as aggravating circumstances. The link between assault and intimidation and private gain can be tenuous, but if the purpose is to create a general culture of fear

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<sup>81</sup> The Herald 1/11/2002

<sup>82</sup> The Herald 14/8/2002

<sup>83</sup> Soweton 23/4/2004

through violence and intimidation it will contribute to receiving private gain through a variety of exploitative relationships between warders and prisoners. The following cases illustrate the creation of a culture of fear:

- Nine warders from Bethal Prison were charged with murder after the death of prisoner, PB Nhlapho. They assaulted him on two different occasions after he allegedly refused to apologise for assaulting one of their colleagues. He died in Pretoria Academic Hospital of severe head injuries.<sup>84</sup>

From testimony before the Jali Commission it is evident that even when criminal charges are laid by prisoners for assault against warders the charges are ignored:

- The Head of Pretoria Prison (Mr Boloyi) was testifying before the Jali Commission when Judge Jali enquired why warders with a sum total of 251 criminal charges (involving assaults on prisoners) against them were still employed and why he (Boloyi) had not done anything to address these criminal matters. Judge Jali stated that this inaction encouraged a culture of assault of prisoners because they (warders) knew that nothing would happen. Boloyi admitted that he did not follow the procedure relating to criminal matters.<sup>85</sup>

The Office of the Inspecting Judge also reported that in 2004/5 a total of 3 722 complaints relating to warders assaulting prisoners were laid by prisoners with independent prison visitors.<sup>86</sup> On this scale, allegations of assault and torture should not be regarded as individual and isolated incidents, but rather as an indicator of the systematic abuse of prisoners' rights.

#### **4.1.10 Gangsterism and organised crime**

There is little recent evidence to suggest collusion between gangs (and organised crime) and officials. If the Jali Commission uncovered such evidence during its investigation, it has not been made it public yet. Historically, the Big 5 prison gang has co-operated with the prison staff in exchange for certain favours. It has been stated that it is for this reason that they (Big 5 members) are frequently targeted for prison murders.<sup>87</sup> Evidence of co-operation and

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<sup>84</sup> Sunday Times 17/5/1998

<sup>85</sup> Pretoria News 21/4/2004

<sup>86</sup> Judicial Inspectorate of Prisons: Office of the Inspecting Judge, Annual Report 2004/5, p. 10.

<sup>87</sup> Haysom N (1981) *Towards an Understanding of Prison Gangs*, Institute of Criminology, University of Cape Town.

collusion between corrupt officials and the other number gangs (26, 27 and 28) is sketchy and probably based on speculation. The preceding description of trafficking in prisoners suggests that there is some level of co-operation between corrupt officials and organised criminal structures. However, the extent of this is unclear. Trade in contraband similarly suggests organised relationships that are not based on one corrupt warder but on a more structured network of relationships. Concrete evidence of this with specific detail is also scarce and even when individual warders are caught with contraband, it is highly unlikely that a full confession would be forthcoming.

## **4.2 Employee - employer relationship (includes organised labour)**

In this section, examples of corrupt practices in the relationship between the DCS and its employees will be described. Most of the examples cited here are not necessarily unique to prisons and can probably be found in other government departments as well. This relationship is explored as corruption in this relationship has a direct and indirect influence on the human rights situation of prisoners. For example, the appointment of family members over better qualified and trained persons compromises not only governance in a department, but also the quality of service delivery and safety of prisoners.

### **4.2.1 Appointment of staff**

From the available information, it appears that interference in the appointment of staff is motivated by three objectives. Firstly, to ensure the appointment of friends and family to positions in the department, secondly, to reward corrupt officials for corrupt acts through promotions, and thirdly, to receive personal (monetary or sexual) gratification from the appointment. This is achieved by means of the:

- manipulation of shortlists for vacancies
- manipulation of selection committees (decisions and members)
- presentation of fraudulent qualifications
- payment of bribes to secure appointments
- granting of sexual favours in exchange for appointments.

The broader human resource management context appears to have played an important role in the escalation of corruption from the mid-1990s on in the DCS. A management audit of the DCS described it as follows:<sup>88</sup>

*The beginnings of a breakdown of proper procedures in human resource matters appear to coincide with the appointment of Commissioner Sitole. From the outset of his tenure of office, the new Commissioner apparently took full advantage of all the powers of his office to the extreme in a campaign to surround himself with "place men". It is alleged that, with scant regard for the published criteria contained in advertisements for posts, short lists were doctored and panel recommendations were ignored or manipulated to select the "preferred" candidates.*

*We have heard of some meteoric promotions of "favourites" whilst anyone showing dissent was transferred out of a post with influence to some remote post. The Commissioner's right to transfer staff "in the interest of the department" seems to have been used as a means of punishing anyone who stood up against the new order. There still exists a climate of fear that prevents honest staff from speaking out against injustice and this hampers any investigation of malpractice. We have heard of records being altered in order to frustrate inquiries into the audit trail of staff movements, appointments, and promotions.*

*A further complication has been the insidious collusion between some elements of the unions and senior managers who are former officials in the same unions and, apparently, still members. It is thought that some of them are still office holders within these unions. This appears to be an unacceptable state of affairs. There are documented cases where properly appointed managers have been prevented from taking up their appointments by union action. On occasion, appointees have been physically "escorted" from their offices. We have even heard of Inspectors being prevented from entering prisons to carry out their official duties (against the Correctional Department's Regulations). So far as we can determine, no action has been taken against staff who acted in this way. Indeed, it is hard to envisage any manager having the courage to take disciplinary action in circumstances where their colleagues have been intimidated and allegedly murdered for taking such action.*

*No organisation can operate properly in this state of chaos and only the most drastic action will remedy the situation.*

The following describes in more detail what the management audit was referring to in general terms:

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<sup>88</sup> Management Audit of the Department of Correctional Services, Dept of Public Service and Administration, Presented to the Portfolio Committee on Correctional Services, 14 March 2000, pp. 17-18.

- M Kosana, former head of Personnel Provision in the Free State DCS, supervised the employment of two relatives and other people close to him, the Jali Commission heard. He allegedly refused to recuse himself from the recruitment drive. His ex-wife, common law wife, sister and another relative were appointed as candidate warders according to evidence leader Vas Soni. In a further recruitment drive, his brother was short-listed although he did not have a matriculation certificate, which is a minimum requirement. Provincial Commissioner Willem Damons conceded that the problem was not dealt with effectively when allegations of nepotism involving Kosana surfaced.<sup>89</sup>
- According to the Jali Commission's briefing of Parliament, the short-listing process at Durban Westville prison was constantly being interfered with to ensure that members sympathetic to certain camps were selected for appointment and promotion. More difficult to prove, however, was the frequent allegation that recruits had paid individuals in the department to secure their employment.<sup>90</sup>
- Briefing Parliament, Judge Jali explained that several staff members at Durban Westville were found to hold fraudulent matriculation certificates. It appeared that the fraudulent matriculation certificates were being generated by corrupt officials employed in the Department of Education. According to him, this practice affects the Department's service delivery as under-qualified personnel are appointed to the Department.<sup>91</sup>
- T Matshoko (a former Popcru shop steward) testified before the Jali Commission that former Eastern Cape Personnel Head, Meshack Mpemva, then Deputy President of Popcru, and St Alban's Assistant Head, Erik Nweba, led the coup in the province that resulted in Mrs Tseane's (Regional Commissioner) ousting and enabled them "to treble their salaries from lowly warders". Mpemva allegedly told a (secret) house meeting that he had to be appointed as head of personnel so that he could influence the appointment of Popcru members. Matshoko stated further that for 200 vacancies advertised, 65 000 applications were received and almost all these were filled with friends of Popcru-aligned managers. It is further alleged that Mpemva gave jobs to a church associate, his wife, two sisters-in-law, the wife and girlfriend of another deputy director, Nweba's wife and niece, and the wife of a Popcru-aligned Human

