

**DO THE HOMOSEXUAL PRACTICES IN SOUTH AFRICAN PRISONS
CONTRAENE THE BILL OF RIGHTS?**

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

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

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

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

(S.A. Bill of Rights: 26)

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



2.1 Unfair discrimination.

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

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

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

2.2 Prisoner's rights

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

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

(Jali 2006:25)

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

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

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

(Jali 2006: 25)

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

2.2.1 Arguments for prisoner rights to be upheld

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

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

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

2.2.2 Rights on admission

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

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

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

2.2.3 Safe Custody

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



2.2.4 Accommodation

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

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

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

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

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

2.2.5 The right to good nutrition

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

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

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

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

(Jali 2006:28)

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

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

The theft of prisoners' food by members of the Department as well as the practice of members consuming prisoner's food was found to be a normal occurrence in many of the Management Areas investigated. In many of the prison kitchens, prisoners are made to prepare food for members on a daily basis. In this investigation it was established that two warders used prisoners to cook food for them out of prisoners' supplies. Another member was found to be regularly stealing buckets of chicken from the prisoners' meat supply.

(Jali 2006:63)

2.3 Counter-arguments to rights

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

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

WORK vs PRISON

IN PRISON: you spend the majority of your time in a 8x10 cell.
AT WORK: you spend the majority of your time in a 6x8 cubicle.

IN PRISON: you get 3 meals a day
AT WORK: you only get a break for one meal and you pay for it.

IN PRISON: you get time off for good behaviour.
AT WORK: you get more work for good behaviour.

IN PRISON: the guard locks and unlocks all the doors for you
AT WORK: you must carry around a security card and open all the doors for yourself.

IN PRISON: you get your own toilet
AT WORK: you have to share with some idiot who pees on the seat.

IN PRISON: they allow your family and friends to visit.
AT WORK: you can't even talk to your family.

IN PRISON: the taxpayers pay for all expenses with no work required.
AT WORK: you get to pay all expenses to go to work and then they deduct taxes from your salary to pay for prisoners.

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

IN PRISON: you must deal with sadistic wardens
AT WORK: they are called managers.

HAVE A GREAT DAY AT WORK!

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



2.4 Rights and recidivism

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

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

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

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

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

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

(Cilliers and McKenzie 2006 131)

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

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

(Marshall 2001:103).

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

2.5 Slight improvements in 2006

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

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

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

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

2.6.1 Corrupt correctional officials revisited

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

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

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

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

(Jali 2006:30)

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

said that some warders who were found to have been corrupt are still on duty. I can believe that, because one case in point is the reported sex in prison case of warder Sonia Graaff (page28) who was having sex with an inmate and after being caught, was transferred to another prison and is continuing to work as warder/correctional services officer member.

2.6.2 Escapes from prisons

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

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

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

(Jali 2006:16-17)

2.6.3 Societal involvement

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

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

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

2.7 Sending conflicting signals

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

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

2.7.1 Officials and prison sexual acts

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

2.7.2 Does the department condone sex in prison?

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

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

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

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

(Cilliers and McKenzie 2006:145)

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

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

(SAHRC 2001: 379)

2.7.3 First time offenders in same cell with repeat offenders

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

2.7.4 Perceptions and retraining

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

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

(Draft White Paper section 8.1.3.)

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

2.7.5 Professionalism and experience of officials

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

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

2.7.6 Pitfalls of housing callow inmates with recidivists

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

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

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

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

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

THE JALI COMMISSION REPORT

3.1 Background

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

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

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

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

(Jali 2006:2-3).

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

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

EXECUTIVE SUMMARY (Jali 2006: Preamble).

3.2 Relevance of the Commission and its Findings

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

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

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

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

(Jali 2006:3-4)

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

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

3.3 Jali Report findings

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

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

3.3.1 Sexual abuse in prison

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

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

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

(Jali 2006:30)

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

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

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

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

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

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

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

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

(Cilliers and McKenzie 2006:151)

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

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

(Cilliers and McKenzie 2006: 152)

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

3.3.2 Correctional officials and corruption

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

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

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

(Jali 2006: 4-5)

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

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

(Jali 2006: 49)

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

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

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

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

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

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

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

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

(Jali 2006: 50)

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

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

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

3.3.3 McKenzie's experiences

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

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

(Cilliers and McKenzie 2006:130)

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

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

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

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

(Cilliers and McKenzie 2006:116-117)

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

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

McKenzie says:

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

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

(Cilliers and McKenzie 2006:126-127)

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

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