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Sexual Practices in South African Prisons from the Perspective of Christian Ethics

Introduction

South African prisons for males are faced with numerous problems. There is overcrowding which poses both social and ethical problems. It is socially unacceptable and unethical to treat human beings like animals. When a human being obeys the call of nature or takes a shower, privacy is needed. In prison this is not the case. The dehumanisation of prisoners in this and other ways is unacceptable. I agree with Coetzee in challenging the South African Correctional Services to consider treating inmates ethically. His emphasis is on the behaviour of warders and how they treat inmates, their involvement in prison drug trafficking and so on. My emphasis is slightly different to his. It nevertheless falls within the general ambit of ethics and I agree with him when he says: "...In view of the above it becomes evident that there is an urgent need to break the "Mokita" of South African prisons by speaking openly about the misappreciation of ethics and reflecting on the urgent need to intervene" (Coetzee 2003:63).

The other inescapable problem for inmates is gangsterism. The number of gangs that operate in prisons poses a big problem for both officials and prisoners. This will be treated a bit more in depth later. Zackie Achmat says the following concerning his prison experience:

Externally, the cell was governed by the conventional rules of prison-locks, grilles, the tower, the warders, shower time, meal time, inspection and punishment. Internally, it was governed by the rules of the "28 Gang", or "Ninevites" - rules with which I had already become familiar while in detention and in Porter School, better known as "Tokai Reformatory".

(Achmat 1993:92)

My main concern lies with the problem of sexual practices in South African prisons housing male inmates. It is a known, but less talked about, fact that homosexual practices prevail and are rife in prison. What makes it worse is that a lot of intimidation, coercion and violence is involved. This can be gleaned from the following quote: “What I hate most about prison is that the authorities tell you when and what to do. Authorities themselves are corrupt. Some prisoners receive special favours from warders. Many of us know that ‘rape’, and gangsterism goes on in here” (Tintinger 1999:23).

South Africa is not unique in the matter regarding sexual practices in prison including ‘rape’. Although this will be fully treated in chapter one, the following statement sets the scene. Toch, in discussing inmate victimization in an American prison says: “The extreme form of inmate victimization is homosexual rape, which is not as frequent in prisons as people think, but has been prevalent in some institutions, including the Philadelphia detention facility publicized by Davis”.(Toch 1992:188).

The above does not take away nor cancel the fact that some men who enter prison as heterosexuals also engage in homosexual sex temporarily while incarcerated. Goyer and Gow say: “Prisoner participation in homosexual activity is usually not related to a person’s sexual orientation outside of prison, but is rather a product of the circumstances within a prison environment” (Goyer and Gow 2001: 129). I would like to qualify that statement by saying that it applies to ‘*some prisoners*,’ in that others engage in these acts due to their sexual orientation outside of the prison. They then in turn perpetuate this behaviour in prison and again in society when set free. Again there are those who go into prison, serve their sentence and somehow manage to complete their sentences without any major incidences, and on being released resume their life in society rehabilitated.

I am a South African black male. Within the Christian family I am a conservative evangelical and a non-stipend pastor of Calvary Evangelical Bible Church. My theological training is a mixed bag from the Evangelical Church, Trinity College Bristol (an Anglican College) in the UK, and UNISA. As a conservative evangelical I subscribe to the old Judeo-Christian tradition that affirms and upholds the primacy and finality of the Bible's authority for faith and practice. Ethically the Judeo-Christian tradition regards the practice of homosexuality and homosexual acts as sin. It is from this premise that my MTh dissertation with the title "Homosexuality: A South African Evangelical Perspective" was researched at the University of South Africa (UNISA). This will be my premise again for this Thesis. It is interesting to note that the time at which I started to tackle this problem coincided almost exactly with the commencement of the Jali Commission of Enquiry on corruption in prisons. To some it may appear as if one is taking advantage of this huge exposure because they would not know that this subject has captured and worried me for some years. Coincidence? Only history will tell. As for me, I'm doing this as a small contribution to the progress of our young democracy and as a small contribution from the evangelical perspective as a pro-active rather than the usual re-active response Christians in general sometimes give to issues with regard to which we should have acted as trendsetters.

The Topic/Research Problem

The topic of the thesis captures my personal interest on different levels. Firstly, as mentioned above in the introduction, it captures my interest on the ethics level. Ethics, among other things, deals with morality, justice, fairness and equality. The biased and unequal treatment given to heterosexuals and homosexuals in prison is ethically unacceptable. Heterosexuals in prison are denied sexual contact with their spouses or partners as part of the punishment, while homosexuals on the other hand are not denied

this contact and they are having a field day in prison. Secondly, and linked to the first reason, is the matter of non-adherence (by prison officials) to the clause on equality and non-discrimination in Chapter two (2) of the Bill of Rights in our Constitution. This discrimination needs to be addressed by the South African Correctional Services. It will be part of my proposal to the department to consider means and ways of implementing indiscriminate punishment to all prisoners.

Lastly, it is my contention that some heterosexuals in prison are often forced into engaging in homosexual acts, as seen from the quote above and from what will be further expounded in chapter one. This male forced sex may be described by some as 'male rape'. It is debatable as to whether homosexual forced sex should be categorised in the same way as heterosexual forced sex that is 'rape.' At the time of writing, our current legislation regarded homosexual forced sex as 'indecent assault.' This definition may soon change because there are submissions to the Constitutional Court to re-classify it as 'male rape'. The repercussions of this proposed change will have far-reaching effects. One of these implications will be to change the dictionary definition of rape. Regarding this atrocious and hideous act of forced sex in prison, it is not just indecent assault on these male heterosexuals, it is the taking away of their rights. This is so, especially as they entered prison to serve a sentence as punishment for whatsoever they may have been found guilty of. In this respect, all prisoners expect their human dignity to be respected and further expect the system '...to ensure the safe custody of every prisoner...' as stated in chapter three of the Correctional Services Act, No.111 of 1998. Unfortunately, in the case of those who are forced to participate in homosexual sex, they find themselves unsafe and not protected. In light of the above, I would like to get clarity in this research on the following issues mentioned below in no particular order:

- What is the extent and nature of sexual practices in SA prisons for male inmates?

- Does the occurrence of homosexual practices contravene the clause on equality and non-discrimination in the Bill of Rights in our Constitution?
- Are these practices tolerated, or even condoned, by prison officials/ warders?
- How should homosexual practices in South African prisons be evaluated from a Christian ethical perspective?
- What can be done to curb homosexual practices in prison that are unacceptable from a Christian ethical perspective and that are discriminatory over against heterosexual inmates?

Methodology

Firstly, Literary Research will be done where relevant literature will be read. This will include books, reports, journals and material from other media where sexual practices in prison are discussed. It will cover incidents both in and outside of South Africa. My primary sources will be the executive summary of "The Jali Commission Inquiry Report" and "*The Choice*" - The Gayton McKenzie Story as told to Charles Cilliers. The other literary sources will be secondary.

Secondly, empirical research will also be done. This will be in the form of interviews. These will include former inmates, inmates, warders, prison chaplains and other prison officials. Short structured questions have been formulated. These were discussed and approved by Ms. Jaqui Sommerville and Ms. Karien Malan of the Department of Statistics of the University of Pretoria, to guide the interviews (See appendix 1).

The expert advice given by the ladies in the department of statistics was that in the analysis of the responses to be done, no comparison should be made of the different

prisons. It was also advised that I should conduct a pilot study and then do the interviews in one or two different prisons. The advice given was that the interviews should be done in one sitting in any given prison. This would prevent the prison grapevine from circulating whereby inmates may be primed to give dishonest answers.

A grid was drawn and used to facilitate the responses that came from the interviewees for analysis. After conducting the interviews I sent the responses to the department of statistics who used the same grid to arrive at the end results. These results have enabled me to then analyse them as recorded.

The following prisons around Gauteng were earmarked and visited for the empirical research: Johannesburg 'Sun City', Johannesburg Leeuwkop, Krugersdorp Correctional and Pretoria Central Correctional Services. The National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO) was also visited and ex-inmates were interviewed. Interviewing these individuals was done in more than one sitting due to problems of different dates allocated to different people to report. This process did not in any way distort the responses from the individuals because, unlike the inmates, there was no grapevine to alert others because they all live in their homes and hardly see one another.

Thirdly and lastly the evaluation was done from a Biblical and a Christian Ethics point of view. It is from this that the proposal for some prison/correctional services reform as a way forward was deduced taking into consideration and taking great care in avoiding the possibility of the labelling of such proposals as an attempt to 'Christianise' or proselytise the state or correctional services.



Motivation

I would like to emphasise the need for the research of this topic for the following reasons. Firstly, our library search for appropriate literature yielded very little in the form of literature related to the topic, particularly in the South African context. Secondly, research related to this topic done in South Africa tends to emphasise the HIV/AIDS threat in prisons. I have so far not come across literature addressing this particular topic with this slant, thus the need for this research from a South African perspective. Dealing with the effects of HIV/AIDS and the provision of free condoms is tantamount to accepting if not promoting/condoning prison sex. I believe the emphasis should be on how to ensure the minimisation of prison sex. Without this, it is inevitable that the fight against the spread of HIV/AIDS and other sexually related diseases in prisons will be lost, and the concomitant results will be an increase in the number of prison inmate deaths. Lastly, I see this research making a small contribution in the arena of debate regarding the understanding of sexuality from a Biblical and Christian (evangelical) perspective. This area of debate will look at and make a comparison between the constitutional legitimisation of homosexuality and the long-standing and accepted Biblical view of homosexuality.

Contribution to society:

I see this thesis contributing to society in a number of ways. Firstly the South African Department of Correctional Services may improve their system of the intake and treatment of inmates if they consider the proposals that will be made. These will include among others the implementation of indiscriminate and equal punishment of all prisoners in the form of taking away the privileges of conjugal rights from heterosexuals and sexual relations from homosexuals. It must be remembered that hitherto homosexuals have not been denied this privilege. On the other hand, the possibility of weekend visits by spouses

of heterosexuals for restoration of conjugal rights if homosexuals are not denied the privilege of having sex in prison, should be investigated. The possibility of housing active and known homosexuals in single cells, so as to minimise the opportunities of mixing and sharing the same cell that makes it easy for sexual contact, needs to be explored.

The above may appear to be farfetched, seeing that our prisons are already overcrowded. In the rectification of anything of this magnitude, there must be a trade-off. At first it may be prohibitively expensive, but in the long run, it will be worth it.

Secondly this will save the state the funds they currently use to purchase condoms they supply freely to inmates. Thirdly, there will be a reduction of repeat offenders, thus easing overcrowding because there will be no more free shelter, food and easily accessible homosexual sex for those who purposely commit offences in order to be sent back to prison to have access to the above. This in a sense may again be seen as an exaggeration by some who think that prison is so tough that no one would like to go back. The truth of recidivism is seen in what one ex-inmate said to have personally experienced at Grootvlei prison in Bloemfontein. "There is something unbelievably perverse about the thought that a man can be beaten, raped and kept under heel in prison, finally released, and then be back again in three weeks. Every time I see it I want to scream. Eighty percent of prisoners come back to jail. They all return with similar stories. "It's hard outside, really hard" (Cilliers and McKenzie 2006:131). Lastly, the issue of the spread of HIV/AIDS in prison will thus be reduced and hopefully ultimately die out.

Overview of contents of the thesis

Chapter 1. - Sexual practices in and outside South African prisons.

In this chapter I discuss the incidence of sexual practices in prisons in and outside South Africa. Factors contributing to these sexual practices will be discussed. I will then evaluate these sexual practices from an ethical Christian perspective.

Chapter 2. - Do the homosexual practices in South African prisons contravene the Bill of Rights?

I will discuss Clause 9 Subsection 3 of the Bill of Rights in the South African Constitution in the light of sexual practices in our prisons. I will also look at the rights and privileges accorded prisoners once convicted. These will be contrasted with actual practices in our prisons in the case of both prisoners and warders in relation to the above clause. The contra-argument that accepting homosexual practices in correctional services (prison) as an inevitable reality is not the same as condoning it, will also be dealt with.

Chapter 3 - The Jali Commission report and McKenzie's prison experiences

In this chapter I will quote and look at the relevant sections of the Jali Commission Report regarding both sexual practices and corrupt officials in prison as a reality. I will also discuss first hand experiences of prison sex and corrupt officials by McKenzie as reported by Cilliers.

Chapter 4 - Empirical research results

In this chapter I will table the results of the empirical research I conducted in the four prisons as analysed by the department of statistics. I will also comment on these and assess them in the light of the results of the Jali Commission.

Chapter 5 - Sexuality and homosexuality from an Evangelical perspective.

In this chapter I delve into the major reason why I am opposed to homosexual sex from an Evangelical perspective. This will include the understanding of sexuality from a Biblical perspective showing why sexual practices in prisons are unacceptable both from a Christian ethical perspective and socially.

Chapter 6 - Punishment and imprisonment from a Christian perspective.

The question whether punishment can be justified from a Christian perspective will be discussed. I will also look at the notion and role of rehabilitation as a rationale for imprisonment. I will also address the question whether the withholding of sexual privileges should be part of the punishment, or whether sexual privileges should be granted as an unalienable right to all inmates.

Chapter 7. - A Christian ethical rationale for prison reform.

In this chapter I will discuss the ethical rationale for reform. This will relate to unacceptable sexual practices in prison, unethical behaviour by prison officials regarding work ethics and the degrading treatment of fellow human beings. Attempts by countries outside South Africa regarding prison reform will be considered. The successes and failures will be noted so as to avoid pitfalls and see if any of their successes can be

contextually replicated, thus avoiding the 're-inventing the wheel syndrome'. Proposals for reform as given by interviewees, both inmates and ex-inmates, will also be considered.

Chapter 8 - Conclusion

A summation of the research findings, both literary and empirical, and the proposals for prison reform will be discussed. This will include among others, proposals for reform for the department, the officials working in correctional services, a summary of personal convictions emanating from ethical persuasions, and motivation for ethically acceptable ways of treating inmates in the correctional service centres of our beloved new South Africa.



SEXUAL PRACTICES IN AND OUTSIDE SOUTH AFRICAN PRISONS.

1.1 Introduction

Generally speaking, the issue of sexual practices in prisons is something well known, but little talked about. Reasons for this deafening silence vary. There are, I believe, mainly three groups of people with different responses regarding sexual activities in prison. These groups are by no means exhaustive. The three groups I will briefly discuss are: the naïve, the helpless and the judgemental.

1.1.1 The naïve.

The naïve do not believe that such activities exist. They include the ignorant, who do not know. Also included among these are those who do not believe that such acts do exist, because of their one-sided knowledge of humanity, or naïve belief in the goodness of mankind. The other possible reason for the perpetuation of this naivety and ignorance, could be the non-disclosure by the victims. It is a well-known fact that those who are beaten into submission into homosexual acts and emasculated, are ashamed to let family members know for fear of no longer being respected. Sometimes these people come to believe that whatever is told of prison sex is meant to scare people from acting unsociably. These people believe that stories of men being indecently assaulted in prison is not factual but an urban legend that acts as a deterrent for those who otherwise may be prone to lawlessness. They do not believe that in prison men engage in homosexual sex acts. They do not believe that men do have other men as sexual partners especially heterosexuals who are married and have wives and children in the free society where they lived before being imprisoned.



1.1.2 The helpless

There are those who know that there are men who force other men into homosexual acts in prison, but feel helpless. Some might have resigned themselves to accepting it as an inevitable reality. Some, having heard of such acts taking place, react with anger, but feel they have no recourse or means to rectify the situation as it is too big for them to handle. In most cases these will be friends or relatives of the 'victim' in prison. Some, when they get to know of this sexual behaviour from others, react with disbelief and ultimately helplessness. They feel they cannot get in there to sort these people out. Even if they were able to get into the prison, they realise the whole situation is beyond their powers. Throwing their hands in the air despairingly they ask; 'What can one do?'

1.1.3 The judgemental

There are still those who hear or have the knowledge that these acts do take place, but somehow wish that a particular prisoner or prisoners should go through a horrible sexual experience in prison. Their reaction is one of satisfaction that the victim when 'raped', or gang 'raped', got what he deserved. These would be friends and/ or relatives of someone who may have been a victim of the one now imprisoned and 'raped'. Even if there was a way to stop these horrible acts, people with this attitude would not lift a finger as they feel that they have been vindicated, or that justice is now being carried out.

People with this attitude feel that additional punishment of whatever kind is befitting for the incarcerated. This view of such people is also corroborated by Zupan as quoted by Coetzee saying: 'There is also a subliminal belief that criminals should suffer from incarceration more than just a loss of liberty. Subjection to inhumane jail conditions is viewed by some citizens as a meaningful component of the criminal's punishment' (Coetzee 2003:64-65). Our situation is, as Coetzee puts it, similar to "...a term in one of

Papua New Guinea languages, namely “Mokita”, literally meaning a truth that we all know but agree not to talk about” (Coetzee 2003:63). I further agree with him that there is an urgent need to break this “Mokita” regarding these unethical sexual practices in South African prisons.

1.1.4 Incidences of sexual practices in prisons outside South Africa

The reality of prison sexual practices can be gleaned from the research literature. Researchers in different disciplines allude to this reality. Nesar and Pretorius, researching AIDS in prisons, say the following regarding prisons outside South Africa; “Thus, even though homosexual activities among male inmates is a significant behaviour pattern, it does not seem to be the major risk factor for the spread of AIDS in overseas prisons” (Nesar and Pretorius 1993: 25). They continue to say the following in the same article

Although homosexual activity is a reality in prison, very little is known about homosexual people in prison. The only data available is the number of people sentenced for homosexual offences...One report (Prison Reform Trust 1988:3), based on observations of prison staff and ex-prisoners in England and Wales, estimates that 20 to 30 percent of prisoners on long term sentences may be involved in sexual activities of this kind at some time.

(Nesar and Pretorius 1993:27)

Their first statement cannot be taken as conclusive as other researchers report the opposite. Some actually see prison homosexuality as a real contributing factor to the rampant spread of AIDS, thus supporting the advocacy for the distribution of free condoms in prison. These researchers, however, agree with them that homosexual acts do take place and that it is known that it happens. Their second statement quoting the estimates of homosexual incidence at between 20 and 30 percent is also important to note. Their estimated percentage should not be taken as static nor conclusive. In other researches, as will be seen later, the estimated incidence percentage is high. We do not,

however, make a bone of contention out of it. What is important is the fact that homosexual acts do take place and is acknowledged.

Moving from England to America, the situation is corroborated with higher figures, also regarding the element of 'rape' (indecent assault). A representative of the 'Stop Prison Rape Campaign' and 'Prison Fellowship', an organisation started by Mr. Chuck Colson, said the following:

Prison 'rape' has become a hidden epidemic. Some experts estimate that between 300,000 to 600,000 men and boys are victimized every year. Dr. Cindy Struckman-Johnson, who did a comprehensive study of the Nebraska prison system, found that 22 percent of male inmates acknowledged being pressured or forced into sex acts.

A horrifying 25 percent of this group say they endured gang rapes, leading many inmates to enter into a "consensual" relationship with another inmate, who then protects him from far-worse gang rapes. Sexual assault and forced prostitution thus become a second form of punishment, especially for young offenders. These gruesome statistics are all too personal for me. I've visited inmates in over 600 prisons and talked with many rape victims; I've seen fresh blood on cell floors where an attack had just occurred.

Facts about prison rape: (www.pfm.org/AM/Template.cfm).

The above statement reveals among others, three important facts. Firstly, it tells us that the extent of homosexuality in these prisons is probably higher than the England figures. Although this is not overtly mentioned, it can be deduced from the quoted figures of 'raped' inmates. That is, if 22% of inmates per annum were raped, it goes without saying that there is even a greater number of homosexual liaisons. The above statement does not quote all the homosexual incidences. Their main concern is the number of inmates who are 'raped'. They have already put pressure on their government who responded by passing legislation to stop prison rape. We will revisit this aspect later when we look at possible models of reform. Secondly, the statement reveals to us that there are many inmates who suffer degradation by being 'raped' and exposed to the danger of being infected with all sorts of sexual diseases, including the possible spread of HIV/AIDS. We

will return to the aspect of prison 'rape' later. Thirdly, and more relevant to this chapter, is the affirmation that homosexuality does take place in prisons and, to add salt to the wound, that some inmates are forced into these sexual acts. The above is not an isolated case.

The following example from another prison in the United States of America, in California to be specific, is proof thereof: "Once he arrived, Barry was double celled with a nineteen year old inmate who beat and anally 'raped' (indecently assaulted) him during his first night in the admission unit. Barry's cellmate continued to assault him sexually during the two weeks they were housed together" (Wayne and Parker 1982:1). Barry continued to be harassed at the different sections of the prison. In concluding Barry's case Wayne and Parker said: "Already an inmate named 'Ben' has approached Barry to 'hook up' or develop a steady sexual relationship with him in exchange for protection, as have several other prisoners. Barry, who has five years left to serve on his sentence, felt he had no choice and accepted Ben's offer" (Wayne and Parker 1982:2). The conclusions of the researchers also apply to our situation: "Barry's experience is not unique. Incarceration creates a high risk of sexual victimization for males. It is a fact of prison life, disquieting to inmates, staff, and administration alike. Such exploitation, although recognized, is generally unacknowledged, incompletely misunderstood, and inadequately addressed" (Wayne and Parker 1982:3).

From the above quote we see another confirmation that homosexual acts do take place in prisons outside South Africa. The added negative dimension to the above case is that this was not a case of consensuality, but homosexual sex forced upon an unsuspecting young man who ended up with another male as a sex partner. Barry's situation and other young men like him, may lead us to say that prisons are one type among others of a breeding ground for homosexuals.

In *Aids in Prison*, a book edited by Thomas and Moerings, there is an article by M. Moerings regarding prisons in Netherlands. He refers to the fact that on the subject of curbing the spread of HIV/AIDS, the supply of condoms always comes up. Some of the officials they interviewed did not see the necessity of supplying condoms to inmates, because sex in prison is forbidden. Nevertheless there were some who thought that the supply of condoms was necessary because despite the prohibition, homosexual sex was practised in prison. The whole matter was confusing. If, on the one hand, the officials supplied condoms, they would be promoting and/or encouraging homosexual sex among inmates. This would mean that they contradict themselves, because sex in prison was prohibited. On the other hand, if officials refused to supply condoms to inmates, the reality of inmates having homosexual sex would manifest itself through the spread of HIV/AIDS. In this scenario, the officials would then be said to be uncaring and negligent or insensitive to the reality of prison life, thus failing in their duties. Some prisoners also maintained that condoms were not needed, as there was no sex in prison. My summation of the prisoners who said there was no sex in prison is that they might be naïve. If not naïve, they might be inmates who were in a cell where no homosexual sex was practised. Lastly it could be that these were sexagenarians who again were housed in cells where homosexual sex was not practised. In his research findings Moerings, however, says the following:

Nonetheless, four of the 25 inmates interviewed in a remand prison maintained that sexual contacts between prisoners occur; they had heard this from other people or had witnessed it themselves. Eleven respondents considered it possible or stated that they did not know, while 10 other inmates said that such contact does not occur.

(Thomas and Moerings 1994)

In analysing the above findings by Thomas and Moerings, I have the following observation to make. Firstly, what the researcher does not explain is whether all 25 respondents were in the same communal cell or not. There is no way that three different responses can

come from people sharing one cell. My summation therefore is that the respondents were sourced from different cells. It would, for example, make sense to say that the first four were together in a cell where homosexual sex did take place and that the last ten were also in the same cell where no homosexual sex took place. Secondly, when one looks at the percentages of respondents, the ten inmates who said homosexual sex does not occur is more than the four who say it does occur. This seemingly waters down the significance of the incidence of homosexual sex. Nevertheless, the four respondents do corroborate the fact that homosexual sex does take place behind the closed doors of Netherlands prison(s).

In the same book, Ralph Jurgens, researching prisons in Canada, reports that Canada also forbids sexual activity in their prisons. He further looks at the argument of the whether sexual activity breaks order or disorder in prison. He then says: "Sexual activity continues to take place in prisons, despite being banned, and there is no loss of order or control" (Thomas and Moerings 1994:110). The sexual contact that Jurgens is referring to is homosexual sex and this is further proof that sex between men in prison does happen.

Researching the same topic in prisons in Norway, Scherdin also made his contribution in the same book Thomas and Moerings edited saying: "The consequence is that the single cell nocturnal system limits the time and space available for co-operation around drug usage as well as homosexual practices and sex between men. These limitations also affect involuntary sexual activity such as male rape" (Scherdin 1994:9). Although Scherdin was looking at the effects of single cells, he further reveals the other side of forced homosexual sex, an aspect mainly affecting heterosexual males thus further inflicting all sorts of trauma and pain unnecessarily. Feest and Stover discuss educational and preventative measures for the spread of HIV/AIDS in prisons in Germany. They quote a leaflet distributed in a jail in Berlin saying: "Stop injecting, get off drugs! Stop tattooing and

piercing your earlobe! Stop anal sexual intercourse!’ But the demand for abstinence to prevent infection is unrealistic given the widespread drug use and homosexual activity in prison” (Thomas and Moerings 1994:26). Among the activities thus identified as high-risk behaviours for the spread of HIV and AIDS, homosexual sex in prison is never absent. In England and Wales the story is not different. In Gunn’s research he found that ten percent of the 453 ex-prisoners interviewed admitted that sex in prison did happen and that some of them did participate. His emphasis is that overcrowding in prisons increases the need for sexual contact. To proof his case, he cites the following: “Narcus Hellewell, who spent three years in prison, stated that during his imprisonment 58 men shared his cell at different times. Seventeen had high risk sex with him and some of those were heterosexuals” (Thomas and Moerings 1994:48-49).

In concluding this subsection on the incidence of sexual practices in prisons outside the borders of South Africa, I agree with what Jurgens in Thomas and Moering’s said when researching the situation in Canada. Although he stated the following in respect of Canada and USA, I believe the situation is the same the world over. He says: “Homosexual activity among male prison inmates, including situational homosexuality, is a significant, widely-recognized behaviour pattern in prisons” (Thomas and Moerings 1994: 116).

1.1.5 Incidences of sexual practices in prisons in South Africa

Having looked at some cases of the incidence of sexual practices in prisons outside South Africa, we now look at the situation in our prisons. I would like to look at the current correctional services, the de-racialising of correctional services, (not housing convicted inmates separately according to race) and the different patterns of sexual activities in South African correctional services.

1.1.5.1 Current correctional services

I believe it is at this stage where the current Department of Correctional Services need to be applauded for the improvements in our prisons. Previously, the emphasis in our prisons was on punishment alone. We are now seeing a slight move and change from incarceration solely for punishment to incarceration with a view to rehabilitate. This I believe is a step in the right direction ethically speaking. It is applaudable in that the intention is not only to punish, but also to acknowledge that there is a degree of goodness in man which at the time of whatever crime that may have been committed, either lay dormant or was momentarily overpowered by a stronger emotion. Giving a person an opportunity to look back and see where he/she went wrong and to resolve to never do the same mistake again is ethically acceptable. This should not be mistaken for a carte blanche acceptance of the 'innate goodness of man' in a liberal way. My approach is in line with evangelical practice of giving man a 'second' chance to repent of one's sins. This may be expressed in the good old Anglican confessional phraseology "forgive us for the wrong we have done and the good we have left undone". It is in line with Christ giving men and women a 'second' chance in His sayings, His 'Go and sin no more' approach.

1.1.5.2 De-racialising correctional services

The other milestone thus far achieved is that of de-racializing the prisons from housing inmates separately based on one's skin pigmentation. As late as 1989 when Dirk Van Zyl Smit did his research on the state of prisons and concentrating on Helderstroom, a prison housing 'coloured' prisoners only, he quoted Section 23 (1) of the Prisons Act that stated:

- (b) as far as possible, white and non-white prisoners shall be detained in separate parts thereof and in such manner as to prevent white and non-white prisoners from being within view of each other; and
- (c) wherever practicable, non-white prisoners of different races shall be separated

(Whitefield 1991:74).

This aspect does not affect inmates only but officials as well. Black and White officials are now given equal treatment whereas in the past they were not. Getting rid of this clause and stopping to segregate prisoners on colour bases, does not by any means mean that they have arrived. There is a lot of work that needs to be done to get our correctional services to be on par with international standards. The attendance by Mr M. Khoza, deputy Commissioner Correctional Services, Mr. J. Kollapen, National Director for Lawyers for Human Rights and Ms. S. Solomon, branch Director of NICRO, of the Seminar on Prison Conditions in Africa held 19-21 September 1996 in Kampala (Prison Conditions in Africa: 1997:134), was a further feather in the cap for South Africa's representatives. This shows that the department of Correctional Services would like to keep abreast of affairs and hopefully improve. This must be seen in the light that prior to 1994, South Africa and the department of prisons then, was isolated and hardly participated in any of the common regional issues. Thus this step is to be appreciated and the department applauded.

1.1.5.3 Over-crowded prisons

As cited by Gunn above, one of the problems, if not the chief problem, that causes prisoners to behave 'homosexually' is that of over-crowding. Other so-called first world or developed countries also fall short of the required standards in this regard. In South Africa the problem of overcrowded prisons/correctional services is an undeniable reality. This is not a result of the new Democratic Dispensation as some may want to believe. This problem was in existence during the apartheid government, was inherited by the current democratically elected government and continues to be so, despite the improvements mentioned above. As Van Zyl Smit researched Helderstroom, he reported that: "The occupancy rate on 09 August could therefore not be regarded as abnormal. On that day the medium and maximum prisons were overcrowded by 72 and 86 per cent respectively"

(Whitefield 1991:74-75). Human beings are the same the world over, and our men in South Africa are not different to any race in the world. I believe that overcrowding also has a negative influence on the inmates in our prisons/correctional services. It is ethically unacceptable to house inmates and treat them like animals. All human beings need privacy, and communal living space. People need to work for self-expression, to be creative, as one chooses. These things inmates do not have the liberty to exercise even if there is no law against them. Not only are inmates denied their right to living space, but also limited freedoms in different ways (as will be seen later when dealing with factors contributing to unethical sexual practices in prison). I need to hastily add that the above should not be misunderstood as if I am saying that if there is no overcrowding, there will be no homosexual acts or activities in correctionals. Far from it, as it is a known fact that in some cases, we find men who are homosexually active even before incarceration. Achmat touches on this as seen in the background to homosexual behaviour in our prisons below.

1.1.6 Background to prison homosexual practices

Francis Schaeffer in the foreword of his book *Escape from Reason* discusses the importance of understanding the culture of the day so as to communicate the unchanging truths of Christianity. He points to the fact that in order to do this effectively, one needs to not only know and understand the present but also know the past. This is where I agree with him in that for us to understand the present culture of homosexual activity in our prisons, we need to know the history (past) thereof. For his part, Schaeffer starts with Aquinas and moves on. For my part I start with what Achmat says regarding the history of prison homosexual sex in South African prisons and how the 28s or Ninevites started operating in prisons.

Schaeffer articulates this truth as follows and I fully agree with him:

Some may be surprised that in analysing the trends in modern thought I should begin with Aquinas and work my way forward from there. But I am convinced that our study must be concerned at one and the same time with both history and philosophy. If we are to understand present-day trends in thought we must see how the situation has come about historically and also look in some detail at the development of philosophic thought-forms. Only when this has been done are we ready to go on to the practical aspects of how to communicate unchanging truth in a changing world.

(Schaeffer 1968:8)

The importance of knowing the beginnings and background of prison gangs was also highlighted by the Jali Commission report. The report expresses the need for highlighting the historical background which will help members to understand why the gangs operate the way they do and the type of crimes they get involved with. This in a sense echoes the same sentiments as Schaeffer as the report states:

The phenomenon of prison gangs is not unique to South Africa. What is unique are the differences in context and history of our prison gangs, and although their origins may be clouded in a combination of myth and reality, the current functioning of gangs is very real. Tracing the origins of the different gangs helps understand the type of crimes they are often associated with and their codes of conduct.

(Jali 2006: 16)

Zackie Achmat in his essay titled “Apostles of Civilised Vice: ‘Immoral Practices’ and ‘Unnatural Vice’ in South African Prisons and Compounds, 1890-1920”, deals with several issues. Among these issues we find him arguing that the issue of homosexuality has been defined by law, theology, psychiatry and criminology as an ‘unnatural vice’, ignoring desire and pleasure. He further argues and points to the fact that the idea postulated by Van Onselen that homosexuality originated in the Portuguese Territory is false, and that it is all about power, bodies and desires. He alleges that free men practiced homosexuality before the Portuguese came to South Africa. He then gives the background of prison homosexuality.



1.1.6.1 Prison Gangs

There are gangs in South African prisons. Achmat who himself is a self-confessed homosexual mentions one gang that operates in prisons namely The Ninevites or 28's. There are also the 26's and the Big 5's to mention a few. The 28's was started by a man called Nongoloza. Achmat says: "The name Nongoloza, leader of the Ninevites or 28's, evokes a striking image in the imagination of academics, lawyers and prison warders alike: the leader of a prison gang of marauding homosexual men" (Achmat 2002:97). As described above, the 28's are a gang of homosexual men whose business in prison is to have and sell sex. The 26's are those who deal with the drugs and all sorts of money-making ventures in prison while the Big5's specialise in 'informing'. "People who inform regularly enough are the Big 5's, members of the most hated gang in prison. To join the 27's you are most commonly asked to stab one of them" (informers) (Cilliers and McKenzie 2005: 98).

1.1.6.2 Nongoloza and the 28's

From Achmat's account, the Ninevites were formed by Nongoloza before he was arrested and the gang operated both in and out of prison. This goes back to 1912 where "Jan Notes' narrative forms part of the Director of Prisons Report of 1912" (Achmat 1993:97). One of the reasons given why the men chose to practice homosexuality was refuted by Achmat. The reason that was spread around was that these men chose to sleep with other men, especially younger men, so as to avoid the "poison", women who were said to have been the source of spreading venereal diseases. Achmat argues that this is not true, because how could they verify that men would not infect other men? Achmat says: "The Ninevites are the only prison gang in South Africa who consciously adopt homosexuality as a creed, and who have a set of laws governing their sexual relations. This is not

‘accidental’ behaviour, and it did not originate in the Portuguese Territory; in compounds; or in prison; it was practiced while Nongoloza and the Ninevites were free on the hills” (Achmat 1993:99). In summing up his arguments for the acceptance of homosexuality and showing that the historical background is positive, Achmat says the following:

A re-examination of the historical evidence must therefore locate the Ninevites sexual practices and criminal activities in the context of a disciplined society in South Africa by referring to the conquest and control of the bodies of African men and women. Its particular significance has to be located in the emergence of homosexuality as an object of discourse, since Ninevites rituals, the historical and contemporary practices of the gang and its heirs, determine a host of relationships inside and outside prison affecting tens and thousands of people.

(Achmat 1993:100)

Considering the above information, it becomes clearer that men having sex with other men in prison is entrenched in the prison culture. It is a phenomenon that cannot be easily overlooked. This is a culture that has apparently been accepted directly or indirectly by prison authorities. We therefore see that homosexual acts in prison have diverse faces and forms, something we need to address later when we discuss possible reform strategies. On account of what Achmat experienced himself as a homosexual and a prisoner at Pollsmoor, he (Achmat) concludes this section of the history of and background of homosexuality in South African prisons with the following statement:

Nongoloza’s vision of an alternative power is realised today in the existence of the 28’s, a gang with their own language, legal and ethical code that is derived from the books of Nongoloza; a gang that terrorises and inspires admiration in all who try to enter their domain. Their traditions are also part of the diverse practices of male homosexuals in South Africa, and this final point is consistently overlooked in contemporary accounts of same-sex desire in Southern Africa.

(Achmat 1993: 100)

In a sense the rapes of callow inmates and unsuspecting prisoners can be laid at the door of the 28’s. No inmate in any prison can force anyone to have homosexual sex with him

unless he is a member of the Ninevites. Thus when we hear of some of the gruesome and indecent sexual acts in prison, we now know the background thereto.

1.1.7 Patterns of sexual activities in prison

From the information gathered, I identified five patterns of sexual activities that take place in prison. This is a mix of information from literature read and interviews conducted mainly with ex-inmates. The first pattern is that of mutual consensual homosexual sex. Secondly there is coerced consensual homosexual sex. Thirdly there is the much talked about prison sex trade, fourthly there is masturbation and lastly indecent assault, 'male rape' in prison/correctional centres. While there may be some who will say masturbation and consensual sex is ethical, whether heterosexual or homosexual sex, from a Christian perspective, none of the above is ethically acceptable outside the confines of the God ordained heterosexual marriage.

1.1.7.1 Mutual consensual homosexual sex

There are two groups of males in prison who usually engage in consensual homosexual sex. The first group is mainly made up of those whose sexual orientation is homosexual. These may be known by or discovered by both warders and inmates. Some will have entered prison as homosexuals and others turned into homosexuals in prison, either voluntarily, or forced by those more powerful than them. Usually these tend to be serving long sentences. The second group is made up of those who practise situational homosexuality. The latter group consists mainly of heterosexual males who are sexually active and because of prison conditions either as heterosexuals together, or with homosexuals, engage in homosexual sex for the duration of their incarceration, a 'once

off' occasion or whenever the need arises. These heterosexuals upon being released, resume heterosexual relations with either spouses or partners.

We find an example of consensual homosexual sex in prison from Achmat's experience. From what he said, Achmat is a homosexual. After the warders told him to choose a 'husband' on arrival, he says: "Not one of the new prisoners awaiting trial could possibly be described as constituting an object of desire. I took my chances with the possibility of finding a desirable 'husband' in the cell" (Achmat 1993:93). He later explained what happened in the cell, after the gang rules were applied and the general of the 28's ruled that Cups was to have him as 'wife'.

We transgressed many of the taboos of the 28s that night. Cups did not ask me whether I was "a moffie," he discovered it in bed. We had sex for hours; he fucked me, kissed me, masturbated me. I wanked him and showed him what a sixty nine was. The passages of Pollsmoor resounded with the sound of guards' steps; by now almost all of the men in the cell were either engaged in solitary masturbation, or had found their partners.

(Achmat 1993:94)

From the above, a number of issues can be noted. Firstly, it is interesting to note that the warders knew what was happening in the cells. Instead of doing something about the then prohibited homosexual sex in prison, - it is still prohibited, - the officials were actually dealing with the reality of prison sex in a way that was encouraging it, rather than discouraging inmates to engage in it. The fact that they told Achmat to find himself a 'husband' is unacceptable. Secondly, it is once more interesting to note that in this cell where he was held, some inmates engaged in homosexual sex consensually, and that those who were not seen as objects of sexual desire were left to their own devices and not forced by the gang members.

Moving from the Cape to Pretoria, we learn further about these types of liaisons from Lewin in his book *Bandiet*. He explains in the chapter on sex in prison the types of men who engaged in homosexual sex. He says the following:

Central society was clearly divided into two categories: 'hawks' and hasies/rabbits. The hawks were the sexual predators: hasies were their partners, either willing victims of the hawks or bandiete who could not, like Dopey withstand the advances of the hawks. For someone without friends or resources, Central did not offer much protection from the hawks.

(Lewin 1974:159)

Lewin talked about one of these partnerships between a younger man Bobo and an older man called Krappies. Krappies worked in a shop bending metal sheets for the welders where Bobo joined him and they worked together. Within days of Bobo arriving, Krappies got him. Lewin does not explain how, but Bobo was surely not coerced because they ended up in 'married quarters' in A section. He says this about them: "Krappies now worked just as hard with Bobo straining besides him but he never complained. 'The love birds' remarked Mr. Lappies quietly, 'them's love birds'" (Lewin 1974:164). Here again we see an official in the person of Lappies who knew that these two had a homosexual affair in prison and did not do anything to stop it. From the above quote, it is clear that these two had homosexual sex consensually. It must further be noted that the above-mentioned two 'arranged' with the warders to be moved to 'married quarters'. The warders knowing what happens there, moved them there instead of curbing the practice. Lewin goes on to give an explanation about the 'married quarters' and says

Most cells are single cells in Central, about ten foot square, with room for your felt mat on the floor as bed, plus a small table and stool, a toilet pot and sometimes a small locker. The regulations do not allow two men to be locked up in a cell together - this they say might encourage sodomy - but Central is overcrowded so there are numbers of single cells with three men in them, with just enough room for three mats to be squeezed alongside each other, and three toilet pots, but little else. These three-men cells are known, both among the bandiete and the warders, as 'married quarters'. It is common knowledge at Central that you can, without much difficulty, make arrangements with the section warden to be moved into 'married quarters'.