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<sup>89</sup> News24.com 25/7/2002

<sup>90</sup> Jali Commission briefing to the PPCCS on 20/8/2002

<sup>91</sup> Jali Commission briefing to the PPCCS on 20/8/2002

Resources Director. He stated that, in general, appointments at senior level were drawn from friends and family despite there being better qualified applicants.<sup>92</sup>

- Eastern Cape DCS official Maria Fourie, a psychometrist, testified before the Jali Commission that her computer was sabotaged and data destroyed. Fortunately, she had made a print-out of applicants' names. She had been attached to the human resources department and been concerned mainly with the screening of applicants up to the point of short listing and forwarded shortlists to head office. She alleged that it was at this point that interference by Popcru members took place during 1998-1999. She stated that they (Popcru) would tell them that the short-listing was not done properly and the interviews they were busy with had to stop. She stated that they had no choice but to comply and the candidates were sent home. A new short listing panel would then be formed and would compile a new list that contained names of family and friends of management as well as members of the short listing panel.<sup>93</sup>
- Ex-Popcru shop steward, T Matshoko, testified before the Jali Commission that personnel officer Louis Tshatsu granted people jobs in exchange for sex. He also said that Tshatsu sold jobs to the public. For example, a woman was sent to him with R1000.00 so that he could secure her a job.<sup>94</sup>
- T Matshoka, a former Popcru shop steward, testified before the Jali Commission that Mdantsane Prison's assistant head was appointed to the post in exchange for assistance rendered in the ousting of Eastern Cape Provincial Commissioner, Mrs Tseane. Irregularities were also alleged in the appointment of the Kirkwood Prison assistant financial services chief because a family member was appointed.<sup>95</sup>
- S Theron told the Jali Commission hearings in the Western Cape that acting former provincial commissioner (M Nxele) interfered in an appointment process by giving him a list of names of additional applicants after short-listed candidates had already been interviewed with the instruction that they also be interviewed on the same day as these names "came from parliament".<sup>96</sup>

The above examples, although many unproven, indicate the insidious nature of corruption in the appointment of staff. This took on various forms and was done for different purposes,

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<sup>92</sup> Sunday Times 15/9/2002

<sup>93</sup> Dispatch Online 28/9/2002

<sup>94</sup> The Herald 11/9/2002

<sup>95</sup> News24.com 18/9/2002

<sup>96</sup> iAfrica.com 27/11/2002

often using the appointment of staff for political purposes and not only for direct personal gratification.

#### **4.2.2 Manipulation of service benefits**

Service benefits typically refer to those benefits that an employee receives in addition to normal salary or wages. Examples are medical aid, pension fund, payment for overtime worked, housing subsidies and vehicle allowances. Exploiting these benefits dishonestly and/or beyond their original intention would amount to corruption. Whilst this form of corruption does not have a direct influence on prisoners, its indirect effect is to misdirect expenditure to costs unintended in the plans of the department. This type of corruption would also contribute to a culture of unethical behaviour that would also indirectly affect prisoners.

Historically, four issues dominate the manipulation of service benefits in the DCS, namely performance bonuses, medical aid fraud (Medcor), sick leave, and payment for overtime worked. The sheer size of the corruption allegedly committed and already confirmed in these four categories is indeed staggering. Whilst other incidents of alleged and confirmed corruption in this category have been reported in the literature, these are of lesser significance and will not be discussed here. Examples are the manipulation of disciplinary procedures<sup>97</sup> and manipulation of salaries.<sup>98</sup>

##### *Merit Awards*

Whilst not of such high monetary value, the merit awards that the previous Commissioner, Khulekani Sithole, allocated to himself and a group of selected officials are of more significance because of the seniority of the official concerned. Asked by the Portfolio Committee on Correctional Services about the merit awards to himself, Sithole explained that he sought legal advice on the matter and the advice that he received allowed him to do this. It was only when a second opinion from the state law advisor came forth after the awards had been made, that it was realised that the merit awards were granted wrongly and should not

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<sup>97</sup> Jali Commission briefing to PPCCS 20/8/2002

<sup>98</sup> SABC News 11/9/2002

have been done. Commissioner Sithole explained that all monies were paid back on the day he had appeared before SCOPA.<sup>99</sup> Commissioner Sithole resigned shortly thereafter.

A DPSA investigation found that during his tenure, Sithole awarded selected officials with irregular cash bonuses. According to the DPSA report presented to the Portfolio Committee on Correctional Services, Mr Sithole approved the following benefits in the 1998/9 financial year: R3000.00 cash award to 78 wardens deployed at the C-Max prison, Pretoria, (despite them already receiving R500.00 per month as an allowance for being exposed to exceptional situations and very difficult prisoners); R500.00 cash award to all 5 of the members of the National Negotiating Team; R500.00 cash award to 83 employees who were involved in recruitment and training initiatives at the Head Office, Empangeni, Zonderwater, and Kroonstad Training Colleges; "Achiever awards" to 5 Chief Directors equalling 10% of their salaries.<sup>100</sup>

In his 2001/2 report on the DCS, the Auditor General raised for the third consecutive year the issue of merit awards with specific reference to the payment of such awards to officials who do not qualify, double payment to officials, and a lack of supporting documentation.<sup>101</sup> Whilst these statements do not allege corruption, they undoubtedly add to concerns relating to the abuse of this system. Giving insight into this, former prison warden, T Matshoka, testified before the Jali Commission in the Eastern Cape that employees of the department told their superiors what to write in their performance appraisals, which would ultimately affect their salaries and merit awards.<sup>102</sup>

#### *Medical Aid*

According to the Special Investigations Unit (SIU) Fact Sheet on its work in the DCS, the unit has been investigating medical aid fraud in the DCS since 2001 after widespread allegations of medical aid fraud were reported by the Jali Commission.<sup>103</sup> At a cost of R6 million per year,

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<sup>99</sup> PMG Minutes of Correctional Services Portfolio Committee Meeting on 27/10/1999

<sup>100</sup> Management Audit of the Department of Correctional Services, dept of Public Service and Administration, Presented to the Portfolio Committee on Correctional Services, 14 March 2000, p. 11

<sup>101</sup> Report of the Auditor general to parliament on the Financial Statements of Vote 19 – Correctional Services for the year ended 31 March 2002, para 5.1.1(i)

<sup>102</sup> SABC News 11/9/2002

<sup>103</sup> SIU fact sheet on the DCS Accessed on 8/2/2006,

<http://www.siu.org.za/index.asp?include=about/dcs.html><http://www.siu.org.za/index.asp?include=about/dcs.html>

40 investigators have been allocated to the investigation. Briefing Parliament in June 2005, the SIU reported that its investigations had uncovered three forms of fraud:<sup>104</sup>

- A medical practitioner and a colluding official would co-operate to charge an innocent member's medical aid account. The colluding official would obtain relevant information, such as the PERSAL number that was required for the claim, which the medical practitioner would submit to the fund. Once the fund paid out, the benefit was shared between the official and the medical practitioner.
- A medical practitioner and a colluding official would submit excessive claims (up to 200 in one day) on the official's medical aid account and when the fund paid out, the benefits would be shared.
- Non-medical goods (e.g. groceries) were supplied through colluding pharmacies and the claims submitted to the medical aid as if these were medical goods.

