



## 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 warden 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 warden 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 3<sup>rd</sup> 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 2<sup>nd</sup> 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 interconnectedness 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).