

# **CHAPTER 1**

## **INTRODUCTION**

### **1.1 BACKGROUND OF THE STUDY**

The study focuses on human rights in South African correctional centres. The selection and identification of this research topic is motivated by researcher's interest for new information. This research is intended to generate information and fill in the gaps that exist in this area. As a correctional officer, the researcher believes that there is a need to investigate human rights issues in correctional centres since violation of human rights is an ongoing concern.

### **1.2 STATEMENT OF THE PROBLEM**

When a researcher is identifying the research problem he/she must have self-reflection and critical self-examination. According to Design and Lincoln, the key to selecting a qualitative research topic is to identify something that will hold one's interests over time<sup>1</sup>. This research topic touches an interesting rather than a more narrowly defined problem. It arises from the problems that have been experienced in the course of everyday life. Despite the policy shift, the Department of Correctional Services is still overshadowed by the problem of violation of human rights within the walls of its correctional centres. The causes of such violations range from gangsterism, improper structures that are not

conducive to rehabilitation, overcrowding, and non-compliance with policies by the officials of the Department of Correctional Services etc. All these challenges will be discussed fully in chapter 3 below.

The lawlessness which filters into the department of Correctional Services also causes the climate to become fertile for the operation of gangs inside the prison walls<sup>2</sup>. The gangs which had always operated in an underground manner within the prison system are now operating openly. The Jali Commission found that some of the officials of the department were even seeking the assistance of the gangs for their own ends, and this renders correctional centres ungovernable.

In order to have a clear picture of abuse by prison gangs one needs to think about the case of an offender who finds himself/herself in prison for the first time, and among a group of hardened criminals. He/she may have been told horrific tales of how young offenders are assaulted, threatened and even raped by these hardened criminals (*bloubaadjies*). A senior gang member then approaches him/her offering to act as a “protector,” in exchange for sexual or other favours. Obviously this first offender may agree and therefore the gang member becomes a safe “harbour” to the young offender.

Another challenge of the department of Correctional Services arises from improper and unsafe physical structures that are not conducive to rehabilitation.

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<sup>1</sup> Design NK & Lincoln YS “Strategies of Qualitative Inquiry”. Sage Publications, Inc. (1998) at 57.

<sup>2</sup> Jali Commission Report. 2002, at 8.

All future facilities, designs and procurements of correctional centres in South Africa should be based exclusively on South African realities. This can be achieved through financial investments in building modern prisons. The approach of dividing offenders into smaller, more manageable units with direct supervision is the most desired method of correctional centre management and is also an effective method to facilitate restorative rehabilitation.

Non-compliance with policies which is caused by ignorance in the executions of duties by officials of the department can lead to unhealthy relations between officials and offenders. The goals and objectives of the department cannot be achieved through non-compliance with the policies of the department.

### **1.3 PURPOSE OF THE STUDY**

The aim of this research is threefold:

- Firstly, it seeks to investigate whether human rights are being observed in South African correctional centres.
- Secondly, it will investigate whether the law is effective enough to ensure observance of human rights in correctional centres.
- Lastly, it is hoped that the findings will empower policy makers with appropriate strategies for preventing human rights violations in correctional centres.

## **1.4 SPECIFIC OBJECTIVES OR RESEARCH QUESTIONS**

In the light of the above, the following are the research objectives:

- To contribute to the changes that need to be done within the department of correctional services.
- To get information from inmates and correctional officials in order to make a difference in correctional centres.
- To evaluate the effectiveness of existing procedures and policies within the Department of Correctional Services

## **1.5 HYPOTHESIS OR ASSUMPTIONS OF THE STUDY**

Pienaar defines hypothesis as a statement temporarily accepted as true in the light of what is at the time known about a phenomenon, and it is employed as a basis for action in the search for new truth<sup>3</sup>. After identification of the problem, it is imperative therefore to formulate a hypothesis and test it to see whether the data collected and analysed will confirm or reject the hypothesis. In this research the hypothesis is needed to clarify the issues at stake and to ground the problem for investigation. The basic function of hypothesis is to guide the research so that

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<sup>3</sup> PJJ Pienaar "Study Guide Research Methodology Paper II". Lovedale Press. 1992, at 26.

the evidence collected will be limited to the area of investigation. One can contend that a hypothesis directs a researcher in his/her investigation to select and pattern facts to solve his/her problem. Without a hypothesis, a researcher often wastes time due to lack of direction. A hypothesis therefore serves as a powerful beacon that light the way for the researcher.

