

SHOWING ITS TEETH

The Jali Commission on prison corruption

Makubetse Sekhonyane,
Institute for Security Studies
kubz@iss.co.za

Some regard the Jali Commission as another expensive exercise aimed at making recommendations that have little effect. To many South Africans, the Grootvlei video on prison corruption televised nationally this year, was the beginning of a revelation. But would this video have seen the light of day if the Jali Commission did not exist? And would there have been a specialised unit to investigate corruption, had the commission not been there? It is likely that the Jali Commission has indeed changed the way in which commissions of this kind are perceived.

The militaristic and secretive nature of the prison environment prior to 1994 meant that little was known of the institution except that it kept criminals away from law-abiding citizens. A commonly held view was that people who landed in prison deserved to be kept in custody; some even advocated that criminals should be permanently locked away. Even the South African government showed little interest in correctional services. However, what happens in prisons and to prisoners is in fact everyone's affair. When prisoners have served their sentences they return to society, and are more often than not left to their own devices. It is likely that they will struggle to re-integrate into society.

With the new Correctional Services Act, management has sought to move away from the old militaristic and secretive way of running prisons. Human rights forms part of the new discourse, alongside the concepts of reintegration and rehabilitation. There is now a realisation that at some stage society will come face to face with former prisoners, and that both parties need to be prepared for this encounter.

However, changing the way prisons are run is proving to be a challenge for the new management. Among the many challenges facing the Department of Correctional Services (DCS), is to rid the department of rampant corruption. Although the former commissioner of correctional services, Khulekani Sithole, is to blame for much of the prevailing corruption, his actions highlighted a deep-seated problem. Since his tenure came to an end, more rot has been exposed. What is also evident is that much of the effort to combat and prevent corruption was either ineffective or non-existent. It took almost two years for the department to initiate any action against Sithole, and when that finally happened, Sithole resigned.¹ It was after Sithole left that DCS embarked on concerted efforts to establish effective anti-corruption measures.

The prelude: three years of investigations

In 1998, when Ben Skosana took over as minister of the department of correctional services, several employees approached him raising allegations of rampant corruption and financial mismanagement. The minister then initiated investigations into these

allegations through the Auditor-General (A-G), an independent Chapter Nine institution which reports directly to parliament.

The A-G's report revealed that corruption was a serious problem in prisons. The report was then presented to the parliamentary standing committee on public accounts (SCOPA).² Following the A-G's presentation, the department was summoned to appear before SCOPA. During the same period the public service commission reported to parliament that government had effectively lost control of the department.

These events necessitated further investigation into prison corruption. In 1999 the minister of correctional services approached the department of public service and administration (DPSA) to conduct a further inquiry. A management audit of DCS was then ordered. Ben Skosana and the minister of the DPSA presented the final report of the audit to the president on 18 February 2000.

The audit revealed more allegations of corruption and mismanagement, prompting further investigation. The DPSA and the public service commission (PSC) jointly conducted the second phase of the investigation. The PSC focused on malpractice in the human resource department, while the DPSA focused on allegations of impropriety. On 16 March 2001 the DPSA and PSC presented their reports to a joint sitting of the parliamentary portfolio committees for public service and administration, and correctional services.

As a result of these investigations 51 people have been dismissed, 118 reprimanded and 33 criminally convicted to date.³ However, the informal nature of the investigations meant that many questions remain unanswered. This necessitated the establishment of a formal judicial commission of inquiry. In July 2001, some three years and many investigations later, the minister of correctional services approached President Thabo Mbeki and requested him to appoint a commission of inquiry to investigate allegations of corruption, crime, mismanagement, violence and intimidation in DCS.

The Jali Commission's task

The Jali commission of inquiry was appointed on 8 August 2001, headed by Judge Thabani Jali. The commission was set to run for 12 months at a cost of R12 million.⁴ However, as the commission began its hearings it became apparent that it would require more money as well as an extension of the deadline. The terms of reference of the commission required it to prioritise the following prisons: Pietermaritzburg management area, Durban Westville management area, Ncome management area, Johannesburg management area, Pollsmoor management area, Pretoria management area, St Albans management area and Leeuwkop management area.