The SIU will be continuing with its investigations and estimates that cumulative savings of close on R1 billion have already been achieved as a result of the restructuring of the fund, funds recovered, and reduction in fraudulent claims. A total of 74 medical practitioners have been charged and R23 million been recovered in addition to R3 million worth of assets that have been confiscated. The following three cases give insight into the mechanics of the corrupt acts:

- Dr M (Gauteng) claimed between R5 000.00 and R30 000.00 for an injection that costs R124. He also saw patients very seldom.
- Dr K (North West) claimed R200 000.00 on an innocent member's account. He also admitted to submitting excessive claims to the value of R500 000.00.
- Dr B (Gauteng) admitted to the SIU that he submitted false and/or excessive claims to the value of R7.6 million to the medical aid.

The SIU Fact Sheet also reports that in addition to the medical practitioners being investigated and prosecuted, cases involving 244 DCS officials have been referred to the SAPS. A further 398 DCS officials have already been referred for disciplinary action.

#### *Sick leave*

Feigning illness occasionally probably can not be regarded as grand corruption, but when the utilisation of sick leave takes on proportions above the norm, the impact should be regarded in a cumulative sense. The Auditor General found that between 1 January 2001 and 31

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<sup>104</sup> PMG Minutes of Correctional Services Portfolio Committee meeting on 7/6/2005.

December 2003 staff of the DCS took 952 160 days sick leave at a cost of R263 061 403.<sup>105</sup> The average number of sick leave days taken per employee per annum was 9.04. This is the second highest of the departments reviewed, and is exceeded only by the Department of Home Affairs at 9.13. The Department of Justice is second lowest at 5.81. In terms of the cost of sick leave per employee per annum, the DCS was second highest after the National Treasury at R2498.00. Just below 10% of DCS staff had taken more than their allotted 36 days of sick leave in a 3-year cycle. This compared favourably with the figure of 50% for Home Affairs staff and just over 40% for Justice.

It was also reported during Jali Commission hearings in the Free State and Eastern Cape provinces that the tactics of Operation Quiet Storm initiated by Popcru included officials taking sick leave simultaneously and thus compromising the ability of the prisons to function properly, which would ultimately reflect negatively on management.<sup>106</sup> This would undoubtedly impact negatively on prisoners' safety, access to services, time spent in the cells, food provisioning and so forth. If working conditions are particularly stressful, it can be expected that employees will use sick leave to avoid or reduce stress. The orchestrated and excessive use of sick leave, however, is seen to be separate from this phenomenon.

The excessive and orchestrated use of sick leave should also be seen against the background of staff vacancy rates. For example, in 2001/2, of the 21 749 posts allocated to Incarceration, 1 326 were vacant.<sup>107</sup> These vacancies may also not be evenly distributed across the department, therefore the effect of excessive and orchestrated sick leave can be severe where there is already a high number of vacancies.

### *Overtime*

Because the DCS always operated a five-day establishment, work performed over weekends and public holidays qualified as overtime. The daily weekday staff worked office hours. To enable staff to leave work at 1600, prisoners were locked up by approximately 1430 in the afternoon after they had received lunch and dinner simultaneously. The cells were re-opened the next morning from 0700 onwards. From 1600 to 0700 the next morning only a skeleton staff, in two shifts, would be on duty.

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<sup>105</sup> Report of the Auditor General on a performance audit of the management of sick leave benefits at certain national and provincial departments, PR 2005, Accessed at [www.agsa.co.za](http://www.agsa.co.za)

<sup>106</sup> SABC News 31/7/2002 and The Herald 1/8/2002

<sup>107</sup> DCS Annual Report 2001/2, p. 22.

On the issue of overtime, the Management Audit conducted by the DPSA in 2000 found the following:<sup>108</sup>

*In common with many other organisations, the DCS is finding that a system that depends upon overtime and premium weekend payments to cover a 7-day operation soon faces difficulties and can be held to ransom. Because staff members rely on overtime to boost a low basic income there is always the motivation to corrupt the system to create unnecessary hours. This is often accompanied by unfair distribution of overtime to favour individuals in positions of power in unions or other non-managerial groups. There is a need to replace the current system with a fresh package that will at once provide fair remuneration and benefits to staff members and remove overtime from the service.*

In his 2001/2 report, the Auditor General noted with concern that the monthly overtime paid to members exceeded 30% of their basic salaries, which was contradictory to Public Service Regulations.<sup>109</sup> In 2001, the DPSA also reported to the Portfolio Committee on Public Service and Administration that:<sup>110</sup>

*It was clear that remunerated overtime was being abused on a large scale. This was evident in employees' practice of taking Mondays to Wednesdays off sick and then claiming overtime by working on weekends. The Commission reported on this to the Commissioner of the Department.*

The amount that was allocated in the budget for the payment of overtime was significant at R770 million.<sup>111</sup> In 2004, the DCS also reported continued overspending on this item "for the past three years".<sup>112</sup> It is evident that the system was being widely abused by employees to supplement their basic salaries. It also had the effect that as a result of staff being absent during the week, prisoners' safety, access to services and un-locked time<sup>113</sup> would be compromised.

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<sup>108</sup> Management Audit of the Department of Correctional Services, Dept of Public Service and Administration, Presented to the Portfolio Committee on Correctional Services, 14 March 2000, p. 11

<sup>109</sup> Report of the Auditor general to parliament on the Financial Statements of Vote 19 – Correctional Services for the year ended 31 March 2002, para 5.2.3(i)

<sup>110</sup> PMG minutes of Portfolio Committee on Public Service and Administration meeting on 16/3/2001

<sup>111</sup> PMG Minutes of SCOPA Meeting, 10/11/2004.

<sup>112</sup> PMG Minutes of PPCCS Meeting, 10/8/2004.

<sup>113</sup> This refers to the amount of time that prisoners are able to spend outside of their cells in common areas, such as the courtyard or participate in programmes.