The researcher will test the following hypothesis:

- Human rights violation is caused by inadequate policies of the Department of Correctional Services.
- Non-adherence of departmental rules and regulations result in poor implementation of policies and violation of human rights.
- Lack of accountability or a strict monitoring mechanism for human rights violation by the South African Human Rights Commission, the Public Protector, and Prison Inspecting Judge contributes to a care free attitude and gangsterism.

## **1.6 SIGNIFICANCE OF THE STUDY**

According to Pienaar, the value of methodology for a particular science lies not only in its investigation into procedures, assumptions and methods of justification, but also in the analysis of the elements on which the philosophy of the human science can be based<sup>4</sup>. As such, what is presently established can be

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<sup>4</sup> Ibid at 12.

used in the future. It is against this background that the findings and recommendations of this research can add knowledge to our understanding of human rights in correctional centres. Looking at published and media sources, it is necessary to explore human rights violations in South African correctional centres. While concerns have been raised on the magnitude of the problem, no adequate solutions have been found.

Before 1994, the Department of Correctional Service was one of the pillars of the apartheid state, which encouraged a culture of secrecy in the way it performed its functions. It seems appropriate therefore to travel quite extensively for supporting evidence. As it has been mentioned above, this research will enable policy makers to identify the gaps and explore appropriate remedies that would address critical areas within the Department of Correctional Service. The learners, communities, prison officials and inmates will definitely benefit from the findings.

The research findings will expose human rights violations related to the department and practices that do not conform to the norms required of a government department in a constitutional democracy. Observance of human rights is a very crucial issue in the Department of Correctional Service. The findings of this research can also help the government to review its policies when deemed necessary.

## **1.7 DELIMITATION OF THE STUDY**

A major difficulty in conducting research is that often one must study social behavior in its natural surroundings where there are many extraneous factors that are difficult to control. The success of the research depends upon the researcher's experience and knowledge of the subject matter. The place in which the interview is to be conducted must be arranged and it is more likely that the respondent feels more comfortable in his/her own turf. It is also important to assure the respondents that the interview will be confidential in the sense that no answer or information will be disclosed to any one.

It is clear that not all the respondents will accept the researcher. There will also be a stage where it would be necessary for the researcher to beg the respondent to be interviewed and promise that whatever will be discussed will not be to the respondent's detriment. The researcher will visit one correctional centre in a rural setting and another in the urban area. The reason for this choice is that crimes committed in urban areas are more serious than the ones in rural areas, and the life style of the two areas is also different. It is not an easy job to have access to correctional centres for security reasons. The researcher will need to apply for permission to be granted by the head office first, after the letter has been scrutinized. The researcher may also expect unpleasant welcoming by either correctional service officers or inmates.

## 1.8 REVIEW OF LITERATURE

In the early 1900s, the prison system was regulated mainly by various provincial ordinances. According to a White Paper on Corrections in South Africa this period will probably be remembered most for an inflated inmate population. Detention and torture prevailed in prisons despite persistent and widespread protests against this practice. During this period, the transgressions of the pass law were dominant and the mining companies used prison labour at very low rates. Punishment for transgressions within prison was harsh and it included whippings, solitary confinement, dietary punishment and additional labour. All these practices were just gross violation of human rights from the onset. According to the White Paper, racial segregation within prison was prescribed by legislation and it was vigorously enforced throughout the country<sup>5</sup>. This clearly shows how the apartheid regime tried to promote human rights violation in its time of power.

According to Foster et.al, the detention without trial in prison was introduced even earlier in 1953 by way of the Public Safety Act<sup>6</sup>. Since the inception of this legislation, there was widespread allegation of physical and mental abuse of people held under security detention in South Africa. The Prisons Act 8 of 1959 reflected little transformation of the prison system and continued to emphasize

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<sup>5</sup> Ibid at 44.

<sup>6</sup> Don Forster et.al "*Detention and Torture in South Africa*". James Curry: London (1987) at 1.



racial segregation within the prison in line with the national policy of the apartheid government. Although this Act recognises the United Nations Standard Minimum Rules for the treatment of prisoners, it ignored other crucially important aspects such as the prohibition of corporal punishment.

The Universal Declaration of Human Rights of 1948 states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>7</sup>”. The Prison Act 8 of 1959 was in full operation throughout these periods when human rights were violated. Despite the human rights culture brought about by different international covenants, inmates in South African correctional centres were abused.