This did not preclude investigations into other prisons should the need arise. For example, the hearing at Grootvlei prison in the Free State did not form part of the nine prioritised management areas and was not budgeted for. However, the nature of complaints from Grootvlei necessitated a special sitting by the commission, a time-consuming exercise and one that stretched the limited resources.

The appeal to the president by the minister of DCS to appoint a commission stems largely from complaints that emanated from KwaZulu-Natal (KZN). It was alleged that a number of warders were accepting bribes from prisoners and in exchange organised escapes. At the time KwaZulu-Natal had the greatest number of pending disciplinary cases in the country. Furthermore, there were allegations that DCS vehicles were used to carry out attacks in the Midlands, and witnesses to these crimes were either intimidated or killed. The Jali Commission's main task is to investigate allegations of corruption, mismanagement, violence and intimidation. The terms of reference of the commission include:

- i) inquiring into reports of alleged incidents of corruption;
- ii) making recommendations regarding steps that can be taken in order to prevent the future occurrence of such incidents;
- iii) making recommendations regarding steps that can be taken against an employee who in terms of the findings of the commission is implicated in impropriety against an employer;
- iv) inquiring into and reporting on any other matter which in the commission's opinion is relevant to its terms of reference.

Achievements thus far

The Jali Commission's hearings in KwaZulu-Natal, Free State and the Eastern Cape revealed further rot in South African prisons. In KwaZulu-Natal six officials were suspended; two serving sentences for the murder of a whistle-blower. The commission has furthermore recommended that 80% of the prison employees in Westville prison be axed.⁵ Since they started operations in September 2001 the Jali Commission has revealed some shocking incidents of corruption, including:

- sales of drugs, firearms and alcohol;
- the unfair dismissal of a prison psychologist;
- prison warders sodomising juveniles;
- sale of juveniles to older hardened criminals for sex;
- murder of a whistle-blower;
- a prisoner and families in KwaZulu-Natal using DCS vehicles;
- nepotism, unfair recruitment and promotions.

It is evident from these hearings in selected prisons that corruption in South African prisons is rampant. South Africa has about 240 prisons, and the revelation of corruption in three of the four prisons investigated so far appears to be the tip of the iceberg.

Thabani Jali – the man for the job

Thabani Jali is a judge at the competitions appeal court in Durban. Prior to being appointed as a judge he worked as an attorney for 15 years, and was also a member of the legal resources fellowship in Durban. He is no stranger to commissions. Between 1996 and 1997 he was a member of a two-member commission of inquiry into problems at the Pietermaritzburg, Johannesburg, Pollsmoor and Victor Verster prisons. Victor Verster is the only prison of the four that is not under inquiry by the Jail Commission. No more were Jali's strength and independence tested than during the Grootvlei saga. DCS tried to prevent the broadcast of the video, and afterwards the department wanted to subject the head of Grootvlei to disciplinary action.⁶ However, the presence of the commission prevented the department from taking actions that would have further embarrassed them. Jali also revealed more corruption within Grootvlei, unperturbed by attempts to silence the commission.

The Grootvlei saga

Grootvlei prison in the Free State shot into the spotlight after four inmates sneaked a video camera into prison to capture corruption. The video, aired by the SABC's Special Assignment programme, showed shocking scenes of warders drinking with prisoners, juveniles being sold for sex to older prisoners, warders smuggling a gun, drugs and alcohol into prison, and food being sold to warders from the prison kitchen. The footage shocked the public and angered DCS. However, the video highlighted serious problems of corruption in prisons and highlighted the need for effective anti-corruption measures.

Investigation units with clout

Subsequent to the initial hearings of the Jali Commission in KwaZulu-Natal, the Free State and the Eastern Cape, the minister of justice and constitutional development declared that corruption and mismanagement are to be probed by a special investigating unit (SIU). The SIU will have powers to prosecute those targeted by the Jali Commission – powers that the commission does not have. The SIU will in effect complement the work of the commission. It is estimated that the SIU probe will cost R20m, the bulk of which will be provided by DCS. However, where necessary, the justice department will contribute, and, in the event of a shortfall, the treasury will be approached.⁷

The SIU's main task will be to provide forensic investigations in support of the Jali Commission. Experienced investigators will be seconded from the unit and may later be incorporated into a permanent DCS anti-corruption unit.⁸ In addition to the SIU, DCS has considered requesting the Directorate of Special Operations (DSO) or the Scorpions to investigate prison corruption.