(Lewin 1974:154)

Just over thirty years later, we find that matters have not changed or improved. McKenzie spent years at the Grootvlei prison in Bloemfontein and was the whistle blower in the wrong treatment of prisoners and the rampant corruption among warders. This step led the Jali Commission of Inquiry to request that they be allowed to extend their investigations to include Grootvlei. He says the following about this type of consensual sex in prison.

Most of the sex in prison is a deal of some sort. In prison there is a stock exchange of sex. It is almost unheard of that two men might simply do it for the fun of it, a notion as foreign to prisoners as asking a shopkeeper if he wouldn't like to give you a sweet for no reason other than the pleasure he might get from watching you eat it. Though it's something they would never dream of doing outside of prison's tight embrace, there is still a kind of love between these men. ...Men with wives will keep their afternoon bread and give it to their women later. Some of them may be in prison for actually beating up their real wives, but they wouldn't dream of being anything but perfect gentlemen to their prison laaities because competition for them is fierce and a wife has to pick you. ...Though true love is rare, it happens. I come to know two men who've been lovers in prison for thirteen years. And they do truly love each other.

(Cilliers and McKenzie 2006:115-116)

Although McKenzie does not divulge the sexual orientation of these particular men who have been lovers for thirteen years, one can safely deduce that they would be homosexuals. The reason of arriving at this conclusion is that I cannot see how a heterosexual can come to love another man the way that these two are described to have had this relationship. McKenzie himself as a heterosexual could not bear to see himself satisfying his sexual hunger with another man or even watching porn movies which were smuggled into prison but he instead resorted to masturbation as he says: "Sex is a basic need. A porno movie smuggled into prison is passed around until everyone's seen it, but I can't bear to watch. I am in the rare minority. I gain my inspiration from soap operas and masturbate daily in the shower" (Cilliers and McKenzie 2006:117). The other form of consensual homosexual sex in prisons is what was explained to me by some of the ex-inmates I interviewed. They said this type of sex is called 'thigh sex'. This I was told is

what most heterosexuals engage in to meet and satisfy their sexual hunger. This I was told is non-penetrative sex. It is performed by two men consensually, none of them being subservient but both interchangeably satisfying the other. McKenzie once more corroborates this type of sexual behaviour as he says: “Most commonly, during prison sex, nothing is penetrated. Sodomy occurs during rape and rarely elsewhere. Common practice simply involves keeping your thighs together while whomever needs it lives out the fantasy he nurtures” (Cilliers and McKenzie 2006:117).

The last form of prison consensual sex I would like to mention is part of what McKenzie includes in his ‘stock exchange of sex’. This is homosexual sex between prison prostitutes and inmates. He says: “Although boys with feminine qualities are the most highly prized, some of the ugliest can succeed as prison wives because the more physically attractive mostly aren’t wives at all, but prostitutes, selling their bodies for a box of dagga or tobacco. Drugs, food and cigarettes remain the main reasons for agreeing to sex and you will do whatever you can to have as much of it as you can” (Cilliers and McKenzie 2006:116). From this type of prison sexual behaviour, we move on to something that is related to this in that it appears to be consensual although coerced.

1.1.7.2 Coerced consensual homosexual sex

This may sound contradictory but it is not. Four ex-inmates I interviewed explained how it happens. They say that it starts with the older and experienced inmate helping the new inmate with whatever needs he may have. Protecting him, sharing his food with him, giving him cigarettes if he is a smoker and orientating him to the cell rules. This befriending with a purpose takes time. The experienced inmate is usually not in a hurry; he continues to lure the naïve inmate with gifts and favours and at the right time, asks him to engage in homosexual sex. The new callow inmate is made to feel both guilty and

fearful of repercussions should he refuse to return the favour. The coercion continues until he gives in and is initiated into the lifestyle of 'men' and their 'boys'. When an inmate has resources and gets visits from family members and friends, the other inmates somehow respect him and will not easily harass him.

Following on from the example given in the introduction of a case at Leeuwkop prison, Vusi said the following, which in a sense resonates the above pattern of coercion that becomes consensual: "Okay, what I hate most about prison is the corruption and the gangsterism. ...They rob and rape other prisoners, if that prisoner does not get a visit. The gangsters they give that prisoner food and cigarettes or dagga. If he smokes all that stuff they would ask him to sleep with one of them. If he refuses to do that, Oh! Oh! It is big trouble" (Tintinger 1999:34). The emphasis in Vusi's case is not 'rape', but the modus operandi of the experienced inmate disguising his wiles with the appearance of humanity, botho, ubuntu. When newly convicted prisoners arrive, the sex-starved inmates would intimidate them. They then find out who the first timers are, and depending on the callowness of the individual, the coercion into homosexual sex that becomes consensual happens sooner rather than later. I was told by those I interviewed that sometimes the experienced inmate would capitalise on the callow inmates' inexperience by using prison terminology in luring him to either invite or accept the invitation to 'share blankets'. This will then be taken as a yes to homosexual advances and there is no turning back for the newcomer. The other trick they use would be to use the experienced inmates to ill-treat and rough handle the callow inmate where the intended 'suitor' will intervene and save the victim from these rough guys. The roughed up inmate will have to repay the favour by agreeing to the sexual advances of the guy who helped him.

This approach is repeated in many other prisons. McKenzie gives his side of the story as he observed the behaviour of prisoners at Grootvlei. His conclusion is that even when one

tends to call this prison homosexual sex consensual, it is to be regarded as forced sex or rape. The interesting aspect from my perspective is the similar modus operandi of luring the callow inmate. This is what McKenzie says:

It's easy to see how they are coerced into giving themselves. Prison wives are assured of a warm bed, warm blankets, food and drugs, drugs and more. Any man who sells himself to the right guy will be protected, to some degree, from violence and rape, although the man protecting him is doing no less than rape. I am never convinced otherwise, regardless of how accepting a victim may become.

(Cilliers and McKenzie 2006:114)

1.1.7.3 Prison homosexual sex trade

We get further insights into Pretoria Central prison with regard to this pattern of homosexual sex. In the same chapter on sex, Lewin goes on to discuss the involvement of officials in this activity saying: "The prison authorities, as in most of their actions, professed one thing about the sex trade and practiced another ... It is common knowledge at Central that you can, without much difficulty, make arrangements with the section warder to be moved into 'married quarters' "(Lewin 1974:154). This arrangement to be moved to these cells was definitely not for free. The inmate had to pay something, in cash or kind. From the information I gathered from ex-inmates, nothing has changed. What is, is what was. They told me that favours by warders were done in exchange for favours. The favour could be anything, including information regarding other inmates. Lewin continues

Everybody at Central, bandiete and boere alike, discussed the sex trade openly: it was, after all, the most immediately available source of social interest and was one of the few areas of free gossip between warders and bandiete. Everybody knew the hawks and everybody watched with interest to see who would be the latest hasies or laities/young boys. The official practice, as opposed to pronouncement, was to encourage rather than discourage the sex trade.

(Lewin 1974:160)

This 'trade' was and is not a one-sided affair. Sometimes the inmate hawk would approach the warder and ask for a favour in the form of a younger callow inmate who may be in a different cell to be transferred to his cell where he knows he will be able to then either entice or force him to have homosexual sex with him. In exchange for the favour the hawk would give the warder whatever he has. It could be money, information or do something for the warder. This sex trade takes different forms. At times the agreement is a tripartite one, where the three parties are involved. This will be the official, the hawk and the 'hasie'. Sometimes it will be a two-way agreement where the 'intended 'hasie' to be made'/'would be 'hasie' would not be involved as he would know nothing about it. The warder and hawk would be the traders. At times the trade would be a four-way agreement. This would involve the hawk, his 'hasie' or 'laaitie', the warder and someone in a different cell who wanted to use the hawk's partner for his sexual gratification. This I was told would be a once off act and the official would gain a lot from this trade. In whatever form this trade happened, the hawks had to be on the right side of the warders. Failing to be, a trap could be easily laid for the hawk to be caught in the act and be further punished or transferred as in the case of the inmate store man called Alf, as related by Lewin. Alf was not much liked by the other inmates. When he was busted, there was, as Lewin puts it, a mixture of surprise and delight. Lewin says: "One afternoon, soon after lunch, four boere burst into Alf's store and caught him with his pants down, on top of a juvenile" (Lewin 1974:160). Surprise, because he must have paid a warder to make those arrangements. Surprise, because few ever thought Alf could slip that bad, and delight for those who hated him. The interesting thing is that on enquiring about these sexual activities that were against the rules and were happening with the knowledge and encouragement of the warders, the answer he got was that this helps to keep the 'peace'. As he puts it, "The official practice, as opposed to pronouncement, was to encourage rather than discourage the sex trade. 'It keeps the peace,' Mr. Lappies explained to me

one day. Mr. Lappies was a head-warder, in charge of welding in our shop” (Lewin 1974:160).

The above may sound or look to some as something of the past that we need not bother ourselves about any longer. It would be wrong to assume that. Those who might have come to such a conclusion must have had a rude awakening when recently the media was abuzz with prison scandals of corrupt warders. The Sunday Sun of 13 February 2005, carried a report of sex trade corruption allegations of warders at the Pretoria Correctional Services. This time the trade was not only internal or for homosexual sex. It is reported that warders took bribes from inmates and then escorted them under false pretence to their (warders’) houses where the inmates’ wives or girlfriends were waiting and were left there for hours to have sex. Morita Borobakala in his report says: “The wives and girlfriends of prisoners come to the prison posing as girlfriends of the warders and are escorted to warders’ rooms. Says one source. These women are then left with their jailed boyfriends for hours to have sex” (Sunday Sun, p 9). The corruption was not only limited to the above cases. As further reported:

A correctional officer who asked not to be named says: “Everybody is having sex here. Female warders are having intercourse with male inmates, female inmates have sex with male warders, female warders have lesbian relationships with inmates and some male warders have some gay relationships with male inmates. This place is just hell. And they all do it for money and other favours.

(M. Borobakala Sunday Sun 13 Feb. 2005, p 9)

The Jali Commission Report in their findings on this aspect of officials' role in sexual abuse, discovered and reported the following:

During its hearings in Bloemfontein and Pretoria, the Commission heard the testimony of a number of victims of sexual abuse at prisons situated in the abovementioned management areas. The evidence underlined that sex is a tradable commodity in prison and that vulnerable, young prisoners become sex slaves whilst incarcerated. Prison warders sell them to the highest bidder despite the fact that prisoners are dependent on these very same warders to ensure their safety whilst in prison.

Indeed warders are themselves implicated in many of the sexual assaults.

(Jali 2006:29)

The above were only a few of many similar incidents in other prisons around South Africa. According to Borobakala, there were more than fifty dismissals of warders in one prison on such and other corruption charges. It was further reported that in total the number of correctional officials in the past eight months dismissed for corrupt behaviour, was up to four hundred and fifty. These correctional officials were stationed at different correctional services centres. It may be discovered that the magnitude of this problem is much bigger if all correctional services in the country were to be thoroughly investigated.

1.1.7.4 Masturbation

Masturbation is a noun that is formed from the verb masturbate. Masturbate according to the Oxford Advanced Dictionary of Current English is defined as follows: “procure or provide sexual excitement by manual or other stimulation of the genital organs” (Hornby 1980:524). This is another way of satisfying one’s sexual hunger. Masturbation in general and traditionally is known as a means of gratifying one’s sexual needs without involving any other person. Self - gratification. It is one of the sexual practices in prison. It involves one’s imagination as a stimulant. Some may see this practice as morally and ethically acceptable. It is seen as non - offensive and involves the one person only and is seen as a harmless act. From a Christian perspective there are those who see nothing wrong with this practise for the very reasons mentioned above. They say there is no scriptural basis for its prohibition.

From a conservative evangelical perspective it is not permissible. There are several reasons posited for regarding this practice morally unacceptable. Much as there is no

direct explicit Biblical text that forbids masturbation, it is seen as implicit in what Jesus said was a sin when addressing the question of adultery. In the discourse of the sermon on the mount according to Matthew, Jesus said: “You have heard that it was said, ‘Do not commit adultery’. But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart” (Mt 5:27-28). It is this aspect of imagination in masturbation that connects it to ‘...anyone who looks at a woman lustfully...’, which makes it a sexual sin. McKenzie’s prison sex life is a good example of this as he says the following concerning how he masturbated; “...I gain my inspiration from soap operas and masturbate daily in the shower. I’m not alone. It’s almost impossible to step into a prison shower without putting your foot in another man’s sperm” (Cilliers and McKenzie 2006:117). The second reason that makes masturbation a sin and ethically unacceptable from an evangelical perspective is that it is ‘selfish’. It involves one person who selfishly wants to satisfy himself and the act does not have the mutual benefit and enjoyment of spouses within the confines of marriage. Sometimes masturbation is regarded as evil as it is seen as wasting seed with the potential of offspring if the sexual intercourse was engaged in a marriage situation with one’s spouse. The evils of masturbation are sometimes equated to the sin of Onan, one of Judah’s son’s who was punished by God for practising what is today called ‘coitus interruptus’. Ejaculating the semen outside the vagina or spilling the semen to avoid pregnancy, something that is seen as a selfish act. “...But Onan knew that the offspring would not be his; so whenever he lay with his brother’s wife (now his wife), he spilled his semen on the ground to keep from producing offspring for his brother” (Gn 38:9). The sin of masturbation for me is the aspect of selfishness. In a prison situation the motive cannot be equated to that of Onan as there is no evil intent of avoiding pregnancy. It is the aspect of self-gratification that reduces the beauty of the sex act within marriage as God intended it to something that one person performs on himself to satisfy himself. This I see as ethically unacceptable. It is further

believed that whoever one fantasises having sex with, may lead one to take steps towards actualising and living out the dream. This is not healthy and is also ethically unacceptable.

1.1.7.5 Male 'rape' in prison

Although the emphasis was on HIV/AIDS in the research at Helderstroom prison, the incidence of homosexual sex and male rape was again mentioned; "Sodomy is a major problem for both the authorities and the prisoners at Helderstroom. Several of the prisoners in the single cells at Helderstroom asked to be put there for protection from homosexual assaults. Prisoners are warned against AIDS, but not issued with condoms" (Whitefield 1991:83). The fact that sodomy is known to be a problem to both inmates and officials is again proof that the officials are aware that homosexual sex was taking place at this prison despite its prohibition and that the perpetrators were not punished. The fact that inmates were listened to when they asked to be put in single cells for protection and that no mention is made of bribes or favours, however, is commendable. Lewin goes on to mention cases of male rape at Central. He says: "One night in April, there was a scream from downstairs, a scream similar to those we used to hear at night at Local:...One of the hospital orderlies explained... 'Oh, it was nothing much really: the boy was raped in the married quarters at Sonderwater (*prison outside Pretoria*) and is still crying about it" (Lewin 1974:158).

At Pollsmoor prison where the 28's gang is known to be dominant, as it was then, it is presently not different. Having outlined the liaisons of homosexuals earlier, Achmat said the following concerning rape at this prison: "As I completed this essay, a newspaper reported the brutal murder and rape of a young man by the 28 gang" (Achmat 1994: 95).

From a sociological perspective, we are told that rape in general is not merely the need for sexual gratification. It is said that the dynamics behind the conduct of a rapist are complex. In prison where men are housed together in close proximity for long periods, the dynamics are even more complex. Besides the negative effects of overcrowding, it is said that rape goes hand in glove with the assertion of power. We get a glimpse of some of these dynamics from Rape Crisis. Rape Crisis is an organisation of women with the purpose of putting men behind bars as punishment for sex crimes (against women). This they do by providing emotional support and counselling for women who are rape survivors. They were asked to help this time with male survivors of rape at Pollsmoor prison. The workers went into the prison to help for totally different motives. We will revisit this aspect later when dealing with reform proposals. In dealing with the problem, they concluded as follows:

Our intervention at Pollsmoor prison evidenced the following:

- Rape and other forms of sexual violence are part of the prison culture in South Africa;
- Survivors of rape and other forms of sexual violence in prison require trauma counselling;
- Efforts must be made to break the culture of rape in prison;
- Rape in prison impacts directly on sexual violence outside the prison;
- The cycle of victim-perpetrator violence ensues from untreated rape of male prisoners.

(Harvey 2002:1-9)

The intervention by Rape Crisis at Pollsmoor revealed what is prevalent in our prisons around South Africa. As cited by Harvey, rape causes a lot of trauma and I believe in a prison situation it is even worse. The situation is worsened by the ever presence of the perpetrator in a confined prison cell. As Harvey says: "Any form of sexual violence results in much trauma and suffering on the part of the victim. Being a prisoner does not change the traumatic effects of sexual violence on a victim" (Harvey 2002:1-9). The essential trauma counselling that rape victims need is not provided by correctional services. This

was told me by some of the ex-inmates I interviewed. Although none of those I personally interviewed ever experienced 'rape' in prison, some witnessed other inmates being 'raped'. The experience left the passive victim also traumatised and no counselling was offered to either the direct/active victim (the 'raped' inmate) or the passive victim (the person(s) who witnessed the 'rape' taking place). I am making a distinction between the person being raped and the onlookers as active and passive. The common factor binding these two is the trauma. In the confined space of a prison cell, when an inmate is molested and others are present, they get affected in different ways. The passive victim is caught up between keeping quiet and reporting to authorities with no guarantee of protection. He is traumatised in that he is not sure whether he will be next on the list of the perpetrators or not. The reasons for this lack of trauma counselling are diverse. I will discuss these reasons a bit more later. The fact of this matter is that the victim without any counselling remains in a state of a victim and not a survivor. This tends to play in the hands of the perpetrator who then takes further advantage of his victim(s) and controls him for the duration of the sentence or until one of them is moved out of the cell. The trauma on the side of the passive victim as explained by my interviewees is that one is always in fear. The person would wonder whether he would be next. For those who do not have friends or are not members of a group or gang, it becomes worse. They fear being 'raped' at any given opportunity the suspected perpetrator may deem opportune. Night time is the worst when lights are off. The one living in fear hardly sleeps. He would lie awake ready to defend himself. The worst part of this hideous practice is when an inmate is gang 'raped'. From the information I got from ex-inmates, gang 'rapes' are not frequent. Rape Crisis also discovered this awful act in their work at Pollsmoor. This is what they say about this terrible act:

Rape in prison takes many different forms. The most brutal is gang rape where one man is raped by more than two perpetrators. (According to some prisoners we interviewed at Pollsmoor Prison, up to nine to twelve perpetrators could be involved in a gang rape). Gang rape is perpetrated for various reasons, especially among the 28s prison gang. A gang

member may choose rape over death as the penultimate punishment for disobeying gang codes. Another reason may be initiation or “sport” where rape is considered a form of fun. Initiation rapes also serve a social purpose of sorts, creating a class of men in prison who are “turned out” and made available for sex.

(Harvey 2002: 1-9)

The officials I interviewed all confirmed that ‘rape’ does take place in prison. These are warders/members and one official who works as a nurse at the prison hospital. The official who works as a nurse told me that they handle on average three to four cases of rape victims per week. The warders, on the other hand, told me that each time there is an intake of new inmates there is bound to be victims of sexual violence. Because of overcrowding and inadequate staff, it becomes difficult for the warders to curb these crimes committed in prison. This scenario of overcrowding and inadequate staffing, can to a certain extent be accepted as a reason for lack of intervention by officials. What is bothering one is that there are warders who know what is required of them as custodians of prisoners, who at the time when some offences happen can intervene, but choose not to. Worse still, as seen in the cases of the sex trade above, rapacious warders actually promote and facilitate the sex trade in prison. It was and is not only unethical, but unacceptable for one at work to choose to do what is contrary to work expectations. The consequences thereof impact negatively on those who expect to be protected (the inmates) thus violating their rights and stripping them of whatever human dignity they have behind bars. These consequences further reverberates into the corridors of society and causes untold hurts in a chain reaction, which if unharnessed, will breed a society with questionable moral standards. These actions by correctional officials are nothing less than purposeful neglect of duties.

The current Correctional Services Act categorically states:

(b) detaining all prisoners in safe custody whilst ensuring their human dignity”(Corr. Serv. Act No. 111 of 1998:319). It must further be noted that the department also needs to ensure that the officials are properly equipped to carry out their duties in terms of clause five subsection (d)

which reads: “The department is under the control of the Commissioner, who must, without derogating from the generality of subsection (2)(d) establish and maintain training institutions or centres for the training of students or correctional officials.

(Corr. Serv. Act 111 1998:321).

1.1.8 Handling ‘Rape’ cases in prison by officials

From the above, one assumes that all correctional service officials would be well trained to handle all eventualities. This will include the handling of homosexual offences in prison. If we assume then that the officials are well trained to handle all eventualities, we will have to look into the reasons why they behave in a manner different to what their call of duty expects of them. We will also have to look at the factors contributing to these sexual practices among inmates in prison. We will start with the latter and then look at the reasons why officials behave in an unbecoming and unethical way regarding their work and the treatment of other human beings under the subheading of ‘Christian ethical evaluation’.

Before looking at the contributing factors to these behaviours in prison, we need to look at the incident reported by McKenzie on prison rape. This incident again highlights the officials lack of response to urgent issues. It is interesting that the turning point in Gayton’s life was brought about by the young white man Wimpie who was raped by the 28’s gang. He explains how he carried the limp body of the young man to the ‘warders’ and asked them to help the boy and they did nothing. “This boy has been raped by twenty men’ ... the wardens take a moment to asses the situation and then smile. Can this really be Gayton trying to help a white boy?” (Cilliers and McKenzie 2006:168). For me the most atrocious of all the prison ‘rapes’ is this incident reported by Gayton McKenzie saying:.

Just when I think what happened to Wimpie is the worst rape yet, I hear of a fifteen year old boy called Kenneth Busakwe who is raped by four prisoners shortly after being put in the admission cell. He has barely been in prison half an hour. As soon as this rape is over, he goes to the head of the section, Mr Sam Mohano, to tell him about it. Sam Mohano invites the boy into his office, closes the door and then rapes him too. The boy tries to complain, and Mr. Setlai sends him to solitary confinement. He chooses another warden, Mr Kapopo, to supervise this. Kapopo, however, sells this boy to another prisoner Jerry Jasta Moheng, who wastes little time in raping Kenneth too. This has all happened in the space of two hours.

After being in prison for five days, Kenneth's bail is finally set at R500.00. Kenneth can't afford it. Sam Mohano pays his bail. 'I want to talk to you,' Mohano tells him. The boy should know better, of course, but freedom is more tempting than sense, and so he accepts Mohano's offer and leaves prison. Mohano rapes him again. Kenneth is brought back to prison 'for his safety'. The rigged payment of bail is revoked when Sam Mohano demands to have his money back.

(Cilliers and McKenzie 2006: 196)

I still cannot understand how a 'warder', a prison official could behave in the manner described above and still nothing was done about this. A protector who turns around and 'rapes' the very person he is supposed to protect, not once but twice, beats me. While the above incident confirms that rape does happen in prison, what is astounding is to read of a warder also raping a prisoner. This is a disheartening thing. The department of correctional services needs to take action in cases such as these and need to inform the public what steps were taken against the said perpetrator. The rest of the officials also need to know what steps were taken against their colleague, so that this can act as a deterrent and even prove that there is transparency.

1. 2 Factors contributing to the sexual practices in prison

The following factors appear to be contributing towards the above-mentioned sexual practices in prison. Overcrowding, physiological needs, boredom, lack of support, prison gangs and corruption (on the part of greedy officials). These have been gleaned from the findings cited above and responses from ex-inmates. Some of the cases mentioned in places like Pollsmoor, Pretoria Central, Leeuwkop and Grootvlei prisons also alluded to these as factors causing men to behave in this way.

1.2.1 Overcrowding

Researches cited above do show in their findings that overcrowding is a factor in contributing to men seeking sexual gratification with other men. Reports also show that in overcrowded cells, homosexuals take advantage of others and either coerce them or force them to have homosexual sex with them. Rubbing shoulders with unknown people one never chose to stay with for days on end in a confined space does affect people in a negative way. Thus overcrowding is one factor among others, causing men to behave unethically. This unethical behaviour can be seen in a number of ways. This includes unacceptable social behaviours where some inmates bully and ill-treat other inmates. This is often seen in unacceptable sexual behaviour where some inmates force other inmates to perform homosexual sex acts against their will. This problem of overcrowding has for some reason been understated. The shocking results of the Jali Commission report puts this problem glaringly and ought to be attended to. This in part is what the report says:

Overcrowding, especially gross overcrowding exacerbates but does not cause the problem of corruption and maladministration in our prisons. It also stretches the Department's resources to the limit, and it affects the rehabilitation of the prisoners, the health system and the education system within prisons. Overcrowding also encourages the sexual abuse of inmates.

Conditions are sometimes unsanitary and unbearable in that one toilet is shared by up to sixty (60) prisoners. Prisoners also have to share beds, sometimes two (2) to a bed, whilst others sleep on the concrete floor and



sometimes with one blanket to share. In some prisons, like Bizana, prisoners were sleeping in shifts.

(Jali 2006: 43-44)

More pertinent to the issue of this aspect of overcrowding being a contributing factor to men behaving unacceptably in prison, the Commission quotes Mr. Johnson, the Western Cape Correctional Services spokesperson as saying the following: "While prison authorities were aware that sexual abuse was taking place in jails, the biggest problem they faced was overcrowding. Our first priority is to reduce prisons numbers so that we can deal effectively with other challenges" (Jali 2006: 43).

This phenomenon of overcrowding has definitely not improved as seen from recent reports in the Media. In the City Press of 19 March 2006 in an article dealing with re-channelled funds, Mpumelelo Mkhabela said the following; "The total prison population is 156 175, while prisons were built to cater for 114 495, meaning that there are 45 000 more people in prisons than they are supposed to accommodate" (City Press page 1). In the same publication on page 28, there are pictures showing overcrowding in Pollsmoor Maximum Security Cell 33. The pictures were taken by photographer Mikhael Subotzky. He first exhibited the same photos inside Pollsmoor prison and later showcased his work outside prison for the first time at Constitutional Hill and the Goodman Gallery in Johannesburg. The significance of displaying these photos first inside the prison I believe is to authenticate the reality. If later people come up and may dispute the fact of this type of over-crowding, their claims will hold no water as the people who were photographed had no objection and would have pointed out any exaggerations or untruths at the time of these being publicly displayed. Our department of correctional services also did not at the time dispute the fact that our prisons are overcrowded. So, it stands, I believe, as an indictment for our Correctional Services to do something in order to alleviate and rid our

prisons of overcrowding. This will help in bringing down incidences of homosexual sex in prisons.

To further verify the state of this phenomenon of overcrowded prisons, the South African Human Rights Commission cited shortcomings in their second economic and social rights report in prisons. In their findings, the department of correctional services did not furnish proof that they adhered to the minimum standard rules regarding accommodation for inmates. The rules state as follows: “ In defining the prisoner’s right to decent living environment, the standards used by the DOCS is the minimum floor space of 3,344m² and 8,5m² for cubic air space” (SAHR 2000:254). On commenting on their findings they said the following: “The report submitted by the DOCS was not satisfactory in terms of monitoring the prisoner’s right to decent living conditions. A detailed analysis illustrating the decent living environment was not provided” (SAHR 2000:254).

In their subsequent report, the South African Human Rights Commission mentioned that the department of correctional services had applied the above requirements of floor space, cubic content of air and so on. But this did not alleviate the problem of overcrowding as they say the following under outcomes:

By December 1999, prisoner population had increased by 11.18 percent. Out of a total of 162 638 prisoners, 58 231 were unsentenced. ... By December 1999, available cell accommodation capacity had been exceeded by 62.9 percent” (SAHRC 2001:369). It is also interesting to note that the effects of overcrowding among others was identified as contributing to prison sexual behaviours that are socially unbecoming and unacceptable by saying; “... The careful selection of prisoners accommodated in the same cells is crucial to protect vulnerable prisoners from gang and sexual abuse

(SAHR 2001: 367).



1.2.2 Physiological needs

Sexually active men are expected to suddenly be celibate during their period of incarceration. It is not an easy issue especially in cases where men are put together in cells indiscriminately with homosexuals. The urge for sexual release gets heightened when the inmates sharing a cell with homosexuals witness them engaging in homosexual sex. This leads some men to seek release in whatever way. The natural need to have sex is not easily suppressed at an age when men are supposed to be sexually active. Thus this physiological need, plus the fact that very little time for exercising is allowed for inmates to work out and reduce the urge, combine and lead men to seek sexual outlet. Some men will masturbate and others will mutually masturbate each other. This is not to be confused with homosexuality. Those who engage in this type of sexual release would not be happy to be categorised as homosexual. The explanation I was given by some ex-inmates is that 'thigh sex' is different to homosexual sex in that there is no anal penetration as mentioned above. It is explained as consensual and performed only to meet sexual needs. It is done to meet physiological needs and not homosexual sexual acts. It is said to be temporal and those who engage in thigh sex perform it with respect for each other and there is no coercion and no power struggle and no denigration of anyone.

1.2.3 Boredom

Man by nature is a creative and hardworking being. We are above all other species and mammals in that we have the ability to think and love among other qualities/characteristics. Apart from some who prefer to be lazy and do nothing, man has it within him to want to be kept busy or keep himself busy doing constructive things. I take it that this is in keeping with the creation story of Genesis chapter one and two. As recorded: "Then God said, 'Let us make man in our image, in our likeness, and let them

rule over the fish of the sea and the birds of the air, over the livestock, over all the earth, and over all the creatures that move along the ground" (Gen.1:26). The notion of ruling over all other living things to me means work, it means being active and not just sitting down and doing nothing. Thus the point that from the beginning man was meant to be doing something, ruling over other created things. There are some who think that work or rather hard work or hard labour was as a result of the fall. Some take it that hard work came as punishment for man having disobeyed God. It must be put clear that in chapter two of Genesis, God gives man work to do before the fall. "The Lord God took the man and put him in the Garden of Eden to work it and take care of it." (Gen.2:15) It is therefore interesting to see that man was commanded by God to work the garden and take care of it before the fall/disobeying God. Thus I posit that man has an innate nature to work in obedience to God. This does not in any case negate the fact that there are lazy people who do not want to work. This aspect of human behaviour can also be attributed to the consequences of the fall.

When a man is in prison, there is very little that he does in the form of work and therefore gets bored. It is not an easy thing for a person to sit in a confined space hours on end day after day, week in and week out for years with nothing constructive to do, to then be expected to behave normal. Boredom sets in and in keeping with his nature, man finds other things to do including bullying others (in the place of ruling things), being involved with gangs and lastly engaging in unacceptable sexual acts. I therefore posit the fact that boredom is another contributing factor for men to find themselves behaving in such unbecoming and socially unacceptable way in prison. McKenzie explains the state of affairs at Grootvlei in this regard and says:

Work details offer distraction and relief from the prison tedium and if you abuse the privilege it's unlikely to be offered again. And you probably will be caught after your escape. There are two thousand men at Grootvlei and only around two hundred of them have their daily work details. They even receive a tiny stipend for their efforts, about R7 a month. ... Those



who don't have work, are let into the control yard between 11am and 12noon, or 1 and 2pm, depending on the warden's whim.

(Cilliers and McKenzie 2006:113-114)

It is this lack of both work for creativity and working the muscles, and the lack of exercise that brings in boredom. Prisoners are given one hour per day to exercise and do their business such as phone calls and tuck-shop. They are then locked up for twenty three hours except for mealtimes. This I believe contributes to men behaving unacceptably and unethically. As the phrase goes, 'the devil will always find work for idle hands' or 'an idle mind is the devil's workshop'.

1.2.4 Lack of support

Another factor that contributes to this unacceptable behaviour of men in prison is lack of support. This aspect was explained to me by most of the ex-inmates I interviewed. They told me that this lies with family members who do not render support to the inmate. Any inmate who does not receive visitors is seen as a loner and thus targeted by the gangs or stronger inmates in different ways. This lack of visits also means the inmate does not get the needed necessities not provided by prison but allowed to be given to prisoners. These would be bread, sugar and cigarettes to mention a few. Added to this would be lack of funds. If those outside do not send him money, he then is not able to buy these commodities. These are basic human needs and may be supplied to him by those inmates who have them, with the intention of receiving in return homosexual sex favours. As already mentioned, the callow inmate may accept these favours without knowing that he will be expected to return the favour later and thus forced into a homosexual relationship in prison. I would like to posit the fact that in some cases this factor is not solely the family's fault. The State is also to blame in cases where the inmate is sent to a prison far from his residence thus making it difficult if not impossible for poor families to

pay the inmate the necessary visit to show support. The other aspect of the State is that there is no counselling given to family members to empower them with the knowledge that support for the sentenced member is crucial to help him cope with the harsh life of prison life. The family is not advised that they can render this support by visiting him in prison regularly and taking basic commodities to him and if they are unable to visit, to send him money to enable him to buy these in order to survive. Support is crucial. McKenzie says: "Men become so lonely that I've seen those that make enough money from prison activities trying to buy visits from people they know. "Come and see me' they'll say on the phone. 'I'll give you fifty rand'" (Cilliers and McKenzie 2006:143). If prisoners do not get support, they become easy targets for those with a lot of prison experience and end up not coping in prison.

1.2.5 Corruption and Prison Officials

In life we get the good people and we get the bad ones. In all walks of life these two are soul mates like the two sides of a coin or the inside or outside of the hand. It is therefore not surprising that in correctional services we get bad officials and good ones. Our media has of late been reporting how our prison officials have been found to be corrupt and neglecting their duties. This can be seen by the number of prison escapes by inmates holding officials hostage using guns; callow inmates 'sold' to long term prisoners for sex; drugs being sold in prison. The question is how these are smuggled into prison if not through officials and/ or their compliance. These will be dealt with in a bit more in depth in chapter three when the Jali commission report is discussed. Suffice it to say here that in their findings right at the outset the following was reported:

The Commission observed that corruption and mal-administration were so rife in most of the Management Areas investigated as to warrant describing this as part of the institutional culture. There was a large group of employees (*warders/officials*) who featured in almost all the incidents of corruption and mal-administration and who are predominantly driven

by greed and the need to make easy money. This became apparent in the nature of the corruption that is endemic within the Department. Despite the aforesaid, some of the instances of corruption were systematic and not mere isolated incidents of corruption...

(Jali 2006:5).

It is unfortunate when on the one hand the justice department is fighting for the safety of all citizens by imprisoning the criminals, while those entrusted with this responsibility of ensuring that this happens, namely prison officials, on the other hand neglect their duties for whatever reason and find themselves acting criminally and unprofessionally. Perhaps some came into the job as a last resort and do not have a passion for justice and no love for their job but greed. Besides the fact that some are just outright corrupt, there are nevertheless a few good men. The new head of the prison was one of the few officials whose intention was to get rid of corruption in prison. At Grootvlei it appears as if there were more corrupt officials than there were good ones. There were those who would perhaps not have turned out to be corrupt if they were not threatened, but it is not easy to know. McKenzie explained how some were lured into the corruption circle.

Often, of course, wardens are played. They spend most of their time close to society's most conscienceless members and the prisoners know which ones to pick. There are numerous ways of corrupting a warden and very few are invulnerable. We can tell a warden that we know everything about him and his family and that when a delivery of cannabis and Mandrax is made to his house he would be advised to bring it with him to work. Of course, he has the choice of reporting the matter, but he knows we are not men to make idle threats. We give him a fee or a cut of the profits and the warden continues happily, thinking he has had little choice anyway.

(Cilliers and McKenzie 2006:123)

Some may be perceived as such whereas they may be genuinely compassionate. Perhaps others hide behind the guise of compassion as discussed below.



1.2.6 Compassionate officials?

There are a few officials who may hide behind the fact that they feel compassion for the inmates who stay behind bars for so long without any sexual activity. These officials may cite the moral issue of compassion by turning a blind eye to the sexual behaviour of inmates. Some of the officials said that they at times turned a blind eye to consensual homosexual sex in cases where no violence is involved citing compassion. Others talk of allowing homosexual sex to take place in prison so as to keep the peace and calm in prison. There are, however, the majority who are downright rapacious. While on the one hand it must be admitted that officials' remuneration is a pittance, on the other hand it must be stated that there are correct channels to address this discrepancy, instead of exacerbating the situation by soliciting for and taking bribes from inmates or their friends or family members. Channels to earn more money legitimately will be dealt with later under reform proposals. This unethical behaviour of officials taking bribes has other repercussions. One wrong leads to another wrong. For example, the greed of officials that leads them to taking money from inmates for favours weakens the punishment intended for the inmates. It further encourages inmates to import into the prison illegal items such as drugs and weapons and the difference between prison and free society is thus blurred. Drugs being smuggled and sold in prison is no hopeful situation.

This undesirable situation where there is very little difference between free society and prison life was highlighted by the results of investigative journalism done by the Sowetan. reporter Brett Chatz. He reported on matters showing areas where correctional members were possibly involved in corruption through the items that were smuggled into an Eastern Cape prison. Chatz looked at the idea of how the general public is lulled into a false assumption that the criminals are locked away, away from the freedoms normally enjoyed by free and law-abiding citizens. He says the following:

Our fallibility, as decent citizens of South Africa, lies in entrusting such wretched souls into the custody of equally corrupt warders. Imagine the outrage if it were known that prisoners prospered more within their cells than many hardworking people do on the outside. When inmates of Sada Prison in the Eastern Cape were caught watching porn, it wasn't a pretty sight.

Convicts were so captivated by their debauchery that the venue could have been mistaken for an elite private party. It wasn't only the fornication on their plasma-screen televisions that had officials up in arms - it was the expensive music systems, DVDs, dagga, official uniforms and more.

(B. Chatz Sowetan January 9 2007: 10)

The area where correctional officials are seen to be corrupt are the items that found their way into the inmates' cells. How possible is it for a plasma screen television set and official's uniforms to get into cells without member complicity? This may also be seen by some people as an innocent act where members may have allowed these items into prison so as to keep the inmates busy and occupied instead of engaging in other more serious offences. The fact is, these items would not be allowed in to start with, but also the fact that those who brought these items surely paid someone money to turn a blind eye. To imagine members doing their rounds in cells seeing these items, couldn't one of them have spotted them and reported or confiscated them? This in a sense shows that most of our members act corruptly either by choice or omission, something that is not good enough for a correctional services department that is trying to move away from an old punitive system to one that is more concerned with rehabilitation.

1.2 7 Officials and rape in prison.

There are some who say that rape and other forms of sexual violence is part of the prison culture. Much as this is the truth, this is an anomaly that should not be left alone. The authorities should see to it that this culture is done away with. The statement by Harvey in



the journal Track Two on Rape In Prison concerning rape in prison and gang rape where officials failed to intervene, is an indictment on the part of warders/officials:

Rape in prison takes many different forms. The most brutal form is gang rape where one man is raped by more than two perpetrators. (According to some prisoners we interviewed at Pollsmoor Prison, up to nine to twelve perpetrators could be involved in a gang rape). Gang rape is perpetrated for various reasons, especially among the 28s prison gang. A gang member may choose rape over death as the penultimate punishment for disobeying gang codes. ...Initiation rapes also serve a social purpose of sorts, creating a class of men in prison who are “turned out” and made available for sex...Another major factor compounding the issue of trauma associated with rape in prison is that pleas for help are often ignored by prison staff. Medical attention is often cursory and opportunities for therapeutic intervention is limited ... Hence most rape victims in prison remain unaided and do not make the journey of recovery and healing from victim to survivor. What this means is that often these men resort to aggression to deal with unprocessed rage and they themselves enter the cycle of violence, both inside prison and outside when released.