### 4.2.3 Property and resources of the state

Stealing state assets and using state resources for private gain diverts these resources from their intended purpose, which is to run an effective and efficient prisons system in line with human rights standards. Whilst individual acts of theft or misuses of state assets and resources can be petty, their collective effect is significant. Using a state vehicle for private purposes may not amount to much if done once, but if the vehicle fleet management system is abused on a consistent and intentional basis, the impact is very costly as the SIU found:<sup>114</sup>

*The total DCS expenditure on fuel and maintenance for 2003/04 was R99.9 million, which constitutes a significant expenditure for the Department. An analysis of the claim patterns pointed to an abuse of the First Auto Fleet card system by officials within the Department.*

*The SIU analysed around 500 000 transactions and found widespread vehicle misuse and petrol card theft. Currently two criminal cases are pending against DCS officials on 40 criminal counts of fraud and corruption. A further 60 potential criminal matters are being investigated.*

*The aim is to bring about a 10% reduction in the national expenditure incurred for fleet management.*

If the SIU succeeds in achieving this target, the savings gained would amount to R10 million per annum.

Channelling departmental assets for private use or sale is another manner in which state assets are lost. In 2004, it was reported that the police in KwaZulu-Natal were investigating five DCS officials for fraud and corruption after goods, including a gym machine and seven television sets purchased by the DCS, were found in a storeroom of a local gun shop belonging to a friend of one of the officials.<sup>115</sup> From the report, it was not clear whether the goods were originally purchased by the DCS for use by prisoners or staff.

The line between corruption and mismanagement is often fine as illustrated by the following example reported on by the Jali Commission in 2002 to the PPCCS, and it does give rise to suspicion as lack of human resources were apparently not the reason for the problem:<sup>116</sup>

*A prison hospital built at a cost of approximately R5 million rand at Pietermaritzburg Prison and thereafter equipped at a cost of R1.5 million was found to be standing empty and un-utilised since 2001. No adequate explanation was forthcoming from management. During this time, at*

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<sup>114</sup> SIU fact sheet on DCS project, Accessed from <http://www.siu.org.za/index.asp?include=about/dcs.html> on 20/3/2006

<sup>115</sup> This Day 3/6/2004

<sup>116</sup> Jali Commission briefing to the PPCCS on 20/8/2002

*substantial cost to the Department, prisoners in need of medical care were being sent to provincial or private hospitals. In the case of one prisoner, who during this time spent a period of eleven months at a provincial hospital, the cost billed to the Department amounted to R 168 908.00. The closed hospital also placed a strain on the prison's manpower as several members were constantly compelled to leave their posts to escort the patient-prisoners to these outside hospitals. As a direct result of the Commission's intervention, the doors of the hospital were opened to patient prisoners for the first time on 22<sup>nd</sup> May 2002, thus obviating the future need to send to patient-prisoners to provincial and private hospitals at great expense to the Department.*

As is the case with any large organisation, private or public, there will always be some level of pilfering, which may not amount to much on an individual basis. However, the collective impact can be enormous. In this regard, the assumption should be that no stock, resource or asset is immune to motivated offenders, as the following case illustrates:<sup>117</sup>

*A few years ago, the Department of Correctional Services in KwaZulu-Natal decided that an ex-con with a trade was less likely to re-offend upon release than one without a trade, so they established a panel-beating workshop in Westville Prison. There, prisoners could repair vehicles for selected clients, earn a bit of pocket money and become employable.*

*Then things apparently started to go wrong. "We've been told that prisoners have been given 'shopping lists' of desirable vehicles and then let out for the night by corrupt officials," says chief investigator for the commission Jerome Brauns SC. "They return with stolen cars, and the chassis and engine numbers are doctored in the prison workshop while the cars are given a respray prior to resale. These are just some of the allegations we've had, but hard evidence is difficult to come by. We've been given the names of some of those allegedly involved, but they, of course, deny all knowledge. Intimidation is very high in these circles and people will talk to us in confidence, but are afraid to speak on the record. Of course, it all makes sense — those people best qualified to do the job are already housed in Westville Prison."*

The two examples show how resources can be channelled out of the department and how existing resources can be used for criminal and corrupt purposes in the prison.

#### **4.2.4 Undermining the investigation of corruption, discipline and other matters**

The investigation of corrupt activities and managers disciplining staff of the department are also victim to manipulation, frustration and to being blocked by corrupt officials protecting themselves and their cronies. Several themes emerge from the available literature in this regard:

- Official investigators being refused entry into prisons and access to information
- Intimidation of witnesses

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<sup>117</sup> Mail and Guardian Supplement, 25 February 2002.

- Undermining investigations through the fabrication or disappearance of evidence
- Delay tactics frustrating investigations
- Selective investigations

Examples of these are given below.

#### *Investigators denied access*

After a decision was taken in 1996 to establish an Anti-Corruption Unit (ACU) in the DCS, it became operational in 1997 and made its first progress report to the PPCCS in May 1998.<sup>118</sup> The results were not overwhelming and it was later reported that the investigators of the ACU were frequently denied access to prisons when investigating irregularities and allegations of corruption.<sup>119</sup> The fact that officials from the departmental Head Office were denied access to departmental facilities is indicative of the power that corrupt officials allegedly held at the time. The blocking of investigators is also not limited to departmental investigations and evidence leader for the Jali Commission, G Barlow, alleged that SAPS investigators were denied access when investigating criminal cases at Pretoria Central Prison.<sup>120</sup>

#### *Intimidation of witnesses*

The work of the Jali Commission undoubtedly placed pressure on officials who were on the wrong side of the law. Especially the Grootvlei video created pressure in this regard. A prisoner there told the Jali Commission that he had to corroborate a warder's (Tlakudi) testimony after being threatened by one of the 22 suspended warders. The warder told him that a gun would be used if he failed to abide. Tlakudi was filmed buying stolen chicken at Grootvlei prison as well as drinking brandy with prisoners.<sup>121</sup>

A former DCS provincial spokesperson (KwaZulu-Natal), P Ntuli, resigned and had to be placed in a witness protection programme after he testified before the Jali Commission. A departmental official, W Naidoo, experienced similar difficulties and had to be transferred from KwaZulu-Natal to Pretoria after he testified before the Jali Commission.

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<sup>118</sup> PMG Minutes of PPCCS meeting 13/5/1998

<sup>119</sup> Management Audit of the Department of Correctional Services, Dept of Public Service and Administration, Presented to the Portfolio Committee on Correctional Services, 14 March 2000, p. 10.

<sup>120</sup> iafrica.com 17/2/2004

<sup>121</sup> IOL 19/6/2002

There is no doubt that when thorough investigations commence, guilty parties will actively undermine such investigations and this can take on the form of intimidating witnesses and whistle blowers. Despite the legislative protection enjoyed under the Protected Disclosures Act (26 of 2000), problems in this regard remain.