This represents a significant shift in the DCS, given that it is financing a probe into its own affairs – a remarkable example of transparency and commitment to combating corruption. One of the key problems in the battle against corruption relates to the perceived ineffectiveness of the correctional services system. Corrupt individuals have always been fairly confident that they would not be caught, and even if they were caught they could assume that there would be no

sanction. This created an environment of impunity. The presence of the specialised unit will at least ensure the prosecution and conviction of corrupt employers and employees.

Management and internal disciplinary systems

The challenge for DCS is to seize the opportunity that currently presents itself. While these investigations are being conducted, it is important that the department examines its management and disciplinary systems and their efficiency.

What is evident from the Grootvlei and Pietermaritzburg hearings is that the supervision of wardens and prisoners is weak. However, the management of the entire prison system has been rather weak. In the case of Pietermaritzburg, a certain individual was appointed to a senior position although he did not possess the relevant qualifications. Subsequent to this appointment he employed family and friends who were equally unqualified. It would certainly appear that at least a few of the Natal Midlands prisons were in the hands of incompetent managers.

In the Grootvlei case, management and internal disciplinary systems are also relevant to the matter. It has to be asked why the head of prisons would have allowed the recording of the video. There are a number of possible answers, but it is possible that he did not have faith in the disciplinary systems available for dealing with corruption within DCS.

The Pietermaritzburg and Grootvlei examples are an indication that the problem does not simply lie with corrupt individuals but that it goes back to the system itself. Some of the recommendations from the DPSA management audit refer to the following deficiencies in the system:

- insufficient training of DCS personnel;
- a lack of appropriate qualifications;
- a lack of appropriate appraisal systems; and
- the design, structure and physical environment of DCS facilities.

Building employees' morale

Often overlooked, but very crucial, is the matter of building morale among DCS staff. Overcrowding, gang violence, corruption, long hours and an increase in natural deaths take a heavy toll on

prison employees. It has been said of DCS that staff morale is crumbling alongside the walls within which they are working.

It is disheartening when combating corruption becomes the priority of an institution. When this is the case, the institution is effectively unable to deliver much else.

An effective system requires sound management practices that embrace good values and principles. Employees know what their job descriptions are and are committed to delivering good service. It is not a system that constantly reacts to crises. The starting point is the appointment of suitable people to positions where they can perform optimally. Recruitment policies need to be refined, transparent, and adhered to. The lesson is 'do not let the rot enter your environment and thrive in it'.

Signs of real change

With the appointment of the Jali Commission an immediate concern was raised: what would it ultimately deliver? Would it simply produce another report, or would it lead to effective action? The announcement of the appointment of the special investigation unit to investigate corruption in prisons came as good news. It signalled that the commission will not be toothless, unlike some of its predecessors. Moreover, its findings prompted DCS and the Department of Justice and Constitutional Development to act decisively.

Endnotes

- 1 E Pelser, *The Broken Society, Managing Corrections in South Africa*, *Crime and Conflict* Number 20, Winter 2000.
- 2 Presentation at the GCIS Parliamentary briefing by the Minister of Correctional Services, Ben Skosana, Cape Town, 21 August 2002.
- 3 http://www-dcs.pwv.gov.za/maintenance/speeches.asp?page=MediaRelease\29Aaug2002.htm&cat_id=-2&item_code=1722
- 4 Presentation by the Department of Correctional Services to Select Committee on Security and Constitutional Affairs, 20 February 2002, Cape Town.
- 5 http://www.sabcnews.com/south_africa/crime1justice/0,1009,286687,00.html, SABC News, 19 February 2002, 21:00.
- 6 Ibid.
- 7 <http://iafrica.com/news/sa/140007.htm>
- 8 GCIS Parliamentary briefing, op cit.