(Harvey 2002:3-5)

How disheartening this is. When human beings treat one another worse than animals, it sure calls for urgent measures. It is unacceptable to learn that there was no intervention of whatever sort by officials. Where is the human dignity that is supposed to be upheld by officials of our correctional services to one another and to the inmates? The aspect of the inmates who are serving long terms and are repeat offenders who take advantage of callow inmates, raping them with the aim of ‘turning them out’ so as to make them available for sex, is inhuman. When this happens with the help of officials as cited above or with their knowledge but without intervening, it is unethical, whichever way one looks at it. One can only conclude that after the ordeal and time served in prison, on being released any man who was ‘turned out’ will find it difficult to have normal heterosexual relations. My educated guess and the odd cases I have witnessed of boys who grew up in a boarding school where they engaged in homosexual sex, tells me that anyone spending years in prison and forced to perform homosexual acts subserviently, will cause the person to automatically continue that lifestyle. This will be a living proof that prison is a

breeding ground for homosexuality. These are definitely not some of the outcomes our correctional services expect. I hope. The behaviour of both inmates and officials is unacceptable. Prison is meant to be a place of serving one's sentence in a secure place and one is to be treated humanely. Above all, the current approach by the Department is that these places are to be correctional places where inmates are rehabilitated and not treated inhumanely.

1.2.7 Officials taking advantage of prisoners

In summing up the behaviour of some of the officials, one may cite the fact that these officials prey on the needs of the prisoners. They wait for an opportune time and then take advantage of the vulnerable prisoners. Some reported cases are those of male warders raping awaiting trial female prisoners. Some officials use the same method used by gangs inside prison by supplying a prisoner with anything the prisoner needs in exchange for favours. This is an unethical way of either getting information from the inmates by officials or any favours for inmates from officials by supplying them with the information. One may see this as taking cruel advantage of prisoners by warders while others may cite compassion. Whichever way one looks at it, at the heart of it is the selfishness of the official involved who is only interested in getting whatever he or she needs irrespective of whether it is lawful, ethical or not.

Norman Masungwini reported in the Sunday World of 15 January 2006 how a female warder took advantage of a male prisoner. The whole matter may have appeared as a warder who had compassion for a prisoner by having sex with him, knowing that he needed sexual gratification. On the other hand some may say it was a case of two people naturally falling in love. Whichever way one looks at this particular case, there are a number of ethical issues involved in it. As Norman reports; "The 20-year old's raunchy

relationship with Sonia Graaff came to an abrupt end recently” (Sunday World p3). The issues as I see them are as follows. Firstly, it is the question of the age gap; “... getting down with a prison warder old enough to be his mother,...” (Sunday World p3). As a free young man I doubt if this inmate would choose to have sex with a woman old enough to be his mother. My summation is that the warder took advantage of the state of this young man and managed to get what she wanted. As she is quoted in one of the love letters she is alleged to have written to her lover Aubrey, “...I have been waiting for this for a life time, a love so real, so pure and so true, that’s what I’ve found in you.” (Sunday World p3). This may be what she has been waiting for, but not what the younger man may have been waiting for. Secondly and more seriously, how can she call this pure and true? An illicit and outside marriage sexual relationship cannot be pure. In her position as an official and he as a prisoner, knowing full-well that he has no choice in prison but to accept whatever sexual approaches he may get from any female, she knew he would not say no. The article does not reveal whether the warder is unmarried, divorced or married. The article does not mention her exact age but only mentions that she is old enough to be his mother. I am no advocate of same age relationships in love, but in this case where the incarcerated man had no choice, I believe it is unethical and morally unacceptable to take advantage of a person under these circumstances. There is that possibility of the inmate having yielded to the warder’s sexual advances for fear of being victimised by other warders or even being charged with attempted rape if he had refused her. This is possible when one remembers what happened to Joseph in the Bible when he refused Potiphar’s wife’s sexual advances (Gen. 39:7-20a). It sure echoes with the saying that ‘hell hath no fury than a woman scorned’. Taking into consideration the fact that this is a case of the under-dog and the powerful, the possibilities that the inmate was probably approached by the warder are highly probable. One cannot imagine a young man of twenty making a pass at a woman his mother’s age, a warder for that matter and a white woman for that matter, not that I have anything against love across the colour and culture barriers. I am

all for love, be it within one culture or race or across, as long as it is ethical and does not involve pre-marital sex, from an evangelical perspective, a test which the above case did not pass. The last point I need to mention is that the above case needs to be looked at from a point of view that an official of the correctional services committed the offence.

One of the very first things inmates are told on arrival at prison is that no sex is allowed in prison. This is the official stance, although in most cases, as seen in Achmat's case, he was told (by corrupt officials?) to choose a 'husband' for protection if he was to avoid being 'raped' in the cell. The very official who tells inmates of the do's and don'ts of prison life in the reported case is the one who caused an inmate to commit an offence. Or should we say, the prison official is the one who transgressed? It is not acceptable, not ethical.

1.2 8 Evaluation of corrupt officials

It is disturbing that we have so many corrupt officials in our correctional services. In a place where people are sent to be corrected (rehabilitated) from doing wrong, it is sad to find some officials doing wrong. Instead of helping inmates to reform by emulating exemplary officials, it is the officials who seem to be emulating the bad deeds of incarcerated inmates. Talking about corrupt warders McKenzie says:

Masunte is one of the more sadistic wardens. He likes to call prisoners 'bitches'. It hardly bears imagining. You have been raped by a steam locomotive and you're questioning whether your very atoms and molecules can bear keeping the show going. Is it really worth the effort for all this, and then a warden appears and says, 'Hey, you bitch, I hear you got raped yesterday. Was it nice? I hear they worked you good.

(Cilliers 2006:131-132.)

Warders are assigned to look after inmates under conditions of ensuring that their rights are protected and upheld. It is unacceptable for warders to behave in this way. They are

supposed to uphold the objectives of correctional services and its work ethic. The behaviour of some of these warders does little to prove that this is the case.

It is difficult I believe for the ordinary warder to keep up the expected standard when his seniors openly defy the system. A case in point is the much publicised escape from C-Max of Ananias Mathe. He was reported to have escaped through a small window by applying Vaseline on his body. How he managed to get onto the roof and past all the other guards right up to the road is an inexplicable case. The rumour was that his gang outside organised and paid some corrupt warders eighty thousand rand, a rumour which was not followed up by those who were investigating this escape from our maximum security prison. When the minister of correctional services Mr Balfour gave his report in parliament, the words he used were that the warders were 'grossly negligent', that is why Mathe escaped. At his next appearance in court after being recaptured, Mathe requested that his lawyer and other officials should go and inspect his cell and his alleged route of escape, namely the window, so that they too can see for themselves that it was impossible for him to have reached, let alone to have managed to squeeze himself through such a small window.

The point here is that it would have sufficed for the minister to have conceded that there is just no way that Mathe could have escaped without the help of some of the corrupt warders. It probably was difficult for the minister to have admitted that there are corrupt officials as if this would have reflected back on him. This unfortunately helps the continual cycle of non-transparency giving corrupt officials a thicker smokescreen to hide behind. If our top officials were as strict as those of yesteryear Roman officials, we would have less corrupt prison warders. One is reminded of the case when Paul and Silas were in prison and the angel of the Lord caused a tremour and the prisoners' chains were loose and the prison doors were opened. When the warder woke up and saw the prison doors opened,

he thought the prisoners had escaped and knew that he would pay with his life. He then took out his sword and was about to kill himself when Paul saw him and shouted to him and assured him that all the prisoners were still in prison (Acts 16:25-28). How we long to have incorruptible warders, men who would treat prisoners in a humane way. Because of both corrupt inmates and warders, it is no wonder many people see our correctional services as universities for corruption and violence.

Chapter 2.

DO THE HOMOSEXUAL PRACTICES IN SOUTH AFRICAN PRISONS

CONTRAVENE THE BILL OF RIGHTS?

Clause 9 subsection 3 of the above mentioned Bill of Rights reads as follows:

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

(S.A. Bill of Rights: 26)

It is quite clear that the above clauses state categorically that unfair discrimination is not permitted on any of the mentioned grounds. The State and any group or individual is prohibited from practising unfair discrimination against any person within the borders of South Africa. It is on the ground of this prohibition that the main contention of my thesis is based. Ethics in general demands that fairness be practised. Ethics further demands that there be no discrimination. Christian ethics goes a step further in that when one is unfairly treated or discriminated against, one is encouraged not to reciprocate in like manner; "Do not repay anyone evil for evil. Be careful to do what is right in the eyes of everyone" (Rm. 12:17). The Apostle Peter in his epistle goes further than the injunction of what not to do. He tells the recipients of his letter what to do when treated badly; "Do not repay evil with evil or insult with insult, but with blessing, because to this you were called so that you may inherit a blessing" (1 Pt 3:9). When one looks at the state of affairs in our prisons/correctional service centres, there is unfair discrimination.



2.1 Unfair discrimination.

Whereas the Bill of Rights in our constitution as quoted above has accepted homosexual practices as a given, it is further understood that anyone with this sexual orientation and who practices it, must not be discriminated against unfairly. The same goes for the heterosexual. The situation in prisons is such that the heterosexual in prison is unfairly discriminated against. One of the prohibited acts in prison is sex. It is an open secret that in prison homosexual sex is practised. The officials do know that homosexual sex is being practiced. While the homosexuals in prison have homosexual sex, the heterosexuals are denied heterosexual sex. The added pain, as alluded to above, is that some heterosexuals are forced into homosexual acts and/ or indecently assaulted, 'raped'. It has already been stated that some officials encourage homosexual acts to take place. While homosexuals are having a field day in prison sexually, heterosexuals are serving their sentences under difficult circumstances. This is unfair and discriminatory. All prisoners are to be treated equally and equally punished. Why is it that heterosexual inmates are officially denied having sex with their spouses when homosexuals are having sex with their partners in prison? This is the core, this is the bone of contention, this is where correctional services are to apply their minds to and act in such a way that all inmates are equally treated.

Before further arguing this main point, it needs to be established whether the denial of conjugal rights to prisoners is part of the punishment and if so, why is it that only the heterosexuals are being subjected to the adherence of this code of conduct in prison when homosexuals are not adhering to it. Later, in the section dealing with reform, we will look into the proposals and suggestions given by both officials and inmates and ex-inmates. Although this is the main point of my thesis, there are other aspects relating to

rights of prisoners that are not ethically adhered to by correctional officials. These are briefly discussed below.

2.2 Prisoner's rights

It has been said that our Constitution is one of the best in the world in spite of the fact that we are a very young democracy born out of the harsh treatment of Black South Africans by the Apartheid system. Some of our teething problems are seen in the Government trying to swing the pendulum from one extreme where prisoners were not informed of their rights - if these did exist - to the centre. In trying to do so, I think they tend to pull it too much to the other extreme where prisoners have rights and are informed of their rights, but it looks like the officials are ill - informed or under trained to adhere to these rights. To me it appears as if some of the stated aims appear to be neglected or overlooked thus begging for questioning our 'state of the art constitution'. This can be seen in our prisons where rights of prisoners are not respected by some of the prison officials. The Jali Commission of Enquiry, in reporting on the treatment of prisoners by officials said the following in an opening note thus reminding us that:

It has been stated repeatedly that a nation's civilization is measured by the way it treats its prisoners. The human rights of prisoners are internationally recognised and norms have been accepted on how prisoners should be treated. These include being treated with human dignity and outlawing torture and cruel, inhuman and degrading treatment or punishment. The rights of prisoners are also enshrined in the Bill of Rights of our Constitution. There is accordingly a duty on the Department to adhere to these norms.

(Jali 2006:25)

The following are rights that prisoners do have, while incarcerated. The rights I will discuss will not be a comprehensive list of all their rights. Only a few selected ones will be discussed. I must, at the outset of this section, say that it is not easy for the uninitiated to conceive of an inmate with rights. The majority of people in society assume that once

convicted, a prisoner has lost all rights. Others go to the extent of even saying that after violating societal rights and the rights of their victim, the now convicted person should have no rights. Can one who murders or rape have rights? Is it not the victim's turn to see some justice done by taking away the rights of the now incarcerated convicted inmate? Ethically speaking one may ask whether it is right or just for one who violates the rights of another/others to then turn around and expect or demand that the state and society should now turn, stand up, respect and uphold his/her rights. Is it not generally accepted that the Biblical golden rule of "do to others as you would have them do to you" (Lk 6:31) applies to all? If the perpetrator violated the rights of others, would it not be fair to have his rights also violated? What God told the children of Israel to do in the Old Testament, is in a sense the same as the above rule formulated negatively. God instructed the Israelites; "Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot." (Dt. 19:21) It is in the spirit of the above that people would like to see convicted sentenced prisoners suffer while in prison. This view is sometimes not isolated. As the Jali Commission reports, some officials hold on to this view and as custodians and protectors of inmates, some tend to treat the prisoners unjustly:

Convicted criminals have for a long time been regarded in South Africa as outlaws. We have chosen to deny their existence and consider them as a form of subhuman species deserving of the consequences of their deeds. This lack of concern has allowed a mentality to take root amongst many correctional officials that prisoners can be treated in any manner without fear of sanction. Consequently, despite all of the pronouncements by our courts in terms of constitutional and common law rights, it has become clear to this Commission that many members of the Department are of the view that prisoners are in prison for punishment and not "as punishment".

(Jali 2006: 25)

When officials adopt that view and treat prisoners in prison who are there to serve their sentences badly, they tend to disregard the fact that these prisoners still have limited rights. These rights are to be respected and accorded to these inmates taking into account that they are in prison as punishment and not to be further punished by officials.

2.2.1 Arguments for prisoner rights to be upheld

Over against the above approach that deny that prisoners have rights stands the approach that they do have certain rights. I agree with the generally accepted phrase that 'if we practise an eye for an eye approach, soon the world will be inhabited by blind people'. The lawbreakers do have rights, limited rights governing the place where they are kept. If we take away all their rights, we will be paying back evil with evil. This would be unbiblical according to among others 1 Pt 3:9. This will be unchristian. This will be unethical. This in turn will be the continuation of a spiral of evil, the end results probably being chaotic or the breakdown of any societal moral fibre.

There are areas of ethics where Christians and Muslims agree and there are areas where we disagree. We both agree that homosexual acts are unethical. Where we disagree is the idea of paying evil with evil. Adherents of Islam and the Sharia law in the east, in particular, believe in the practice of an eye for an eye principle and say it is a successful way of curbing societal ills. It is generally said that this principle is very good as a deterrent. In the case of prisoner rights, I believe from a Christian ethics perspective we should strive for the ideal of walking the talk, repaying evil with good and turning the other cheek. It is from this Christian ethical perspective that I argue for the upholding of certain prisoner rights even with the full knowledge that they are in prison because they took other people's rights, either robbing, raping or even murdering innocent civilians on the basis of the 'golden rule'. Doing unto others as one would have them do to one. In other words, if people treat one badly, one ought to treat them in return as one would have liked others to have treated one. If one treats others badly because one was treated badly, it will be doing to others as they have done to one. Returning evil for evil. By treating them as they should have treated one would be a good lesson. It is this sense of teaching for

rehabilitation that makes me argue for prisoner rights such as the following, to mention a few.

2.2.2 Rights on admission

According to the Correctional Services Act, 111 of 1998, inmates do have some rights. They include among others the right to choose and consult a legal practitioner or have one provided and paid for by the state. A prisoner is also entitled to written information in a language he/she understands concerning the rules governing the treatment of prisoners in his category, disciplinary requirements, authorised channels of communication and so on (Correctional Services Act. 1998:323). It further states that for the illiterate prisoner, correctional officials are to explain this information to the prisoner and if necessary through an interpreter. The day and hour of admission and release must also be recorded in the appropriate register.

I would like to mention two reasons for arguing for the upholding of prisoner rights in this section of rights on admission. Firstly, we look at the right to be informed of the treatment of prisoners in his category and channels of communications. If a prisoner is unaware of his prison category and the treatment or privileges or restrictions, he may innocently act in a way his category does not allow him. This may land him in trouble by behaving in a wrong way or expecting something not allowed prisoners in his category. Secondly, a prisoner has the right to know when he can expect to be released either on parole for good behaviour or after serving his full sentence. If the officials do not divulge this information to the prisoner and it is not recorded, a prisoner may stay in prison longer than his sentence or be released by mistake before he completes his sentence. Worse still would be the case of being overlooked for parole after being an extremely helpful and good inmate but not utilising his rights and privileges to apply for parole due to ignorance

of his rights. This is the reason why I argue for the upholding of the rights of prisoners. More important is the fact that these rights must be upheld and respected by prison officials who are designated custodians of these rights.

2.2.3 Safe Custody

The next right that prisoners have while in prison is the right to safety. While every prisoner is required to accept the authority and to obey the lawful instructions of the officials on the one hand, the department must take the necessary steps to ensure the “safe custody of every prisoner and to maintain security and good order in every prison...” (Correctional Service Act of 1998:321). In other words, the prisoner in custody has the right to be protected from both other inmates and the officials. It is in this regard that the officials fail some inmates in that some inmates are bullied, intimidated and forced to share their possessions with the tough guys. Worse still, there are those who end up being indecently assaulted on an ongoing basis. This right for security can be tied to the purpose of correctional services as seen in chapter two of the same act (Correctional Service Act of 1998:319). The purpose of the correctional system is to “... detain all prisoners in safe custody whilst ensuring their human dignity”. As briefly mentioned in the introduction, there is no human dignity when a person sits on a toilet seat to relieve himself in full view of twenty or more inmates. The system further fails the inmates/offenders in that being forced to engage in homosexual acts erodes their human dignity. It goes against the grain when a person who is supposed to be a protector becomes the one who violates the prisoner’s rights. This the officials do by failing to protect the callow inmates as already mentioned. They further fail the prisoners by not stepping in to stop the bullies or even when they as officials know who the perpetrators are, they do not bring them to book. This is not in keeping with a good work ethic. It is unethical and unacceptable.



2.2.4 Accommodation

One of the rights of prisoners is that the state must provide adequate accommodation. As stated in the act: "Prisoners must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity" (Correctional Services Act. 1998:325). The problem of overcrowding in prison is a violation of this right. It is further worth noting that overcrowding is not a new phenomenon recently experienced under the new governmental dispensation. This is an old problem as seen from the experience of Hugh Lewin in the seventies. Lewin spent years in the Pretoria Central Prison and explained that the prison even then was overcrowded to a point where three prisoners were sharing a cell meant for one person.

To put this matter into perspective, the South African Human Rights Commission on addressing this issue takes us back and gives an insightful background. "The South African prison system formed part of the state apparatus of a minority government based on racial discrimination. The 'pass laws' required Africans to carry passes at all times and failure to do so meant a jail sentence. As a result South Africa had one of the highest prison populations in the world and prisons were often overcrowded. ... Detained persons were subjected to human rights abuses in South African prisons during the apartheid era. Detention without trial and torture were the order of the day" (SAHRC 2001:366). To add to the above, a person would end up in prison if he did not have a pass. In addition, if one had a pass but did not have the pass correctly stamped either as employed or work-seeker, one was sure to go behind bars. Many Africans were jailed for failing to have a stamp in the pass allowing them to be in a said area, a 'permit'. There were many other by

- laws that controlled Africans in South Africa which, if not adhered to, made one a candidate for spending time in prison.

As cited earlier, this problem of overcrowding has not abated with the progression of years. The situation has actually gotten worse. Our media continually monitors the inadequacies of different Governmental departments including prisons. This is done in light of our newly found non-harassment of reporters because of 'freedom of speech' and the advent of investigative journalism.

In an article dealing with the problem of understaffing in Correctional Services, City Press commented on the problem of overcrowding, saying: "Popcru says facilities meant to house 114 000 inmates are currently stretched to accommodate 187 000. Whilst jails are over-crowded, the department is understaffed at operational level by more than 10 000 members" (City Press, 20 March 2005, p 4). Officials of Correctional Services have on air, when interviewed, confirmed that our prisons are overcrowded. This situation is a denial of the rights of prisoners entitled to be housed under conditions of human dignity. It is a problem that does not end there, but has negative consequences. One of the resultant factors is indecent assault on callow inmates and other problems like the easy spread of communicable diseases. The minister of Correctional Services, Mr. Ngconde Balfour, after addressing Cabinet on this problem, made an announcement on air, covered by electronic media. Both radio stations and television shows covered his speech live on Tuesday 31 May 2005 at 07h30 when he announced a reduction of sentences of six months across the board and an extra reduction of fourteen months for certain categories of prisoners. These were prisoners sentenced for minor offences, excluding prisoners sentenced for violent crimes, sexual offences, armed robberies and attempted robberies and so forth. This was an attempt to alleviate the problem of overcrowding in prisons. It was a welcome move and positive in a reformatory way.

2.2.5 The right to good nutrition

The last right I believe prisoners should not be denied is this one of good nutrition. The section dealing with this right in Correctional Services Act. 1998:325 reads as follows:

- Each prisoner must be provided with an adequate diet to promote good health, as prescribed in the regulations.
- Such diet must make provision for the nutritional requirements of children, pregnant women and any other category of prisoners whose physical condition requires a special diet.
- Where reasonably practicable, dietary regulations must take into account religious requirements and cultural preferences.
- The medical officer may order a variation in the prescribed diet for a prisoner and the intervals at which the food is served, when such a variation is required for medical reasons.
- Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than fourteen hours between the evening meal and breakfast.

The Jali Commission of Enquiry Report found that the officials did not follow the above directives concerning proper nutrition for prisoners. According to their findings, not only did the officials fail to follow the above guidelines but the officials were found to have been acting in a corrupt manner in that they helped themselves to the food meant for prisoners and worse still, the officials stole the food and sold it back to the prisoners. As the Commission reports:

The Commission has heard numerous complaints from prisoners in almost every Management Area regarding the fact that they do not receive three meals every day, that warders eat the food intended for them, that they seldom get sufficient meat and so forth. In its earlier reports, the Commission has acknowledged the fact that food is an important commodity inside the prison and that it is used as a commodity not only by prisoners but also by members. Internal corruption was ultimately exposed in Grootvlei Prison where a number of members augmented their income by selling chickens to the prisoners. This complaint was also received in other management areas.

(Jali 2006:28)

The Commission further found that officials combined meals, breakfast and lunch or combined lunch and supper so they can leave early to attend to their errands. This abrogation of duties is not good work ethic. For the prisoner it shatters the set programme of meals at certain intervals. Those who may be unwell and need to follow a strict medical diet are sure not to be better off. If they are expected to keep their own food until supper time, there are a number of possibilities that may creep in between and the prisoner may end up with no food for the next meal. The bullies may take the food from him or others may steal it while he is not aware or may be distracted. With the conditions already mentioned of overcrowding and the heat in summer, the food may be unhygienic by the time he wants to eat it. Thus it is important for officials to adhere to these and other rights of prisoners so as to make life a bit more bearable while incarcerated.

At the Pretoria Management Area, the Commission found a similar pattern of misbehaviour by officials as they report saying:

The theft of prisoners' food by members of the Department as well as the practice of members consuming prisoner's food was found to be a normal occurrence in many of the Management Areas investigated. In many of the prison kitchens, prisoners are made to prepare food for members on a daily basis.

In this investigation it was established that two warders used prisoners to cook food for them out of prisoners' supplies. Another member was found to be regularly stealing buckets of chicken from the prisoners' meat supply.

(Jali 2006:63)

2.3 Counter-arguments to rights

The rights discussed above and many others are not generally accepted by the society. In most cases the society would like to know that the convicted person serves his sentence and comes back into society rehabilitated. The majority of members of the society believe in retributive punishment and see the above rights as a reversal of justice. They see the

inmate as one who is gaining more than the victim or even the free person. This sentiment was echoed clearly by one of these anonymous emails doing the rounds. The following email entitled Prison vs Work was forwarded to me by a friend who got it from a colleague. The person who sent it is an employee of the South African Airways office in Durban. This was sent in January 2004 and it is not clear who the author is probably an anonymous one. This is what the email says:

WORK vs PRISON

IN PRISON: you spend the majority of your time in a 8x10 cell.

AT WORK: you spend the majority of your time in a 6x8 cubicle.

IN PRISON: you get 3 meals a day

AT WORK: you only get a break for one meal and you pay for it.

IN PRISON: you get time off for good behaviour.

AT WORK: you get more work for good behaviour.

IN PRISON: the guard locks and unlocks all the doors for you

AT WORK: you must carry around a security card and open all the doors for yourself.

IN PRISON: you get your own toilet

AT WORK: you have to share with some idiot who pees on the seat.

IN PRISON: they allow your family and friends to visit.

AT WORK: you can't even talk to your family.

IN PRISON: the taxpayers pay for all expenses with no work required.

AT WORK: you get to pay all expenses to go to work and then they deduct taxes from your salary to pay for prisoners.

IN PRISON: you spend most of your life inside bars wanting to get out.

AT WORK: you spend most of your time wanting to get out and get inside bars.

IN PRISON: you must deal with sadistic wardens

AT WORK: they are called managers.

HAVE A GREAT DAY AT WORK!

This piece of work makes it clear that some people think that the prisoners are actually having a good time in prison while the free and victimised have to work hard for their keep. It may sound light-hearted but the subtleness of the truth embedded in this piece gives an idea of what the (wo) man in the street thinks.



2.4 Rights and recidivism

Prisons the world over have and continue to have this problem of repeat offenders. The reasons for recidivism vary from country to country. In the United Kingdom and Scotland to be specific, they had a high rate of repeat offenders in 2005. Angus Macleod reporting in The Times of Saturday 24 June 2006 said the following:

Figures in the Parole Board for Scotland's annual report for 2005 showed that of the 363 prisoners paroled 236 were recalled, all serious offenders originally sentenced to at least four years in jail. In 2004 the figure was 201 and only eight years ago it was 96. A further 36 prisoners sentenced to life, almost all of whom were jailed for murder, were also brought back into custody having committed another offence after their early release. That figure was down on 40 recalled the previous year.

(Angus Macleod, The Times 24 June 2006; page 8).

It was interesting to note that one of the politicians remarked and saw the contributing factor as an emphasis on the rights of offenders. "Annabel Goldie, leader of the Scottish Conservatives, said the figures showed that Executive ministers were 'far more concerned with the rights of offenders than with the rights of victims and the rights of the public to remain safe'"(A Macleod; The Times 24 June 2006 page 8).

In our own country this pattern seems to be repeated as repeat offenders keep increasing. McKenzie relates the story of a young man whose trend of recidivism started way back as an eleven year boy who was sent to a reformatory school where he was raped. He was then released but committed some offence and was sent to prison. Cilliers and McKenzie continue in the same vein to discuss how some prisoners find life 'outside' as hard and how they commit offences and return to prison. This is how McKenzie puts it:

There is something unbelievably perverse about the thought that a man can be beaten, raped and kept under heel in prison, finally released, and then be back again in three weeks. Every time I see it I want to scream. Eighty percent of prisoners come back to jail. They all return with similar stories. 'It's hard outside, really hard.'

(Cilliers and McKenzie 2006 131)

Much as there may be some truth in what the (wo)man in the street sees as an unfair distribution of rights, it nevertheless does not mean that prisoners should not have rights. I believe it is in the interest of the department of correctional services to put their house in order so as to reduce the number of recidivists, without reducing the rights of prisoners, or even denying them rights as two wrongs will not make one right. The problem of recidivism as alluded to above, is not an exclusive nor peculiar phenomenon to prisons in South Africa. The statistics in New Zealand, although not marrying this problem to rights rightly upheld or abused, also show an undesirably high percentage. Marshall says the following in this regard:

There is a major pragmatic objection to the reformatory theory: it appears not to work! Despite the introduction of rehabilitation programs, recidivism rates remain high. New Zealand is typical: around 30 percent of current female prisoners and 60 percent of current male prisoners have already served previous prison sentences.

(Marshall 2001:103).

It would not be surprising if further research discovers that the rights enjoyed by prisoners in prison exacerbate this high rate of repeat offending. It is therefore interesting to note that paying more attention to rights of prisoners and being politically correct as the Scottish politicians noted in their case, at the expense of the victim becomes a cause for recidivism. We would be well warned in the South African scene to ensure that this does not become rife. As McKenzie mentioned that around eighty percent of inmates come back to prison because they find life outside hard, the department of correctional services should therefore do something to reduce recidivism. The department should also ensure that while the prisoner enjoys his rights in prison, he is made aware of the rights of his victim(s) that he violated and needs to make amends for that by good behaviour and adhering to rehabilitation schedule laid out for people in his category.

2.5 Slight improvements in 2006

Any improvement in the Correctional Services is a welcome step, no matter how small. Boyd Webb reporting in The Star of May 12, 2006 discussed a few issues noting improvements. First he quoted an increased budget that will increase the number of reservists by eight thousand. This will help in the fight against crime in increasing the visibility of policing. This will in itself be a deterrent, thus reducing possible crimes and offenders leading to less people going through our prisons. He further quotes the minister of Correctional Services Mr Ngconde Balfour as saying: "Statistics indicate that in 1995 we had 110 000 offenders, in 2003 this increased to 187000 while last year it dropped to 156 000" (The Star May 12, 2006 page 2). It must be appreciated that there is an improvement from 187 000 to 156 000 inmates. With that drop of 31000 inmates we need to remember that our prisons are built with a capacity to house 114 000 inmates. This means that the prisons are still overcrowded by 42000 inmates. This is very, very high and is unacceptable. The Department of Correctional Services needs to unabatedly fight the battle of decreasing the number of inmates so as to treat those in South African prisons humanely. This aspect will be dealt with more in depth later when looking at proposals for prison reform.

2.6 Points from the Draft White Paper on corrections in SA December 2003

This Draft White Paper was approved by Cabinet to replace the 1994 White Paper on Corrections in South Africa. I deduce from this that it is therefore important that whatever the department of correctional services does, it will be based on the objectives and intended outcomes of this current White Paper. I choose to discuss a few relevant issues pertinent to issues already touched on so as to see whether any improvement can be expected. This part will tie in with the behaviour of correctional officials as expected by the

department, correctional management and safety, security and human dignity of inmates and cost effective facilities.

2.6.1 Corrupt correctional officials revisited

In the 'Societal Context - After Care' section of the preamble of the Draft White Paper regarding officials, the following statement calls for comment: "The Department of Correctional Services recognizes the enormous challenge it has to change the profile of the correctional official from that of a prison warder perceived to be prone to corrupt influences to a role model and a rehabilitator" (Draft White Paper-Societal Context-After Care). The point that needs to be faced is that the correctional services intends changing a profile of a warder who is perceived to be prone to corrupt influences. In other words the correctional services appear to be denying the fact that some prison warders/ members are prone to corrupt influences. This to me appears to be an approach by the correctional services of adopting the ostrich mentality of hiding its head in the sand. It is a matter of denial if the correctional services do not accept the fact that there are corrupt officials and not only a perception. A case in point is the above-mentioned warder who not only had a sexual affair with a prisoner knowing full well that inmates are not allowed to have sex in prison, but further, as alleged, took ten thousand rand from the same man she claimed to love, which was supposed to be paid to lawyers. This in itself is not an isolated case, but as pointed out earlier on (page 21) the very DCS dismissed four hundred and fifty prison warders members after they were found guilty of corruption and many other offences. How can they then turn round and talk of warders who are perceived to be prone to corrupt influences? It must further be remembered that 'it takes two to tango'. Any straight thinking and fair warder would not accept bribes when approached by inmates, but rather would expose the inmate and thus curb the cycle of corruption. I believe that it needs to be said that correctional service warders members are not only perceived to be prone to

corrupt influences but that they are corrupt, albeit not all of them. The sooner those in authority accept this fact, the better it will be to deal with the real matter decisively rather than take it to be a perception.

The Jali Commission of Enquiry in their findings regarding sexual abuse in prisons reiterated this view. Although their comment related to the contracting of AIDS, it is nevertheless relevant in that it touches on the officials ignoring facts. The Report reads as follows:

If the Department keeps on ignoring the fact that sexual abuse is rife in our prisons and that there is an extreme likelihood that prisoners who are exposed to violent unprotected sex will in all likelihood contract AIDS, then it is effectively, by omission, imposing a death sentence on vulnerable prisoners.

(Jali 2006:30)

It was further revealed that there is a booming drug dealing business in prisons. The point was made that prison is no deterrent for repeat offenders when prisoners earn a living in prison by selling drugs. It was more lucrative and enjoyable to stay in prison than to be free and be unemployed. From that report one can see that corruption of warders is widespread in our prisons. It is quite obvious that drugs such as cocaine and dagga cannot just easily come into prison without the help of warders. A simple example is that when the inmates smoke dagga, the smell is very strong and detectable. How come the warders on duty do not bust the offenders and confiscate the drugs? One can therefore easily deduce from this that some warders members are in cahoots with the prisoners. As an ex-inmate, Mr. Bhudu commenting on the aspect of corrupt warders said: "It happens all the time; pay warders and they can bring in anything." He further mentioned the case of Grootvlei prison in Bloemfontein, as reported by another Special Assignment programme, and said that some of the inmates who were the whistle blowers on corrupt warders were victimised and assaulted by both inmates and warders members. He also

said that some warders who were found to have been corrupt are still on duty. I can believe that, because one case in point is the reported sex in prison case of warder Sonia Graaff (page 28) who was having sex with an inmate and after being caught, was transferred to another prison and is continuing to work as warder/correctional services officer member.

2.6.2 Escapes from prisons

Reports of prisoners escaping from prison are numerous. We hear of these escapes from different prisons around the country. One common thread about these escapes is that firearms were used. In some cases the warder's firearm was used after he was overpowered and taken hostage. In other cases the firearms were smuggled into the prison by visitors who are supposed to be thoroughly searched by warders to prevent any weapons from being brought into prison. One can easily conclude that in the cases where the guns were smuggled in, the warders on duty must have known. The latest case of such an incident was reported by the media; on the news on 702 Radio on June 7 to 9 2006. The report said that prisoners escaped from the Johannesburg prison using firearms. Two of the escapees were later arrested, but the rest, the ones who had the gun(s), were still at large. The question again is how did these prisoners get hold of a gun if the warders were not party to this apparently planned escape? The question of warders being perceived as corrupt or corruptible can satisfactorily be laid to rest by admitting that corrupt warders are a reality and not a perception. The above can in a sense be laid to rest with the results of the Jali Commission report. The results show clearly that there is warder complicity in these cases either directly or indirectly. The report says:

Department members often take bribes to turn a blind eye to sexual abuse, gang violence and thefts, and are sometimes complicit in illegal activities ... Smuggling has always been a problem for the Department. It is sometimes conveniently associated with gang activities by some of the members. Others always refer to smuggling as happening because of the involvement of the members of the community who visit the prisoners.

The evidence heard by the Commission has clearly pointed to the fact that the members are as equally culpable for smuggling especially drugs and alcohol. There are other items, which are also smuggled into prisons, like fire-arms, radios, tape recorders, fridges, stoves (hot plates), video recorders and DVD players and television sets. These obviously are smuggled to the various cells with the complicity of the members (*warders*). Italics mine.

(Jali 2006:16-17)

2.6.3 Societal involvement

The Department of Correctional Services mentions in the Draft White Paper that the job of correction, working with inmates especially in rehabilitation, is not their responsibility alone. As they put it in the Preamble section under 'After Care': ... "Correction is not a responsibility of the Department of Correctional Services alone it is a shared responsibility with society. The role of societal institutions must be visible at all levels where correction is taking place, including Departmental correctional centres" (DWP-December 2003, Preamble). This aspect of the department and the pronouncements in the preamble can be viewed in different ways. One way of viewing a statement like the one above is a critical one. This critical view would be that the department takes it for granted that all societal institutions will be able to gain access to information such as this. When one goes in at grassroots where the rubber hits the road, especially in urban areas, and asks the volunteers in most of the institutions whether they know the White Paper, the answer is negative. It is one thing saying that the society has a responsibility and another thing for the society to know and do something about it. How well will they then achieve their goals when the people they expect to work with are not aware of what is expected?

The other view would be one of applauding the department in that they see themselves not knowing it all, that they are aware of their inadequacies and shortcomings and of the existence of other institutions who can play a complimentary role in bringing about a change in the society. In order to fulfil this role, I believe that the men and women in the

media are to be praised. These are the people who take the bull by the horns especially in the area of investigative journalism. The role of these men and women can be seen in articles they publish or screen that are factual and sometimes revealing and critical of the shortcomings of the Department of Correctional Services. Some of the topics they tackle are eye-openers to the public and when engaging the officials of the department, it helps keep them on their toes and in some cases reveal things the department may not have been aware of. In this category of men and women who are playing a positive role in helping the department, there are some who most of the time are forgotten. These are the men and women who work voluntarily in prisons as chaplains. Besides the chaplains who are employed by the department of correctional services, there are those who go into prisons voluntarily out of concern. These are men and women who are members of Churches and or priests/pastors who see their calling as that of helping and counselling the incarcerated. The following cases below touch on the work some of the media have done in playing their role in keeping with the intentions of the Draft White Paper (DWP).

2.7 Sending conflicting signals

There are confusing actions taken or not taken by the department of correctional services and its officials that send conflicting signals. Both inmates and the community receive these signals. Some of the conflicting signals I would like to discuss a bit more in detail are as follows: officials know that inmates are not allowed to have sex in prison and they inform inmates of this restriction and yet they do nothing when inmates engage in homosexual acts. The department that issues the restriction of prohibiting sex in prison on the other hand appears to be condoning sexual acts in prison in that they make condoms available. The department saying that there is a perception regarding officials that they are perceived to be prone to corruption and then saying that the officials need retraining. Then there is the question of the officials who are expected to be experienced and their

status of professionalism. Lastly there is the guideline that first offenders should be accommodated separately from repeat offenders and yet in practice first offenders are put in the same cell with repeat offenders. These are the few areas where conflicting signals are being sent by the department of correctional services.

2.7.1 Officials and prison sexual acts

The media continues to play its role in questioning unclear moves by the department. On the Tim Modise Network Show on Radio 702 on 31 of March 2005, the question of sex in prison was discussed. The first question was whether the Department of Correctional Services would consider looking at the recommendation in a report to allow consensual sex among inmates to minimize coerced sex. The minister of Correctional Services Mr Ngconde Balfour was not available to take part in the discussion but did send in his deputy Mr Graham Abrahams. In response to that proposal the deputy made it clear that one of the rights prisoners lost when in prison is that no inmate is allowed to have sexual relations in prison. One of those who phoned in was an ex-inmate and he mentioned that it is a known fact that although sex is not allowed in prison it is taking place. This the deputy did not dispute. The fact of coerced sex among inmates was mentioned and again the deputy did not dispute that fact. What was disturbing to me was that the deputy did not outline any plan to stamp out this practice in prisons. This further added to my point of discrimination in that heterosexuals are being unfairly discriminated against in that homosexuals are having sex in prison, while heterosexuals are not, and that some of the heterosexuals are forced, indecently assaulted, 'raped' and receive very little help from the officials and the department. Why are there no plans to enforce the "no sex in prison" prohibition? Why do the officials not act on those who have sexual relations in prison knowing that it is not allowed?

2.7.2 Does the department condone sex in prison?

On the same show mentioned above, an ex-inmate asked the deputy minister of correctional services a telling question: “If sex is illegal in prison, why does the department make condoms available to prisoners” (Tim Modise Network Show-702 on 31 March 2005)? The deputy’s answer was not satisfactory. He said that because it was a known fact that some people were being ‘raped’ in prison and others were having sex, it was the contribution of the department to minimize and in some cases prevent the spread of HIV/AIDS in prisons. I agreed with the comments of those who took part in the discussion as they pointed out to the deputy minister that if someone is being ‘raped’ he has no time and is in no position to ask or tell the person who is about to ‘rape’ him to put on a condom. In this case, the weak and now overcome inmate is in no state to dictate from a position of weakness to his attacker to use a condom.