#### *Fabrication or disappearance of evidence*

Following the exposé at Grootvlei Prison, it was alleged that a faction of the staff at the prison wished to discredit the head of the prison, T Setlai, by planting evidence of drugs and alcohol in prisoners' lockers whom Setlai apparently regarded as model prisoners.<sup>122</sup>

A senior human resources manager, T Ludada, told the Jali Commission in July 2002 that when he attempted to investigate allegations of nepotism against a colleague, M Kosana, the report detailing the alleged irregularities was stolen. Even the Jali Commission was not spared and allegations that the head of Pretoria Central prison, Baloyi, was implicated in an effort to mislead the Commission were made by the Commission evidence leader in February 2004. It was alleged that the plan was to discredit one of the witnesses, L Karp, a former prisoner. Baloyi vehemently denied this.<sup>123</sup>

#### *Delay tactics*

Delaying and frustrating investigations with technicalities can seriously undermine the investigation as witnesses lose interest, memories fade, and witnesses want "to put the issue behind them". In the case of former Western Cape Acting Regional Commissioner, M Nxele, he allegedly requested numerous postponements from the Jali Commission to the point that Judge Jali had to berate him for this when he asked for a postponement again as he allegedly could not find legal representation and was also looking for certain documents:<sup>124</sup>

*Nxele asked Jali to postpone his cross-examination of Theron (a witness) to Tuesday so he could consult a lawyer first.*

*However, on Tuesday morning he said he had been unable to find a lawyer and also needed to locate documents in the department that related to the issue.*

*The commission's leader of evidence, Vas Soni, said Nxele had been formally notified of the allegations against him on November 14 [2002], and had signed receipt of that notice.*

*"He knew his rights eleven days at least before yesterday," he said.*

*He also said some of the documents Nxele wanted had reportedly been stolen from an earlier investigator probing corruption and nepotism in the department, and were not available.*

As far as could be established, Mr Nxele never testified before the Jali Commission.

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<sup>122</sup> Dispatch Online 16/7/2002

<sup>123</sup> iafrica.com 9/2/2004

<sup>124</sup> Iafrica.com 27/11/2002

### *Selective investigations*

It is probably impossible to get an accurate picture of what is and what is not investigated in any organisation. As long as an allegation does not make it to the stage of a formalised inquiry, it remains technically un-investigated. The decision not to investigate can be based on well-founded reasons, but also on corrupt and biased ones aimed at covering up illegal activities. The gratification received may therefore be direct in the form of, for example, a bribe, or indirect, by maintaining a particular power balance.

A significant example in this regard was investigated by the Jali Commission at the Pretoria Central Prison:<sup>125</sup>

*Commission chairman Judge Thabani Jali wondered what it would take to have a prison warder dismissed for misconduct. "Perhaps a warder has to kill a prisoner or burn the prison down before they could be dismissed for misconduct," he told Nicolas Baloyi, the head of the Pretoria Local Prison.*

*Baloyi had provided the commission, among others, with statistics indicating that prison warders implicated in 251 criminal cases were still holding their positions, including those who had committed dismissible offences.*

*"There is a total collapse of discipline with managers frustrating disciplinary processes and making sure that cases are withdrawn without any action taken against the offenders."*

*He told Baloyi: "You did nothing to intervene in the 251 assault cases by warders against prisoners. No warder was dismissed. This has encouraged the culture of assault of prisoners because they know nothing will happen. Many of the offenders have the surname Baloyi. Are they related to you?"*

*Baloyi admitted that the figures were too high and said something should have been done. He agreed many offenders were carrying the surname Baloyi, but said they were not related to him. He said there was nothing he could do in all the cases because the disciplinary hearings were chaired by other officials.*

*Jali interjected: "But the Prisons Act clearly states that it is a criminal offence for a warder to assault a prisoner. Why did you not apply it?"*

*Baloyi said Pretoria Local Prison was a problematic prison "because all bad elements are brought there".*

*Evidence leader Simphiwe Moloji said very little had been done to correct the situation at the prison. Nothing was done to follow the criminal procedure because if this was done, some warders would have been found guilty in court and could have been dismissed.*

Allegations of failure to investigate also emerged from the Eastern Cape where ex-Popcru member T Matshoko alleged that Popcru members were never investigated and cited an example of a government vehicle that went missing in front of a senior Popcru official's house in Port Elizabeth without an investigation ever being conducted.<sup>126</sup> It was also alleged

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<sup>125</sup> Pretoria News 21/4/2004

<sup>126</sup> SABC News 10/9/2002

at the Jali Commission hearings in the Eastern Cape that Regional Commissioner Mataka abused his power by failing to provide the necessary documentation required by three women who were not satisfied with the manner in which the DCS was handling a sexual harassment complaint against an official.<sup>127</sup>

#### **4.2.5 Intimidation, assault and killing of colleagues**

At one stage, factions within the DCS were so intent on achieving their objectives that killing, intimidating and forcibly removing colleagues from their positions became part of tactics to ensure that the “right people” were in decision-making positions. The murder of a senior departmental official, Ms T Bhengu, in 2001, in KwaZulu-Natal provides further testimony to the extent of corruption at that stage in the DCS. According to P Ntuli, testifying before the Jali Commission, Ms Bengu approached him before her death, and informed him that she had been confronted by a Russell Ngubo about the exclusion of Ngubo’s relatives from a shortlist for jobs in the department. Later she was killed at her home.<sup>128</sup> In the above, reference has already been made to the alleged planned assassination of the head of Middledrift prison that was narrowly averted.<sup>129</sup> Mention has also been made in the above of P Ntuli, former DCS KwaZulu-Natal spokesperson, who received death threats as a result of his testimony before the Jali Commission and who was placed in a witness protection programme.<sup>130</sup>

Insubordination and insurrection are not inherently corrupt acts, but their underlying purpose is to change the balance of power by means other than those that are approved and accepted. Gratification is achieved by attaining the desired position of power. This seems to have occurred at Middledrift Prison in the Eastern Cape, where tension and conflict levels must have been particularly high in preceding years as it was alleged that a warder attacked his supervisor with a baton after the supervisor berated him for arriving late for work.<sup>131</sup> Intimidating management and rendering them ineffectual would thus ensure silence and co-operation.

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<sup>127</sup> The Herald 23/10/2002

<sup>128</sup> IOL 16/4/2002

<sup>129</sup> The Herald 14/8/2002

<sup>130</sup> SABC News 21/2/2002

<sup>131</sup> The Herald 14/8/2002

In the Eastern Cape, the Provincial Commissioner and her Chief Deputy were forcibly removed from their offices according to a former Popcru shop steward testifying before the Jali Commission:<sup>132</sup>

*“Anyone who was seen as a stumbling block and did not toe the line was removed,” former Popcru shop steward Thembile Matshoko told the commission.*

*Explaining one incident, Mr Matshoko told the hearing how in 1999 former Eastern Cape correctional services commissioner Nokulunga Tseane and her chief deputy, Thandi Kgosidintsi, were given immediate notice to vacate their positions after a delegation of about 25 senior Popcru members invaded Mrs Tseane’s offices and ordered her and Mrs Kgosidintsi “in no uncertain terms” never to return to the province.*

*Mrs Kgosidintsi had been sent from the national office to investigate the under-performance of the human resources department, which fell under Meshack Mpemva’s control.*