Article 31 of Standard Minimum Rules for the Treatment of Prisoners (1957), states that corporal punishment and all cruel, inhuman or degrading punishment shall be completely prohibited as punishment for disciplinary offences. Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights (1966) provide that no one may be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

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<sup>7</sup> This is also a violation of Article 1 of United Nations Declaration on the Elimination of All Forms of Racial Discrimination which stated clearly that discrimination between human beings on the ground of race, colour, or ethnic origin is an offence to human dignity and shall be condemned as a denial of the Charter of the United Nations, as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

The Constitution of South Africa entrenches the protection and promotion of the rights of arrested, detained and accused persons<sup>8</sup>. It states that a convicted person has the right to be treated with humanity and with respect for their inherent dignity as humans. In view of the Constitution and international obligations, the government has established the South African Human Rights Commission, the Office of the Public Protector and the Office of the Prison Inspecting Judge to monitor human rights violations in South African Correctional Centres. Late in 1990, the government of South Africa announced that it planned to introduce extensive reforms on prison legislation.

Despite this policy shift the Department of Correctional Services continued to be saddled with the responsibility of managing overcrowded prisons. Progressive changes started taking place with the closing down of prison outstations and a general decline in the use of prison labour for agricultural purpose. The system of paroling prisoners under paid contracts was also phased out.

These marginal improvements in the prison system were, however, overshadowed by:

- Violation of human rights by prison gangsters.
- Non-compliance with policy by officials of the Department of Correctional Services.
- Overcrowding in correctional centres around South Africa.

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<sup>8</sup> The Constitution of Republic of South Africa of 1996.

- Improper structures that is not conducive to rehabilitation.

All the above factors contributed to violation of human rights in prisons.

The government later introduced Correctional Service Act 111 of 1998. The most important features of this Act are, among others:

- The entrenchment of fundamental human rights of offenders.
- Special emphasis on the rights of women and children.
- A framework for treatment, development and support services.

The President of South Africa appointed the Jali Commission in terms of Proclamation No 135 of 2001 (as amended) to investigate alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Service. According to Jali Commission report, prison gangs are a very powerful force operating in South African correctional centres<sup>9</sup>. They play a great role in corruption and violence and therefore present an ongoing threat to the orderly functioning of correctional centres. In certain cases they run some prisons.

It is also argued that as conditions in prisons deteriorate because of overcrowding, gangs get stronger and this makes the penal system less effective. Scraton, Sim and Skidmore mentioned that accounts by prisoners reveal a daily routine of violence and bullying which feeds an atmosphere of fear

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<sup>9</sup> Op. cit. at 14.

and intimidation<sup>10</sup>. The new offenders would be terrified when entering prison and some of them would seek protection from gangs. A clear picture of this is the brutal treatment suffered by sex offenders. Scranton *et al*, also describe prison violence by gangs as a walking time bomb with no one, or place, to turn to<sup>11</sup>.

According to the *Daily Dispatch*, the National Portfolio Committee members who visited Middledrift Prison were shocked with the conditions that prevail at this centre<sup>12</sup>. They were horrified when they discovered that 76 inmates were locked in a cell which only had one toilet. They also found that water was dripping from the taps and paint peeling from the roof. The committee members also found that the prison, which was built to hold not more than 411 offenders, was currently housing an average of 1550 offenders. This is not in line with humane treatment of offenders.

Situations such as those described above prove that there is no confidentiality and privacy in the prison. Travis, Schwartz and Clear view many prisons as having exceeded cell capacity and now having reached or exceeded bed capacity<sup>13</sup>. According to the evidence before the Jali Commission, members of the Department of Correctional Service are also collaborating with gangsters and

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<sup>10</sup> Phil Scranton; Joe Sim; and Paula Skidmore. “*Crime, Justice and Social Policy: Prisons under Protest*” Open University Press Milton Keynes-Philadelphia (1998) at 67.

<sup>11</sup> Ibid at 67.

<sup>12</sup> *Daily Dispatch* 21 June 2006 at 1.

<sup>13</sup> Lawrence F Travis et al “*Corrections: An Issues Approach*” (2<sup>nd</sup> Edition) Anderson Publishing Co (1984) at 83.

are involved in drug smuggling. This is contrary to the policy of the Department of Correctional Services.

## **1.9 METHODOLOGY**

The qualitative methodology will be employed in this research. According to Maykut and Morehouse, qualitative research generally examines people's words and actions in narrative or descriptive ways more closely representing the situation as experienced by the participant<sup>14</sup>. Unlike quantitative research, qualitative research does not rest upon methods that rely on measurements and mathematically expressed data; it is considered as soft research because it deals with interpretation of social realities.