This is an area of ethical testing. Why send out these conflicting signals? If sex is not permitted in prison, why make condoms available? Is this not in a way to sow confusion where straight deontological ethics is to be applied? It is generally known that in any male dominated society, even in households, the woman has very little influence in convincing the man to use a condom when engaging in heterosexual sex. The situation in prison is worse in that the power struggle games and male ‘rape’ to subdue the weak and callow male inmate to prove who is dominant, does not allow one the luxury to ask his assailants to use a condom. Usually the perpetrator knows that the person he is about to rape has minimum risk as a callow inmate and therefore he may not be running any risk himself, except that he may himself already be a carrier of some sexually transmitted diseases or the dreaded HIV.

The actions of the department to provide inmates with condoms when on the other hand they have been told they are not allowed to have sex in prison are confusing actions. The whole matter can for sure be seen as if the department of correctional services does condone homosexual sex in prison. McKenzie also says the same regarding these actions at Grootvlei. He says:

The DCS maintains that prisoners should not have conjugal rights, but it gives out prison condoms. Any young boy that comes to prison and sees the wardens giving out condoms can be forgiven for assuming that men having sex here is condoned. The condom dispenser is almost always empty. I wonder if prisoners have to ask the wardens for one if they know they're going to be raped tonight.

(Cilliers and McKenzie 2006:145)

This issue of supplying condoms to prisoners who are not allowed to have sex in prison is a disturbing one. More disturbing to me is that even the South African Human Rights Commission in their recommendation did not comment on this contradiction. Rather, because of the HIV/AIDS problem in prisons, they too sound like condoning homosexual sex in prison. Although they mentioned a number of causes for the spread of this epidemic, including prison sex, in their recommendation they do not propose any means of eradicating this practise of homosexual sex in prison as they say:

Research indicates that sexual activity, tattooing, body piercing (prisoners may use the same pin to create tattoos on multiple prisoners), and drug use by injection are the most prevalent HIV risk related activities among incarcerated men. In addition to the minimisation of the number of HIV positive prisoners, it is recommended that the promotion of condom use not be the only preventative method advocated in dealing with the epidemic. Education, life skills training and changing behaviour patterns are also recommended.

(SAHRC 2001: 379)

2.7.3 First time offenders in same cell with repeat offenders

The incidents of first offenders being housed with repeat offenders are against the stated aims of the Department of Correctional Services. In chapter 12 of the Draft White Paper of 2003 it is clearly stated : “First offenders sentenced for the first time, particularly for less serious crimes, should as far as possible be accommodated separately from repeat offenders...” (DWP12.8.1). Different prisons do not always adhere to this clause. Although the reason may be seen as simple in that our prisons are overcrowded and therefore cannot afford the ‘luxury’ of following to the letter recommendations given by the department, why do the officials do the direct opposite? This is sending even more conflicting signals. On the same programme where Tim Modise was discussing sex in prison, it was reported that some warders brought in prisoners to be sodomised by the experienced-repeat offenders. Some rehabilitated ex-inmate offenders on the programme shared that they were first time offenders and were sentenced for minor offences such as shoplifting and so on. They reported that they shared communal cells with repeat offenders. Again one sees that the department failed the offenders in accommodating first offenders and repeat offenders together. There are other cases where first time offenders were accommodated with repeat offenders and fell prey to these recidivists. It is this type of behaviour by warders/officials not helping or offering help to callow inmates that questions the work ethic and integrity of warders who do not apply or follow given directives in their duties. Why accommodate first offenders with repeat offenders when the directive says the opposite?

2.7.4 Perceptions and retraining

The second last example I would like to mention of conflicting signals being send out by officials of correctional services is based on the following statement:

The history of the Department shows that correctional officials *were not trained in the skills and knowledge critical for a Rehabilitation-Centred Correctional System*. As a result, the Department faces a major challenge to retrain the members in the new paradigm of rehabilitation through correction and development in a secure and humane environment.

(Draft White Paper section 8.1.3.)

The conflicting signal I see is this: whereas the department earlier talked about the image of the warder as one of “being perceived to be prone to corruption”, thus exonerating the correctional officials, now they admit that ‘the warders were not trained’. Why don’t they just come out straight and admit that there are problems of inadequately trained officials, and that because of that, they are sometimes prone to treating inmates in an inhumane manner? This forthright approach would help build the image of a department that is upright and open. The department is currently seen as untruthful. In one statement they do not admit that their officials are corrupt. When the wardens/officials are caught red handed, they then admit that some of their officials are corrupt and have been dismissed. The conflicting signals here are that on the one hand department says that their officials are perceived to be corrupt and on the other hand when the media exposes their areas of weakness, the department turns around and say that the officials are probably untrained in doing their job. Can we trust a department that plays hide and seek with the community that pays its taxes for their upkeep? This is just not good enough, and even ethically unacceptable.

2.7.5 Professionalism and experience of officials

The last example is based on the statement that reads as follows: “As such, the competencies required of the ideal correctional official must be a unique combination of: * personal qualities, *experience, * expertise, * professional ethics...” (DWP 8A.1.1.). I personally see the conflicting signals here as the following. The mention of *the ideal*

correctional official to me spells an indication that such a person is hard to come by. I understand an ideal as something that is hoped for but in reality is not achievable. The Little Oxford Dictionary explains 'ideal' as follows: "perfect; existing only in idea; visionary". In other words, the department have a visionary official; a perfect official who we all know does not exist because there is no perfect human being. The combination of competencies are again conflicting in that while *professional ethics* can be taught in a school where officials will be trained, *experience* cannot be taught. One gains experience on the job. How can they expect a newly trained official to have experience? I see the department sending conflicting signals in that on the one hand they would like to have officials who are efficient and good, on the other hand they see these officials who should have these competencies as 'ideal officials, perfect officials' who exist only in idea. The department expects their officials to have experience from where? I believe the department is to set targets and objectives that are achievable and expect their officials to perform towards a reachable goal. Conflicting signals are a distraction and will sow confusion. It can become something to hide behind for those officials who will come into the job with wrong motives. We can imagine an official who after failing to carry his or her duties accordingly arguing that s/he did not have any experience but were doing their best.

2.7.6 Pitfalls of housing callow inmates with recidivists

The cases of young and callow inmates, most of whom are first offenders suffering under the attack of the experienced inmates are a reality. As reported earlier, there are cases where inmates were 'sold' to other inmates by warders. This is unethical and unacceptable. On Sunday 16 October 2005, on SABC 2 on a programme called 'The Big Question' hosted by Masechaba Moshoeshe, the question was on the rights of prisoners. In the discussion other aspects were touched such as cases of inmates from

different parts of the prison being brought into certain sections of the prison by warders to be sexually abused-molested-‘raped’ by other inmates (repeat offenders). There were some reformed/rehabilitated ex-prisoners in the audience. One reported that he was arrested for the first time for shoplifting and was in a cell with repeat offenders and witnessed how some inmates were beaten and others sexually molested. There was no mention of warders coming to the rescue of such inmates. The fact that first offenders were accommodated in the same communal cell with repeat offenders is unacceptable. This, as mentioned before, flies in the face of the department’s stated intentions to separate first offenders from repeat offenders because; “...as in general they have the best possible opportunities for rehabilitation” (Draft White Paper 12.8.1). In the same paragraph, it is further stated that this separation is to start during the awaiting trial period. This is not always adhered to. The next clause is also not adhered to in respect of first offenders. It reads as follows: “Given the extent of overcrowding and the limitations of resources at the Department’s disposal, the bias in resource and accommodation allocation should be towards first offence correctional clients ... ”(Draft White Paper 12.8.2). In some cases, the opposite is true in that the repeat offender known by officials will be given the cell he likes in exchange for a favour he will do for the official.

Although the next incident did not happen in South Africa, it further serves as an example of the need to separate first offenders from repeat offenders. This case needs to be taken as a wake up call for correctional officials in South Africa to work according to and adhere to the departmental code of conduct and professional ethics. This incident took place in one of the prisons in England. It was reported on the BBC 1 18h00 News of Thursday 29 June 2006.

The report was on the verdict of a court case against a repeat offender who beat a first time offender with a table leg in a cell they were sharing together in 2000. The victim later

died. The young man who was killed was Zahid Mubarek and the repeat offender was Robert Stewart. These two were put in the same cell and the victim repeatedly asked to be moved elsewhere, because he was threatened by Stewart. The officials did not do anything about the request although Stewart was known to be a habitual criminal and is said to be a racist and psychopath killer. The main question in this case, where the judge gave Stewart a life sentence for the crime, is the role the officials played. Could this not have been averted had they acted on the request of Zahid and his family to move him because of the letters Zahid wrote them? The officials acted wrongly in the first place by placing a first offender with a known habitual criminal. Reporting on the same matter in the Times of Friday 30 2006, the family lawyer concluded his argument in court by saying the following, "The Prison Service had 15 chances to save Zahid from his killer and it missed them all" (Adam Fresco and Sam Knight, The Times June 30 2006 page 8). If this is not a lesson for our prison officials, I know not what will be.

THE JALI COMMISSION REPORT

3.1 Background

The Jali Commission of Inquiry was appointed by the State President in 2001. The main purpose was to investigate and report on incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services. Mr. Justice T.S.B. Jali was appointed by the President as the Chairperson of the Commission. Hence the Commission has commonly been referred to as the "Jali Commission of Inquiry" (Jali 2006:2).

This inquiry initially was to concentrate on certain Management Areas excluding Grootvlei, situated in Bloemfontein. It was only in May of 2002 that this prison was also included.

According to a section of the executive report of this enquiry, it says the following:

During May 2002, the Commission became aware of certain acts of corruption that had been captured on video at the Grootvlei Prison, a prison situated in the Bloemfontein Management Area. The Commission approached the State President to extend its terms of reference to include the Bloemfontein Management Area. The terms of reference were accordingly amended.

(Jali 2006:2-3).

To legitimise this inquiry, its findings and report, the preamble reads as follows:

COMMISSION OF INQUIRY INTO ALLEGED INCIDENTS OF CORRUPTION, MALADMINISTRATION, VIOLENCE OR INTIMIDATION IN THE DEPARTMENT OF CORRECTIONAL SERVICES APPOINTED BY ORDER OF THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA IN TERMS OF PROCLAMATION NO. 135 OF 2001 AS AMENDED. FINAL REPORT.

EXECUTIVE SUMMARY (Jali 2006: Preamble).

3.2 Relevance of the Commission and its Findings

The relevance of this Commission of Inquiry and its findings can and will be seen in the few areas of the scope of this thesis. These areas relate to the sexual practices in prison which are covered under the sections dealing with sexual abuse, violence and intimidation related to these sexual abuses and general corruption of prison officials. The officials who were involved in this corruption were not exclusively those who dealt with prisoners. The terms of reference went beyond warders, but because of the scope of this dissertation, I will restrict myself to discussing the findings of such corruption as relating to prison officials such as members. The findings of the Commission will be commented on and relevant sections quoted. I will also make use of information from the book written by the man who exposed the evils of corruption and gangs in prison who were bullying and 'raping' young and callow inmates with the help of prison officials. This man is Gayton McKenzie. Before I quote and comment on the relevant sections of both the Commission and McKenzie's work, it is worth noting that what was being 'alleged' to the Commission, was ultimately proven to have been true in all respects if not more shocking than what was expected. Mr. McKenzie's work as eye-witness and whistle blower at Grootvlei corroborated the Commission's findings in other prisons and Grootvlei as well. Or more correctly, the Commission's findings corroborate McKenzie's and others assertions who have for so long been made to deaf ears. Parts of the opening summary of the Commission's findings reads as follows:

The constitutional norms and values specifically highlighted in the report are public service principles of transparency, demographic transformation and efficiency. Human rights, particularly the right of prisoners and staff to dignity, fair and humane treatment, equality, race, sexual orientation and gender are also examined.

The Commission became acutely aware of the Department's struggles with powerful underlying dynamics, many of which related to contested attempts to institutionalise the Department which was at the time, moving away from an old order and conforming to a new constitutional order.

The nine (9) Management Areas the Commission investigated were, according to the information furnished to the Commission in 2001, selected because they were amongst the most problematic ones in the Dep. The Commission did in fact find that corruption and maladministration, violence and intimidation were prevalent at these management areas. Accordingly, the reading of this report should be seen in that context.

(Jali 2006:3-4)

These findings are a great indictment on the department. These findings should be seen in the light of verifying claims or allegations of officials being involved in corruption. Much as the allegations were apparently true, some of the allegations are bound to be false, thus the need to investigate and verify. Rather, in general all allegations are to be treated with caution, keeping in balance the general saying that 'there is no smoke without fire' and the legal aspect that each South African citizen according to the Roman Dutch law is 'presumed innocent until proven guilty'.

I need to mention here that it will be noted that reference to the findings of the Jali Commission, have not been restricted to this section. The same goes for McKenzie's book on his eye witness experience in prison. All over the thesis I have made use of the rich findings of these two sources.

3.3 Jali Report findings

Of the nine areas investigated by the commission, only a few will be commented on. As mentioned above, due to the focus of this thesis, I will restrict the discussion on findings regarding the factuality of homosexual sex activities in prisons and the role of correctional officials regarding corruption in some of the areas of their work. This aspect of corruption among members of the department of correctional services will sometimes be intertwined with the discussion on sexual abuse in prison. It is important to note that although some of

the areas of corruption and maladministration may be dealt with in detail for a few prisons in the report, the picture remains the same in all the prisons they investigated.

3.3.1 Sexual abuse in prison

In dealing with this aspect of prison life, the Commission found that the situation was worse than they expected. In the prisons they investigated many came forward to testify to the fact that they were abused and sodomised (raped) by inmates and that nothing was done by the members when they reported these incidents. As reported elsewhere, the Commission heard of a young prisoner who went to report to an official that he was sodomised by two inmates. Instead of getting help from the member, the very official who was supposed to help him sodomised him. Although this case is an exception in that an inmate was raped by other inmates, as well as a correctional service official, sexual abuse is also a reality in other prisons. The Jali Commission verifies this by saying the following: “In fact, the number of cases the Commission heard all point to the fact that sexual abuse in prisons is rife” (Jali 2006:30). It is not only rife but it also involves violence. The findings of the Commission as mentioned above show that they were appalled. This is what they said concerning this aspect: “This chapter highlights the horrific scourge of sexual violence that plagues our prisons where appalling abuses and acts of sexual perversion are perpetrated on helpless and unprotected prisoners” (Jali 2006:29). It is also interesting to note that the report mentions ‘acts of sexual perversion’. Without diverting from the main focus of discussion, it is morally correct to refer to acts of forced sodomy on an unsuspecting prisoner by a number of other inmates as ‘*perversion*’. It should be noted that this was carefully worded and by professionals who were and are not unaware of the sexual orientation clause in our Constitution /Bill of Rights whereby consenting adults are free to engage in sexual acts of their choice.

It is therefore worth noting that the Commission unearthed and found it to be factual that sexual abuses and sodomy do take place in our prisons. What is upsetting though, as mentioned earlier, is that these acts of homosexual acts are forced on unsuspecting inmates who by nature or choice are heterosexual. This is not acceptable. The whole matter is made worse by the complicity of the members of the department of correctional services who act contrary to expectation as those who are supposed to be the custodians of justice neglect to apply it. Not only do some members play a part in the facilitation of sexual abuse of callow inmates by recidivists, it becomes even harder when members do not help victims of sexual abuse. The Commission found that even in areas where guidelines were given as to how to help inmates, these members failed to do so as the following report shows:

The Department has specific policy dictating how prisoners who have suffered sexual assault should be treated. However, it is clear that none of the sexual assault victims who testified before the Commission was given the treatment the policy envisaged.

(Jali 2006:30)

The above cited reports and probably many other similar but unreported incidents highlight the fact that homosexual sex does happen in prisons, among others, between un-consenting adults; and that this happens partly because of corrupt officials who play the role of being the owners of these young men who have very little say with regard to which cell they are allocated to and who their cell inmates are. At the end of the day they find themselves forced into performing homosexual sex acts and 'turned out' to becoming the 'wife' of an influential inmate who managed to outbid other inmates. Top departmental officials deny some of these facts due to the fact that the members who deal directly with inmates do not report these activities to them and paint a picture that 'all is well.'

Much as it is not the focus of this thesis to look at sexual practices among female inmates, it is worth noting that female inmates as well as female members are not innocent in this

matter. This was not reported to the Jali Commission either, but in order to give a balanced picture in this human matter, a brief look at the phenomenon of sexual matters in female prisons is visited, courtesy of Sunday World. The Newspaper investigated this matter and Mzilikazi Wa Afrika discovered several disturbing things. In an Eastern Cape prison they discovered that female warders were having sex with male inmates and that in one female prison a male warder was having sex with female inmates. What is interesting is that in one case, one male inmate had sex with more than one female member and was treated like a king with a computer in his cell. At the same prison other inmates impregnated female members. "Two other wardresses at the same jail who have already given birth to their bundles of joy were made pregnant by one prisoner. The prisoner later died in a freak car accident while he was on parole" (Mzilikazi wa Afrika Sunday World 15 December 2007:2). Some of these female members were transferred and one was fired. In the case of female inmates, one male member had sex with three female inmates whom he made pregnant and it is alleged he had sex with many other female inmates. Afrika said the following in the report regarding these officials:

A source at the prison claims Peterson (member) was not alone and the three women inmates are not the only prisoners he had sex with. "Some of the prisoners are not pregnant yet but they are not the only ones. Warders are having sex with prisoners like rabbits here."

(M Afrika Sunday World 15 April 2007 page 2-3)

To me it is still difficult to understand the rationale to have female members in a men only prison and have men members guarding female inmates. I see this as a very good recipe for disaster. What the Sunday World has uncovered may be the tip of an iceberg. We may be in for a big surprise when inmates turn around and sue the department of correctional services for misdemeanours committed by its employees, the members.

In the case of McKenzie at Grootvlei, he writes and tells how he personally had sex with female members:

An almost basic law is that there will be sex when you put men and women together. Female warders do have sex with select prisoners. There are thirteen of them working at Grootvlei. I have managed, once or twice before, through much effort, to have sex with them myself, using charm, being a shoulder to cry on when boyfriends at home screw up and being a friend when the office job becomes too boring. And most importantly, lending them money.

(Cilliers and McKenzie 2006:151)

McKenzie did not stop there. He also tells the story of how he arranged for himself and his friend to have sex with two female warders. His friend was so excited that he told someone who somehow got the story to the media. It was reported accurately, but when investigated, he denied it all. The classic one for me was how he made lots of money by arranging an illegal conjugal visit for a rich inmate, paying the warder a small percentage of the takings. This is what he says:

I notice a new white inmate and watch him carefully. He has to be rich. His wife looks the part of a real lady and visits him as often as she can. I finally tell him that if he pays me R3500. I can arrange a few conjugal visits for him. The man is only too willing to pay. I give the warden R400 in exchange for one conjugal visit. I keep most of the rest of the cash and give the remainder to the 26s.

(Cilliers and McKenzie 2006: 152)

This in a sense shows that human nature is the same, be it for males or females. Where officials were found to have acted unethically, the department should act accordingly by disciplining the guilty members. If and when these steps are not taken, it appears as if the department condones this type of behaviour by its employees.

3.3.2 Correctional officials and corruption

In the section dealing with corruption among the members, the Commission also found that the claims and allegations were true. This can be seen in the statement they made:

The Commission observed that corruption and mal-administration were so rife in most of the Management Areas investigated as to warrant



describing this as part of the institutional culture. There was a large group of employees who featured in almost all the incidents of corruption and maladministration and who are predominantly driven by greed and the need to make easy money.

(Jali 2006: 4-5)

The areas of corruption varied from stealing food intended for prisoners to aiding prisoners to escape.

In 1999, one hundred and twenty nine (129) inmates escaped from Gauteng prisons alone. Evidence points to the fact that at the Johannesburg Management Area aiding and abetting prisoners to escape has been rife. It is, however, of concern that the Department does not do enough to ensure that staff who aid in these escapes are severely punished so as to curb this problem.

(Jali 2006: 49)

The concern of the Commission is that the perpetrator members are not punished enough so as to set an example in curbing this unethical behaviour of members is one that some countries are addressing. When I was in India during December 2007 there was an article in one of their newspapers on how the Department dealt with police officers or prison officials who were suspected of having played a part in the escapes of prisoners. There are two types of prison escapes as the Jali Commission points out. There is the genuine escape where the escape route can be traced and clues left behind as to how the inmates got away. Sometimes inmates without the help of officials mastermind this type of escape. In other cases officials are involved. Then there are escapes where it is clear that officials were involved for example in cases where at night when the roll call is made all prisoners are present but in the morning some are missing, having disappeared without trace. Nothing was broken and no official overpowered and the official in charge had the keys on him. A case like this would point to official complicity. In the case referred to above in India, it first appeared as if the escape was a genuine inmate job. But the officials did a lot of investigation and found links between the prison official and some of the inmates and

questioned the official and others who were on duty and found them guilty and suspended them. Nitin Mahajan reported as follows:

The Chhattisgarh government has ordered a magisterial inquiry. After suspending five prison staff yesterday, the government today suspended DIG (Prisons) P D Verma, who was in charge of prison security in the state, and arrested Jailor V S Mankar.

“The jailor was arrested after sustained interrogation pointed towards a link between the jailor staff and escaped inmates,” Superintendent of Police (Dantewara) Rahul Sharma said. Mankar has been booked under Sections 128, 129 and 130 of the Indian Penal Code, which pertain to a public servant facilitating escape of prisoners.

(N. Mahajan:Indian Express December 18 2007: page 1)

It is this kind of decisive action that our authorities in our correctional services need to exercise in order to curb this unethical behaviour. The current judicial arrangement where guilty parties cut a deal with the prosecution and get indemnity may be playing a part in letting the guilty go free. It may be a lawful thing to do but in the case of a self confessed corrupt official, the Commission does not tell us what was done to the member who testified to them concerning the role he played in aiding inmates to escape. The Jali Commission reports on corruption and members as revealed in cases like the one(s) below:

One member revealed that the people who were assisted in “disappearing” were all incarcerated on charges of armed robbery. Members acknowledged that armed robbers have lots of money so those prisoners are identified as people who are in need of “help” and who would benefit from the “assistance” of officials and would have money to pay them.

This member testified about his role in various escapes, and even the fact that it cost between ten thousand rand (R10 000.00) and two hundred thousand rand (R200 000.00) to arrange for an escape at Johannesburg Prison.

(Jali 2006: 50)

In between these, there were cases where members were found to have acted unbecomingly and unethically in that they supplied prisoners with drugs, and as reported above 'sold' callow young inmates to inmates as wives. In other cases the members were found to have purposely not searched visitors properly and guns and other illegal items were smuggled into prison. Other items that were smuggled into the prisons were television sets, hot plates and DVD players. The investigation to find out how these found their way into prison pointed to officials' complicity with money changing hands. What leaves me dumbfounded are members who assist dangerous inmates to escape. The question is whether these officials never think of the possibility that these dangerous criminals, once they escape and are free, will commit crimes that may involve their own family members or relatives. Apart from that possibility, the mere fact that they are aiding convicted criminals to be free before they are rehabilitated and thus defeating the ends of justice is unacceptable. This is tantamount to shooting oneself in the foot, working against oneself. It augers well with what Jesus said when he was accused of driving out demons through the power of Beelzebub. He explained that if that was the case, the devil was then working against himself. "If Satan drives out Satan, he is divided against himself. How then can his kingdom stand?" (Mt 12:26).

The other areas where the Jali report deals with the corrupt *members*, points out that the complicity of members contribute to the causes of coerced homosexual sex in prison. The report shows that corrupt members accept bribes to allow some inmates proper visits. One of the rights of prisoners is that each inmate is allowed a forty five minute visit but the members only give some inmates ten minutes. Only those who bribed the officials will get the proper allocation of time. It has already been reported that the gangs will keep watching those who do not get visits and then earmark them as their targets to be drawn into their nets and later coerce them into homosexual sex acts. Not only do these corrupt members sell visits to inmates with money, they also exacerbate the situation by not

giving inmates the stipulated three meals a day all the time. The commission found that members sometimes combined meals so as to knock off early to go and run their errands (Jali:27-28).

3.3.3 McKenzie's experiences

The above examples given by the Jali report are not isolated cases. McKenzie himself, as seen above, showed how members are and can be corrupted. He explains how members at Grootvlei stole prisoners' food and sold it back to them and how some got involved with gangs. He also tells how some honest members were targeted and got involved by being threatened by inmates and as a result, brought drugs into prison. Sometimes the innocent members brought in drugs stashed in the wheels of their cars without them knowing it. What beats me is when he explains that some members actually join some prison gangs and facilitate the objectives of the gang. How can a free man join a prison gang? When this information is known by those in authority nothing seems to be done. McKenzie says:

A warden wants to be a prisoner in every sense but the literal. He'll even join a gang. Those with a closer affinity to men like me and the constant stream of money we shepherd become fellow 26s. They facilitate the daily robbery, smuggling, trade and extortion. Those who assist the 28s help them to gain access to younger prisoners and have sex with prisoners themselves. Wardens join gangs for their own advancement and for protection.

(Cilliers and McKenzie 2006:130)

The above does show that the callow inmate in most cases will end up trusting a person who may be planning his downfall. It is men of this nature who must be rooted out of the correctional services lest we end up with a department with corrupt members.

One aspect that is not easy for the (wo)man in the street to understand is the involvement of officials participating in prison sex. Not only do some members facilitate the sex trade

and import young men into the adult section of inmates, but, they also get personally involved and have homosexual sex with inmates. McKenzie says the following:

There's sex between wardens and prisoners. When a warden falls in love with a prisoner, if one could call it that, the inmate almost always gives in. It's part of the warden psyche, his need to fit in with prisoners. Though he despises them, he becomes them. ... Fear is behind the sex in many cases, the basic fear of what might happen if you fail to give in to the licentious urges of a more powerful man.

(Cilliers and McKenzie 2006:116-117)

What is difficult to understand is that the members are free men. Most of them are probably married or have girlfriends. Why they get involved with prisoners does not make sense. Again the question of upholding the 'no sex in prison' rule is blatantly ignored, and this time not by inmates, but, by members, the very custodians of the rules. It is surely not acceptable.

The other aspect that the Jali commission also touched on is that of officials involved in stealing. There is a link between wardens stealing food meant for inmates and the sexual practices in prison. McKenzie explains how wardens steal and eat food meant for prisoners and that this leaves prisoners starving. Some of the food is smuggled back into prison and sold back to prisoners. The strong and influential inmates will buy the food while the poor and callow inmate cannot afford it. What then happens, as already mentioned, is that the hungry men are lured to give in to the suppliers of food sexually.

McKenzie says:

It comes as a surprise to me the day I discover that a warden eating prison food is an act of corruption. It's such a norm that nobody even questions it. ... Wardens' cars carry away kilograms of food: vegetables, pork and chicken. ... The state loses millions from the thefts. Toothpaste, toilet rolls, shaving blades, floor polish, toothbrushes, all are commodities that sometimes never reach the prisoner. ... If you have the money, you use it to buy back your own rations. Those without money simply have to keep living in artificial famine. ... The elite buy the meat, the rest buy the starches, mostly porridge and sauce. ... Ultimately, when hunger feels



like a jigsaw puzzle falling to pieces within them, men sell themselves. They'd rather be used for sex than starve.

(Cilliers and McKenzie 2006:126-127)

McKenzie revealed that it is not only the homosexuals who are having homosexual sex in prison. Heterosexual men, when in prison, do have homosexual sex. He also revealed that sometimes the prison gang rules are not always strictly adhered to. He talks about one of the members of the 26's who was not supposed to be having sex in prison but he was. He says that this man was very influential in that he as the chief cook he was able to smuggle food. McKenzie says: "Kit Makwe, the prison's chief cook and one of the most powerful in jail, has more than ten 'girlfriends', though he's a 26 and shouldn't technically be having any sex at all. He makes a profitable business out of food smuggling and the wardens, too, fear the chef" (Cilliers and McKenzie 2006:127). No doubt Makwe's behaviour in stealing prisoner's food and reselling it to rich inmates also contributed to the further hunger of poor inmates. No doubt some of them ended up either as his 'girlfriend' or selling themselves to someone with enough power and money as a 'wife', so as to be well cared for and not going hungry.

Incidents such as these I believe are taking place in many prisons in our country. Unlike the reported cases to the Jali Commission and the information gathered from McKenzie's experiences, these go unrecorded and unpublicised. What we need to remember is that incidents like these involve lives of men we hope to see back in the free society one day. The state is losing millions through thefts of this nature in our prisons and the Department of Correctional Services needs to look into alternatives to stop this corruption that results in a chain reaction with negative repercussions for inmates and the department.



Chapter 4

EMPIRICAL RESEARCH RESULTS AND EVALUATION

4.1 Introduction

I started the process of applying to the department of correctional services for permission to visit prisons in the Gauteng province in order to conduct interviews with inmates and members in August 2005. For almost one year I was directed from one office to the other and at the end, it appeared I was knocking at the wrong doors. I was then given the correct department and office in September 2006. I visited the officials, collected the necessary documents and submitted my application. Professor Etienne de Villiers, my promoter, had to write a letter of motivation and verification. After a lengthy period the ethics committee of the department of correctional services requested me to supply them with additional information including a copy of my MTh dissertation. I was finally granted the permission during the first week of June 2007 to visit the prisons. The results that are analysed below are of interviews conducted in the following prisons in no particular order: Pretoria Central correctional services; Johannesburg (Sun City) correctional services; Leeuwkop correctional services and Krugersdorp correctional services. A small percentage of ex-inmates were personally sourced while the majority were interviewed at the Soweto NICRO offices and at Moroka Police Station.

4.2 NICRO

NICRO stands for National Institute for Crime prevention and the Reintegration of Offenders. They have regional offices in all nine provinces. I went through the Johannesburg regional office and was referred to the Soweto branch. My summation of the organisation is that it does a lot of good work in rehabilitating released offenders. They

have a number of good programmes but a great deal more can be done. Let me mention here that it became clear to me on account of my interviews with inmates that very few knew of the existence of this organisation and what help they can get from it. If some extensive marketing was done, a lot more could be achieved. For example, many inmates would have loved to study and do literacy courses or further their studies, but lacked the funds to enrol in the study programme in prison. It must again be said here that for many inmates to escape the traps of gangsterism, being a member of those engaged in studying, gives them respect. They are also seldom attacked by members of the different prison gangs. NICRO has a Study Fund for inmates and very few inmates knew of it and how to access it.

Another great service rendered by NICRO is the provision of bursaries for children of prisoners. If a prisoner is the breadwinner and has school going children, he can be helped and the children can get bursaries from the same Study Fund that makes funds available to prisoners. This is called The Esther Lategan Study Fund. This again is a service many inmates do not know of. The unfortunate part is that in cases where the services are known, very few make use of them. I do hope that this will not cause the organisation to adopt a defeatist attitude and stop trying to help by making these services more widely known

According to the 2001/2002 Annual Report, one can see the impressive job done by the organisation in the different provinces. They reported that, "47 victim support centres operated from police stations, courts, clinics, community centres and other venues" (NICRO Annual Report 2001/2002:4). They also reported that their community victim support programme which operated in seven of the nine provinces had reached over 34 800 individuals. My observation is that a lot is being done outside the prison walls and that a lot more visibility in prisons would make a greater difference to inmates.

My proposal is that NICRO should apply to the DOCS to be given an office in each of the correctional services centres, prisons. This will enable them to provide orientation to new inmates. This is where they can explain what help inmates can get from NICRO and how their children if the incarcerated parents are bread-winners can get help with bursaries and, lastly, how on release they can be further helped to be reintegrated back into their communities. Here NICRO officials can get details of family members and start to work with these people in helping them to cope with the absence of a family member and how the families can offer support to the member in prison especially by encouraging them to visit and send funds. It must be said again that the information gathered from inmates and former inmates is that the gangs, especially the Ninevites, would target the inmate who does not get any visits from family or friends and within a short space of time the callow inmate is subsumed into the prison gang lifestyle.

4.3 Summary of research procedures

The results of the interviews that were conducted were captured by the Department of Statistics of the University of Pretoria, (see appendix 3 and 4). Ms Jaqui Sommerville and her team worked very hard and efficiently in sending me the summary of outcomes as captured. I interviewed thirty members/warders in total. These were based in the four different Correctional Service Centres. I also interviewed a total of seventy four inmates and ex-inmates. Apart from the four Correctional Services Centres I visited, I also interviewed ex inmates who were on parole and reporting weekly at the NICRO offices and or at the Moroka Police Station. These men had served their sentences in different prisons and all these fell under category or code number five (5).

4.3.1 Research results on correctional service members

The officials/warders had twelve questions to respond to. Questions [Variables] one (1) to three (3) dealt with where they were placed, position held and number of years in service respectively. Questions [Variables] four (4) to seven (7), nine (9) and twelve (12) expected a yes or no answer with a not applicable where applicable. The answers to these questions were also given codes for example a YES = 1, a NO = 2 and a Not Applicable = 3. The other variables, as the results will show below, required sentence answers. I spent a bit more time on these variables, as will be seen below, talking to the members.

All thirty members answered variable one giving their place of work. Similarly, variable two had a hundred percent response in that all of them knew what position they held. These positions ranged from a C1 to C3 as a member warder to administrative officials and health and spiritual care officials. The next variable dealt with experience, how long the member has been in that position. The lowest serving member had been in their position for a period of seven months and the longest serving member had been with the department for thirty years. It was interesting to note that on the matter of inmate behaviour in prison, namely the question on whether inmates are told that sex in prison is prohibited, twenty seven answered in the positive, one in the negative and two did not know. In responding to the question whether, irrespective of the above, inmates do have sex in prison, twenty six said yes and four said no. The next variable dealt with the question whether the department provided inmates with free condoms. Twenty nine members answered in the positive and only one answered in the negative. Only three members said that some members do play a role in assisting inmates to have sex in prison. Twenty five answered that question in the negative and two did not know. The next question dealt with the reason for members to behave in this unethical way. One out of the thirty members gave two reasons. The other twenty nine responded in the following

way: six members thought that the reason for such behaviour by members is greed; the only second reason was given by one member as corruption. Twenty two members responded with a not applicable or that they did not know of any member behaving in that way. Two members did not respond to that question.

Variable nine asked whether members knew of any inmate who was forced or raped by other inmates. Eight members answered in the negative, saying that they did not know of or heard of inmates being raped. Twenty two answered in the positive, that they either knew or heard of inmates who have been raped or forced by other inmates to have sex with them. A follow up on the above question dealt with the place where the incidents of rape and or coerced sex took place. Twenty three members said that this happened in the communal cells and one said it happens in single cells. Six members said the question was not applicable or did not know as they do not think this happens in the first place. Questions/variables eleven and twelve dealt with solutions from the point of view of members. Variable eleven asked what the member thought the authorities should do to prevent inmates raping others or even having access to sex while in prison. Variable twelve dealt with a double barrel question which sought to find out if members felt that they were adequately trained to deal with all eventualities; and secondly to find out from those who answered in the negative as to what is needed to ensure that members would be equipped to deal with all eventualities.

Responses to variable eleven had seven different answers as to what authorities could do to curb sexual behaviours in prison. Five members gave three suggestions, thirteen gave two, ten gave one suggestion and two did not give any suggestion as to what the authorities should do to curb sexual activity in prison. Four members suggested that more members should be employed as the current number of members are not enough and are working under pressure and overworked. Only one member suggested that the

department should install CCTV cameras in the cells so that members can monitor cell activities and be able to respond to any misdemeanours. Five members suggested that the department should deal severely with both sexual perpetrators and officials who may be found guilty in playing a role in the sexual activity of inmates. Two members saw the solution by keeping inmates busy. The solution could be for the department to introduce more activities for the inmates to keep them busy. Six members suggested that gangs and known gang members should be dealt with in a way that will end prison gangs and overcrowding. All those who mentioned gangs mentioned overcrowding, almost as if gangs were seen to be thriving in overcrowded cells. An interesting suggestion came from six members saying that the authorities should allow more preachers to come into prison to preach to both inmates and members. They saw the solution in a spiritual level where one's attitude once changed supernaturally will bring about a change in behaviour. The highest number of members suggested separation as the solution. Thirteen members said that authorities should separate inmates, gang members from non-gang members, hardened criminals from petty crime offenders and first time offenders from repeat offenders. A few of the inmates mentioned the necessity to separate younger offenders from the older offenders, that a middle class of inmates should be created, when the juveniles who no longer fit the profile of juveniles and qualify as adults should be kept apart from the older men for several years until they can fend for themselves and are experienced enough to stand on their own.

In answering the first part of variable twelve, there were eleven who felt that members were well trained to deal with all eventualities pertaining to inmate problems and their duties. Thirteen responded negatively, saying that they felt members needed more training to be able to cope with their work adequately. Of these thirteen two gave both a yes and a no. Five members said it was not applicable and one member did not respond at all. The second part of variable twelve had five different suggestions as to what the

department should do to ensure that members are well trained to cope with their duties. One member gave three different suggestions, six members gave two suggestions, ten members gave one suggestion and thirteen did not respond at all.

The suggestion that was commonly cited as one that the department needed to concentrate on regarding the equipping of members to do their work well was cited by ten members. They felt that the department should run refresher courses for members. This was followed by the suggestion that the department should introduce and run courses on stress management. The feeling was that the members were working under stressful circumstances and looking after inmates - some of whom were incorrigible - was very stressful. The last area suggested as a need to enable members to do their work satisfactorily was the need to train members how to handle and work with inmates with the objective of rehabilitating them. The feeling here was that the switch from guarding and punishing inmates to working with inmates towards rehabilitation was too sudden a change for some members. The problem, I was told, was that some of the inmates were not interested in being rehabilitated. These are the men who made prison their home, especially recidivists with long sentences who do not dream of seeing the outside walls of prison. These are the hardened men who make life unbearable for some members. This suggestion for the training of members to handle and work with inmates with the objective of rehabilitation was subscribed to by five members. These then were the suggestions for change in the department as seen by members regarding sexual practices in prison and the equipping of members to enable them to perform excellently.

4.3.2. Evaluation of members' responses

The above results show that the respondents were not totally honest. This conclusion as will be seen is based on some of the answers given by the members when these answers

are compared with the results of the Jali Commission. Combining the question whether members are well trained to deal with all eventualities and the question whether inmates are specifically told that sex in prison is prohibited, the four members who answered in the negative are four too many out of the thirty interviewed. These could be some of the members who *unknowingly* did not enforce the rule, apart from those who did not enforce this strict rule of “no sex” knowingly, on purpose for personal gain or ill-gain to be politically correct. The other possibility is that these may actually be the members who may have been involved in assisting some inmates to have homosexual sex in prison. It was also very interesting to note that in answering the question whether inmates do have sex with other inmates in prison, twenty six answered in the positive. There was no indication of whether the members did anything on discovering that homosexual sex was taking place under their noses as the guardians and officials who are to see to it that rules are obeyed. There was no mention of any charges brought against those who broke the law or in the case of forced homosexual sex, no case opened against the perpetrators. Although the questionnaire did not have a question related to this aspect, McKenzie’s experiences in prison show that, of the male rape cases he saw at Grootvlei, no steps were taken against the perpetrators. This is what McKenzie says:

It’s at night when you hear the screaming. Somewhere, someone is being beaten or raped. The wardens that do work at night often cannot be bothered to look in on anything, because they’re using the time to study. Many a screaming inmate has received little more for his shrieks than a warden shouting, ‘Shut up!’ and banging his door.

(Cilliers and McKenzie 2006:115).