*Although Mr Matshoko was not present when the women were forced out of their offices, evidence will be led on how the two defenceless women – up against 25 angry Popcru men – were frog-marched out of their offices.*

*“Mrs Kgosidintsi was told in no uncertain terms to leave as we did not want her in the Eastern Cape.*

*“We told her to take the earliest flight back home or else there would be trouble.*

*“In fact, we personally escorted her to the airport and put her on a plane.”*

*Mr Matshoko said four cars filled with Popcru members drove in convoy to the airport to ensure that she left.*

*He said Mrs Tseane’s removal stemmed from a decision taken after a series of secret meetings were held when it became clear she was not toeing the line the union wanted her to take.*

*He said her removal came with the blessing of Dr Kulekani Sithole on condition she came to no physical harm.*

*Her forced removal as provincial head stemmed from her refusal to accommodate Popcru’s demands in respect of recruitments and appointments.*

*Subsequent to her dismissal, the floodgates of nepotism were thrown open when almost every high-ranking prison official and Popcru heads had their wives and extended families working at the prison.*

The use of violence and threats of violence should be seen within the context of the prison environment in which there is an omnipresent threat of violence and officials are often exposed to the violence used by prison gangs to address conflicts. Steinberg cites the case of Pollsmoor Admission Centre where 78 recorded assaults by staff on prisoners and 219 prisoner-on-prisoner assaults occurred in 1995<sup>133</sup>. In such an environment, it would therefore not be altogether surprising if officials used violence and coercion in their pursuance of corrupt objectives.

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<sup>132</sup> The Herald 10/9/2002

<sup>133</sup> Steinberg J (2004) Nongoloza’s Children – Western Cape prison gangs during and after Apartheid, CSV, Johannesburg, p. 69

#### 4.2.6 Undermining the management of facilities and the department

The investigations of the Jali Commission found evidence of campaigns orchestrated by unionised labour to frustrate and undermine management and the department as a whole. Allegations in this regard emanated primarily from three provinces namely the Eastern Cape, KwaZulu-Natal and Free State. To add to their sinister nature, these programmes were allegedly codenamed “Quiet Storm” and “Thula”, with the overall objective of replacing White managers in the DCS with selected Popcru members.<sup>134</sup> Reflecting on its findings in KwaZulu-Natal, Judge Jali informed the PPCCS as follows:<sup>135</sup>

*A complete lack of unity amongst the members was apparent with members belonging to clearly defined A and B teams. Certain managers ruled the prison by intimidation and fear, conducting the affairs of the prison as if the prison was their own fiefdom. As one senior manager commented in his evidence that the conduct of some of these individuals had turned “a model prison into a ghetto”. These members have also become the “gate keepers” to improved opportunity as they control all the key positions at the prison. Slowly they have succeeded in building their own power block by appointing members sympathetic to their cause to key positions and thus in effect controlling the recruitment, promotion and disciplinary processes. There was clear evidence that this orchestrated campaign by Popcru members to replace White management members with selected Popcru members was being driven by senior managers employed at Pietermaritzburg Prison. The campaign itself, however, was found to be not limited to Pietermaritzburg Prison. The campaign’s objectives were achieved by calculated action intended to render the prison ungovernable. Sit-ins were organised and unwanted personnel were systematically targeted and thereafter either by intimidation or violence hounded out of office. In some cases the unwanted individuals were simply removed by force from their offices and never again allowed to enter the prison premises. It is clear that the provisions of the Department’s Disciplinary Code will need to be amended to ensure that the proper distinction between management and the unions is maintained. In Pietermaritzburg this distinction has become extremely blurred or non-existent. Union members appointed to management posts were still actively involved in union affairs. In some cases senior managers were found to be acting as shop stewards at disciplinary hearings – a completely unacceptable situation.*

Other officials testifying before the Commission confirmed the above and also admitted that Operation Quiet Storm did not go as planned as unqualified and inappropriate people were appointed.<sup>136</sup> Witnesses testified that tactics agreed to entailed taking management hostage, refusing them entry to offices, protest action, go-slows, and frustrating management by engaging them in arduous meetings.<sup>137</sup> In general, the alleged tactic was to make the prisons ungovernable and thus remove existing managers and replace them with approved ones. The attempted seizure of the department has a complex history and it requires further research,

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<sup>134</sup> Jali Commission briefing to the PPCCS on 20/8/2002

<sup>135</sup> Jali Commission briefing to the PPCCS on 20/8/2002

<sup>136</sup> SABC News 21/2/2002

<sup>137</sup> IOL 14/4/2002 and The Herald 10/9/2002

which would hopefully be informed by the findings of the Jali Commission. Nonetheless, it can be concluded that the attempt at seizure started when the department suffered from weak leadership, lack of strategic direction, and a lack of accountability due to weak oversight.

### 4.3 Employer external agent relationship

The last relationship category to be explored is between the DCS and external suppliers or agents. Although corrupt officials facilitate and benefit from these crimes, they have been placed in a separate category because an external agent is involved. The role of prisoners is unknown and available evidence and reports do not suggest that there is involvement but this possibility should not be excluded, especially if organised crime groupings are part of the landscape.

The available information suggests two main forms of external agent involvement in corrupt acts, namely involvement and manipulation in the supply chain and manipulation of employee service benefits. None of these are unique to the DCS, but the effect thereof on the rights and conditions of prisoners is.

#### 4.3.1 Manipulation of the supply chain

The procurement of goods is a high risk area in any organisation and poor controls will almost inevitably lead to exploitation. Evidence of this was uncovered by the Jali Commission at Durban Westville Prison:<sup>138</sup>

*The area of procurement of goods and services by the Department would have to be investigated by forensic auditors as the commission simply did not have the expertise and resources to conduct such a specialised investigation.*

*The investigation into the procurement of goods and services at Westville focused on the following:*

- **Perishables:** *There was clear evidence that one company in particular that had been awarded contracts to supply perishables to the prison had misled the Tender Board by falsifying information regarding its ownership to ensure that the company falls within the equity ratio as required by the tender rules. The very same company referred to above appears to enjoy an unhealthy position of preference in the supply of perishables to the prison. Certain staff members at the Logistics Department of the prison appear to be acting in concert with the company. Payment of invoices have been authorised without proof of delivery and clearly laid down policies, procedures and contract conditions were not adhered to. In one particular incident the*

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<sup>138</sup> Jali Commission briefing to the PPCCS on 20/8/2002]

company supplied fresh cream to the prison despite the fact that another company had already been contracted by the prison to supply the fresh cream. This deviation from procedure in effect resulted in a loss to the Department of approximately R 18 803.76.

• **Funerals:** Evidence was found that prison staff in the Logistics department was manipulating quotations received to favour selected funeral parlours. Payments were being authorised without proper breakdowns being obtained and in some cases double payments to the obviously preferred parlour were discovered.

• **Medicines:** Certain staff were again found to be acting improperly in the authorising and payment of orders to certain pharmaceutical suppliers.

In their concluding remarks the auditors found that the outdated system presently used by the Department allows for the possibility of gross negligence and misconduct within the logistics department of Westville Prison. Controls are weak and the linkages between documentation and transactions are virtually non-existent – all of which enhance the opportunity for fraudulent behaviour with very little prospect of detection. Urgent upgrading of the entire system is recommended.