According to Denzin and Lincoln, a researcher has several methods of collecting data ranging from interviews to direct observation, analysis of documents and records, and the use of variety of different methods of reading<sup>15</sup>. As the qualitative research method requires, firstly, a field text consisting of field notes will be created and documents from correctional services will be used. As an investigator in a qualitative research, the data collection information necessary to produce a rich qualitative study was sought. This was followed by choice of the problem and hypothesis, research design, data gathering, data coding and

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<sup>14</sup> Maykut P & Morehouse R "*Beginning Qualitative Research: A Philosophic and Practical Guide*". The Famer Press Teachers' Library (1994) at 2.

<sup>15</sup> Denzin NK & Lincoln YS "*Strategies of Qualitative Inquiry*" Sage Publications, Inc. (1998) at 29.

analysis, interpretation of data and testing of hypothesis, and lastly, writing the research report.

Since inmates and officials will be dealt with, data collection was done through interviews and analysis of policy documents. In qualitative research, an investigator needs to avoid rigidity and dogmatic approaches. More important about qualitative research is that it uses different methods of obtaining data without testing hypothesis or bringing specific theories into the research. It is against this background that the researcher decided to use qualitative research as the preferred method of this research.

#### **1.10 ETHICAL CONSIDERATIONS**

There are ethical principles to be employed when conducting research with human beings. Consent essentially entails making the subject fully aware of the purpose of the research, its possible dangers, and the credentials of the researcher, procedures employed and the demands that may be made upon participants. In this issue a sample consent forms were provided to all the respondents before interview. Confidentiality was adhered to during data gathering by disguising the participant's identity in all records and reports. No respondent was forced to participate.

Concealed observers, cameras, microphones, or the use of private correspondence without the subject's knowledge and permission is an invasion of privacy. All respondents in this research were assured of protection from physical and mental stress, harm or danger. All participants were informed of the reasons for the experimental procedures and the result of the investigation. Results of this research will also be submitted to senior officials of the Department of Correctional Services and be put in the libraries of different correctional centres for the benefit of the respondents.

#### **1.11 LIMITATION OF THE STUDY**

The researcher encountered some difficulty especially during the interview process. Most of the respondents are illiterate people as they comprise the majority of the population of correctional centres. The researcher's experience as an employee of correctional services shows that inmates do not like to participate in events from which they will not benefit. If they can be assured that the information will be broadcast in media they will come up in numbers. Some of the inmates and officials may lie so as to dent the image of the department or paint a better picture for themselves. It was therefore the duty of the researcher to ensure objectivity so that at the end of the day, a clear picture emerged as to whether human rights are observed in South African correctional centres.

## **1.12 OUTLINE OF CHAPTERS**

The first chapter is an introduction where the topic will be introduced.

The second chapter dealt with the historical context, focusing on human rights violations in South African prisons. This chapter assists in demonstrating how human rights were violated in the apartheid era. It also show whether human rights were monitored effectively during this period.

The third chapter provides a critical analysis of the challenges encountered by correctional centres in upholding human rights. This chapter concentrates mostly on the present functioning of correctional centres and will also take into consideration the establishment of the Jali Commission, its findings and recommendations.

Chapter four focuses on the interviews and the visit made to two correctional centres. Information gathered will be analysed to highlight the extent of observance or violation of human rights.

The last chapter provides conclusions and recommendations from the information and analyses of empirical research. Suggestions for policy implementation or improvement will be made.



## **CHAPTER 2**

### **THE HISTORICAL CONTEXT OF HUMAN RIGHTS VIOLATION IN SOUTH AFRICAN PRISONS**

#### **2.1 INTRODUCTION**

This chapter aims to provide a brief overview of the historical background of South African prisons focusing on human rights violations. However, if the goals of this research are to be achieved, the researcher cannot exclude the origin and development of prisons in America and Europe as the concept of institutionalisation originated there. In this chapter the researcher firstly discusses the historical context of human rights violation in South African prisons and, secondly, examines the transformation of the correctional system in democratic South Africa.

It is widely acknowledged that the test of a “good government” is the level of response to the human rights requirements of its citizens. It is evident that there is much in common between a particular type of government and its policy towards the promotion and protection of human rights. Hence there is a need to protect the rights of the individual, which is what human rights are all about.

Prison inmates have certain fundamental rights, which they can enforce. The fundamental rights of an inmate as entrenched in the Bill of Rights in the Constitution of the Republic of South Africa of 1996 are also recognized by the Department of Correctional Services. According to White Paper on Corrections in South Africa, the responsibility of correctional centres is not merely enforcing a punishment given out by the courts<sup>1</sup>. The correctional centres are also responsible for the rehabilitation and humane treatment of offenders.