The other case was the one that led to his turning point, the rape of Wimpie and he explained that the wardens did not help and in spite of what they saw, they said there is no proof that the boy was raped. There is no mention of any steps taken against the men who raped Wimpie. There is also no mention of steps taken against the four inmates who raped the fifteen year old boy called Kenneth. Not only was there no mention of cases

opened against the four perpetrators, worse still, nothing appears to have been done against the warder who also raped Kenneth when he went to report that he was raped, namely Mr. Mohano who according to reports raped Kenneth not once but twice. “We talk about it in the cell and curse the wardens. It’s as if they have raped this boy to spite us” (Cilliers and McKenzie 2006:196).

This surely does not augur well with the behaviour of members, wardens. There may be a few members who may claim that most of the prison sex is consensual, and between adults. This argument would not stand because in prison sex is prohibited. The variable dealing with the provision of free condoms by the department to inmates, as mentioned above, had a ninety seven percent positive response and only one out of the thirty gave a negative answer. Off the record, after answering the question, a few members chatted to me about this controversial and contradictory action by the department. On the one hand they prohibit sex in prison and on the other hand they provide free condoms. The members I chatted to explained that it was confusing. They said sometimes it was difficult to enforce the ‘no sex in prison’ rule because, when asked by inmates what they were supposed to do with the condoms, when sex was prohibited, they found it difficult to give a decisive answer. It is to a certain degree understood that while the department prohibits sex in prison, knowing full well that in spite of that prohibition, it happens, they have to provide these condoms for those who want to safeguard themselves. This in a sense still does not make sense of being positive about what the department is all about. My believe is that the department should be very strict and not supply condoms and see how many will stop being involved in prison homosexual sex. There are currently some inmates who are HIV positive and some die of AIDS in prison even when condoms are provided. To me this is a matter of choice. If an inmate wants to be careless with his life, he will do so in spite of the provision of condoms. There are those who are HIV positive as McKenzie pointed out who do not care what happens to them in prison. The incident where an

inmate was sentenced by the prison gang member to be raped by HIV positive men in prison is one horrendous action that the provision of free condoms would not stop happening. Stopping gangs from operating in prison will do a lot in bringing some sanity into our correctional service centres. It has been mentioned above that the department does not provide free needles for drug users in order to stop them from infecting one another by sharing the same needle. Why not apply the same to condoms?

Perhaps the area that showed the lack of openness and honesty most, was the responses given by members to variable seven. This variable dealt with the complicity of members in inmates having access to sex in prison. Only three answered in the positive and twenty seven said that members do not play a role in assisting inmates to have sex in prison. When we look at the results of the Jali commission, the revealed facts in McKenzie's story and the numerous reports in papers and on our television programmes and compare that with the responses I got, one sees a very big difference. One wonders whether the members do not read newspapers or watch the reports on the television programmes. Their answers were an emphatic NO; that members do not play a role in assisting inmates to access sex in prison. This is the opposite of the truth and to me this spells trouble in that, if our members are not open to admit where some of their colleagues have erred, we have a long way to go. They are still in a stage of denial, the stage where one tells a lie so often that ultimately one tends to believe that the lie is actually true. McKenzie mentions how corrupt members acted with regard to selling young callow inmates to the older inmates for sexual purposes and to be turned out. For the members to deny complicity by any members really beats me.

Responding to the question of whether the members know of or are aware of inmates being forced by others to have homosexual sex, seventy nine percent said yes. This again proves that not only do inmates have homosexual sex in prison against the rules and with

the members' knowledge, but that there are many who are molested, indecently assaulted and turned out to be sex slaves of the powerful recidivists and probably members of the Ninevites gang operating in prisons. It would be interesting to know how many perpetrators were prosecuted after being found guilty and given further sentences. This I believe is another area that needs to be researched and attended to urgently by the department of correctional services. The twenty three respondents showing that the indecent assaults on inmates happened in communal cells highlighted the evils of overcrowding. The funny thing is that in normal life, one would not think of engaging in something so personal as sexual relations in a place where there was very little privacy. In prison the incidences of indecent assaults taking place in communal cells spell out some dynamics in prison life that the man in the street may not understand. It was only when I revisited the hardships of the homeless and people living a normal life in an informal settlement that I understood how in a place where privacy was unavailable, men could behave in such unethical ways. Nevertheless the problem of overcrowding was once more brought to light as a cause for this unbecoming behaviour by incarcerated men living in close proximity with other men they never chose to befriend or live with.

The last part of the interview questionnaire dealt with solutions. The idea was to lift the dark mood the reality of the evils of prison sex to a point of seeing that something can be done. The last but one variable asked, was what they, as members, thought the authorities should do to stop or curb the incidents of inmates indecently assaulting 'raping' other inmates. There were two second position popular suggested solutions from the members' point of view. These solutions were each affirmed by six members. The first solution was split into two in that it dealt with overcrowding as well as dealing with prison gangs. The second solution stated that the authorities should "Get more preachers to preach to inmates". It does show that among members, those who are close to inmates, there is an awareness that a spiritual encounter with Christ brings about a change in

behaviour. The top solution from the members' point of view was supported thirteen members. The solution is; "Separate inmates; gang members from non-gang members; hardened criminals from first time /petty offenders". It seems to suggest that the separation of inmates in whatever way will go a long way to minimising the problem of prison sexual behaviour among inmates. The last question members responded to dealt with the point whether they were equipped to do their job. The responses were not quite conclusive in that while eleven said yes and thirteen said no, the five who felt the question was not applicable made it difficult to draw a clear-cut conclusion. Nevertheless the response to this solution showed that members were in a way complacent. Those who felt that members needed refresher courses were in my opinion objective. Those who felt that members needed training in the rehabilitation of inmates were also objective and direct. Direct in that they acknowledged the difference in the old approach of guarding and punishing inmates and the current approach of working with inmates towards their rehabilitation. The interesting issue for me is that not many mentioned their need for stress management. The seven out of the thirty who said that there is a need for offering members a course in stress management were being realistic considering the kind of men they were in contact with and type of crimes these inmates were convicted for. In conclusion I found some members who are very passionate about their work and are concerned about the few who are tarnishing the image of good members.

4.3.3 Research results on inmates and ex-inmates

As mentioned above, there were seventy four inmates and ex-inmates who were interviewed. They all gave their consent to be interviewed. Fifty five inmates were visited in their different prisons correctional centres and nineteen ex-inmates were either free or free on parole and were interviewed at the NICRO premises, the Moroka Police Station and wherever I could arrange to meet and interview them. Variable one (1) dealt with the

name of the correctional service where the inmates are serving their sentences/former inmates served their sentences; variable two (2) asked whether they were inmates or ex-inmates. Variable three(3) and four (4) asked the question related to the number of years and months of their sentences and what period have been served to date or up to the time when they were released. Having dealt with variables one and two, variable three revealed that the total number of cumulative years of the sentences that these seventy four men were serving was one thousand and sixty two (1062) years. Answers to variable four showed that up to the time of the interviews, the total number of cumulative years already served, including those who were released was three hundred and eleven years and three months (311yrs 3mnths). There was one person with the heaviest sentence of ninety eight (98) years. The lightest sentence was one (1) year and there were two inmates and one ex-inmate with this sentence. The average length of the sentences would therefore be 14.35years and the average years already served would be 4.2 years .

Variable five dealt with the sexual orientation of inmates whether they were straight or gay. Seventy three (73) inmates indicated that they were straight and only one disclosed his status as gay. Variable six asked whether inmates were told on arrival at the prison of their admission to serve their sentence that sex in prison was prohibited. Twenty said that they were not told and fifty four said that they were told that sex was prohibited. Variable seven asked the straight men if they ever engaged in sex with another inmate in prison. Seventy one said no, two said yes and one did not answer that question. To variable eight, asking whether condoms were provided free of charge by the department of correctional service, sixty three said yes and eleven said no. Variable nine was directed to the gays to find out if they had regular sex partners in prison. The one gay person said no and the other seventy three were given an automatic not applicable response.

Variable ten asked whether the inmate/ex-inmate was ever forced by another inmate(s) to have sex with them. Nine said yes and sixty five no. Variable eleven was reversing the odds by asking whether the respondent ever forced an inmate to have sex with him. Only one responded in the positive and seventy three said no. Variable twelve asked whether the respondent knew or heard of an inmate who was forced / 'raped'. Sixty three said yes and ten said no and one did not respond to the question. Variable thirteen dealt with solutions. The respondent was to give a solution what he thought the authorities should do to reduce or stop inmates from being raped by other inmates. This question had twelve different answers as to how this problem could be solved. Three respondents gave five solutions; eighteen gave four solutions; twenty seven gave three; nineteen gave two; four gave one solution and three did not respond to the question.

The first solution suggested was that the department should deal with overcrowding and/or house inmates in single cells. This solution was chosen fifteen times; Twenty six of the respondents said that the authorities should separate inmates in several ways: recidivists from first time offenders; young offenders from the old and serious crime offenders from petty crime offenders. Twenty one respondents said they saw the solution to be the doing away with gangs in prison, that is, authorities should deal with prison gangs. Eight respondents mentioned that they think gang members should be separated from non gang members. Eight respondents said the remedy to this prison sex issue was allowing inmates to have conjugal visits either in prison or outside prison by allowing qualifying inmates to have week-end home visits. Sixteen respondents said the authorities should embark on encouraging family support in the form of visitations and funds being sent to inmates to buy the bare necessities. Fifteen responded that the department should implement an orientation for first time offenders so as to equip them with common do's and don'ts of prison life. Fifteen said the installation of CCTV cameras will solve this problem and fifteen said the department should deal with corrupt officials. Twenty one

supported a two in one solution, that the department should supply adequate food for inmates and that they should increase the number of recreational activities for inmates to combat idleness. Only three respondents saw dealing with drugs in prison as the solution. The last solution that was suggested to deal with this problem of forced homosexual sex was supported by forty five respondents. They said that the sex offenders should be isolated, separated from the rest of the inmates. This suggested solution was chosen by the highest number of respondents. These then are the results from the inmates and ex-inmates from the set questions as seen in appendix 1.

4.3.4 Evaluation of inmates and ex-inmates results

This evaluation will deal with those aspects of the results from inmates and ex-inmates that are more pertinent to our main concern, which is sexual practices in prison. The first aspect of the results that caught my eye was the variable regarding the dissemination of do's and don'ts of prison life. In responding to the variable whether they were told that sex in prison was prohibited, twenty out of the seventy four inmates/ex-inmates answered in the negative. This to me say that there are some members who either are not doing their job properly, by not telling all inmates when entering prison that sex in prison was prohibited, or that they themselves did not know that sex was prohibited. The other possibility is that although they knew, they did not do their job properly on purpose so as to be able to then facilitate the human trade in prison. The last reason why so many inmates were not given the rules of prison life regarding sex could be that these members took it as a foregone conclusion that whether they told the inmates or not, homosexual sex was happening in prison. So, better not waste their strength in telling incoming inmates not to engage in sex while incarcerated. The other interesting aspect is that even those who knew of the prohibition, still engaged in sex anyway. More interesting for me is that of those that I interviewed very few openly admitted having had a sexual experience

with an inmate in prison. It was always someone else out there, but not me. As for the core of the thesis, it became clearer that two main points were confirmed. Firstly, that men in prison were having homosexual sex with other men, and that secondly, there were those who forced others to have homosexual sex with them. The disheartening thing here is that the authorities did not appear to be doing anything to help the victims of sexual abuse. Sixty three of the seventy four said that they knew of or heard of someone in prison being indecently assaulted (raped) by other inmates. This again showed how personal this issue was. Not many of those I interviewed admitted to forcing some inmate to have sex with them or admitted to being forced by other inmates. I concluded that perhaps they felt this would make them appear weak to a stranger asking questions. The difficulty of divulging such intimate and personal matters to a stranger was not easy for many inmates. This aspect of men who in prison were forced to serve powerful inmates sexually and when they met their girlfriend or wife pretended to be fine, was explained by McKenzie in his story about prison life as he experienced it at Grootvlei prison.

It was interesting to note that when it came to the variable where they were given the freedom to contribute to possible solutions to curb these sexual practices, the inmates gave twelve suggestions compared to three given by members. This discrepancy proved the truth of one saying in one of our languages that goes: “*seso se baba mongway*”. Literally translated it would go something like; “The itchiness of a sore is known only by the one who scratches it”. In other words it is the one who is wearing the shoe who can tell where it pinches the foot. In this case, it is the one who is directly affected who will come up with means and ways of alleviating the problem. It was therefore no surprise that the inmates who are the ones affected by indecent assault by other inmates are the ones who came up with more solutions. Out of the twelve suggested solutions, two had high votes. One had fourteen ‘votes’ and the other one had twenty nine ‘votes’. The one with fourteen votes was suggesting that in order to prevent inmates to indecently assault

others is to separate inmates in different ways. Separate recidivists from first time offenders; the young from the old and serious crime offenders from petty crime offenders. The highest suggestion attracted twenty nine votes. It was suggested that the perpetrators of forced homosexual sex in prison, "rape", should be isolated. Off record some inmates touched on the attitude of members when an inmate reported a case of indecent assault "rape". They mentioned that in most cases the inmate is not taken seriously. This then leads to the victims hardly reporting such cases as the response from the members is not helpful at all.

Lastly, when I interviewed inmates and ex-inmates I found out that the ex-inmates were more open to discuss this issue in comparison to the inmates. I understood this attitude because the inmates, were not sure whether I could be trusted or not. In a way they did not want to incriminate themselves. My summation with hindsight of the situation is that I might have gained more trust had I gone in with one of the regular preachers or an independent spiritual leader, one that the inmates knew and trusted. The regular chaplains employed by the Department of Correctional Services were seen as part of the system. They could not be trusted one hundred percent because their pay comes from the department. So, where the results and answers from both inmates and members differed from the results of the Jali Commission and the experiences and report by McKenzie regarding his time in prison, I take it that the respondents were not being open and honest. Where the answers were similar to either the Jali report or McKenzie's experience, it made me feel that I was barking up the right tree and that there are some who are open and honest.

SEXUALITY AND HOMOSEXUALITY FROM AN EVANGELICAL PERSPECTIVE

5.1 Introduction

One of the main reasons why I am against sexual practices in prison as discussed above, is because I believe some of the reasons for society and prison officials allowing or accepting these practices may be a misunderstanding of sexuality. I will therefore discuss sexuality and homosexuality in particular and Biblical texts dealing with these topics. Like all human beings who treat subjects from their own religiously coloured perspectives, I will treat this sexual ethics topic from my Christian background. I will do this as an Evangelical and like all Evangelicals the world over, we have our foundation and stance rooted in the rich Judeo-Christian tradition. We believe in the inspiration of the Bible as God's Word and infallible in its original form and its final authority in life. Botha puts this aspect beautifully when he says: "A socio-historical overview of the sexual ethical codes within Judaism, Hellenism and early Christianity shows that very definite codes were in place. Early Christianity inherited its sexual ethics from Judaism and reinterpreted it in the light of the Gospel. The Christian community originated and existed within a Gentile world within which sexual immorality was rife" (Botha 2005:54).

5.2 Human sexuality

The basis for our doctrine on sexuality is found nowhere other than the Bible, which states categorically that God made 'man' (human beings) in His image; both Men and Women. This was not acknowledged by scholars of yesteryear like Tertullian who thought women were inferior and not made in God's image. He accused Eve as follows:



You are the devil's gateway; you are the unsealer of that (forbidden) tree; you are the first deserter of the divine law; you are she who persuaded him to whom the devil was not valiant enough to attack; You destroyed so easily God's image, man. On account of your desert - that is death - even the Son of God had to die.

(As quoted by Stott 1999: 286)

Tertullian saw women as not having God's image, contrary to Scriptures that clearly states: "So God created man in his own image, in the image of God he created him; male and female he created them" (Gn 1:27). Our doctrine of sexuality is built on this foundation. This aspect of sexuality is affirmed in the New Testament. In response to the question on divorce, Jesus started with creation and said "Haven't you read" he replied, "that at the beginning the Creator made them male and female..." (Mt. 19:4)? Greenlee shares the same sentiments in his article on homosexuality in the New Testament, when he says the following: "There are two basic premises in the New Testament's treatment of sex. The first is that God "made them male and female" - two sexes, no more and no less (Mark 10:6) (Greenlee 1979:81).

Besides the fact that both men and women are made in God's image, we also need to note that male and female are also made for each other. When Adam was alone and lonely, God saw that it was 'not good' (Gn. 1:18). So God made Eve. God made them male and female to relate to each other. He made them to 'complement' each other, to celebrate their sexuality as male and female. He also made them and commanded them to procreate, to have children. "God blessed them and said to them, 'Be fruitful and increase in number; fill the earth and subdue it. (Gn 1:28) This aspect of procreation is not possible within homosexual relationships.

Male and female are to celebrate their sexuality within the God given parameters. These parameters are that non-genital relationships are to be enjoyed across the sexes, and

only within the confines of marriage are men and women to have heterosexual sex. This is our evangelical belief and practice. God forbids any sexual contact outside of marriage. This however is not the only view. As Botha puts it:

Gay theologians claim that sexuality is neither right nor wrong; it is simply a gift from God. To be heterosexual or homosexual is not a question of sin or morality, but rather the product of God's infinite mind. The gay person therefore needs to be theologically enlightened to the point of accepting his sexual orientation as ordained by God.

(Botha 2005:14-15)

5.2.1 Evaluation/Critique

The above approach by gay theologians cannot be found in the Bible. What they say is a gift from God cannot be traced anywhere in the Bible. Nowhere does the Bible say that God made man, woman and homosexuals. Biblical texts will show this later. It is not clear how and where they find God's infinite mind regarding homosexual relations not being sin or a question of morality when the written text shows that God is against homosexual relations. Lastly, when they say that the gay person needs to be theologically enlightened to accept his orientation, will they be happy with an understanding of someone who claims to be theologically enlightened and has a sexual relationship with either his daughter or an animal?

5.3 Homosexuality

It is generally agreed that homosexuality is a condition and that those who fall under this condition are referred to as homosexuals. It is further alluded to that there may be those who may think they have the condition and those who do not have this condition but may feel that they ought to try it as a form of 'fashion'. Nevertheless I will restrict myself to those with the condition and the practice, be it for longer periods or short periods. I may

here and there use the terms interchangeably. For a better understanding of this aspect we now turn to the definitions.

According to Taber's Cyclopedic Medical Dictionary, homosexuality is defined as follows: "A condition in which the libido is directed towards one of the same sex" (Taber 1976). And the Longman's Dictionary of Contemporary English says the following about the homosexual; "A person who is sexually attracted to people of the same sex" (Longman 1987:502). The Oxford Advanced Dictionary defines a homosexual as someone who is "sexually attracted to persons of one's own sex" (Hornby 1980:409). Lastly regarding definitions we look at what Grenz says about the term 'homosexuality': "The term, then, refers basically to the preference for sexual partners of the same sex or to the situation in which the erotic feelings are nearly exclusively triggered by persons of one's own sex" (Grenz 1990:225). From the definitions given above, it is clear that when we talk about homosexuals we mean people who are both sexually attracted to people of the same sex and have sexual relations with them. In general the term 'homosexual' includes both gays (males) and lesbians (females). In this discussion I will be referring to males, as our topic affects males in prisons and not females.

In addition to the definitions above, we need to immediately add that there are practicing and non-practicing homosexuals. I will concentrate on the issues relating to practicing homosexuals. Of these, there are four types I would like to discuss. The four types are the following: Transient Homosexuals, Transgenerational Homosexuals, Transgenderal Homosexuals and Egalitarian Homosexuals.

5.3.1. Transient homosexuals/homosexuality

This type is said to be a passing phase, an experimental stage that is not permanent. “Here the early relationships are usually of the same gender...Transient sexual acts at this time should not be confused with concretised homosexual choice; they are much more likely to be merely extensions of self-love” (Yerkes and Yerkes in Barnhouse and Holmes 1976:181). This is also seen as a stage where young men have strong friendships with other young men. In most cases these relationships are not sexual. It is a stage where boys shun a relationship with the opposite sex. The same I believe goes for girls. At this stage, they do not have sexual relations with other girls and have little or no interest in the opposite sex. In some cases this is a stage where people engage in a relationship with persons of the same sex as an escape route or healing period after a failed heterosexual relationship. After some time, they go back to live as heterosexuals. There are examples of women who were married and had children. The relationship went sour and instead of finding another man, they engage with a person of the same gender. This in most cases does not last for a life time and the person ends up with a partner of the opposite sex.

5.3.2 Transgenerational homosexuals/homosexuality

This kind of homosexuality takes place between males of different ages. Michael Vasey discusses this kind of homosexuality and quotes Greenberg who defines it as follows: “...In these societies, sexual relationships between older and younger men are an integral part of initiation into the masculine role demanded by the needs of the tribe” (Greenberg in Vasey 1995:75-76). This is the kind of homosexuality that is also practised in prison. As already mentioned, the sad part is that the younger men in prison in most cases are forced to participate in this activity. Some unfortunately do not survive the

ordeal of being emasculated. Some either die from sexually transmitted diseases or commit suicide in prison. McKenzie says the following about suicides in prison:

In a year there can be fifty serious suicide attempts or more and its a strange year when even one succeeds. If you really want to put an end to yourself, you have to convince the guy watching you to do it too. The ones who do succeed are often the youngsters placed in solitary confinement for their safety after being raped. They set themselves alight. It happens twice, and on both occasions the boys burn themselves to death, dying agonisingly, hours later, on the hospital sheets.

(Cilliers and McKenzie 2005:137)

5.3.3. Transgenderal homosexuality

This kind of homosexuality is described as the one partner (of the same sex) plays the role of the opposite sex when engaging in the sexual act. The nearest in modern day society is that of transvestites. Greenberg, in describing it, says the following: “A common feature of this cultural form of homosexuality is the recognition that an individual is not suited to the particular culture’s form of masculinity or feminine identity” (Greenberg in Vasey 1995:76). In prison as already discussed earlier, this would be similar to cases where men become the prison ‘wives’ or prostitutes. These would be the good-looking men who are effeminate and sell sex (homosexual sex) for commodities such as food, cigarettes and or drugs.

5.3.4. Egalitarian homosexuality

This is the generally known homosexuality, which is called egalitarian homosexuality. This is where the partners of the same sex treat each other as social equals. Greenberg says that it “...relates to accepted sexual contact between people of the same sex where the partners treat each other as social equals. Many forms of such homosexuality are

widespread in traditional societies and are not treated as alternative to the important social roles of marriage or child rearing” (Greenberg in Vasey 1995:76).

This kind of homosexuality is also practised in prison. As seen earlier, it looks like we can safely say that there are two types of this egalitarian homosexuality. The first type is where the men practice ‘thigh sex’ where no penetration takes place. The second type is where homosexual sex actually happens between two men, performing anal sex where penetration takes place as seen in the self-confessed episode of Achmat when he was imprisoned at Pollsmoor prison in Cape Town.

5.4 Causes of homosexuality

The causes of homosexuality have not been conclusively researched and unanimously nor harmoniously resolved. There are always two views on what the causes are. There are those who claim nurture as the cause and those who claim that nature is the cause. Without going too deep into the whole debate of causes, there are these two that continue to be on the perennial agenda. Each supports one of the above, nurture or nature, namely the physiological causes and psychological causes. “Suffice it to say that the perennial debate of nurture or nature continues. Although there is no one conclusive answer to that question, from studies done and personal interviews conducted, I have found that the overwhelming majority of homosexuals have been nurtured. There are nevertheless those from childhood who have had this inclination or were sexually abused, who may claim the cause to be psychological and or physiological” (Shayi in Kretschmar and Ntlha 2006: 36).

I have not yet come across a scientific research regarding the homosexuals in prison as to whether the causes for their sexual behaviour were nurture or nature. From the accounts of the majority of homosexual acts in prison, it can be safely deduced that

circumstances and physical needs forced these men to act homosexually. Except for the minority of men whose sexual orientation is homosexual, the majority are 'turned out' as we have already seen, into becoming the 'wives', the 'laaities' by being 'raped' into submission or seduced and coerced into agreeing to homosexual acts because their needs are supplied by the perpetrator. This in a sense is corroborated by what the Jali Commission uncovered. One of the causes or mitigating circumstances in prison that forces the nurture of homosexual behaviour is overcrowding. In dealing with matters of sexual abuse in prison, the Jali Commission in their report said: "...overcrowding also encourages the sexual abuse of inmates" (Jali 2006: 43).

5.5 Key Biblical passages regarding homosexuality

There are a few Old Testament and New Testament passages that address this topic of homosexuality. The two Old Testament texts that are generally referred to regarding homosexuality are the Genesis story of Sodom and Gomorrah in Gn 19:1-29 and Lv18:1-25 which deals with unlawful and prohibited sexual relations. The New Testament passages are Rm1:26-27 and 1Cor 6:9-10.

In the story of Sodom and Gomorrah in Gn 19:1-29, the bone of contention between the pro-homosexual scholars who are predominantly liberal and those who are against the practise of homosexuality, mainly evangelicals, is around the meaning of the word *know*. It has traditionally been understood that God destroyed the twin cities of Sodom and Gomorrah because of their sin of sodomy-homosexual activities. Liberal scholars later disputed that fact saying that it was not for homosexual acts but for being inhospitable. Sherwin Bailey based his arguments on the meaning of the word know: "Bailey points out that the word know has sexual references only 14 times out of a total of 943 occurrences. Therefore, he suggests, that the odds are against its having a sexual reference here"

(Oswalt 1979:73). Evangelical scholars have refuted this view of Bailey on the basis that in the context of the verse and chapter, the word does have sexual connotations even if in other contexts it does not mean to have sex. The verse referred to, reads as follows: “Look, I have two daughters who have never (*known*) slept with a man. Let me bring them out to you, and you can do what you like with them. But don’t do anything to these men, for they have come under the protection of my roof” (Gn 19:8). Oswalt says: “First of all, notice that both passages use the word *know* with unmistakable sexual connotations. Genesis 19:8 speaks of ‘daughters who have not known a man’ and Judges 19:5 says ‘They knew her and abused her all night.’ The context is clearly sexual and suggests strongly that when the inhabitants demanded to ‘know’ the visitors, they were speaking in sexual terms (Oswalt 1979:73). Oswalt is not a loner with this view. Several other evangelical scholars have the same exegesis of that passage including Richard Lovelace who said: “Lot’s offer of his daughters as sexual surrogates shows clearly that the men of Sodom did not simply want to become acquainted with the angelic visitors socially, and indicates that this passage is one of those in which ‘*yadha*’ (*know*) is used with the meaning of sexual knowledge” (Lovelace 1978:100). It is therefore clear that in this case, the word *know*, was used with sexual connotations. Not ordinary sexual connotations but homosexual sex. We then get a slight twist in this debate. Within the same camp of pro-homosexual practice we find two who differ with Bailey, namely Suggit and Hanigan. Both of these men agree that the condemnation is not for homosexual acts but for homosexual rape. This means that they are in agreement that the passage is about sexual activity. Suggit says: “The two passages most frequently quoted regarding homosexuality (Gn19:1-14 and Judges 19:16-30) are concerned not with homosexual intercourse by consent, but with homosexual rape. What is condemned is the abominable treatment of guests who would have expected to receive the hospitality customarily offered in early Semitic societies” (Suggit 1996:231). Hanigan says the following: “ ... what is condemned as sinful in the story is not simply homosexuality in general or even homosexual acts as

such, but the intent to commit homosexual rape in the context of an abuse of hospitality against a background of general depravity and disregard for God” (Hanigan 1988:38).

The interesting point here is that as alluded to above, the shift is now to rape and not homosexual acts as such. The fact that these two agree that the passage is about homosexual acts, cancels out Bailey’s argument that the word “know” in this passage did not have sexual connotations. For me, this argument that the passage is about homosexual ‘rape’ does not hold water in that homosexuality by itself is Biblically not acceptable as the next Old Testament passage states. What Suggit and Hanigan are arguing for any way, is exactly what happens in prisons. Men are ‘raped’ daily in our prisons and this is not acceptable.

The second Old Testament passage is Lv 18:1-25 dealing with sexual relations that are not permissible. The passage that deals with homosexuality in particular reads as follows: “You shall not lie with a man as with a woman; it is an abomination; [and] if a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death, their blood is on them” (Lv 18:22). Clear as this passage is concerning homosexual sex, there are those who are pro homosexuality who interpret it differently. Some say that this passage is culture bound and does not affect Christians while others say that Christians are not bound by these laws. Suffice it to quote one scholar on each side of the divide. First is Suggit who says:

The law of holiness (Lv 17-27) condemns sodomy and connects it with bestiality (18:22-23; 20:13-16). The adoption of this post-exilic position may well have been due to the close link between homosexuality and the heathen shrines. The regulations of the law of Holiness are what sociologists call ‘boundary markers’. They indicate the practices that had to be observed if Israelites were truly to be seen, and were themselves as the people of the Lord...Not surprisingly, Leviticus was rarely cited by early authors as evidence for Christian behaviour, for which its regulations are scarcely relevant.

(Suggit in Hulley et al 1996:232)

It is worth emphasising the fact that in the passage above, it is not only homosexuality that is singled out as sinful. The treatment of sexual offences in the Leviticus passage includes heterosexuals. Oswalt explains that the treatment of homosexuality in this passage is not homophobia or being singled out but..."one more manifestation of a total approach to sexuality, an approach that denies any boundaries in creation...homosexuals are not being singled out as an oppressed minority" (Oswalt 1979:52). Suggit cites early authors who did not see Leviticus as evidence for Christian behaviour and that its regulations are scarcely relevant. How would he explain the inclusion of incestuous relations mentioned in Leviticus as wrong and unacceptable because in our modern day democracy these are also deemed illegal? The lists of forbidden relationships mentioned in Leviticus are repeated in the South African Manual for Marriage Officers with little variation. How does he explain that relevance? The misinterpretation of the Biblical texts by pro homosexual scholars is quite obvious and for evangelicals these misinterpretations will not change what the Bible explicitly say is sin. It is also worth noting that there is no sin in the Bible that is time-bound, that is, it used to be sin but now has graduated to be acceptable. I am not alone in critiquing this type of exegesis. Lovelace says:

The third argument against the relevance of these passages which argues that Christians are free from the law, overlooks the fact that Christians have always recognised that the body of material in Exodus 20-40, Leviticus, and the rest of pentateuchal legislation (the ten commandments) does contain material which is of continuing ethical significance for Christians, including the ten commandments and a valuable deposit of social legislation.

(Lovelace 1978: 89)

The next passages are found in the New Testament. The first text reads as follows: "Because of this, God gave them over to shameful lusts. Even their women exchanged natural relations for unnatural ones. In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed indecent acts with other men, and received in themselves the due penalty for their

perversion” (Rm1:26-27). There are several arguments around this passage. Let me mention just two of these arguments raised by the pro-homosexual liberal scholars. The first issue surrounds the meaning of nature and natural. The second issue again deals with the holiness code. John Boswell, one of the pro-homosexual advocates has this to say:

It is not clear that Paul distinguished in his thoughts or writings between gay persons (in the sense of permanent sexual preference) and heterosexuals who simply engaged in periodic homosexual behaviour. It is in fact unlikely that many Jews of his day recognized such a distinction, but it is quite apparent that whether or not he was aware of their existence - Paul did not discuss gay persons but only homosexual acts committed by heterosexual persons...

Nature in Rom 1:26 then, should be understood as the personal nature of the pagans in question.

(Boswell 1980: 110-111)

In addressing the nature/natural issue, Boswell says that Paul was talking against those heterosexuals who were experimenting with homosexual sex, which is against their given heterosexual nature, that Paul was not speaking against homosexuals whose given nature is homosexuality. But it must be emphasised that Paul was not addressing an individual's nature, he is talking about individuals reacting against God's given nature. Lovelace says: “Against nature simply means against God's intention for human sexual behaviour which is plainly visible in nature, in the complementary function of male and female sexual organs and temperaments” (Lovelace 1980:92). He is not the only one with this interpretation. The well known and internationally respected British evangelical scholar, John Stott says the following: “What Paul was condemning, therefore was not the perverted behaviour of heterosexual people who were acting against their nature, but any human behaviour that is against Nature, God's created order” Stott 1985:26). One of the contemporary evangelical scholars respected in South Africa, Michael Cassidy in responding to Boswell's kind of Biblical interpretation said: “In Romans 1 (Paul) takes this high ground of the creation ordinance and nature and the constituted order of things,

and condemns homosexual practice as changing the natural use (of sex) to one against nature” (Cassidy 1998: 2).

I must add my voice to the dissenting voices to Boswell’s exegesis of this passage. Mine is based on the change of protagonists in the armour of pro-homosexuality. Well-known Jewish leaders and figures like David and Jonathan are generally cited by those who are pro-homosexuality as examples of homosexual relations. Now, suddenly, Boswell turns around and says it is unlikely that the Jews of Paul’s day were aware of the difference between gays and periodic homosexuals. If this was the case, why are we not given examples of these homosexuals be they periodic or permanent? If there were no gays then, it therefore becomes clear that David and Jonathan were not gay. If so, those who cite them as examples would be wrong. Boswell also does not explain why Paul did not give examples of those who stuck to their ‘nature’ (as gays), and why if they did exist were they not commended either by him Paul, or anywhere in the Scriptures?

There are those who argue that Paul is against homosexual lust and not homosexual loving relations. One such scholar among others is Nelson saying: “In addition, in this passage we are given a description of homosexual lust (consumed with passion for one another), but hardly an account of interpersonal same sex love - about which Paul does not speak” (Nelson in Batchelor 1980:191). The word ‘passion’ which Nelson uses, or lust for one another, used in the passage implies mutuality. It means that the gay men in the passage lusted for one another, a mutual feeling; passion for one another. Keeping in mind that the word passion should not always be seen in a negative light, I believe a husband or wife, can love his or her spouse with passion and this would be commendable. We need to hastily add that nowhere in the whole Bible are we given a positive, commendable example of homosexual love as practiced then as an example to emulate. Each time homosexuality is mentioned, it is prohibited. Some scholars who are

homosexual protagonists cite examples in the Bible and wrongly interpret the relationship of these Biblical characters as being homosexual. One such scholar is Vasey who quoted the relationship between Jesus and John as one such loving relationship. I personally see this example as bordering on blasphemy if not blasphemy itself when Vasey says; "However, the natural reading of these texts with their detailed portrayal of great intimacy between two unmarried men (Jesus and John) provides a natural echo with the love that many gay people share" (Vasey 1995:123). It must be stressed that nowhere does the Bible say Jesus and John had a homosexual relationship. His love for all His disciples was Agape love, unconditional and platonic love.

Another scholar who added his voice against the pro-homosexual scholars is Van Der Lugt. Commenting on the passage in Romans he said the following: "Paul speaks clearly of homosexual practices being against nature and terribly wicked that no one can dispute it" (Van Der Lugt 1979: 77). He further responded to those who said that Paul was actually against the unbridled, promiscuous homosexuality that was linked to idolatry, and not against consenting homosexuals in a loving partnership. To these advocates Van Der Lugt said the following:

In response to this view, I wish to point out the context of these verses. They show us that homosexuality is the final state of sexual debauchery reached by people who wilfully reject God. This nauseating and pitiful perversion of human sexuality results from the fact that "God gave them up unto vile affections." The apostle is here declaring that rejecting the Lord brings total disintegration, both moral and spiritual. When people are given over completely to the control of their passions, they exchange the natural use of sex for that which is "against nature." In so doing, however, they do not find satisfaction.

(Van Der Lugt 1979:77)

This is so true when one considers the incidence of promiscuity among the active homosexuals as compared to heterosexuals. My summation is that the homosexuals find no satisfaction in their relationships because it is not natural. I further think that they are

perpetually trying to find what satisfies and breaks all moral norms because they find no written code of discipline anywhere for them to follow, so they formulate their own principles as they go along and change them when it suits them. Unlike heterosexual relations, there are guidelines and examples to follow and emulate.

The last New Testament text that is also always touched on regarding the prohibition of homosexuality is 1Cr 6:9-10. This text does not go unchallenged by those who are pro-homosexuality. The text reads: “Do you not know that the wicked will not inherit the Kingdom of God? Do not be deceived: Neither the sexually immoral, nor idolaters nor adulterers nor male prostitutes nor homosexual offenders nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the Kingdom of God” (1Cr 6:9-10). The above text gives a list of people who commit sin and thus will not inherit the Kingdom of God. Among these are homosexuals. The bone of contention again happens to be semantic, the meaning of words. Those who challenge the meaning of the words used here are those who claim that homosexuality is not prohibited. The words in question are *malakos* and *arsenakoitai*. Boswell argues as follows;

The first of the two, *malakos* (basically, ‘soft’) is extremely common Greek word...meaning sick, liquid, cowardly, weak willed, gentle... The word is never used in Greek to designate gay people as a group or even in reference to homosexual acts generically...The second word *arsenakoitai* is quite rare, and its application to homosexuality in particular is more understandable. The best evidence, however suggests very strongly that it did not connote homosexuality to Paul or to his contemporaries but meant ‘male prostitute’ until well into the fourth century after which it became confused with a variety of words for disapproved sexual activity and was often equated with homosexuality.

(Boswell 1978:106-107)

Boswell does not do justice to the explanation of the two words. Firstly in the context of the other words used, he does not explain why if the word *malakos* means ‘gentle’ among other meanings, the gentle or the ‘sick’ will not inherit the Kingdom of God. Wouldn’t this fly in the face of the understanding of the qualities of gentleness? Gentleness is generally

accepted as a virtue, one which Jesus Himself possesses and said the following “Take my yoke upon you and learn from me, for I am gentle and humble in heart, and you will find rest for your souls” (Mt 11:29). Paul further includes gentleness as one of the fruit of the Spirit in Gl.5:22-23 against which there is no law. Secondly, he fails to mention the words he claims *arsenakoitai* got confused with, which he claims meant disproved sexual activity and got equated with homosexuality. On the other hand we find evangelical scholars who give the definition of the words as found in the context of the whole story and says the following; “The two Greek words *malakoi* and *arsenakoitai* should not be combined, however, since they have precise meanings. The first is literally ‘soft to the touch’, and metaphorically, among the Greeks, it meant males (not necessarily boys) who played the passive role in homosexual intercourse. The second literally means ‘male in a bed’ and the Greeks used this expression to describe the one who played the active role” (Stott 1985:24). Greenlee when responding to Boswell’s argument said the following:

The principal lexical item concerning same sex activities is *arsenakoites* (in older Greek, *arrenokoites*). This word is found in the Sibylline Oracles and *Diogenes Laertius* which means it is as old as the New Testament. It therefore reflects no credit on the objective scholarship of a clergyman such as John Boswell who has stated that the word homosexual was not coined until the 1880’s and that ancient people did not distinguish between homosexual and heterosexual persons.

The second word...*malakos*. The basic meaning of this word is ‘soft’...The same lexicon gives the *malakos* the further meaning of ‘soft’ ‘effeminate’ especially of *catamites*, the term *catamite* being defined as ‘men and boys who allow themselves to be misused sexually’.

(Greenlee in Keysor 1979:97-98 and 102)

It is clear from the above that while liberals try to argue for the acceptance of homosexual practices on the basis of their Scriptural interpretation, evangelical scholars interpret the same passages in a more in-depth and contextual manner showing that homosexual practices were not acceptable and should not be accepted now as an alternative sexual expression. Discussing the same issue of homosexuality Botha comes to the same

conclusion that homosexuality should not be accepted as an alternative sexuality. He mentions some who argue in the opposite and some who argue in his favour. One such scholar is Bahnsen and this is what Botha says;

Contrary to this Bahnsen argues that tolerance of homosexuality is based on doctrinal premises that deviate from biblical teaching. This deviation constitutes an antipathy to biblical revelation. Scripture is to be understood to condemn both homosexual orientation and homosexual acts for there is no need in ethics to distinguish them. Bahnsen is strongly supported by Gagnon in his arguments that the Bible unequivocally defines same-sex intercourse as sin, inasmuch as same-sex intercourse constitutes an inexcusable rebellion against the intentional design of the created order.

