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**SEXUAL PRACTICES IN SOUTH AFRICAN PRISONS
FROM THE PERSPECTIVE OF
CHRISTIAN ETHICS**

By

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Supervisor: Professor D. E. de Villiers



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Summary

Sexual practices in prisons the world over are almost the same. Men incarcerated for many years in limited space with other men without the opportunity for normal heterosexual sexual outlet end up practicing homosexual sex. South African prisons are not an exception.

In this dissertation I tackled a number of issues from a Christian Ethics perspective, with a slant from the Evangelical wing of Christianity as this is my background. The few issues I investigated from a South African prison system are the following. Firstly the issue of homosexuality was looked at from an Evangelical perspective. The conclusion was that the practice of homosexuality is a sin just like any other sexual deviation from the God ordained sex within marriage.

Secondly empirical research was done to verify homosexual sex in prisons in South Africa. The results of this research confirmed that homosexual sex acts are a daily occurrence in our prisons. The results also showed that the aspect of indecent assault, forced or coerced homosexual sex acts now classified as “male rape,” was rife in prisons. Other factors related to this matter were that prison gangs and Correctional members’ complicity aggravated this issue of “male rape”.

Thirdly we looked at the policy of “no sex in prison” as set out by the Department of Correctional Services. A number of discrepancies were uncovered. Firstly, there is unfair discrimination in the treatment of heterosexuals and homosexuals in prisons. Whereas heterosexuals are legally barred from having sex with their spouses while in prison, homosexuals are having sex in prison with their partners. Although the DOCS insists on

the policy of no sex in prison, they appear to be condoning it in that they provide free condoms to inmates. In accordance with the stipulation of the Bill of Rights regarding unfair discrimination, the DOCS should treat inmates equally. To make matters worse, the South African Government has sanctioned same sex unions but failed to put in place effective control measures in correctional service centres to ensure that the policy of no sex in prison is not undermined. The DOCS should look at either allowing heterosexuals to have conjugal visits or ensure that homosexuals are not put together in the same cell, so as to adhere to this policy.

Fourthly the issue punishment and rehabilitation was also investigated. This was done from a Christian ethical perspective. The Department of Correctional Services says that their objective is not to punishment but to rehabilitate. The discussion showed that putting convicted criminals in prison was a punishment on its own. It was further discussed that punishment is biblical, and that whilst punishment should be left to God, He in turn has put governments on earth as His servants to mete out punishment to those who deserve it. It was also discussed that rehabilitation does not happen automatically, that it needs a buy in by the individual concerned as seen from the examples of individuals cited in the thesis.

Lastly, the causes of such sexual behaviour in prison were investigated. Corrupt officials, overcrowding and inadequate food supply, among others, are matters to be rectified in dealing with this problem. Alternatives to jail sentences for minor offences are also strongly suggested so as to alleviate the problem of overcrowding.

Key Terms

Human Sexuality; homosexuality; heterosexuality; prison inmate/ex-inmate; unfair discrimination; prison homosexual sex; Department of Correctional Services; prisoners' rights; indecent sexual assault/ 'male rape', punishment, recidivism.

Frank Shayi (Shai) was born in Khujwane near Tzaneen in the Limpopo Province on 16 June 1948. His family moved from Sophiatown in 1955 to Meadowlands (forced removals). He attended Meadowlands Secondary School where he passed Junior Certificate in December 1968. He studied at Bethel Teacher Training College obtaining his Primary Teacher's Certificate in December 1970. He was appointed Principal of Tsoso Farm School in Potchefstroom and taught from 1971 to 1976. This is where he heard the Gospel and accepted Christ as Lord and Saviour. In 1977 he taught at Lilydale Primary School in Soweto.

In January 1978 he joined The Scripture Union of South Africa and pioneered work in Soweto, Alexandra Township and Thembisa. In 1986 he and his family moved to England. He studied at Trinity College Bristol, graduated in 1988 with a BA (Hons) and returned to SA. He was appointed the first Black person to be National Field Director of Scripture Union SA. He further studied at UNISA graduating with a BTh (Hons.) in 1992 and MTh in Theological Ethics in 1999. He stepped down as Field Director and started the first Scripture Union Youth Centre (Ikemeleng) in Alexandra Township in 1998. In 2003 he was seconded to the International College of Bible and Missions (ICBM) and was appointed as Principal in 2005. Reverend Shayi was ordained as pastor of Calvary Evangelical Church in Soweto in 1995. He also serves as President of The Scripture Union of South Africa since 2006.

He married Maria Mapule Sathekge in 1973. Maria is a Primary School teacher at Lilydale Primary School in Soweto. Together they have four grown up children. Blessing is married to Siphwe Pandeka (they have 2 boys). Gregory their son works in the advertising world. Philadelphia is a musician and is currently contracted to Imperial Palace Hotel, Seoul South Korea as resident singer. Patience, the youngest, graduated from Johannesburg University 2008 with a BA in Humanities.

My heartfelt thanks go to all the inmates and former inmates who participated in the interviews and all the members of the DOCS. Thank you to Ms Joyce (Joy Joy) Kungwane who was instrumental in my getting the correct channels for obtaining permission to visit the different prisons. I also want to thank all the chaplains who made my visits in all four prisons possible.

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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 investigations 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.