During visits to individual prisons, the SIU found evidence of numerous irregularities in the purchasing, stock management and distribution of medicines intended for prisoners:<sup>139</sup>

*The SIU's investigation focused on in-house pharmacies and correctional centres supplied by the nearest classified correctional centre pharmacy. There are 14 classified correctional centre pharmacies in five provinces that supply correctional centres without in-house pharmacies.*

*Classified centres have a pharmaceutical store and supply medicines to several smaller centres (hospitals and primary health care resources) in their management area (unclassified centres).*

*Classified centres procure medication from local pharmaceutical wholesalers.*

*The SIU's investigation has found the following procurement irregularities or fraudulent activities in the supply of medicines to correctional centres or in the dispensing of medicines to inmates:*

- *The supply to inmates of grey medicine (medicine that is illegally manufactured in [the] country or smuggled into the country and repackaged by professional criminal syndicates).*
- *The repackaging of expired medicine and its dispensing to correctional centres.*
- *The theft and repackaging of state medicines and its subsequent retailing through private pharmacies.*
- *The stockpiling of medicine at some correctional centres that result in the expiry of medicines.*
- *Flouting of procurement policies.*
- *Forging of prescriptions by DCS officials*

Other allegations relating to supplies have also been reported in the media and therefore need not be repeated in this paper. Interference in the supply chain has undoubtedly occurred on a significant scale in the DCS with the result that prisoners do not receive the goods and services intended for them. Due to poor controls and a lack of accountability, it was possible for officials to manipulate the system and exploit weaknesses to benefit private sector accomplices, presumably with them benefiting in the form of kick-backs.

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<sup>139</sup> SIU Fact Sheet on DCS Project, <http://www.siu.org.za/index.asp?include=about/dcs.html>

### 4.3.2 Manipulation of service benefits

In this paper, reference has already been made to the medical aid fraud investigated by the SIU and the enormous amounts of money involved. It is not necessary to repeat the information here but it should be noted that this is another example of collusion between officials and external agents, in this case medical practitioners. The combating of corruption should therefore not only be seen as the responsibility of the DCS, but also the relevant professional bodies in a particular sector, in this case the health sector.

The scale of corruption should not be underestimated, even when only one external agent is involved as is illustrated by the following case:<sup>140</sup>

*[A] Durban doctor, barred from practicing by the Health Professions Council, and his mistress, who are facing a staggering 75 383 counts of medical aid fraud, will be in the Durban Magistrate's Court dock today (Wednesday).*

*Moonsamy Soobramoney and Maliga Pillay, whom the Scorpions have also charged for racketeering, may be informed today of their trial date, which was postponed last month because the accused have engaged the services of new counsel.*

*Warders and senior officials from the Department of Correctional Services who were granted indemnity from prosecution after they blew the whistle at hearings by the Jali Commission on how Medcor, a medical aid scheme for Department of Correctional Services employees, was allegedly conned [out] of R28 million in false claims, are expected to testify for the State - again - at the trial. The bulk of the alleged fraud occurred between January 1999 and August 2001.*

## 5. Conclusions

Corruption undermines in a direct and visible manner the very institution that society hopes will reform and rehabilitate its offenders, and if not that, at least to keep society safe from them. For prisoners who observe corrupt officials plying their trade, the conclusion to be drawn is almost unavoidable: *We are all offenders but on different sides of the bars, and wearing different uniforms.* This conclusion fundamentally erodes the intended purposes of imprisonment and the rehabilitation ideal. In a prison system characterised as and perceived to be corrupt, any rhetoric relating to rehabilitation and offender reintegration soon finds itself in a quicksand of cynicism and doubt. Corruption therefore undermines the prison as penal institution and therefore the state's response to crime.

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<sup>140</sup> The Post 31/1/2006

In this paper it is argued that prisons present a unique context for corruption due to three characteristics. Firstly, the sub-culture of imprisonment and the long-term and forced relationships between warders and prisoners are unique. Secondly, in the context of prison, and especially the prisoner-warder relationship, the commodification of the state's control is an essential component of prison corruption. Because control in prisons lies solely in the hands of the state, there is potential for the creation of a variety of commodities. Thirdly, prisons have a unique association with crime, and imprisonment does not lead to an automatic cessation of criminal activities. In fact, corruption very often "works" for prisoners.

The notions of petty and grand corruption were not used in the categorisation of examples and it was argued that this needs to be done on a case-by-case basis, and, more importantly, that the use of the term "petty corruption" has a tendency to trivialise and mitigate corrupt acts. In the context of prison, this would be risky, as prisoners depend almost exclusively on prison management for every aspect of their lives, and even seemingly small transgressions can have severe consequences, especially over a protracted period of time.

The paper used three relationships to categorise corruption in the prison context: prisoners - warder; warder – employer, and employer- external agent. For the purposes of a descriptive and exploratory review, this proved to be a useful structure. It allowed further categorisation of corrupt acts to emerge from the available information and also left open the possibility for new categories to be added if new data were to emerge.

Following from the descriptions, a number of observations are made.

#### *The multi-dimensional nature of corruption*

The cited examples and cases confirmed the multi-dimensional nature of prison corruption as a result of the different roles played by the main actors, i.e. prisoners, officials, DCS management and external agents. Given the closed nature of the system and closeness of relationships, the cumulative impact of corrupt acts is accentuated. Imprisonment coerces individuals into relationships and the nature and content of these relationships depend greatly on the integrity of individual officials as well as collectives of officials, and their willingness to engage in corrupt acts.

### *Prisoners*

This report reflected on and also gave insight into how prisoners' rights are severely compromised as a result of corruption. Corruption impacts on the rights and conditions of prisoners in every conceivable manner; from denying the most basic of rights (safety and bodily integrity) to providing prisoners with illegal drugs and alcohol. There is probably not a single aspect of prison life that goes untouched by corruption.

It is also true that in many instances prisoners are not innocent and passive victims, but that they are active agents who seek the association of corrupt and corruptible officials, and provide them with handsome rewards. The fact that prisoners engage in the recruitment of corrupt officials is not an excuse for or a defence of corruption occurring in prisons. It should also be acknowledged that prisoners can receive considerable benefits from corruption and therefore would not always be in support of anti-corruption strategies.

The understanding of the effect of corruption on prisoners in South Africa remains very sketchy; this discussion was fed primarily by the revelations of the Jali Commission; continued research in this regard is needed.

### *Employer – employee relationship*

There is no doubt that as a result of corruption (alleged and confirmed) and the investigation thereof, the relationship between the DCS and its employees has suffered immeasurable damage. The culture within the Department and staff members' self-perceptions have changed substantially to the extent that officials have referred to themselves in public fora as being from the "Department of Corrupt Services".<sup>141</sup>

The alleged role of organised labour in corruption has placed further strain on the relationship between employer and employee. It can also be assumed that levels of trust have suffered and this is further exacerbated by the centralisation of decision-making in the DCS - an approach which is understandable but one that also has negative consequences. It leads to middle managers being disempowered and to the bureaucratisation of decision-making, which undermines efficiency in the department.