(Botha 2005: 44)

It is clear from the texts we discussed above that while liberals argue for the acceptance of homosexual practices, evangelical scholars argue and show that homosexual practices were not acceptable then, and that these should not be accepted now as an alternative sexual expression let alone a Christian lifestyle. I agree with both Field and Lovelace in summing up the New Testament texts regarding homosexual practices. "Viewed in its theological context, then, the New Testament teaching on homosexuality takes on an impressive unity... So, despite the very important modern distinction dividing inverts from perverts, it seems impossible to resist the conclusion that the New Testament puts a theological veto on all homosexual behaviour however well motivated it may be" (Field 1980:17). Lovelace puts it as follows; "This survey of texts specifically related to homosexuality has shown that there is no warrant in scripture for any form of homosexual behaviour to be considered a legitimate expression of the will of God. Nothing speaks for this, and everything speaks against it" (Lovelace 1980:102). It is therefore clear on these texts that homosexual acts are not accepted as a legitimate sexual expression from a Christian perspective. Before we look at the different positions adopted regarding homosexuality we revisit a fresh debate on the exegesis and hermeneutical style of Jones

regarding David and Jonathan We will then look at the position adopted by our government as seen in the constitution and Bill of Rights/Human Rights.

5.5.1 Jonathan and David revisited

This in a sense is a postscript to the much maligned and misinterpreted relationship of David and Jonathan. I just could not keep mum when Scripture is misinterpreted and the exegesis thereof done out of context. I am here referring to the contemporary issue of gay unions. The Anglican Church in England went through a tough patch where clergy debated and opposed the ordination of practicing gay priests. This issue was recently revisited when Bishop Jones suddenly turned round and apologised for having opposed the ordination of Jeffrey John as Bishop of Reading. This apology is based on a misconstrued and misinterpreted portion of Scripture quoted out of context citing David and Jonathan as a “gay couple”. It is this example that Bishop Jones cites that called for a response as it comes at a time when this debate seemed to have been laid to rest.

Shaun de Waal reported this matter in the *Mail and Guardian* online of 08 February 2008. In this article entitled “The Bible may sanction gay unions” de Waal quotes from an essay that Bishop Jones wrote entitled ‘Making Space for Truth and Grace in a Fallible Church’. In this essay, Bishop Jones claims that the Bible may sanction gay unions as seen in the relationship between David and Jonathan as he urges the Anglicans to; “...acknowledge the authoritative biblical examples of love between two people of the same gender, most notably in the relationship of Jesus and his beloved [John] and David and Jonathan” (de Waal *Mail and Guardian*; 8-14 Feb. 2008 page 7).

I will not here repeat what I said earlier regarding the neo-blasphemous suggestion of Jesus as a homosexual. What I find intriguing is the new twist and angle to the pro homosexual unions matter that Bishop Jones brings by implying that David and Jonathan

were 'married' 'officially united' to an extent that king Saul saw David as his son-in law.

Jones says the following:

The story of Jonathan and (later king) David in the Old Testament book of Samuel hints in a different direction, recounting that they "made a covenant, because he [David] loved him as his own soul". The word "covenant" is used elsewhere in the Bible (Proverbs 2:17; Malachi 2:14) for a marriage covenant.

(Shaun de Waal *Mail and Guardian* 08-14 February 2008 page 7)

Jones then drives his point home implying that David was married to Jonathan by saying the following: "Later king Saul, Jonathan's father, also offers David his daughter saying: "Thou shalt this day become my son-in-law a second time.' When Jonathan dies, David laments: 'Thy love to me was wonderful, surpassing the love of women'" (de Waal *Mail and Guardian* 8-14 Feb. 2008 page 7).

Bishop Jones here is not being fair. He combines the offer that king Saul made of his daughter to David with Jonathan's death as if the two events followed each other, whereas that is not the case. It will be remembered that King Saul offered his oldest daughter to the man who would kill Goliath. King Saul did offer David his daughter after David killed Goliath but David declined and that daughter was married by someone else. David actually did not see himself as worthy to become the king's son-in-law because of his status. As recorded in the book of the prophet Samuel: "But David said to Saul, "Who am I, and what is my family or my father's clan in Israel, that I should become the king's son-in-law?" So, when the time came for Merab, Saul's daughter, to be given to David, she was given in marriage to Adriel of Meholah" (1Sm. 18:18-19). The verse that Bishop Jones quotes comes after David declined the first offer to become the king's son-in-law. It so happened that the king's second daughter Michal was in love with David and when the king found out, he then offered her to David and this is the context of the offer, not that David was already the king's son-in-law, but that he now had a second chance to become

the king's son-in-law. It will also be remembered that this comes at the time when the king was jealous and afraid of David and wished him dead. He had hoped that somehow David would be killed because the bride price he asked was very ridiculous in that he asked for one hundred foreskins of the Philistines. "I will give her to him," he thought, "so that she may become a snare to him and so that the hand of the Philistines may be against him." So Saul said to David, "Now you have a second opportunity to become my son-in-law" (1Sm 18:21). These then are the circumstances and context of King Saul's utterances of a second opportunity because the first opportunity went a-begging. David was in a sense being offered a second bite of the cherry.

Lastly then, on this supposedly erotic love between people of the same gender, the understanding is that homosexually inclined people are only sexually attracted to people of the same sex. It has not been explained how David and Jonathan, if they had this relationship and it was known and accepted, both had families. How can they be attracted to both sexes and have children if they were homosexually inclined or if they had a homosexual orientation? The homosexuality protagonists are quick to quote the relationship of these two men as homosexual. What they seldom and actually hardly quote are the details of these men's relationship. The biblical context actually show the opposite of what they want people to believe. What they do not quote reads as follows: "Jonathan said to David, "Go in peace, for we have sworn *friendship* with each other in the name of the Lord, saying, 'The Lord is witness between you and me, and between your descendants and my descendants forever'. Then David left, and Jonathan went back to the town" (1Sm 20:42). Here Jonathan mentions a sworn *friendship* and no more. He mentions that this sworn friendship was to extend to their descendants. If these two were homosexuals they would never have had thoughts of having children. As Jews, would they have had a homosexual relationship in defiance to their God's command and even taken an oath in the name of the Lord?

In concluding this new twist by Bishop Jones, I would like to add my voice to those of Peet Botha and Taryn Hodgson that nowhere in the Bible do we come across homoerotic relationships that are commended on or praised. Right through scripture all we see is the prohibition of same sex erotic relations. Whenever same sex relations are mentioned in a positive light, these are platonic, phileo-type relationships. We see Shadrack, Meshack and Abednego in the Old Testament as very close friends and no eroticism in their relationships Paul travelled a lot with Silas in the New Testament and there is no mention of these two having a homo-erotic relationship. As Botha puts it: "I have shown adequately in the previous chapters that the Bible rejects homosex every single time it is discussed, irrespective of the type of homosexuality mentioned. This message of the Bible portrays unashamed tension between the standard of God's word and the culture around it" (Botha 2005:218-219).

Two issues surround David's stature that neither Bishop Jones nor the pro homosexual scholars adequately address. Firstly to say that if David was homosexual, when he committed adultery with Bathsheba why was he not rebuked for changing his nature of attraction, if that is what he was? Secondly, for those who say Paul was against those whose nature was heterosexual but who practised homosexual acts, why did Paul not give an example of men whose nature was heterosexual and who acted homosexually as it would then appear David was such a man according to these proponents of this school of thought? Or, if David was homosexual and later ended up as a heterosexual, a very viral man with many wives, and many children, why do they say that homosexuality cannot be "cured"?

The other point concerns Jesus and John who are cited as an example of same gender love. It is contemporarily confusing. Who was Jesus? There are those who like Bishop

Jones claim the above by quoting iconography that depicts John leaning on Jesus' chest as a sign of this relationship.

In the New Testament John is referred to consistently as “the beloved disciple”, while other disciples are not given this distinction. Christian iconography frequently showed John resting his head on Jesus' shoulder or chest, in a pose of physical intimacy and mutual comfort.

(De Waal Mail and Guardian 8 to 14 Feb 2008 page 7)

On the other hand there are those who like Dan Brown in the Da Vinci Code claim that Jesus was a married man. The claim is that Jesus was married to Mary Magdalene. Brown's claims are based on the same iconographical depiction of someone sitting next to Jesus at table on the last night having the Last Supper. Brown, however, claims that the person sitting next to Jesus is not a man, and that it is not John the beloved, but that this person is in fact Mary Magdalene. This, according to Brown, is the code that needs to be deciphered as the “holy grail” the position of sitting at table by two people who were married. Who is telling the truth? Who does the man in the street believe? Would we not end up sowing a lot of confusion and thus leading people astray and helping God's enemy in ensuring that people do not get to know the truth that would lead them to saving faith in Jesus?

Committed Christians believe and teach that Jesus Christ was a heterosexual male who never sinned and never got married. Brown teaches that Jesus Christ was married to Mary Magdalene. Bishop Jones claims together with others that Jesus Christ was a homosexual. Of the three schools, who do people believe? It must be said that reading into texts is a dangerous thing. A simple but not simplistic approach for me is to take the text as is and not put iconography above the text of the scripture. Firstly, common sense tells me that the person who depicted the Last Supper, if not Leonardo Da Vinci himself, painted this famous portrayal hundreds of years after the event. It is not a painting that was done by someone who was an eye witness. In similar iconographies Jesus is often

depicted as a white man. It is a known fact, as scholars have revealed, that he was more brown than white as seen by the people of that region. We therefore cannot pin our hopes and factualise matters of primary importance based on hearsay. Responsible scholarship is needed when dealing with matters as important as these that pertain to faith and eternity. Sexuality surely touches the core of mankind. To let loose and do and teach as we please outside God's plan for mankind is not responsible scholarship.

5.6 Different positions regarding homosexuality

There are different positions regarding homosexuality. The following are four major positions regarding homosexuality as summed up by Townsend when he discusses the topic. He lists them as follows; 'rejecting punitive', 'rejecting compassionate', 'qualified acceptance', and 'full acceptance'. He explains these positions as follows:

A rejecting punitive stance rejects homosexual behaviour and orientation as incompatible with Christianity and, often buttressed by cultural stereotypes, is hostile towards people who are homosexual.

A rejecting compassionate approach regards homosexual behaviour as contrary to God's creative intent and never permissible for Christians. However, actions and orientation are distinguished and the Church is to welcome into the community of forgiven sinners all who will follow Christ irrespective of sexual orientation.

The position *qualified acceptance* amounts to saying; the homosexual person is rarely, if ever, responsible for his sexual orientation; the prospect of developing heterosexual orientation are minimal; celibacy is not always possible; stable homosexual unions may offer the prospect of human fulfilment and are obviously better than homosexual promiscuity. Homosexuality is never ideal because God's intention in creation is heterosexuality, attempts to develop heterosexual desires must be made, but occasionally and reluctantly, one may accept a homosexual partnership as the only way for some people to achieve a measure of humanity in their lives.

Full acceptance stresses the unitive purpose of sexuality as central in God's sight and regards the procreative purpose as by comparison, incidental. Same-sex relationships can fully express the central purpose for sexuality so homophile attraction may be affirmed. All sexual acts should be evaluated by their relational qualities: what matters is whether

or not a particular relationship or action will enhance human fulfillment, faithfulness between persons, genuine intimacy and mutuality. The gender of the persons concerned is immaterial.

(Townsend 1994:1)

Some conservative evangelicals and the biblical fundamentalists, usually adopt the first rejecting punitive position. The adoption of this position is rarely divorced from the phobia they have which is based on the sexual violence of male homosexuals. Drakeford explains why people have a phobia, a fear of male homosexuals as opposed to lesbians saying; "Another factor is the perfectly justifiable fear people have of the use of force in sex. Most people have the idea that certain male homosexuals are child molesters and rapists, but lesbians are thought of more as feminine, soft, and unlikely to resort to force" (Drakeford 1977:58). Drakeford's view has been proven correct in the cases we have already seen in prisons but should not be generalised to an extent of stereotyping all homosexuals. Nor should this approach be ethically universalised because this will be unfair and a distortion of homosexuality just as one would be wrong by assuming that all heterosexuals contracting marriages before they are twenty five years old would end in divorce, as a result of research done on only a limited number of couples.

I fall under the group of conservative and radical evangelicals who adopt the position of rejecting compassionate. This is a position where the struggling homosexual would be treated the same as the alcoholic and adulterer who is struggling with their behaviour. All these would be welcomed into the Church to pursue their quest to follow Christ. Without being homophobic, I believe it is a humanely and ethically acceptable approach for us to adopt the rejecting compassionate position as evangelicals, the same way as Jesus did with the woman caught in adultery (Jn 8:3-11). The challenge is to love the sinner with a view of helping while not condoning the sin. "...then neither do I condemn you," Jesus declared. "Go now and leave your life of sin" (Jn 8:11). As evangelicals and the Church in general, we have failed the homosexuals in that we have treated them differently to others

in the Church who may be struggling with different sins in their lives. We generally would have in the Church someone who may have been found guilty of perjury or fraud, but the Church will find it difficult to have a known homosexual who would be non-practising as a member. On the other hand, the homosexuals have made it difficult for the ultra-right conservative evangelical. Being in a state of denial, the homosexuals are persistent that they are born like that and must be accepted. The problem I have with some homosexuals is not too different from the problem some of these ultra-conservative evangelicals have with them. When homosexuals insist that theirs is not a sinful practise but a God-given orientation that they want to express, would that not be the same as a kleptomaniac who would want to be accepted by the community because he says that is his orientation, that is how God made him? This then is my point of rejecting the practise of homosexuality in or out of prison. It is not an alternative sexual practice acceptable from a Biblical or Christian ethical position.

In 1997 the Baptist Union of Victoria assigned a task group to research and ask members to submit their views regarding their understanding of the Bible in relation to homosexuality. Their objective was to then arrive at a consensus so as to resolve whether to ordain persons who engage in homosexual practices. Their resolution was that the Baptist Union of Victoria shall not ordain persons who engage in homosexual practice. They arrived at this resolution after receiving submissions and doing a thorough research. Their summary, after receiving all the submissions, that I agree with, reads as follows:

The approach to Biblical teaching on the subject of homosexuality, as in all matters of faith and doctrine, was expressed by Paul to Timothy: "All scripture is inspired by God for teaching, reproof, correction, and training in righteousness." Today the Bible is still the word of God and the text says what it means and means what it says. The Old Testament in all references prohibits homosexual practice. The New Testament likewise in every reference not only condemns it, but Paul saw it as a sign among many, of the brokenness of God's creation. Jesus does not mention it, but He does not mention rape, incest, child abuse, and other

questionable practices. However He totally endorsed the Old Testament teaching. In so doing, He endorsed the teaching in these matters, and this became the foundation of the early church. It was the word of God. It still is.

(Baptist Union of Victoria Report: 16)

This stance of rejecting homosexual practices is aligned to biblical truth and acceptable societal behaviour. This is both a deontological approach in that homosexual acts are seen as being wrong in themselves and in the prison scenarios we have discussed it is teleologically wrong in that even the end results are not desirable. It cannot be ethically accepted, as the act does not yield the greatest joy, good or happiness to a greater number of people. I therefore see the practice of homosexual acts in prison and out of prison as sinful, unethical and socially unacceptable. From a historical perspective, it is generally known that homosexuality was practised in some societies but never was it sanctioned and morally accepted as a normal lifestyle. One can look back at the Greco Roman times of Julius Caesar and beyond and we find that these behaviours were known but talked about in hush-hush voices. They did not publicise this nor went up to the rooftop and shouted at the top of their voice for the world to hear. Today is different in that we see annual gay/lesbian marches on our television screens. There are annual gay and lesbian marches in cities such as San Francisco, Amsterdam and even our own Johannesburg. What was and is morally and ethically unacceptable as the Bible calls it sin is today paraded as good. In the days gone by, the same approach was adopted with the practise of prostitution. It was known to be happening but the community never accepted it as a normal moral behaviour. We read of temple prostitutes who were the practice of pagan communities that God commanded His people Israel that they should not copy the evil practices of the nations of the land they will be occupying. Prostitution is known to be the “oldest business” Today the tables are turned round. In Amsterdam it is legalised and in our own country it is not politically correct to call one who practices it a

prostitute. They are now called sex-workers. Be it as it may, it is shunned and known to be a sin. Why not homosexuals?

5.7 South African legal position on homosexuality

From a legal point in our country, homosexuality is a sexual orientation that the constitution allows and protects (Constitution of the Republic of South Africa, Act 108 of 1996 Chapter 2 clause 9:3). It must be said here that what the state accepts is not necessarily right. As Christians and evangelicals in particular, our guide is God's Word. As mentioned above, during the apartheid era, it will be remembered that inter-racial marriages were legislated as illegal by the government while the Church in general accepted these marriages except for those few Churches that were pro-government. If an inter-racial couple wanted to get married, they had to do this the neighbouring independent states like Lesotho, Botswana or Swaziland. A couple like this would not be allowed to live as husband and wife in South Africa as South Africans. This is the reason many such couples had to live in exile. Today the State not only acknowledges homosexuality as an acceptable sexual orientation as seen above in the constitution, but has legalised same sex unions. After the ruling of the Constitutional Court on the first of December 2005 that the prohibition of homosexuals to 'marry' was unconstitutional, the government/parliament was given one year to rectify this constitutional discriminatory act. On the 30th November 2006 while the State President was out of the country on parliamentary duties, the deputy president Mrs Phumzile Mlambo Ngcuka signed this bill. She was at the time the acting state president. This Civil Unions Bill was passed by the South African parliament earlier during the month of November. This was a big victory for the same sex marriage proponents and a small victory for the Church and all who opposed this bill. The small victory for the Church is that the definition of marriage was not

changed and this union between people of the same sex is not called marriage but a 'civil union'. The Church opposed this bill because the Bible categorically states that God ordained marriage for heterosexuals as seen in what Jesus said in response to the question posed by the Pharisees regarding divorce and said:

Haven't you read", he replied, "that at the beginning the Creator made them male and female, and said, "For this reason a man will leave his father and mother and be united to his wife and the two will become one flesh?

(Mt 19 4-5).

The Bible does not talk of the man leaving his parents to be joined to another man or a woman leaving parents to be joined to another woman!! The Constitution and Human Rights and the Civil Union Bill may accept homosexual unions but it will not make it Biblically correct. There is no record in any of the holy writings of religions practiced in South Africa or elsewhere in the world of same sex unions. South Africa became the first country on the continent of Africa to legalise same sex unions. The Bible contains no record of same sex unions. Evangelicals hold on to the truths and record of scriptures for good examples to follow and bad ones to avoid.

5.7.1 Implications of the Civil Unions Bill

The enactment of this bill has far reaching ramifications especially for the department of correctional services. We hear of heterosexuals who in the past have requested special permission to get married where one partner was in prison. Where the permission was granted and special arrangements made for the consummation of the marriage, we know that such couples do not live together in prison as husband and wife. The spouse is separated from the partner until her spouse is released. Even when visiting, they would not be allowed to have sexual contact. The problem of the same sex civil union bill being passed is this as I see it. What will the government or department of correctional services

do when two inmates approach the officials and request to be “married”? The department will be obliged to give permission and then the “couple” will then go back to their cell or cells. They will then live together as a legally united couple having homosexual sex. At the same time they will be sharing a cell with married heterosexual men whose wives are not allowed to come and live with them in prison. This will be compounding the discrimination heterosexuals already suffer in that even outside of this bill, they live with these men who are homosexuals in prison, who are having homosexual sex with their partners whilst they are denied this right. The question is whether the department will take steps to separate these couples once they “marry”? If not, why not allow heterosexuals the same right? If they would separate them, what stops them from separating the homosexuals who are currently practising and living together in prison in their mkhukhus?

The term mkhukhu is a local township lingo meaning an informal self-build (sometimes) illegal dwelling. In the townships it is usually made of some timber and corrugated iron. In the prison setting, mkhukhu is used to denote a private secluded corner in a communal cell. This privacy in a communal cell is made of blankets and sheets to create a separate room where the known homosexuals have their beds put together to make a double bed that they use as their private room so that at night or whenever they feel like having homosexual sex they go in and use it. It is a separate bedroom within a communal cell. It is in a sense illegal because all inmates are supposed to sleep alone, separate from others in their own beds or space allocated to them. Heterosexuals in prisons are experiencing this discrimination on a daily basis. Worse still, as already mentioned, where the gangs are operating, some of the heterosexuals end up being molested and indecently assaulted, “raped”. Have we ever heard the voice of the heterosexuals shouting loud that they are being discriminated against? No. The simple reason is that these shameful acts are a hush hush issue. Even in cases where one is indecently assaulted, they seldom tell others apart from those who witnessed the act. As seen in the

McKenzie case, the officials do not take it seriously. These men feel degraded and even after being released, they struggle to come to terms with what happened to them in prison. There is therefore a possibility of communal cells being turned into mkhukhus and as time goes, homosexuals in prison will make the correctional service centres their homes.

There is a second problem I foresee with the implementation of this bill. This problem may seem a bit removed from our main point of discussion, but it should be noted that it has to do with ethical issues. The problem will arise and it has already raised its ugly head in other parts of the world. In the case of two men adopting a child, socially how are they going to raise this child? The first commandment with a promise reads: "Honour your father and your mother, so that you may live long in the land the Lord your God is giving you" (Ex 20:12). How will the child fulfil this law and secondly how will the child address these men?. To link this matter to our main concern, we need to be reminded that in the prison scenarios we have seen the older men prefer younger men as partners. It is this aspect of the same sex civil unions that may open the door for these partners to adopt and bring up a child so as to indoctrinate him and turn him into a 'wife'. Some may adopt or foster children with evil intents. One such case among many that are not reported found its way into the print media in England. In *The Times* of June 2006 two men who were in a civil partnership for five weeks were found guilty of abusing boys they were fostering. Apparently they have done this before but were not arrested. Helen Nugent reports as follows:

A gay foster couple were jailed yesterday for sexually abusing boys in their care...Wakefield Metropolitan District Council approved Wathey and Faunch as foster carers three years ago but within months they were assaulting boys from troubled homes, the court was told. The two were found guilty of abusing four boys aged between 8 and 14. Judge Sally Cahill, QC said that neither men had showed any 'empathy, remorse, or any responsibility for their actions'.

List of (The Times Saturday June 24, 2006 page 15.)

These are but a few of the problems our societies are facing and may in the future be experiencing among others as a result of this bill.

5.8 Challenges facing the Church

As noted above, there are numerous challenges facing the evangelical church regarding these issues of sexuality and the practise of homosexuality. Regarding the sensitive issue of homosexuality, the evangelicals need to be armed with knowledge. Without detracting from the fact that homosexuality is not an acceptable chosen lifestyle whether by choice or orientation, we must support them in their quest for some and not all civil rights. I believe that homosexuals, among others, have the same right to nominate anyone of their choice to benefit from their medical aid or insurances. There are still people in the Church who are homophobic and harbour hatred for homosexuals. There is no room in Christianity for hatred except for sin. In concluding what the Church ought to do pastorally on this issue, Vibert says:

We must speak to the Christian Church
With biblical teaching;
to reduce fear and homophobia;
to equip them to bring others to Christ;
to help them to model Christ-likeness to the world around

(Vibert,1995:25)

I agree with Vibert. We need to do much more than we are doing for the good of both heterosexuals and homosexuals. On the one hand when evangelicals stick to the God ordained approach to sexuality and identify our weaknesses in handling the issue of homosexuality, it is disheartening to see no reciprocation from homosexuals.

Jacques discusses sex and the society in his book *Ethics and the Christian life*. In this chapter he looks at the history of sexual behaviour and comments on Ancient Greece. He

notes how homosexuality was treated in a casual way and says it looks like we are approaching a time where we may find ourselves in a similar situation. In order for Christianity and, I believe, Christian ethics to maintain a moral stance that is acceptable we need to stick to the Biblical norms. I further agree with Jacques when he says the following:

It looks as if we need to revive something like the scholastic distinction between formal and material sin. A formal sin is an action which is wrong and done by the agent knowing it to be wrong. He is therefore to be blamed for what he has done. A material sin, however, is one which is wrong in principle, but which, because he was misled, confused, ignorant, or blinded by some compulsion, the agent did not see to be wrong and so he is not to be blamed for doing it. The value of this distinction is that it allows the Church to regard certain actions as wrong while not blaming those responsible because for various reasons at the time they were not aware of the wrongness of what they did.

(Jacques 1976:119)

He concludes by showing how some homosexuals would fall under the first group by virtue of the fact that they do know that what they do is wrong and somehow they justify themselves and do it nevertheless. On the other hand, there will be those who may be brainwashed and end up thinking that they are not doing anything wrong as they are convinced they are made that way. These are the ones who at the end when confronted with facts, do repent and either stay celibate or struggle until they live a normal heterosexual life. These are the ones we can easily categorise as having committed the material sin. The problem is that those who admit that what they do is sinful are few and far in between. The majority are those who are articulate and sometimes very violent. Ours is to love them while showing that what they do is not acceptable, loving the sinner and hating the sin.

5.9 Challenges facing homosexuals

We have neither seen nor heard homosexuals admitting their shortfalls. For those who claim to have sexual feelings exclusively for people of the same sex and want to act on it, will it be acceptable to them if those who may claim they have sexual feelings exclusively for children under the age of twelve to act on that? I believe as much as we expect the latter group not to act out their feelings lest they be charged with paedophilia, that homosexuals can also discipline themselves on account of the fact that nowhere in the Bible has homosexuality been accepted or recommended. The challenge therefore to homosexuals is to come to grips with a God-perspective of their chosen lifestyle and admit their error. The other challenge is for homosexuals to read the Bible and not misinterpret it to suit themselves. Still another challenge is that instead of parading their shameful acts, to consider the kind of society we will live in in the future where many may 'come out of the closet' and openly tell the world and ask to be accepted as their sexual feelings are for animals only and not other people; or those who like Jeffrey Dammer whose appetite for meat was human flesh, if they were to say they want to be accepted by society and their dietary preferences should be respected. Would the homosexuals be happy to live in a country where this kind of lifestyle was the norm? Thus my point of rejecting the practise of homosexuality be it as a free person or in prison.

5.9.1 Sexually transmitted diseases

Last, but definitely not least, the challenge homosexuals face is the high risk of contracting sexually transmitted diseases. Although sexually transmitted diseases are not peculiar to homosexuals, what is significant is that when we consider the low percentage of the incidence of homosexuality as researched by Schmidt;

What is the percentage of the population then, that consistently desires or practices same sex relations? The NORC data provides an estimate that of the approximately 6 percent who experience same sex relations ever, the number of currently active homosexuals is 0.6-0.7% of the US adult population

(Schmidt 1995:103)

The proportional number of homosexuals suffering from these diseases compared to heterosexuals, it is very high (in the US). I believe that it is not different in the rest of the world including our country. The main reason for this threat that places homosexuals in the high risk bracket is their promiscuous behaviour. Williams quotes Don Clark, a homosexual proponent who said the following:

Clark advises sex with friends rather than strangers, where sex is a friendly interaction to be offered to each other...
The heterosexual marriage role model does not work for most gays. As they relate to several sex partners, they should remember that the more one loves, the more capable one is of loving. Thus there is no reason for jealousy unless there is a feeling of love being withdrawn.

(Clark 1978;43)

William's investigation of this promiscuous behaviour of homosexuals is not the only one. Schmidt also arrived at a similar conclusion after his research on the incidence and prevalence of homosexuality. This is what he said:

We can quantify the phenomenon of homosexual promiscuity, especially among males, more specifically. The numbers are astounding. Bell and Weinberg found that 74 percent of male homosexuals reported having more than one hundred partners during their lifetime, 41 percent more than five hundred partners, 28 percent more than one thousand partners. Seventy five percent reported that more than half their partners were strangers, and 65 percent reported that they had sex with more than half their partners only once. For the previous year, 55 percent reported twenty or more partners, 30 percent fifty or more partners. The numbers for homosexual women were considerably lower: 60 percent reported fewer than ten partners lifetime, and only 2 percent reported more than one hundred partners; for the previous year, only 3 percent reported twenty or more partners, one percent-fifty or more partners.

(Schmidt 1995:106)

It is this promiscuous lifestyle of homosexuals that puts them in a higher risk category for contracting sexually transmitted diseases. A research done in Australia by Sherrard and Forsyth proved this point as they reported their findings as follows:

Results: Overall, gonorrhea is declining in Victoria in the general population but has risen sharply in recent years in homosexually active men. An increased number of cases of rectal gonorrhea in men has also been noted...

Conclusion: Gonorrhea in homosexually active men has increased disproportionately to the rate of infection in heterosexual men in recent

years, despite intensive education and counselling aimed at the gay community.

(Sherrard and Forsyth 1993:450)

This disproportional infection between homosexual and heterosexual men was also found in San Francisco. Jackson, an Englishman, visited this city to study the community care of people with HIV/AIDS. This is what he reported.

San Francisco is a compact city with a population of about 724 000. By March 1995, 20 962 cases of acquired immune deficiency syndrome (AIDS) had been reported in the city, mostly among gay white men, with 13 892 deaths. In the USA as a whole, 401 749 cases of AIDS had been reported by the end of June 1994, with 224 423 deaths (data from the San Francisco Department of Health AIDS Office)... It was at the city clinic that 6 704 gay men were recruited between 1978 and 1980 for ongoing studies into hepatitis B. Retrospective study of their blood samples showed that 75% had been infected with HIV by December 1993, 40% had been diagnosed as having AIDS, and 31% of the latter had died.

(Jackson 1996:178)

The above statistics show that homosexual males accounted for about 40% of the total number of infections in the country whereas they only make up around 1% of the whole population. It must also be borne in mind that although these figures are more than ten years old, whatever improvements gained, to date it will still not be proportional. Vasey in his research also commented on the disproportional infection of homosexuals in England regarding AIDS (Vasey 1995).

The American figures may appear to be a bit out of date in that they are just over ten years old. The fact is this phenomenon does not easily change. Kennedy and Newcombe quoted some results of a research done in 2004 by Sprigg and Dailey. The Family Research Council put these results together. The situation regarding homosexuals and AIDS in America as summarised is as follows:

They point out that homosexuals in America still represent the greatest population with HIV infection. This is because of unhealthy sexual practices. "The high rates of HIV infection among homosexual men are largely due to two behavioural factors the practice of anal intercourse, which facilitates the transfer of the virus far more easily than vaginal intercourse, and the practice of having sexual relations with multiple sex partners, which multiplies the opportunities for acquiring and transmitting HIV.

(Kennedy and Newcombe 2004:90-91)

To end this section of the challenges facing homosexual men and the risk they run of contracting sexually transmitted diseases more than their heterosexual counterparts, I would like to look at the research conducted in South Africa. Statistics compiled by Zwi and Bachmayer from 1982 to 1989 of HIV/AIDS infections led them to say the following:

A combination of the pattern common to homosexual and bisexual men which has occurred in the USA and much of western Europe, and that of heterosexual spread which has occurred in much of central and southern Africa, has been evident in South Africa. Of the 326 South African cases of AIDS, 231 (71%) were whites, 79 (24%) were Africans, 13(4%) were coloureds, and 3(1%) were Indians. For all races combined, 216 (66%) of the cases were in men who have sex with men...

(Zwi and Bachmayer 1990:317)

We are made aware daily that this disease is colour blind, status ignorant and sexual orientation unaware. It is generally accepted that today the tables have turned in such a way that there are more heterosexuals suffering from HIV/AIDS simply because there are more heterosexuals than homosexuals. Nevertheless it is still important for active homosexual men to be aware that this danger has not abated nor disappeared. Much as it goes for heterosexual males, more so for homosexual males as their promiscuous

lifestyle puts them in this high risk category. It is also interesting to note that the department of correctional services has reacted to the dangers of this scourge in providing free condoms in correctional services. Generally speaking, when I casually asked some officials off the record why this conflicting action, it was mentioned that the reality is that men will not abstain from satisfying their sexual hunger. Therefore the government is trying to minimise the rate of infection and even to avoid any libel cases against them by anyone who may contract the virus while serving his sentence. It was also interesting to note that one of the main reasons generally cited is that inmates contract the virus, because they share contaminated needles as they inject themselves with drugs. Now, in order to minimise this infection all what the department is doing is to educate the inmates and warn them not to share needles. I have not yet come across a South African prison where free needles are made available to inmates. My point is this, that much as it would be ridiculous for the state or correctional services to offer free needles, as this may be equated to the state now sanctioning drug use, why has the correctional services not seen the provision of condoms in the same light? Both drugs and sex are prohibited in prison. Nevertheless, for the active homosexual inmate, here is one challenge they have to face and tackle if they are to see and enjoy the free world as healthy men after serving their sentences.

The above figures and comparisons may appear to be a bit outdated. The fact is, we still find the pattern of behaviour among homosexuals continuing to date. Kennedy and Newcombe assert that this is the case in their book looking at the reasons for rejecting same sex marriages. They corroborate the above-mentioned promiscuous behaviour of homosexuals and the different sexually transmitted diseases that homosexuals are more prone to contract as compared to their heterosexual counterparts. This is what they said concerning the American situation:

In the late 1980s, we were warned that AIDS was going to break out



and overtake the heterosexual population in America. That did not happen. In the United States, HIV and AIDS are still largely homosexual diseases. In Africa, AIDS appears to be more of a heterosexual disease, but that's what happens when widescale promiscuity is coupled with poor hygienic conditions. Sexual promiscuity - whether homosexual or heterosexual - exacts a price.

(Kennedy and Newcombe 2004:90)

For us in South Africa, within the heterosexual population, those who succumb quickly to the devastating effects of AIDS are not only those with poor hygienic conditions but especially those who are poor. Poverty is the number one enemy of those who were previously disadvantaged. From this point, one can see why our president kept on talking about fighting poverty! Opportunistic diseases find themselves a home in the bodies of the many poor people who sooner rather than later have to bid the good life good-bye with no smile but a smirk on their faces.

5.9.2 Early death

The other challenge that homosexuals should face is that of early death. Kennedy and Newcombe touch on this aspect in discussing the deadly lifestyle of homosexuality. It will be interesting to find out what figures our country can come up with, regarding this challenge of early death for active homosexuals. The one aspect that was recently commented on was on SABC 1 on the 19h00 news on the 14 November 2007 on HIV/AIDS. Partly because of the virus, life expectancy in South Africa is now forty-seven years. Later on the same day on SABC 3 on the late news at 22h00 the report from the World Bank published their results on Sub Saharan Africa. It was reported that because of the effects of HIV/AIDS and malaria the average lifespan of people in Sub-Saharan Africa is thirty-five years. From these figures it is clear that the average life-expectancy in Sub-Saharan countries is estimated at a much lower average compared to other countries. In

comparison with the life expectancy figures of active homosexuals in America, we can see some commonalities despite the fact that ours are figures of both heterosexuals and homosexuals living with HIV/AIDS. The fact is, the lifestyle of homosexuals is one that makes its followers prone to contracting diseases leading them to an early death than normal. This is not always exposed or openly discussed.

The other generally known fact is that HIV/AIDS is devastating the economically active populations of the world. The figures range from between twenty-five years and the early forties, men and women at the height of their productive years. We hear of high numbers of orphans in Africa, these being young people anywhere between the ages of three to teenage years. In parts of Africa we hear of child headed households homes where both parents succumbed to the scourge of HIV/AIDS.

The fact is, as revealed by Kennedy and Newcombe, that when discussing homosexuality, it is portrayed as an alternative lifestyle without explaining the risks. I look at this in a similar light where rights are flaunted and demanded without emphasizing the responsibilities that goes with these rights. It is like someone selling a policy with low premiums and high yields without explaining or directing the client to the small print that contains exclusions and conditions that may result in the client not buying that policy. Research has revealed the following regarding the lifespan of homosexuals according to Cameron:

He points out that the average homosexual lifespan is somewhere in the late thirties, early forties for gays. Somewhere from early to middle forties for lesbians. He pored through approximately seven thousand obituaries from eighteen different homosexual publications all over the country. "What we found was this: for gays, if they died of AIDS, the average age of death was 39. If they did not die of AIDS, their average age of death was still very young, about 42. For lesbians, it ran at 44.

(Kennedy and Newcombe 2004:88)

This pattern of many deaths among homosexuals was corroborated by an ex-gay who was interviewed on American television. He was around thirty-five years himself as reported by Kennedy. This is what he said: “At this point in my life, there have been at least 94 people that I know who have died of AIDS - personal friends in the past three years” (Kennedy and Newcombe 2004:89). I take it that many will agree that this is a high rate of deaths under normal circumstances. This then is what anyone who contemplates an active homosexual lifestyle should consider before embarking on it. It must be said that like the small print of many a contract, this is hidden from many a homosexual and needs to be highlighted like many killers such as cigarette smoking and the abusive use of drugs. Is forewarned not forearmed?



PUNISHMENT AND IMPRISONMENT FROM A CHRISTIAN PERSPECTIVE

6.1 Introduction

According to the Cambridge Learner's Dictionary online definition from Google, punishment is defined as 'causing someone who has done something wrong or committed a crime to suffer, by hurting them, forcing them to pay money, sending them to prison, etc'. From a Christian and ethical perspective, Marshall defines it as follows:

'Punishment may be defined as the deliberate infliction of an unpleasant or painful experience on a person, such as the deprivation of something greatly valued, like freedom or money or even life itself, as the response to a perceived offence and corresponding in some way to the action that evoked it.

(Marshall 2001: 97)

The definitions above make it clear and are in agreement in the sense that imprisonment itself is seen as punishment. The South African department of correctional services in the Draft White Paper of December 2003 says the following:

"The purpose of the correctional system in South Africa is not punishment, but protection of the public, promotion of social responsibility and enhancing of human development in order to prevent recidivism or return to crime"(Draft White Paper 4.4.2). This is an oxymoron if not a contradiction of some sort. How can they say the purpose is not to punish when incarcerating offenders in itself is punishment? The deprivation of one's freedom is punishment. Prisoners are being forced to live and share space with people they would otherwise not have chosen to live with. This on its own is punishment. It is punishment to be separated from the people one loves and would like to see each time one feels like. It is important therefore for the department to revisit their set of objectives and correct them accordingly, in order to serve the public correctly with understood terminology, 'singing together from the same hymn sheet'.



6.2 Punishment and justice

We cannot talk about punishment in a penal situation without talking about justice. Each offence is to be punished justly, that is the punishment should fit the offence, no more and no less. These twins go together, albeit that in some cases when justice is miscarried, one finds a heavy sentence being meted out for minor offences, or a major offence being punished with a light jail sentence or fine. Whenever we discuss punishment for offences committed, we are faced with a choice of punishing the offender with one of two objectives in mind. Punishment should be retributive or restorative. Sometimes both are embedded in the punishment.

In dealing with this aspect of criminal punishment, Marshall looks at the purpose of punishment. He discusses the ethical and moral justifications of punishment. He quotes Aristotle in the case of justness and says: "Aristotle argued that the essential feature of justice is equality or equivalence: corrective justice requires an exact correspondence between an offence and its punishment..." (Marshall 2001:110). It is worth noting again that in this case where we look at homosexual and heterosexual offenders, these are not necessarily treated equally. Whereas the sentence may be equal, the treatment in prison is not. We accept the fact that part of the punishment is to take away the rights of the inmate of having conjugal rights whilst imprisoned. The homosexual's rights, by default or on purpose, are rather restored and enhanced whilst the heterosexual's rights to have sexual relations with his partner or spouse are denied. This is discrimination that needs to be addressed urgently in order to restore the much needed moral equality in our prisons.

From an ethical perspective, I believe that all three aspects, namely justice, retributivism and restorativism should be borne in mind in meting out punishment to an offender. Justice should be in the form of punishment equalling the offence. I believe an ethical way

could be in punishing retributively, where the offender makes amend for the wrong or evil he has done and lastly that the punishment should have in it a restorative aspect, to help rehabilitate the offender so as not to re-offend and also to prepare him for re-entry back into the society. Marshall discusses the justification of punishment in a similar way when giving his answer to the purpose of punishment. He talks about the inherent justness of punishment and says: " Crime upsets the moral or social order, and punishment is required to restore the balance" ... and secondly he says,

Punishing wrongdoers is justifiable because, in terms of curbing antisocial behaviour, it yields better results than not punishing them. Because it causes suffering, punishment is not a good thing in itself. But if the suffering it prevents is even greater, or if it serves to bring about a greater good, then the desirable consequences that punishment produces outweigh the harm it causes the offender.

(Marshall 2001:98)

In terms of our retributive and restorative approach to punishment, in his summary he talks about two approaches one can employ to justify punishment and these do fit in well. Addressing these two respectively, he says; " The first approach (retributivism) legitimates punishment by reference to the past, to the crime already committed; the second approach (restorativism) legitimates punishment by reference to the future, to the prevention or reduction of crimes that have not yet been committed" (Marshall 2001:99).

If our department of correctional services holds on to their approach that the objective of the department is not punishment, I believe they will continue to lose the battle of reducing recidivism. As already mentioned, the percentage of repeat offenders is too high. If the department does not educate the inmates to ensure that they come to a point where they see that they have offended and upset the communal rules, the inmates will continue to re-offend. They will demand that their rights be restored and respected while in prison without realising that they have violated the rights of their victims and need to come to a

point where they realise their wrongdoing, which will enhance their chances to stop re-committing crimes.

Marshall further looks at the theory of retributivism and identifies four key elements as guilt, desert, proportionality and reprobation or denunciation. I agree with his explanation of the aspect of desert, the area that deals with the fact that on account of the guilt, the individual is then treated according to what he deserves namely punishment. This element further shows how the notion of not punishing as an objective of the correctional services is too far-fetched. This is what Marshall says concerning this element of desert;

Punishment is meted out solely because it is deserved and because it would be unjust not to punish. No other justification is necessary. Wrongdoers deserve to suffer for what they have done, whether or not the punitive suffering produces any desirable consequences.

(Marshall 2001:109-110)

6.3 Is punishment Biblical?

When we study the Bible we are constantly confronted by incidents of men and women offending and being punished. The first book of the Bible gives an account of the first couple and how they offended God by disobeying His commands and they were punished. It is also worth noting that God punished them justly in His justice, meting out the sentence He preset for the offence (Gen 3:1-19). No more and no less. It is also important to mention that punishment and forgiveness go hand in glove. Where one has offended and repents asking to be pardoned, forgiveness should be given.

There are other further examples of offences followed by punishment in the Old Testament. Moses did not obey God and was punished (Dt 32:48-52); The Israelites offended and they too were punished (Nb 14:26-38); King Saul did what was evil in the sight of God and he too was punished (1 Sam 16-19). In the New Testament we see

Ananias and his wife Sapphira being punished for lying to The Holy Spirit (Acts 5:1-11).

The last book of the Bible, Revelation records the punishment God will mete out to Satan His archenemy, the evil spirits for their rebellion and all whose names were not written in the Book of Life (Rev 20:7-10). The few examples mentioned above are not exhaustive but these do at least help us to come to a conclusion that punishment is Biblical. In accordance to God's decree, the punishment meted out was also just and equalled the offence.

Lewis B. Smedes, professor emeritus of theology and ethics at Fuller Theological Seminary discussed the question: 'How to deal with criminals' in an article he wrote in *Christianity Today*. He specifically addressed the question whether there is a biblical principle behind the punishment of those who break the law. Smedes comes to the conclusion that while there are examples aplenty in the Old Testament of punishment for those who broke God's law, retributive justice does not have its etymology from any Christian principle. He points to the fact that all pre-Christian societies dealt with wrongdoers by causing them pain (*punitive justice*). Concerning Christianity, he says the following that I agree with:

Though it brings the good news of grace to sinners, the New Testament does not disavow the Old Testament way of punishing wrongdoers. The apostle Paul insists (Rom. 13) that God invested the state with a sword. And what is a sword for but to kill or to cause pain?...It seems, then, that the New Testament grants the state the right to punish wrongdoers.

(Smedes 2002 : 59)

Smedes then tackles the issue of restorative justice and says that it should not be seen as replacing retributive justice but as a complement. He further comments on the South African Truth and Reconciliation Commission as conducted by Archbishop Tutu as a point in case saying:

By the way he conducted South Africa's Truth and Reconciliation Commission, Archbishop Desmond Tutu demonstrated how restorative



justice can work when a just retribution is all but impossible to achieve and punishment would cause double damage if it were attempted.

(Smedes 2002 59)

In the section on Biblical considerations for retribution, Marshall also identifies some texts in Scripture that support punishment for offenders. He quotes the following:

Do not be deceived; God is not mocked, for you reap whatever you sow' (Gal 6:7). According to Jerome Quinn, 'A basic conviction that grounds the whole scriptural teaching is that the one God ultimately punishes those who do evil and rewards those who do good. The God who gives human beings commands to act upon reserves ultimately to himself retribution for the actions that he has ordered.

(Marshall 2001: 120)

Although the above statement deals with retributive justice, what Marshall said raises the question: '*should punishment not be left to God?*' I will look at this question briefly after dealing with the sticky issues of retributive justice and restorative justice.

The few examples cited above again give us the satisfaction that retributive punishment is not an immoral act that may be seen as cruel, inhumane and unethical. It is a just recompense of wrongs done so as to correct the offender. The flipside hereof should be restorative in its full sense that I find lacking in our judicial system. Restorative justice should have elements of first restoring to the victim whatever is just and fair by the offender. The state should play a role of the middleman/mediator seeing to it that justice is done. The other side of restorative justice is that the state should ensure that in meting out punishment to the offender, it is done in such a way that the punishment has a component of restoring the offender back to the state of being able to return to the community after undergoing a period of rehabilitation and to be accepted and be restored to his former position of responsibility and respect for both the community and the laws governing the community whilst being respected himself.

What we tend to see in modern day society is that the state assumes the position of both victim and dispenser of justice. The victim cum offended party is pushed aside and receives no form of compensation from either the state or the convicted offender. We do know that there are some offences where the perpetrator cannot pay back what he has taken away from the victim. For example, in the case of raping a virgin, there is no way that virginity can be restored. Or in the case of murder, there is no way that the life lost can be brought back. It is in cases such as these where the state should step in and give a just sentence, befitting the offence and satisfactory to the injured party that justice is seen to be done.

One of my favourite examples in the Bible of retributive and restorative justice, apart from Leviticus 19-20, is the story of Jonah on the ship to Nineveh (Jonah 1:1-16). We see how the sailors lost their cargo in trying to lighten the ship on that life threatening stormy journey. On realising that the cause of all the trouble was Jonah, he personally asked the men to seize him and throw him into the sea. Jonah could have jumped into the sea; but in order to take punishment for causing all the trouble (retributivism) and in order for the victims to feel appeased (restorativism) he wanted them to personally mete out the justice of throwing him into the sea in order to achieve the desired end. This they did and the sea was calm. Although they did not recover their cargo, they at least had the satisfaction of dealing with the culprit themselves. This was satisfactory to both victim and offender. How we need to see more of this kind of justice. No wonder scholars and ethicists never stop to marvel and comment on the South African Truth and Reconciliation Commission as conducted by the Archbishop emeritus Desmond Mpilo Tutu. This whole exercise had the elements of the perpetrators owning up for the wrongs they did in repentance and asking for forgiveness. Forgiveness they did get from both the victims and or relatives of victims and from the state they were given immunity from prosecution. All parties were involved and thus the first example in the world where such a thing ever happened. Hideous



atrocities were confessed with remorse and victims with pain still embedded in their emotions were empowered to feel that they were now in the driving seat to offer forgiveness or not. This not so easy exercise encompassed what I believe show elements of God's retributive and restorative justice.

Not all theologians and or scholars accept this approach of restorative justice that includes retributive aspects. There are those who see these two as being exclusive and as the 'twain shall never meet'. Richard Snyder is one such scholar. He sees these two as being exclusive and in opposite camps. He says the following:

Retributive justice is primarily concerned with maintaining power, while restorative justice is concerned with restoring relationships. Retributive justice is primarily concerned with punishment, while restorative justice is concerned with healing...

(Snyder 2001:76)

Snyder seems not to realise that from a God perspective these two can and are bedmates. Looking at these two, namely retributive justice and restorative justice, from a human perspective, one can see how Snyder arrived at this conclusion. We find it difficult as human beings to fully comprehend how a Loving God can turn around and send people He made in His image to hell. It is important to note that when retributive justice and restorative justice are seen as going hand in glove and implemented as God intended, it would be possible to understand. Following on from what Snyder said, how can we heal what is not wounded? In our case looking at the inmate as the perpetrator, the person who needs healing is the victim. How this is done, I believe, is through the wheels of justice. The victim will embark on a road of healing when he or she sees that the perpetrator has been fairly judged and sentenced. Unfortunately the second part of healing is seldom practised in our judicial system. This second part, as I see it, is the aspect of restoring to the victim what the perpetrator has taken or stolen. This restorative aspect is lacking. In the Old Testament we see how God commanded His chosen nation,

the Jews, that the one who has suffered loss must be recompensed. This was a requirement for the perpetrator, to restore what s/he damaged or stolen.

The other Godward aspect of healing that is sometimes beyond the comprehension of the person in the street is the healing of the perpetrator. The fact is that the offender also needs healing. In some cases healing comes after pain has been inflicted on the offender. We can see God's aim in punishing His children as wanting to restore them to their former position. When Israel, the offender, sinned, God withheld rain or sent some sort of disease, as punishment. When the Israelites repented, God forgave them and restored them back to their former glory by either sending rain or bringing them back from exile. Restorative justice. Here we see God punishing and healing the offender.

When we take a casual look at the principles of the South African Truth and Reconciliation Commission, there are those who say this was purely restorative and no retributive justice was dispensed, no pain or punishment for the perpetrators. It is, I believe, only when one takes a closer look and not just a casual look at the Truth and Reconciliation principles that one sees that there was retribution in the process. I believe a lot of pain was experienced by the offender. If we are to agree that one of the results of punishment is pain, we can then see how the offender who suffered pain can be said to have been punished. Indeed I think the offender had suffered and experienced some kind of pain as he lived with the haunted feeling and the skeletons in his cupboard.

6.4 Should punishment not be left to God?

The answer to the question whether we should not reserve punishment to God is found in the Bible. We can attempt to answer the question ourselves, but the answers are sure to be as different as our religious backgrounds may be. There is a saying in Sesotho which

goes '*Ha e antshwe ka modutwana mmayona antse ale teng*' Literally translated it would mean that 'a calf cannot be fed milk artificially (bottle-fed) while the mother is alive'. This can also be explained in this way to fit our context that 'you do not speak on behalf of someone who is present and capable of speaking for him /herself.' When we turn to the Bible to get the answer from the source, we first have to come to terms with the basis of punishment. We have to understand that the Bible deals with right and wrong, good and bad, good and evil, and that punishment is meted out to anyone who does what is wrong, bad or evil. The wrong, bad and evil the Bible categorises as sin. Thus what God punishes mankind for, is when we do what is contrary to God's laws and intentions for our welfare. Before we hasten to say that God is not fair if all He does is to punish mankind for wrongdoing and nothing is done for the good-doers, let me say here and now that God is a just and fair God. The Bible again tells us that He repays mankind for whatever he deserves. The apostle Paul said this to the Galatian Church: "Do not be deceived: God cannot be mocked. A man reaps what he sows." The one who sows to please his sinful nature, from that nature will reap destruction; the one who sows to please the Spirit, from the Spirit will reap eternal life" (Gl 6: 7-8). These words of Paul are an echo of what the man of wisdom said in the book of Proverbs: "The wicked man earns deceptive wages, but he who sows righteousness reaps a sure reward" (Pr 11:18) and again; "Be sure of this: The wicked will not go unpunished, but those who are righteous will go free" (Pr 11:21). This aspect of God being fair and just can be seen right throughout the Bible from Genesis to Revelation. For example in Genesis we see how God punished the first murderer, Cain, after warning him of impending sin and that if he (Cain) did what was right that he too would be accepted; "Then the Lord said to Cain, " Why are you angry? Why is your face downcast? If you do what is right, will you not be accepted? But if you do not do what is right, sin is crouching at your door, it desires to have you but you must master it" (Gn 4:6-7). In the book of Revelation we see how God will judge the people – justly: "And I saw the dead, great and small, standing before the throne, and books were opened.

Another book was opened, which is the book of life. The dead were judged according to what they had done as recorded in the books” (Rv 20:12).

The related question to the one above is whether punishment should be carried out by an individual who is wronged? Taking this further, the question may be asked whether the authorities or governments of the day should punish the offender or wrongdoer instead of God? The answer as we saw above can and should be sourced from the Bible. When we look at the Old Testament scriptures, we are guided by examples of God’s chosen people, the Israelites. God did not allow individuals to punish anyone who may have offended them, but commanded them to take the case to those in authority to judge and punish equitably. One biblical text states as follows:

If a malicious witness takes the stand to accuse a man of a crime, the two men involved in the dispute must stand in the presence of the Lord before the priests and the judges who are in office at the time. The judges must make a thorough investigation, and if the witness proves to be a liar, giving false testimony against his brother, then do to him as he intended to do to his brother. You must purge the evil from among you.

(Dt 19:16-19)

Whereas the biblical text shows that the individual is not allowed to take the law in his hands, when we read the guidelines in the New Testament regarding authorities, the answer is different. Paul writing to the Christians in Rome explains that the government on earth is God’s servant and empowered to punish the wrongdoer. Paul urges Christians and I believe everyone, to be obedient to those in authority as they have been put there by God to carry out God’s purposes. This is what Paul says:

For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God’s servant to do you good. But if you do wrong be afraid, for he does not bear the sword for nothing. He is God’s servant, an agent of wrath to bring punishment on the wrongdoer.

(Rm 13:3-4)

The text above makes it clear that God has put governments in any organised society to be His servants with the right to punish wrongdoers. It is therefore important to note that in answering the question, individuals are not allowed to punish wrongdoers. Governments on the other hand, are allowed to punish wrongdoers because they are God's servants, empowered by Him to do what He would do. Any person who may be under the impression that it is wrong for the state of any country to be punishing wrongdoers, needs to be informed that what the authorities do is as a result of what God has empowered them to do.

6.5 Does prison (as punishment) rehabilitate?

I believe that a simple answer without being simplistic to the question whether prison as a punishment or prison per se rehabilitates or not, would be yes and no. There are some people who go into prison knowing very well that they have been found guilty of what they committed and accepted their sentences. These are the men who face their sentences gritting their teeth and eager to do their best and come out the better. These are the men who look forward to serve their sentences and while in prison do their best to stick to the conditions and comply with all conditions relating to their incarceration. These are the men who become 'streetwise' in prison and adapt to harsh conditions with one thing in mind, to serve their sentence and get out never to return. These are the men who turn the negative situation of prison life and make something positive out of it.

6.5.1 Former President Nelson 'Madiba' Mandela

If ever there was someone who beat the odds and came out trumps from prison, this is the man. Arrested and charged and sentenced at the notorious Rivonia Trial, he was `sentenced to life imprisonment for treason with no chance for parole. He turned the

whole negative situation into a positive one. He saw his stay in prison as temporary as somehow he believed he would be free one day. The warders' attitude of dealing with prisoners changed as they realised they were dealing with a different man. He refused to bow to immoral prison practices and introduced discipline among the 'comrades' at Robben Island.

To regard Mandela as one who came out of prison rehabilitated after twenty-seven years, would be the greatest misnomer of the decade if not the century. I personally see this elderly statesman as one who rehabilitated the prison codes. There was no mention of men 'raping' other men in prison during his stay. There was no mention of prisoners ill-treating other prisoners as together they identified themselves as the victims of an evil system that found them guilty judicially but based on an inherently discriminatory racist system. The laws that were laid down to further break him and his compatriots were turned round to serve them better. The warders who worked at the prison learned a lot from the inmates and those who would have been easily corrupted saw a man of principles and respected him and treated him humanely. No wonder when president de Klerk announced that Mandela would be released, world political leaders welcomed the decision. No wonder all peace loving South Africans hailed him a brave and honest man. No wonder when Mandela came out of prison the world almost stood still as millions were glued to their television screens to watch and witness the historical moment when this man stepped out of prison a free man. It may even be remarked that to name this statesman a rehabilitated ex-political prisoner is of itself a misnomer. This man went into prison unlawfully and while in prison he maintained his stature and principles. One of the remarkable things about this man is that while others who were wrongfully imprisoned came out angry, he came out full of forgiveness. No wonder the idea and implementation of the TRC that was based on his forgiving spirit and attitude was so successful. Yes, I do include him in this section simply because he is one of many who spent years behind bars

and left a legacy not only for the prison officials, not only for the prison department, not only for South Africans but for the whole world to learn.

6.5.2 Jonathan Aitkens

Jonathan Aitkens, a British politician, was arrested, tried and found guilty for perjury. He was sentenced to eight years imprisonment. He accepted his sentence and intended to serve that jail sentence as he knew he was guilty. This perhaps is one man who can also be seen as having impacted the British prison system and exposed some of the security flaws of prisoner safety. Some inmates were paid by journalists to smuggle in cameras to try and take pictures of him and earned lots of money. He exposed some of these loopholes.

He further was a great help to many inmates who were semi or totally illiterate by reading prisoners their letters and writing replies to these letters as requested. Aitken explains how he was helped to evade the paparazzi and how he helped inmates saying; “However, Mickey did perform two helpful minding services. First, he minded or rather managed the evening queue of inmates wanting advice or letters written for them. In this role he was much more of a receptionist than a bodyguard, but he did it well” (Aitken 2005:111).

It was during his time in prison that he took a course in theology and that helped him a lot on his way to be rehabilitated. He served his sentence and came out a better man having resolved never to live a life of perjury again. Rehabilitation starts from inside, from the individual. Aitken himself talks about his remorse, the realisation of his errors and owning up of his mistakes and willingness to do his time as punishment. He further explains that he did not want favours done for him as he wanted to be treated like any other inmate having committed a crime and now paying his dues. Without the buy-in by the offender

and the intention to change as well as the means to change, rehabilitation will remain a pipe dream. This buy-in has to be reciprocated by the department of correctional services by offering the offender the tools he needs to be rehabilitated. If the department fails to provide these tools or even fails to identify the inmate who is ready to change, the chances of achieving their objectives of releasing rehabilitated men back into the community will not be reached.

6.5.3 Gayton McKenzie

The story of Gayton McKenzie hit media high when the corruption and ill treatment of inmates at Grootvlei prison was aired and exposed on television. On his release he worked with a young writer by the name of Charles Cilliers and together produced one of the best books on prison life in South Africa: *The Choice*.

It is in this book where McKenzie, a self-confessed criminal, tells the story of how his criminal life continued to increase in prison. He gives an insight of how gangs operate in prison and how the criminals can corrupt some officials. He explains how he managed to continue as a leader of the 26's, a gang specialising in dealing with drugs and monies in prison. He also details how they managed to get the drugs and other commodities into prison, sometimes through their own ingenuity and sometimes with the help of warders/members. McKenzie says:

Brilliant, bent on crime, even in prison Dirk proves capable of making ten thousand to fifty thousand a day. He soon becomes the 26's prized asset, living like a lord among us. All he requires to function are his drugs, his daily newspapers and an unending supply of telephone cards...Money stands in line and knocks to get into Dirk's accounts. Before the swindled are any the wiser our gang has sent a warden to collect the money. These wardens receive a good share, at least ten percent.

(Cilliers and McKenzie 2006:149-150)

McKenzie in a sense makes a point in the title of the book *The Choice* that the case of reform and rehabilitation is a 'choice' that one makes. Prison on its own cannot rehabilitate someone who is not prepared to change. Although the correctional services officials are aware of this fact that there must be a buy-in by the prisoner to change, the draft white paper does not delineate steps to be taken for this to happen. "The department must go through a process to ensure that people under correction buy-in and accept the need to be corrected and rehabilitated" (draft white paper 4.4.1). The information I gathered from my interviews actually shows a cry from inmates in need of skills so as to be ready on release to be employable. There is a lot of intentionality but very little actuality in implementing skills training courses for inmates. This is an area that needs to be attended to urgently by the department of correctional services if they are to see inmates rehabilitated and ready to re-enter their communities equipped to make a difference and contribute to the welfare of society.

McKenzie tells how his own change of mind and rehabilitation came about, in the midst of corruption and how some officials who were bent on corrupt actions did not support him when he took a turn for the good. He explained how he made the choice to change when he saw the body of a callow young white man who was 'raped' and lay in a pool of his own blood. He decided to end his life of drug dealing and expose the wrong things that were taking place in that prison. Among these evil dealings were corrupt warders aiding prisoners to bring drugs into prison; warders stealing prisoners' rations of food (especially meat); warders bringing in juveniles from the juvenile section of the prison for the Ninevites to 'rape'. He nevertheless pressed on as a rehabilitated prisoner and spent most of, if not all, of his ill begotten gains from drug dealing in prison and bought expensive video equipment to capture all the dealings of corruption by warders and inmates alike as proof. The long and short of it all is that McKenzie ultimately managed to be freed and is now a respected married man and going around the schools preaching the message of

'crime does not pay'. A good role model of a rehabilitated prisoner. The sad part of this whole matter of McKenzie's rehabilitation is that the man who collaborated with him as chief warder to expose corrupt officials was suspended from his position and at the time of writing this thesis, he was still not re-instated. He was alleged to have been the corrupt warder when in fact he was the mister 'no nonsense', 'no corruption in my prison' man. This in a sense shows how deep corruption has gone in the department of correctional services where the good men are painted bad by the baddies and somehow almost succeed. It will be interesting to see how this whole affair ends. The ethical thing would be for those in authority to re-instate this good man and to expose and expel the bad members. This may be 'pie in the sky by and by when I die', and should it turn out that this good man will not be re-instated, it will be a sad day for justice and fairness in the department of correctional services.

6.5.4 The story of Frank Ayers

The story of Frank Ayers is a fascinating one. I was in Jacksonville Florida and in a town called St Augustine where I met this hunk of a man. At the time of meeting and interviewing him, Frank was 52 years old. His current work was that of a plumber and apart from that he was spending most of his time helping men who served terms in prison for paedophile offences. He helps them to face their addiction and help them to fit back into the community by getting them to meet their victims and apologise. He said that the moment they meet their victims and discover that the children they molested were actually hurt, they become remorseful, turn around and confess, ask for forgiveness. And when forgiven, they slowly fit back into the society accepted, all because they made up their mind and because there was someone who believed in them and walked the tough road of recovery and rehabilitation with them. He told me that the method they use have so far achieved a ninety eight percent success rate.



The most fascinating part of Frank's story that is more pertinent to this discussion is how he got rehabilitated. He explained to me that prison itself does not rehabilitate a person. He told me that he spent eleven years in the Florida State Penitentiary. His original sentence was thirty-two years. He told me that he was a repeat offender and how he went in and out of prison and that he once escaped from prison. Frank was very frank to me (We coined a phrase; 'Frank is frank to Frank') and told me how as a first offender a homosexual repeat offender raped him and later the same person was his protector as long as he remained his sex partner. When Frank was released he lifted weights and matured and was very muscular and strong. He offended again and was re-arrested and when he got to prison, his molester was still there but for the first time he realised that he was bigger and stronger than him. He then beat him up and had the upper hand and refused to be his 'sex-slave'. He beat up all the other prisoners who were trying to rape younger men. The younger men ran to him for protection and offered themselves to him sexually. Although he was not a homosexual he lived like one as the younger men he was protecting 'paid him back' and also he did what was done to him in prison. As he put it, "he knew no better".

While in prison he took up general repairs around the prison as part of his prison job. He later took to plumbing and became very skilful. He was released because of overcrowding and room was made for people with serious and violent crimes. One of the inmates gave him the name of a man and told him to go ask this man for a job. Once outside he worked for this man and at night he was a bouncer because of his built. This is where he struggled to regain his manhood as women threw themselves at him and he slowly gained confidence and never told anyone that he was raped in prison. He had three different women and one of them became pregnant. One day after an argument with his girlfriend and nearly being arrested, he explained how he drove away and after an hour or so, he

pulled over with a heavy feeling. His thoughts went back to his difficult childhood and to the girlfriend carrying their unborn child. He said that he kept on thinking about his childhood and how he did not want his child to grow up in the same way. He wanted to be a good father to his child and a good husband. He explained that he came from a family where he was one of eight children with five different fathers. He said that he recalled what his Sunday School teacher once said that God can take a person's dirty life and give him/her a new life. He said he remembers sobbing and praying and asking God to take his rotten life and to give him a new life. From that day on, his life started to change and slowly he saw how he can help others and stopped his life of drugs and wayward women. He told me how earlier on he found it difficult to relate to women because of his prison lifestyle. As a macho man, he knew no one would believe him if he was to come clean and share how he was indecently assaulted, 'raped' in prison and how he later in turn had young men and had homosexual sex with them. He said that even as a big muscular man, inside he was afraid. Each time he thought of unburdening, fear gripped him. After much prayer, and a repetitive vision where he saw himself at the edge of a high cliff, he took a step and found himself on level ground. This helped him to come clean and shared his prison story with family members who continued to respect and love him. He told me that he is now a free man and works with paedophiles who are on the road to rehabilitation. He said that he does not mind for his real name to be used as he would like others to know that his changed life is the result of Jesus stepping in and changing it for the good. He emphasised that one cannot just be rehabilitated, what needs to happen is that the inmate must be willing to be rehabilitated and buy-in into the prison programme. Above all, the inmate must confess his wrongdoing and ask Jesus Christ to forgive him as He is the real change agent. The key here is being born again. One's old life gone and given to God, who in turn forgives because Christ died on the cross for all mankind and He gives one a new life. There is no better way to explain this phenomenon than the Biblical text itself: "Therefore if anyone is in Christ, he is a new creation: the old has gone, the new

has come”(2Cor. 5:17). Much as this may not be true of all who are rehabilitated and stop offending, the majority of success stories of those who have turned a new leaf is as a result of a Christian experience. Without going into detail, one such life in our country is that of Eugene Terblanche.

6.5.5 Eugene Terblanche

Eugene Terblanche will be remembered as the fiery Afrikaans rightwing leader of the “Afrikaans Weerstand Beweging.” (Afrikaans Resistance Movement). One of his international episodes was the time when Codesa was on at the Johannesburg International Airport between the government and the ANC and he stormed the venue with his followers with caterpillars and he was on his horse. There was another time when he was captured on television, falling off his horse on one of his parades with his followers opposing moves towards democracy. He was later arrested, tried and found guilty of murder and put in prison. While he was in prison, one way or the other, he had a kind of Damascus experience. It will be remembered that even before he was arrested, he claimed to be a Christian. This I believe was a mechanical religious adherence to precepts learned at home from parents without a heartfelt personal experience of Christ Himself. This time I believe he saw his errors, which led him to confessing his sin and was converted. On his release, Terblanche made it very clear that he was a changed man, that Jesus Christ was now Lord of his life. It has been years now and we have not heard any negative report about him. Isn't it that Christ said that a tree will be known by it's fruit? “By their fruit you will recognize them. Do people pick grapes from thornbushes, or figs from thistles? Likewise every good tree bears good fruit, but a bad tree bears bad fruit” (Mt 7:16-17) Thus I believe Terblanche is a truly rehabilitated man.



6.5.6 Mount Zion Baptist Church

I met and interviewed three ex-inmates who served their sentences at Leeuwkop correctional centre. They were and are still running a very successful furniture business in town (Johannesburg). These men are also leaders of a Church where they minister to people in as many different areas of need as needs may require. These men were converted while in prison while serving their sentences. A volunteer pastor of a Church helped them and they 'bought into' the rehabilitation scheme of the department of correctional services. That is where they acquired their skills of making furniture. On their release, they were helped by the same pastor and raised enough funds to buy a disused Church and started their business. On interviewing them, they all attributed their success to the fact that had it not been for Christ changing their lives, they would have been back in prison like most of their fellow ex-inmates who were released and re-offended and were caught and went straight back to prison.

These men also mentioned that they were spared the trouble of gangsterism and being involved in all sorts of prison misdemeanours because of their Christian stance. The complex they were in was quite big. Apart from the Church services on Sundays, they have youth meetings, prayer meetings and they also have an Early Learning Centre for children of parents who live in the area. They were not only self-employed but they also created jobs for other local people in the furniture business as well as the Early Learning Centre. Thus one can say that Christianity does help and is pivotal in the rehabilitation of offenders. The cherry on top would be a prison acquired skill that one can use once released as seen in the case of Frank Ayers and these gentlemen running a furniture manufacturing business, a skill they acquired in prison. These skills proved to be the catalyst in helping these men not to re-offend when they were unable to be employed

because of their prison records which is a stigma. They were able to be self-employed and are giving back to and serving their communities.

6.5.7 The Argentinian model

When I was in St Augustine Florida, I met the Reverend Sam Allert, a pastor of Christ The King Anglican Church. He told me that he had just returned from Argentina where he attended a Transformation Conference. It was fascinating and encouraging to hear him relate the amazing story of prison transformation in Argentina. He told me that they were taken to several prisons where very little policing is taking place because the inmates have had a Christian experience - a transformation of life through the preaching of one born again pastor. He told me that the whole transformation started in one prison called Almos. The pastor was very patient and worked with inmates in one cell. When they understood the Gospel, their guilt and that God is ready to forgive them, they all repented and together with the pastor preached the Gospel to other inmates. From one cell to the whole wing and then to other wings of the prison until the whole prison had born again inmates. He told that the inmates started to work together unsupervised and produced a lot of vegetables which they shared with the community. He said that the inmates reached out to the community, got the community to forgive them for their wrongs and they were serving their sentences with a clear conscience. He said that the officials got to know and saw the changed lives of the inmates and the department then recommended that the method that was used at Almos should be adopted at all the prisons in Argentina.

This proved to me that the power of the Gospel should not be overlooked or side-stepped. Where people accept Christ as Saviour, accept their wrongdoing and ask for forgiveness, transformation and rehabilitation does take place. I therefore want to conclude this section by saying that unless there is a buy-in by the inmate, unless there is an acceptance of the

wrong done, unless there is a remorseful attitude, unless there is a willingness to repent and start anew, there will be no rehabilitation. At the top of it all, I strongly believe that unless the authorities allow and promote the preaching of the Gospel of Jesus Christ who alone can change hearts, the rehabilitation may be short-lived and or may not even happen. I therefore advocate that for rehabilitation to take place in correctional service centres, there must be a working together of those chaplains, voluntary pastors and Christian workers and the department of Correctional services with their programmes for inmates. I see Christianity as a kind of a Damascus Road experience playing a major role in the rehabilitation of inmates. This will curb recidivism and help the released offenders to fit back into the society trusted by the community as they will have made peace with the community and prepared to live a productive life according to the needs of the common society and the needs of the individual as synchronised by the governing regulations as mutually agreed upon by all stakeholders.

In conclusion, one can safely say that there are those who come out of prison rehabilitated, and some who do not. The cases cited above show that the people who came out of prison to fit into society, made a choice to serve their sentence and come out having bettered themselves. It is clear that prison on its own without the buy-in of prisoners, does not rehabilitate. We have already seen examples and figures of recidivism both in South Africa and elsewhere proving the fact that some prisoners get out of prison unrehabilitated and once free, commit crime and return to prison. It is not clear whether the fault lies with the prisoner, the prison or the community. Whether the prison system failed the prisoner in not making sure that he was ready to re-enter the community; or whether the prison system failed the community by not preparing the community to accept back into its fold the now presumed rehabilitated member; or whether the prison system failed itself by not accomplishing its objectives through the negligence or purposeful wrongdoing by the members, or the correctional service itself. Or could it be that the

prisoner, inmate failed to make the right choice and buy-in towards being rehabilitated? Or could it be that the correctional centre was too comfortable for him to such an extent that he could not cope with civilian life? Rehabilitation can be achieved and, again, in some cases it may not be achieved. As a concerned society, what we would like to see happening is that most if not all inmates should come out of prison rehabilitated never to re-offend.

A CHRISTIAN ETHICAL RATIONALE FOR PRISON REFORM.

7.1 Introduction

The proposals below can be of help if implemented. I see the outcomes of these as being beneficial to the department of correctional services, the members, the inmates and ultimately the society in which we live. The boon to the department as I see things would at least be the reduction of recidivism with the spin-off of spending less money on housing and feeding inmates. The members would then be able to work under better conditions, well trained with refresher courses at given intervals or as the need may arise. Members would also be well informed of their rights and incentives and work with a positive objective of serving the inmates with dignity. The boon for inmates would also be to enjoy less crowded cells, less intimidation by gang members as these will be in the process of being rooted out. They will also serve their sentences without fear of being indecently assaulted by other inmates. They could also serve their sentences with a sense of preparing for release if they get involved in rehabilitative programmes designed by the department. Those who may be illiterate may start literacy classes and further gain skills to be used when released thus making them employable. The communities where these inmates come from, and will be returning to, will also gain. The community will expect to receive back into their midst a rehabilitated member and not live in fear of him re-offending. In the case of the inmate serving an alternative sentence, the community will gain from the labour and work done as giving back to it what was taken in one way or the other.

These are but a few of the gains for the different bodies if and when these or some of these proposals can be implemented. There must be a buy-in by all stake holders. In this case, the department is the majority shareholder and needs to take the initiative.

7.2 Reform proposals for the department of correctional services

It will be remembered that the department changed the focus of imprisonment from punishment to rehabilitation. This change was also seen in the change of terminology from “prisons” to “correctional centres”; from calling the officials guarding the prisoners “warders” to “members” and from calling those incarcerated “prisoners” to “inmates”. In order to live up to their name and objectives, I strongly believe that the department has to attend to at least three areas. These areas would be the members, the inmates and lastly the guidelines or working principles.

7.2.1 Correctional services and members .

Members have been shown to be prone to corruption. The department needs to attend to this problem in different ways. Firstly, to deal with those who are already in their employment with severe punishment if found guilty of corruption. Secondly, the department needs to do a thorough screening of those who are applying to be members: their backgrounds, criminal records and their motives for joining the department as members. Lastly, I believe that the training of their intakes has to be thorough in areas of working with inmates for rehabilitation. In their training, emphasis must be put on handling potential areas of vulnerability to be corrupted by inmates and how to manage stress. The area of stress management was mentioned as a need by several members.

Talking to some members after the official interviews at the different correctional centres, I realised that the majority were not aware that if they did their job excellently, they would be financially rewarded, which is one way of spurring them on to do their job well, as well as turning their eye from accepting bribes from inmates, family members or friends of inmates. All they have to do is to do their work beyond the call of duty, which will result in enabling the commissioner to reward them. This will be the duty of the Commissioner which in turn can be seen as a right of the officials/members to claim. Subsections of clause 5 of the Correctional Services Act dealing with the Commissioner and employees under him/her state clearly that the Commissioner will among other duties do the following for the employees (in this case the employees being correctional officials/members);

(e) award to any person who is or was a correctional official such monetary or other reward for exceptional ability or possessing special qualifications or rendering meritorious service, as is, in his or her opinion, a fitting reward;

(f) award a monetary or other reward to any person who performs an act which promotes the interest of the Department.

I believe the above is an incentive good enough to steer the members away from corruption towards acceptable and ethical behaviour. For the members to neglect this opportunity and pursue one of accepting bribes is unacceptable. The other aspect is to encourage members to further their studies so as to qualify for this monetary award or reward. Again, when I talked to some members, not many were involved in further studies. An awareness campaign within the department among members that the better qualified they get, the more money they will get, can bring about better results. The department would have members who are better qualified and more knowledgeable about their job. The monetary incentive would help towards steering members away from accepting bribes.



7.2.2 Correctional services and inmates

There are several areas where the department of correctional services needs to change their modus operandi in order to achieve their goals. I will not discuss all these areas but touch on those that affect inmates in the area of exacerbating unethical sexual behaviours of inmates. The first area of reform is that of fighting illiteracy. On admission inmates should be informed that their chances of re-employment after serving a jail term will be more difficult. If the inmate is illiterate or semi-literate their chances of employment will be even more difficult. They should be informed that unless they have a skill that the market has a need for, their chances of employment are almost non-existence. The sad part about these illiterate men is that after serving their sentences and upon being released, within a short space of time they re-offend and get caught and get back to prison. Getting rid of illiteracy by increasing the delivery of the Adult Basic Education Training (ABET) will help both the department and inmates. This area has not been attended to as reflected by the report of the human rights commission on economics and social rights. This is what their report says:

The illiteracy rate for prisoners has not changed since the financial year 1998/1999. It still stands at 37 percent, which is more than the national average. Although the department seems to be committed to the well being of the prisoners, the budget allocation and indicators do not reflect that commitment of ensuring access to education and training.

(HRC 3rd ESRR 1999 / 2000 :378)

Apart from the ABET programme that needs to be increased, inmates should be encouraged to enrol in doing technical courses and other skills based courses such as brick laying, plastering, plumbing, motor mechanic, panel beating and spray painting, carpentry and a lot more. The tendency is to get these men to start these courses towards the end of their sentences in preparation for their release and possible employment. The negative aspect of this approach is that for those who served ten years and only engage

in the skills training for the last six months, prison life style is part and parcel of their life and the prospect of civilian life has dissipated into a dream. To combat that attitude, these men must start as soon as they have completed all the required settling and once they qualify, they can for the rest of their sentences be deployed in government jobs for practical work and to gain experience. By so doing they will be kept busy and not left to devise means of molesting others. They will at the same time be putting back into the community what they took in unsettling civil life. This is where restoration takes place and they will be ready to come back into the community ready and employable. Where it becomes difficult to get jobs, they can start their own small businesses that the government can subsidise.

This reform proposal is not suggested in isolation. The human rights commission did a study/research of the needs in the department of correctional services and also came up with this recommendation. They said the following: "More funds for educational programmes are required since education is an important contributory factor towards the rehabilitation of offenders" (Human Rights Commission 3rd Economic and Social Rights Report 1999/2000:376). The report further acknowledged the positive side where the department was doing well in offering good educational and training programmes. On the negative side, it was noted that only 81 prisons benefited from these programmes and also: "The fact that 302 qualified educationists and trained personnel were employed means that there are clearly insufficient educators to accommodate the needs of prisoners" (HRC 3rd ESRR 1999/2000:373). Not only was the department not doing enough, the fact mentioned above regarding the time when inmates got involved in these programmes was also highlighted and showing the low number of inmates involved in these educational programmes.

This was deduced from the fact that the DCS stated in other reports that it aimed at increasing the involvement of child prisoners in education programmes to 90 percent, and those of adults to 45 percent of prisoners

serving two years or less. These figures suggest that not enough child and adult offenders are accessing education. Only 20 000 prisoners out of a total of 162 638 are accessing education programmes. The children of female offenders should be accessing early childhood development programmes and the DCS makes no mention of this.

(HRC 3rd ESRR 1999/2000: 373).

This problem of the illiterate being the ones who are more likely to be candidates for offending and re-offending is not peculiar to South Africa. Other countries are experiencing the same problem and so we must not despair but deal with it vigorously. Goyer and Gow in their research on HIV/AIDS, especially in prisons, identified prisoners as a high risk group to be infected. In the process of this research they also found out that the majority of the prisoners are illiterate. They quote Grant saying: "Similarly, prison inmates tend to fit a standard demographic profile. In New South Wales, Australia, the typical prison inmate is an unmarried unemployed male, aged 20 to 30, with little or no formal education, who has been in prison before, is serving a 2 to 5 year sentence, and has a history of drug or alcohol abuse" (Grant 1992:7-8). They then proceeded to look at the situation in South Africa regarding this profiling of inmates. They were unable to get information directly from the department of correctional services but were able to get something from the South African Prisoner's Organisation for Human Rights (SAPOHR). They found the profile of the South African not much dissimilar to that of South Wales Australia as they said:

According to these sources, the majority of incarcerated South Africans are young, poor, illiterate, unemployed, black men convicted of non-violent offences, such as theft or robbery. This boilerplate prisoner profile is the same in many countries, in part because selective law enforcement tends to focus on incarcerating the crimes of the lower class, specifically people who are poor.