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<sup>141</sup> Personal observation by author at workshop in Johannesburg, October 2005.

As a result of corrupt practices, inappropriately qualified people were appointed. Employees were reportedly also transferred for political or discriminatory reasons. Appointment processes were allegedly manipulated to favour friends and family. It would therefore be reasonable to expect to find a level of suspicion amongst staff about appointments and for them to wonder whether particular individuals were appropriately qualified and duly appointed. How far the DCS has gone in addressing incorrect appointments is not known.

#### *Prisoner-warder relationship*

Corruption alters the fundamental nature of the relationship between prisoners and warders. While the nature and scope of corrupt acts involved would make a qualitative difference in this regard, they would, nonetheless, blur the line between prisoner and warder. When warders abuse their power, the relationship changes to one of exploiter (offender) and victim. This can range from requiring small bribes to assaulting and torturing prisoners. Other examples cited illustrated a different type of relationship. Alliances between prisoners and warders were entered into for the purpose of financial or political gain thus changing the dynamic of the relationship from one that is supposed to entail the parties keeping a respectful distance, to one involving collusion for criminal purposes. The information that is available is too sketchy to allow a researcher to conclude with any certainty what the “bargaining chips” were; they might have been as diverse as cash, transfers to different prisons, relaxed security and so forth.

It can also be argued that perceptions of corruption can become very widespread amongst the members of the prison population, and this need not to be based on fact. Once a perception that “all warders are corrupt” takes root, it can be extremely difficult to change. The survey done by Painter-Morland *et al* found evidence of this, indicating that, by and large, prisoners at the two prisons surveyed held the view that warders were easy to corrupt, behaved in an unethical manner and did not take pride in their work.<sup>142</sup> If this belief is held widely, it follows that interactions between prisoners and warders will be based on suspicion and mistrust.

#### *Public image*

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<sup>142</sup> Painter-Morland M *et al* (2003) Final Consolidated Report – focused assessment of anti-corruption capacity within the Department of Correctional Services, UNODC, Pretoria, p. 46-61.

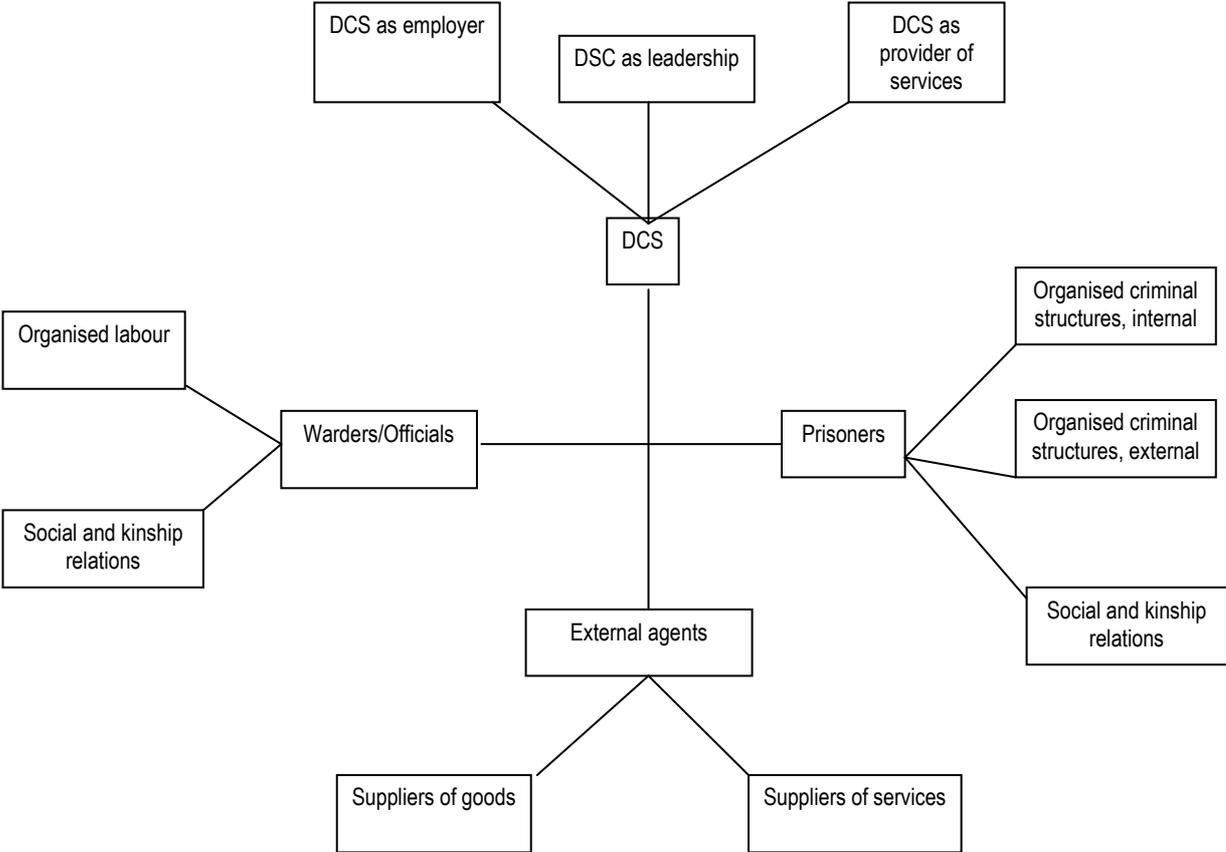
Prisoners are probably the best informed parties on prison corruption, but do not have the means to bring this knowledge into the public sphere. The Grootvlei video therefore was an important act in democratising prisons by exposing the nature and level of corruption in one of South Africa's largest prisons. Corruption, as uncovered by the Jali Commission, has in fact propelled DCS into a position of public notoriety - an image that will take a long time to change. In addition to the Grootvlei video, reports of escapes, qualified audits, and industrial action have continued to add to the department's public image woes.

### *Governance*

Accepting Tapscott's description of governance in the prison system, it follows that corruption has undermined the ability of the department to deliver on its mandate in a material way. During a time of weak leadership and strategic indecision, factions within the department rose in an attempt to seize control of the department and temporarily succeeded to some degree. Since then, there have been significant efforts in the department to clean up the situation, but this will take a considerable period of time and sustained action. The impact of corruption should therefore also be appreciated for its long-term effect on governance and the fact that a significant proportion of management's energy would have to be directed towards this activity as opposed to managing the core business of the department.

Regrettably, it has to be accepted that corruption will probably always be part of the prison landscape due to the nature of imprisonment. In a constitutional democracy this does not mean that it must be regarded as right or that it is part of the pain of imprisonment. Corruption will always be a threat to the long-term human rights of prisoners, even if there might be perceived short-term benefits. Understanding the relationship between prison corruption and the rights of prisoners is the first step to addressing prison corruption. This paper provided a description of a basic categorisation and should be regarded as a first step towards further research in this field.

Appendix 1



Appendix 2