(Goyer and Gow 2001: 128)

There is therefore a need, and an urgent one for that matter, for the department of correctional services to address this problem of illiteracy in correctional centres so as to

reduce recidivism. The community as mentioned will gain a lot in that these inmates are at their most productive years and these years are wasted in prison. Once released, the community can then reap the fruit of the labours of these young strong men, as originally intended and ordained.

7.2.3 Correctional services and their policies

There are several policies that the department needs to attend to in order to better the situation in correctional centres. One of these policies regards accommodation. This was touched on above in referring to the evils of overcrowding. Housing inmates in cells that are not overcrowded will lower the tensions in the cell and thus the levels of indecent assault on callow inmates will be reduced. This aspect was recommended by the Human Rights Commission in the report as late as 1999. Their recommendation read as follows:

- It is recommended that the DOCS, in consultation with the Department of Justice and other relevant structures, put into place measures, which could alleviate prison overcrowding.
- Rules and regulations with regard to legal recourse for inmates concerning incidents of violations of the right to adequate accommodation should be developed.

(HRC 2nd ESRR 1998/1999: 250)

To date very little progress seems to have been made. The department needs to urgently look into this human rights need if we are to receive back into the community men who will have served their sentences with respect and hopefully will be rehabilitated so as not to re-offend. The following year, the human rights commission's report did not show any improvement. The report combined the ill-effects of overcrowding with inadequate food supply and said the following: "Intimidation in overcrowded prisons results in some prisoners not getting enough to eat. The DCS does not seem to have short-term solutions for addressing this problem especially where children are concerned" (HRC 3rd ESRR 1999/2000:373).

The other policy that touches on factors contributing to men offering themselves or being coerced into participating in unethical prison sexual acts, is the lack of supplying inmates with adequate food. It has been alluded to above that inmates do not get enough to eat. Food that is meant for inmates is sometimes stolen by members (as reported by the Jali Commission and McKenzies' experiences). This results in a shortage of food for inmates. Those who do not have connections or money to buy extra food, end up being fed by other inmates with ulterior motives. At the end, the callow inmate pays back that favour by allowing or being coerced by the provider to have homosexual sex with him. Sometimes the food provided is just not enough and/ or not served at the correct intervals thus causing inmates to steal others' food saved for supper. The one whose food is stolen also ends up in a similar situation described above. There is therefore a need for the department to monitor this area of the provision of food to inmates keeping in mind that in prison the adage also goes that 'the way to a man's heart is through his stomach' as well as the business adage that 'there is no free lunch'. Someone somewhere is paying and unfortunately for the callow inmate he realises too late that he has to pay with his body and sacrifice his manly dignity.

7.2.3.1 Correctional services and the policy of no sex in prison

The research results do show that this policy or regulation that inmates are not supposed to have sex in prison has been confirmed. Reports and debates in the media show that it is a known fact that sex in prison is prohibited. The same debates and reports, the results from the interviews discussed in this thesis; McKenzie's experience and the report from the Jali Commission, show that despite this prohibition, inmates do have sex in prison. This happens in different ways. Male members take advantage of female inmates and have sex with them; female members take advantage of male inmates and have sex with them; male inmates buy favours from members and have sex with their girlfriends or

wives; male inmates bribe members and have young callow inmates brought to them to have homosexual sex with them; gang-members of the Ninevites, sometimes in collusion with members, force and indecently assault other inmates, 'turn them out' and make them their "wives"; and other inmates collude with each other and pair off and have homosexual sex in prison.

Proposals towards a solution in eradicating or minimising the incidents of sex in prison were suggested by inmates. One way would be to house inmates in single cells. This step will cause the department a lot of money to renovate existing prisons into single cell accommodation. This can, however, be achieved if the department was to adopt this solution by utilising the very inmates to renovate the prisons once they have completed their skills training. The other solution that was suggested is that prison gangs must be eradicated especially the twenty eights (Ninevites). A complimentary way would be to isolate known sexual offenders and put them in single cells. This would result in the department getting rid of all those who engage in homosexual sex in prison. I also propose that known homosexuals should also be housed in single cells. This can be achieved by thoroughly interviewing inmates when first arriving to serve their sentence as to what their sexual orientation is. An emphasis must be made that if they purposely give misleading information, steps will be taken against them.

The last proposal for reform in this regard is one that was tried in other countries and yielded some good results to a certain degree. The idea of allowing married inmates to have conjugal visits. This is a proposal I think may work if properly implemented. Firstly it should not be a blanket right for every inmate but for deserving well behaved inmates who have proved themselves. These visits can be arranged to take place in prison in demarcated cells. Secondly, care is to be taken that the wives of those who visit are well screened to ensure that they are the legitimate spouses and that they are on a family

planning scheme that will prevent them from falling pregnant, because this could be an added burden to the one parent to bring up a baby in the absence of a father. The other alternative could be that the screening for family planning can be overlooked if the couple is well off and that even in the absence of the father, the mother will cope. The reason for family planning in other cases is to safeguard the department that could also be liable to help with child support in the absence of the incarcerated father. So, wives allowed to have conjugal visits with their husbands in prison, if the wife is not able to cope with a child in the absence of the father, should provide the department with a certificate issued by a doctor recommended by the department that they are on a birth control programme.

The current practice, although not legalised, is that homosexual inmates without publicising it, are having sex in prison while heterosexuals are forbidden. The above mentioned term of *mkhukhu* is where two consenting adult males in the same cell are known to be living together as a couple and have their bedroom within the cell. This is achieved by using curtains and other available material to create a screen to give them some kind of private room - *mkhukhu*.

This is done despite the prohibitions by the department and yet by default the feeling is that it is ok for these men to carry on in this way. The department even provides them with free condoms. The proposal is that the department should take stringent steps to make sure that no sex happens in prison, be it between homosexuals or heterosexuals. If the department condones homosexual sex, the same should be done for heterosexuals. What is good for homosexuals should be good for heterosexuals. No free needles for drug users in prison, so there must be no condoms for inmates. The argument that these are supplied in order to protect the vulnerable callow inmates who may be indecently assaulted does not hold water. It has already been mentioned that the targeted victim of

forced homosexual sex is in no position to tell his attackers to use a condom. So the provision of condoms does not help him at all.

The Jali Commission of Enquiry report summed up their reform recommendations and touched on some of the above proposed reform steps for implementation. The above proposals for reform do not encompass all that the Jali commission recommended but touched only a few of the areas pertinent to our topic, which shows the inter-connectedness of issues affecting inmates. This is what the Jali commission said:

“It is the Commission’s view that to remedy the problems within the Department, management needs to intervene urgently in seven (7) areas, namely, recruitment of staff, disciplinary inquiries, training of personnel, treatment of prisoners, anti-corruption measures, anti-gang strategies and labour relations” (Jali 2006:4).

7.3 Alternatives to jail sentences

The issue of overcrowding in South African centres of correctional services is a problem that has been acknowledged. It is a problem that needs to be attended to as a matter of urgency as it has negative spin-offs such as contributing to unethical and unacceptable sexual practices. It has been established that there are thousands of unsentenced inmates in most of the centres/prisons. For some of these awaiting trial prisoners, it takes months before they are sentenced. To a certain degree the awaiting trial prisoners are the major contributing factor to the overcrowding in prisons. The Human Rights Commission report of 1999/2000 showed that of the 171 462 offender population in prison then, awaiting trial offenders in custody were 62 952. This number constituted 36.71% of the total. (HRC ESRR: 376). The second issue causing this problem is that there are inmates who are in prison for very minor offences serving sentences of under five years and under, who could serve as little as one year or less of that sentence and be released on

account of the right to apply for parole on the grounds of good behaviour. Out of the seventy four I interviewed seventeen of them were in this category. The shortest sentence was one year. These are the inmates I'm convinced should be given an alternative sentence instead of serving time in prison. Most of them come out worse than they went in due to the nature of prison life. This recommendation was also given by the Human Rights Commission saying:

Due to overcrowding in prisons, the United Nations has sought to alleviate the problem by reducing the size of the prisoner population by recommending alternatives for to imprisonment. The DCS should consider alternatives to imprisonment for petty crimes. To alleviate overcrowding, methods of expediting trials of awaiting trial prisoners should be considered.

(HRC ESRR:376)

The Republic of South Africa is a sovereign and a young democratic country. Much as we need the help of international organisations, we do not and should not sit on our laurels and wait for guidance from outside. The rulings or recommendations of the United Nations to better living conditions of our citizens should be the benchmark. We need to do much more than that. Alternative sentencing for petty crime offenders is one such area that we ought to be pro-active in and do what suits South Africans and not wait for outsiders to wake us up to do that. We set a record by being the first country to use the God-given model of the Truth and Reconciliation Commission in settling our political differences. The Truth and Reconciliation Commission had an aspect of forgiveness in it. I will discuss this aspect briefly as an option and recommendation towards reform for both the department, inmates /offenders and the community/offended. Why can't we take the lead again and implement alternative sentencing for petty crime offenders?

We will definitely not be the first to work hand in hand with the justice department to have a system where petty crime offenders will be given an alternative sentence other than serving a jail sentence. Two countries come to mind. The United States of America and

the United Kingdom are such countries that have tried and with a degree of success applied alternatives for jail sentences. I must add immediately that not all the States in America have the system of alternative punishment for offenders.

Community Service Sentences are one of the tested and tried alternatives to jail sentences. This was experimented on by the Alameda County municipal courts of California as far back as in 1966. Those who were given these sentences were those found guilty of traffic offences. This proved to be successful and it was then later used for other non-violent crimes. Successful stories include the sentencing of the following:

For example, six Nebraska contractors, all convicted in federal court of rigging their bids for highway construction jobs, were given community service sentences as part of their punishment. One was ordered to establish a program to create jobs for released prisoners; another had to plan road improvements on a local Indian reservation. Elsewhere, executives of a meat packing firm who were convicted of criminal violations were ordered to donate two hundred hours of service to a youth training project and to hire a specified number of paroled felons in their own company.

(McDonald 1989:7)

McDonald traced this method of punishment back to "An ancient Babylonian, Greek, Roman and Jewish law (*that*) all contained provisions for calculating the compensation to be paid by offenders to their victims or their kin" (McDonald 1989:8). This augured well especially with the Jewish law of compensation along the lines of 'an eye for an eye'. England also followed suit later and practised community sentencing including offenders of serious crimes. McDonald says: "In 1973, England's Home Office instituted a nationwide community service sentencing reform, demonstrating that the use of the sanction for offenders convicted of relatively serious crimes was feasible on a large scale" (McDonald 1989:9). This alternative as mentioned above should not be seen as being advocated as the panacea and/ or total substitute for jail sentencing. In any given situation, there are two sides. The same goes for this practice of community service.



There are those who see it as an answer and alternative and there are those who see it as a failed attempt. I believe that with some work done in closing some loopholes, this can work for our situation in South Africa.

I have already mentioned how the department can work hand in hand with the Church and religious leader to serve the inmates. This can be extended to include supervision of community sentenced offenders. The department can start by gathering data of community serving centres in their areas. It can then invite and train leaders in these non-governmental organisations in methods of supervising these offenders and the reporting methods etc. The identified organisations then submit a list of duties to the local Magistrate Courts with the approval of the correctional service department. When offenders are sentenced to a community service project, it is ticked off and the leader of the project starts to monitor the progress of the offender and gives regular reports as will be agreed upon. As the offender serves his sentence serving the community, a certain degree of remorse will hopefully trickle down to him. The community seeing him working and doing something constructive for the community will grow to accept that he has given back to the community and paid his dues. The gains for the department will be the positive effects on housing inmates, less overcrowding, less funds spent on housing and feeding inmates. The other gain will be enjoyed by both the department and the community in that work will be done at no pay and the community will save the local council funds and again playing a role in assimilating and accepting the offender back into the community.

7.4 On Forgiveness

The Arch-bishop emeritus Desmond Mpilo Tutu wrote a book entitled *No future without forgiveness*. The title says it all. The book deals with events of the Truth and

Reconciliation Commission. The success of the TRC gave rise to invitations to Tutu and other representatives of the TRC to visit many countries including Northern Ireland, Middle East and Rwanda and Burundi. They shared our story and the insights have been helpful to those in need.

I stand convinced that this model of forgiveness can and should be adopted in the department of correctional services in their quest for the success of a rehabilitative approach to imprisonment. Wherever Tutu went in sharing our story, he encouraged politicians to choose the way of forgiveness rather than the way of recrimination and revenge. I agree with him when he says:

True forgiveness deals with the past, all of the past, to make the future possible. We cannot go on nursing grudges even vicariously for those who cannot speak for themselves any longer. We have to accept that what we do we do for generations past, present and yet to come. That is what makes a community a community or a people a people - for better or for worse.

(Tutu 1999:226-227)

The idea of a community being a community is what I have in mind in that forgiveness for the offender is crucial for the future of the community and offender alike. The need for forgiveness is crucial in the quest for reform. The department of correctional services should play a major role in ensuring that the offender gets to meet and apologise to the offended or next of kin of the victim affected by his crime. This is what contributed to the success story of the Argentinian model of repentance, forgiveness and reconciliation. The TRC model had its central point in forgiving the offender. The offender had to disclose everything and in cases where remorse was shown there was reconciliation. Otherwise it was then left up to the offended whether they do forgive or not. The State on the other hand, gave immunity to all who told it all, making a full disclosure.

It is clear that the correctional services cannot import this model lock stock and barrel and apply it to the treatment of inmates. The point I'm trying to make is that in their preparation of inmates prior to their release they have to include a component of bringing further closure to the matter. This can be done by facilitating wherever possible the meeting of the offender and offended, try to get the two parties to be reconciled, through the owning up by the offender of the crime, admitting his guilt and wrongdoing, and ask for forgiveness. On the other hand, it will be up to the offended, to accept the apology and forgive the offender or not. Forgiveness will go a long way to minimize cases of revenge incidents where the offender gets out determined to harm those who got him into prison, or conversely where the offended or his/her next of kin awaits the release of the offender so that they can harm or even kill him.

Another form of forgiveness that I would encourage our judicial systems to use more is that of giving first time offenders a suspended sentence. This form of forgiveness would take into account the fact that the courts do not overlook the offence or offender, but instead of a jail sentence, the offender is given a suspended sentence. The correctional services can also use a similar form of forgiveness by releasing prisoners early especially those who did not commit violent crimes. Both the court system and prisons will have to work hard at ensuring that the people they pardon, forgive are well deserving people who may have committed a crime, petty crime pushed by circumstances beyond his control. It will be left to those in authority to implement the above considering again the gains for the department. Less people in prisons, less money to feed inmates and lessening the chances of endangering the life of a person who would have been imprisoned and molested in prison or served a sentence and came out worse than he went in.



CONCLUSION

Prisons the world over are faced with a moral issue of men behaving unethically in many different ways, especially on sexual matters. South African prisons are no exception. I set out firstly to describe the incidences of homosexual practices in prisons both in and outside South Africa. Information gathered does prove that men incarcerated together under circumstances that are not conducive for normal living, end up having sex with each other and/ or being coerced to have sex with other men. From a Christian Ethics perspective it is unacceptable and sinful in itself, apart from the wrongful act of forcing people to do what they do not want to do. The incidence of homosexual sex in prisons was once more researched and found to be prevalent in countries like America, England and South Africa to mention just a few. Goyer and Gow said the following regarding homosexual activity in prison:

Homosexual activity is a frequent occurrence in prison. In the United States, researchers estimate that up to 60% of prisoners participate in homosexual activity (Moriarty and Fields, 1999:2) At Westville Medium B Prison, social workers estimate that more than half of prisoners participate in sodomy, both voluntarily or through threats and coercion...In response to a report by the Prison Reform Trust in the United Kingdom, the evidence suggested that between 20 and 30% of prisoners were involved in homosexual activity.

(Goyer and Gow 2001;129)

Goyer and Gow in South Africa further interviewed those who were close to the action, namely representatives of SAPOHR, and revealed that sodomy in prison; "...is an every night, and every day occurrence" (Goyer and Gow 2001:130).

The contributing factors for men to behave in this manner have been identified. These will vary from prison to prison. The factors identified are boredom, inactivity and lack of basic commodities, especially food. As mentioned earlier, those who lack food or are supplied

with inadequate amounts of food are preyed upon by those who have the means. They supply them with what they need and later expect them to reciprocate with sexual favours or permanent homosexual partnership in a subservient role where they play the passive role or 'wives' of the dominant inmates. The research by Goyer and Gow also corroborate what I have already mentioned earlier concerning the modus operandi of inmates and saying:

Of particular interest was the interviewee's explanation of sodomy as currency in prison. If a prisoner is poor and does not have any money, he will not be able to buy influence or protection within the powerful prison gang system. Often, his only option is to agree to be the passive partner of another prisoner with power or money in order to obtain his protection and influence.

(Goyer and Gow 2001:130)

The other factors, as mentioned above, are overcrowding, the prison gang system particularly the 28's or Ninevites and the natural need for sexual fulfilment especially for the age group of young men who are sexually active. We rarely hear of any sexagenarians who are involved in this type of prison sex. These and many other factors can and should be addressed by the department of correctional services so as to curb and ultimately eradicate this phenomenon.

The wrongness of homosexuality as pointed out is seen from a Christian ethical perspective. Botha tackles this problem by explaining that the answer to the wrongness of homosexuality can be found in theological terms. I agree with him that sexuality is God-ordained and that the Bible is the source of information. All other sources or disciplines regarding sexuality were developed by man long after God had set the natural parameters that sexual intercourse must be between man and woman and only within the confines of marriage. Botha in answering the question whether homosexuality is wrong simply by virtue of being a sexual act between two persons of the same sex irrespective of the nature of the relationship etc, says: "In my opinion the only possible answer to this

question is a theological one. Not only does the theological answer supersede other arguments, but it presupposes any psychological, biological, anthropological, sociological and cultural arguments, and evaluates them in terms of the Scriptures” (Botha 2005:197)..

It has also been shown that the researched sexual practices in South African prisons/correctional centres do contravene Clause 9 of Subsection 3 of the Bill of Rights. This could have been an oversight by the department in not having their ducks in a row before implementing the Bill of Rights. The department failed to take into account the fact that, the ‘no sex in prison’ rule which they inherited from the old Government, was enforced and enforceable because sodomy and homosexuality was outlawed. This is no longer the case. Sexual orientation is one area where no one is to be discriminated against according to the clause above. This, I believe, was added to the rights due to the fact that homosexuals were being discriminated against in many areas. In putting in the clause they reversed the whole issue in that in prison homosexuals are not separated from their partners and can and do have homosexual sex whereas the heterosexuals are separated from their spouses and girlfriends and cannot have sex with them. I have also mentioned the fact that while this is happening, the 28’s then take advantage of some inmates and indecently assault them, ‘rape’ them. This, in a sense, is a double punishment. The authorities, while forbidding sex in prison, have legalised homosexuality. While forbidding sex in prison they supply inmates with free condoms. Who do they expect these men to have sex with if not with each other? What are the aims of correctionals if not to release men into the community who will perpetuate their prison behaviour outside? In this regard confusion seems to be rife. Heterosexuals should be seen as a group that is being discriminated against in that they are not allowed to have sex with their spouses while homosexuals are by default allowed to have sex with their partners. The authorities know of the existence of the *mkhukhus* in correctional centres in many cells. It is an open secret what they are meant for and yet the department does very

little to get rid of this practice in cells. The reality of homosexuality in prisons does not make it right, in as much as the reality of kleptomaniacs and prostitutes does not make their actions right. The department is giving the public the impression that they condone prison homosexual sex acts by supplying inmates with free condoms. The department needs to attend to the unequal treatment of heterosexual and homosexual inmates, and stick to their policy of 'no sex in prison' indiscriminately.

The Jali Commission of enquiry dealt with a lot of immoral and unethical issues in correctionals. Among these were the corruption of members, complicity of members in prison escapes, inadequate supply of food, quality of food supplied, overcrowding, lack of educational facilities and many others. It was during the investigations of this commission that McKenzie and his friends exposed corruption of members and of corruption in general at the Grootvlei correctional centre in Bloemfontein. The Jali commission was permitted to include Grootvlei in their list of centres to be researched. Their findings confirmed what was all along said and yet fell on deaf ears. McKenzie, on his release, together with Cilliers, then wrote a book *The Choice*. It is currently one of the most explicit books on prison life. In it they show how gang members and gangs thrive and get richer more than the civilians doing their daily jobs as free people. The report confirmed that in many correctional centres inmates do get 'raped' and that homosexual activity is rife. It also confirmed that overcrowding and corruption of members is almost beyond control. They ended their executive report with a recommendation for the department of correctional services to attend urgently to seven areas if they are to operate well and right the wrongs and evils of current practices in the department.

The empirical research that I did in the four correctional centres around Johannesburg yielded some fruit. Johannesburg 'Sun City', Krugersdorp, Leeuwkop and Pretoria Central Correctional Centres are the ones I visited. I interviewed both members and inmates. Ex-

inmates were sourced individually and including parolees who were reporting to the correctional services at NICRO in Soweto and the Moroka Police Station. The results of this research gave some insights into the phenomenon of prison sexual practices confirming that it is a daily happening and that members are involved in some degrees of corruption.

The evaluation of homosexuality as practised in prisons showed that it is not only homosexuals who engage in homosexual sex but this includes heterosexuals who because of circumstances have no other means for sexual fulfilment. I also looked at the unfortunate situations where some heterosexuals were 'raped' and turned out to serve members of the 28's as passive partners in the homosexual sex act. These were evaluated from a Biblical and Christian ethics perspective. This angle showed that Christianity base their sexuality the Biblical view where homosexuality is never accepted as an alternative lifestyle. The arguments from those who are pro-homosexuality based on Biblical texts was proven to have been done on wrong exegesis as exposed by many scholars. Botha explained that although the word homosexuality does not appear in the Bible, the actions and practices thereof are explained and denounced. "I have argued that the Bible does speak of homosexual acts. There is consensus enough among scholars (exegetes and commentators) to prove acceptance of this fact, even though the textual data do not render the present day term homosexuality" (Botha 2005:198). Botha sums up the whole matter of the unacceptability of the practice of homosexuality by Christians and any person in different ways. The following summary especially resonates more with my Biblical convictions:

On the descriptive level, throughout the Bible there is not a single hero of faith that engages in homosexual conduct: no patriarch, no matriarch, no prophet, no priest, no king, no apostle and no disciple. The Song of Solomon is devoted to singing the praises of committed heterosexual love. Every proverb or wisdom saying refers to heterosexual, not homosexual, relationships as fitting for the lives of the faithful. In short, the universal silence in the Bible regarding an acceptable same-sex



union, combined with the explicit prohibitions, speaks volumes for a consensus disapproval of homosexual conduct.

(Botha 2005: 201)

My argument for the unacceptability of homosexual practices in prisons is based on the above. Not only is the sexual practices in prison discriminatory against heterosexuals, but they are also wrong and ethically unacceptable of themselves.

In closing, I looked at the notion of punishment and imprisonment from a Christian perspective. I noted the fact that where the department of correctional services mentions that their objective is not to punish, the Bible does talk of punishing the guilty. The Bible also teaches that the government of the day is established by God and that the one in authority is God's agent or servant to disburse justice and punish the guilty. This does not mean that all governments are doing what pleases God or even His children because history has a plethora of regimes who abused their powers. In the case where governments go contrary to God's way, the words of the apostle Peter would be exemplary when he said: "But Peter and John replied, ' Judge for yourselves whether it is right in God's sight to obey you rather than God" (Acts 4:19). I argued that punishment is biblical and that justice is going hand in glove with punishment. God punishes justly. I further pointed out that what the department says is an oxymoron in that they say that the objective of incarcerating offenders is not to punish, yet imprisonment on its own is punishment. The main point here was to point out that the department in executing what I see as punishment by incarcerating offenders, ought to treat all inmates equally. If homosexuals are *allowed* to have sex in prison, the heterosexuals should also in the light of fairness and justice be *allowed* to have sex with their spouses. I argued that sexual privileges should be handled equitably, either being denied to all, or all being granted this as an unalienable right to all human beings. Justice for all?

I then argued for the department to attend to certain issues in order to reform the correctional centres. In this I was in agreement with the Jali commission of enquiry in their recommendations, the Human Rights Commission and the scores of incarcerated men seeking to serve their sentences with human dignity not under dehumanizing conditions. I proposed that the department of correctional services should attend to fighting and dealing with overcrowding, gangs in prisons, deal with corrupt members, work with the community in the rehabilitation of inmates and do away with homosexual sex practices in prison. If not, we may end up, because of the high number of prisoners with our correctional centres, becoming corruption centres and/ or schools where men become women and on their release become men again like Julius Caesar who was: “Queen of Bithynia and every woman’s man and every man’s woman” (Botha 2005:210).



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Appendix 1

Interview questions for inmates and ex-inmates

- 1 Name of Correctional Services
- 2 Inmate/Ex-inmate
- 3 How long is/was your sentence?
- 4 How long have you served?
- 5 Are you gay/straight?
- 6 Were you told that sex is prohibited in prison?
- 7 If straight, have you ever had sexual experience with another inmate while in prison?
- 8 Are condoms made available to inmates by the department of correctional services
- 9 If gay, do you have a regular sexual partner in prison?
- 10 Have you ever been forced by anyone to have sex with him?
- 11 Have you ever forced an inmate to have sex with you?
- 12 Do you know of or seen an inmate who was forced by other(s) to have sex with him/them? Raped?
- 13 What do you think the authorities should do to prevent inmates being forced by other inmates to have sex with them?



Variable (V) numbers are same as the Questionnaire numbers 1-13

V 1 Code:

- 1 = Johannesburg(Sun City) Correctional Services
- 2 = Pretoria Central Correctional Services
- 3 = Leeuwkop Correctional Services
- 4 = Krugersdorp Correctional Services
- 5 = Other prisons around South Africa

V 2 Code:

- 1 = Inmate
- 2 = Ex-inmate

V 3 & 4 Years Months

V 5 Code:

- 1 = Gay
- 2 = Straight

V 6-12 Code:

- 1 = Yes
- 2 = No

V 9 Code:

- 1 = Yes
- 2 = No
- 3 = Not applicable

V 13 Code:

- 1 = Deal with overcrowding/house inmates in single cells
- 2 = Separate inmates-recidivists from first offenders; young from old;
serious crime offenders from petty crime offenders
- 3 = Deal with prison gangs
- 4 = Separate gang members from non - members
- 5 = Allow conjugal visits in/out prison
- 6 = Encourage family support for inmates (Funds/Visits)
- 7 = Educate /orientation for first time offenders
- 8 = Install CCTV Cameras/regular patrols of cells by officials
- 9 = Deal with corrupt officials
- 10 = Attend to supplying adequate food/ more recreational activities
education
- 11 = Deal with drugs /drug sellers in prisons
- 12 = Isolate the perpetrator(s) of forced homosexual sex

Appendix 2

Interview questions for prison officials

- 1 Name of correctional services
- 2 Position held
- 3 Number of years in service
- 4 Are inmates specifically told that they are not to have sex in prison?
- 5 Do inmates have sex with other inmates in prison?
- 6 Does the department provide inmates with free condoms?
- 7 Do some warders play a role in assisting inmates to have access to sexual relations with other inmates?
- 8 What do you think is the cause of this behaviour by warders?
- 9 Are you aware of or heard of inmates ever forced/raped by other inmates?
- 10 Where does this happen - in single or communal cells?
- 11 What do you think the authorities should do to prevent inmates raping others or having access to sex in prison?
- 12 In your opinion, are correctional services officials (warders) well trained to deal with all sorts of inmate problems?



Variable (V) numbers are same as the Questionnaire numbers 1-12

V.1 Code:

- 1 = Johannesburg (Sun City) Correctional Services
- 2 = Pretoria Central Correctional Services
- 3 = Leeuwkop Correctional Services
- 4 = Krugersdorp Correctional Services
- 5 = Other prisons around South Africa

V.2 Code:

- 1 = Health; Spiritual Care Officials
- 2 = Administrative officials
- 3 = Grade /C 1-3 Officials (Warders)

V.3 Years-Months in service

V 4-7 Code:

- 1 = Yes
- 2 = No
- 3 = Not applicable

V 8 Code:

- 1 = Greed
- 2 = Corruption
- 3 = Not applicable

V 9 Code:

- 1 = Yes
- 2 = No

V 10 Code:

- 1 = Communal cells
- 2 = Single cells
- 3 = Not applicable

V 11 Code:

- 1 = Employ more officials
- 2 = Install CCTV cameras
- 3 = Deal with corrupt officials/ perpetrators
- 4 = Keep inmates busy-more activities
- 5 = Deal with gangs/ overcrowding
- 6 = Get more preachers to preach to inmates
- 7 = Separate inmates-gangs/non gang members; hardened criminals/petty crime offenders

V 12 Code:

- 1 = Yes
- 2 = No
- 3 = Implement refresher courses for officials
- 4 = Training in stress management needed
- 5 = Training in rehabilitation of offenders.



Appendix 3

Inmate Interview Data

Obs	NUMBER	V1	V2	V3YY	V3MM	V4YY	V4MM	V5	V6	V7	V8	V9	V10	V11	V12	V13A	V13B	V13C	V13D	V13E	SENTENCE	SERVED
1	1	4	1	8	0	7	4	2	2	2	1	3	1	2	1	3	4		2		8	7.33
2	2	4	1	10	0	3	0	2	1	2	1	3	2	2	1	2	3	7			10	3.00
3	3	4	1	8	0	2	6	2	1	2	1	3	2	2	2	12					8	2.50
4	4	4	1	13	0	0	7	2	1	2	1	3	2	2	1	12	3				13	0.58
5	5	4	1	13	0	0	8	2	1	2	2	3	2	2	1	2					13	0.67
6	6	4	1	5	0	2	1	2	2	2	1	3	2	2	1	3	12				5	2.08
7	7	4	1	10	6	3	0	2	1	2	1	3	2	2	1	12					10.5	3.00
8	8	4	1	1	0	0	3	2	1	2	1	3	2	2	1	8	12				1	0.25
9	9	4	1	15	0	9	0	2	2	2	1	3	2	2	1	12	2				15	9.00
10	10	4	1	8	0	2	6	2	2	2	1	3	1	2	1	1	7	2			8	2.50
11	11	1	1	20	0	5	0	2	1	2	1	3	2	2	1	6	10	10			20	5.00
12	12	1	1	15	0	3	0	2	1	2	1	3	2	2	2						15	3.00
13	13	1	1	98	0	0	3	2	2	2	1	3	2	2	2	1	12				98	0.25
14	14	1	1	1	0	0	1	2	1	2	1	3	2	2	2						1	0.08
15	15	1	1	6	0	2	2	2	1	2	1	3	2	2	1	12	1				6	2.17
16	16	1	1	43	0	5	0	2	1	2	1	3	2	2	1	12	1	3			43	5.00
17	17	1	1	15	0	1	1	2	1	2	1	3	2	2	1	10	12	8	1		15	1.08
18	18	1	1	20	0	5	0	2	1	2	1	3	1	2	1	12	12				20	5.00
19	19	1	1	19	0	6	0	2	1	2	1	3	2	2	1	12	8	2			19	6.00
20	20	1	1	15	0	0	7	2	2	2	1	3	2	2	2	1	10				15	0.58
21	21	1	1	30	0	3	0	2	1	2	1	3	2	2	1	12	1				30	3.00
22	22	1	1	15	0	0	4	2	2	2	1	3	1	2	2	4	2	6			15	0.33
23	23	1	1	15	0	3	0	2	1	2	1	3	2	2	1	12	9				15	3.00
24	24	1	1	14	0	0	9	2	1	2	1	3	2	2	2	12	6				14	0.75
25	25	2	1	20	0	7	0	2	1	2	1	3	2	2	1	11	3				20	7.00
26	26	2	1	12	0	2	6	2	1	2	1	3	2	2	1	2	12	8			12	2.50
27	27	2	1	15	0	14	0	2	1	2	1	3	2	2	1	1	2	2	2		15	14.00
28	28	2	1	15	0	4	0	2	1	2	1	3	2	2	1	5	12	12			15	4.00
29	29	2	1	15	0	5	0	2	1	2	1	3	2	2	1	2	12	8	12		15	5.00
30	30	2	1	10	0	4	6	1	1	1	1	2	2	2	1	2	4	8	12		10	4.50
31	31	2	1	20	0	7	0	2	1	2	1	3	2	2	1	12	12	5			20	7.00
32	32	2	1	15	0	3	9	2	1	2	1	3	2	2	1	10	12	10	12		15	3.75
33	33	2	1	6	6	1	6	2	1	2	1	3	2	2	1	12	3	7	10		6.5	1.50
34	34	2	1	15	0	4	0	2	1	2	1	3	2	2	1	3	4	11	2		15	4.00
35	35	2	1	12	0	1	5	2	2	2	1	3	2	2	1	3	12	5			12	1.42
36	36	2	1	15	0	2	7	2	2	2	1	3	2	2	1	6	2	1			15	2.58
37	37	2	1	15	0	1	5	2	1	2	1	3	2	2	2	6	7	12			15	1.42
38	38	3	1	30	0	4	1	2	1	2	1	3	1	2	1	3	2	5			30	4.08
39	39	3	1	26	0	7	10	2	2	2	2	3	2	2	1	3	2				26	7.83
40	40	3	1	39	9	12	4	2	1	2	1	3	2	2	1	12	2				39.75	12.33
41	41	3	1	30	0	5	0	2	1	2	1	3	2	2	1	2	9				30	5.00
42	42	3	1	15	0	4	0	2	2	2	1	3	2	2	1	3	12	5	7		15	4.00
43	43	3	1	15	0	7	0	2	1	2	1	3	2	2	1	5	8	1			15	7.00
44	44	3	1	10	0	3	7	2	1	2	2	3	2	2	1	7	3	9	6		10	3.58
45	45	3	1	15	0	9	0	2	1	2	1	3	2	2	1	2	7	7	6		15	9.00
46	46	3	1	5	0	1	10	2	1	1	1	3	2	1	1	6	3	12	10		5	1.83
47	47	3	1	15	0	7	0	2	2	2	2	3	2	2	1	3	12	4	10		15	7.00
48	48	3	1	15	0	6	10	2	1	2	1	3	2	2	1	12	7				15	6.83
49	49	3	1	15	0	5	8	2	1	2	2	3	2	2	1	6	10	7	12		15	5.67
50	50	3	1	6	0	1	2	2	1	2	2	3	2	2	1	9	12				6	1.17
51	51	3	1	4	0	1	6	2	1	2	1	3	2	2	2						4	1.50
52	52	3	1	3	0	1	2	2	1	2	1	3	2	2	1	2	7	10			3	1.17
53	53	3	1	15	0	8	6	2	1	2	2	3	2	2	2	12					15	8.50
54	54	3	1	15	0	6	0	2	2	2	2	3	1	2	1	10	12	2	5		15	6.00
55	55	3	1	15	0	6	5	2	1	1	1	3	2	2	1	8	8	7	12		15	6.42
56	56	5	2	5	0	3	6	2	1	2	1	3	1	2	1	12	8	9			5	3.50
57	57	1	2	3	0	1	6	2	1	2	2	3	2	2	1	5	10				3	1.50
58	58	5	2	3	0	1	6	2	1	2	1	3	2	2	1	8	10	6	12		3	1.50
59	59	5	2	1	0	0	6	2	1	2	1	3	2	2	1	12	8	9			1	0.50
60	60	5	2	5	0	3	6	2	2	2	1	3	2	2	1	3	2	2	1		5	3.50
61	61	5	2	4	0	2	0	2	1	2	1	3	2	2	1	10	6	12			4	2.00
62	62	5	2	1	6	0	6	2	2	2	2	3	2	2	1	9	1				1.5	0.50
63	63	5	2	10	0	5	4	2	2	2	1	3	1	2	1	9	9	12	9		10	5.33
64	64	5	2	11	0	8	6	2	1	2	1	3	2	2	1	10	6	1			11	8.50
65	65	5	2	5	0	3	9	2	1	2	1	3	2	2	1	4	2	9	12		5	3.75
66	66	5	2	13	0	5	10	2	1	2	1	3	2	2	1	11	6	8	10		13	5.83
67	67	4	2	9	0	6	0	2	2	2	1	3	2	2	1	9	10	8			9	6.00
68	68	4	2	9	0	6	0	2	2	2	1	3	2	2	1	9	10	10			9	6.00
69	69	3	2	23	6	13	3	2	1	2	1	3	2	2	1	9	3	10			23.5	13.25
70	70	5	2	2	0	0	10	2	1	2	1	3	2	2	1	3	4	8	1		2	0.83
71	71	3	2	20	3	9	9	2	1	2	1	3	1	2	1	4	7	1			20.25	9.75
72	72	1	2	25	0	11	10	2	2	2	1	3	2	2	3	3	6	2	9		25	11.83
73	73	5	2	1	6	0	5	2	1	2	2	3	2	2	1	3	7	6			1.5	0.42
74	74	3	2	5	6	3	0	2	2	2	1	3	2	2	1	3	6	7			5.5	3.00



Appendix 4:

Warder/Member's Interview Data

Obs	NUMBER	V1	V2	V3YY	V3MM	V4	V5	V6	V7	V8A	V8B	V9	V10	V11A	V11B	V11C	V12A	V12B	V12C	V12D
1	1	4	3	15	0	1	1	1	2	1		1	1	6	7		1	4		
2	2	4	2	18	0	1	1	1	3	1		2	1	1	3		2			
3	3	4	1	5	8	1	1	1	2	3		1	1	5	6		3	5		
4	4	4	2	4	0	1	1	1	2	3		1	1	7	4		3			
5	5	4	2	25	0	1	1	1	2			1	1	1	7		2	3		
6	6	4	1	30	0	1	1	1	2			1	1	5	7	1	1			
7	7	4	3	14	0	3	1	1	2	3		1	1	7	5	5	1			
8	8	1	3	13	0	1	1	1	2	3		1	1	3			1	2	3	5
9	9	1	3	6	0	1	1	1	1	1		1	1	2	5		3	5		
10	10	1	1	18	0	1	2	1	2	3		1	1	6			1			
11	11	1	3	2	0	1	1	1	1	1		1	1	3	3		2	3		
12	12	1	3	1	6	1	2	1	2	3		1	1	5	2		1			
13	13	1	3	1	6	1	2	1	2	3		2	3	3			1			
14	14	1	3	2	0	1	1	1	2	3		1	1	5	7		1			
15	15	2	3	1	6	1	1	1	3	1		2	3	3			2	3	5	
16	16	2	2	26	0	2	1	1	2	3		2	1	5			3			
17	17	2	2	27	0	1	1	1	2	3		1	3	4			3	5		
18	18	2	2	18	0	1	1	1	2	3		1	2	4	3		2			
19	19	2	1	28	0	1	1	1	1	1	2	1	1	5	6					
20	20	3	3	0	7	1	1	1	2	3		1	1	7			2	4	3	
21	21	3	3	6	0	1	1	1	2	3		2	1	7	6		2	3	4	
22	22	3	3	2	0	2	1	1	2	3		1	1	7			1			
23	23	3	3	1	2	1	1	1	2	3		1	1	1	5	7	1	4		
24	24	3	3	2	0	1	1	1	2	3		1	1	7	6		2	3		
25	25	3	3	7	0	1	1	2	2	3		1	1	1	2	5	1	2	3	
26	26	3	3	2	3	1	2	1	2	3		2	3				2	3		
27	27	3	3	1	2	3	1	1	2	3		2	3	3			2	4		
28	28	3	3	0	9	1	1	1	2	3		2	3	3			2			
29	29	3	3	21	7	1	1	1	2	3		1	1	7			2	3	4	
30	30	3	3	2	8	1	1	1	2	3		1	1	7	3		2	3	4	