For too long, prisons in South Africa have been regarded as breeding grounds of criminality, places of human rights violation and the pillars of apartheid regime. Prisons also reflected a divided country racked by racial segregation and discrimination as well as repressive measures such as solitary confinement and violent interrogations. The current Constitution of the Republic of South Africa emphasises the right of convicted persons. Convicted persons have the right to be treated with humanity and with respect for their inherent dignity as humans<sup>2</sup>. The Bill of Rights provides for human rights environment in which the correctional centres must operate<sup>3</sup>.

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<sup>1</sup>White Paper on Corrections in South Africa, 2005, at 71.

<sup>2</sup> The Constitution of the Republic of South Africa of 1996, Section 35 (2) (e).

<sup>3</sup> Ibid. Section 35 & 36.

## 2.2 THE ORIGIN AND DEVELOPMENT OF PRISONS

According to Cole, prisons originated in America and their history can largely be attributed to a need to breakaway from a cruel application of punishment which was a common practice<sup>4</sup>. Institutionalisation was thus seen as a more humane way of handling offenders. Two institutions that contributed to the development of prisons and exerted considerable influence on them were the detention barracks for juvenile offenders and the maison de force.

The environment in which change was to take place was characterised by discipline, hard labour and solitary confinement at night. Besides this, it was also characterised by psychological manipulation. Corporal punishment was used as punishment for breaking the institution rules. Children were required to wear masks, which prevented communication among themselves. These masks also prevented them from recognizing each other so as to reveal their identity. Cole also pointed out that the rules according to which these two institutions were managed became part of the prison system on which the American system was based almost a hundred years later<sup>5</sup>.

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<sup>4</sup> Introduction to Practice Orientated Penology. COLSA Publications (1996) at 3.

<sup>5</sup> Ibid at 4.

Looking at the environment of these two institutions, it is clear that there was gross violation of human rights although institutionalisation was seen as a more humane way of handling offenders. This is evident if one looks at the rights of persons subject to incarceration. Mention has been made of Article 5 of the Universal Declaration of Human Rights (1948) and Article 7 of the International Covenant of Civil and Political Rights (1966). Both make provision that no one may be subjected to torture or cruel, inhumane or degrading treatment or punishment.<sup>6</sup> The issue of children wearing masks is in itself an inhumane treatment that degrades the dignity of children. Discipline and order shall be maintained with firmness, but with no more restrictions than is necessary for safe custody as well as ordered community life.

Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners state clearly that corporal punishment, punishment by placing in dark cell and all cruel, inhumane or degrading punishments shall be completely prohibited as punishment for disciplinary offences<sup>7</sup>. This rule is against the practice that was used by American institutions. Taking into account this background of American prisons, one can foresee the history of human rights violation in South African correctional centres. The correctional system of South Africa is based on the American model. This background of American system was also practised by South African prisons. The following discussion will illustrate that the American correctional system background is similar to the one during the apartheid period.

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<sup>6</sup> Article 5 of the Universal Declaration of Human Rights (1948) and Article 7 of International Covenant of Civil and political Rights (1966).

## 2.3 THE EARLY 1900s

The White Paper on Corrections in South Africa states that the prison system in South Africa was mainly regulated by various provincial ordinances<sup>8</sup>. There was a prison system of the Cape Colony; Natal; and the Orange Free State and Transvaal.

Offenders in these prison systems were detained in the castle. Custody was generally reserved for offenders awaiting trial and those on death row. This early period must be remembered for overcrowding due to people being kept there for petty crimes. The entire prison system was extremely unorganized, with no mention of any form of rehabilitation. This period was also characterised by deportation practice.

Another factor that caused overcrowding in prisons was transgression of the pass laws. The prison system of the Cape Colony promulgated Ordinance 7 of 1844 for the discipline and safe custody of offenders employed on the public roads.<sup>9</sup> The offenders were treated as slaves and were responsible for building roads around Cape Town as well as mountain passes.

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<sup>7</sup> Article 31 of Standard Minimum Rules for the Treatment of Prisoners, United Nations, 1955.

<sup>8</sup> Ibid at 45.

<sup>9</sup> Introduction to Practice Orientated Penology, COLSA Publications, at11.

Article 4 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that no one shall be held for slavery or servitude. Article 4 (2) further prohibits compulsory or forced labour completely.<sup>10</sup> Prison labour was seen as a means of punishment to prevent idleness of offenders. Prison labour was also not organised according to state employment system (public works system), inmates were taken to road camps.

According to Correctional Service Act, a prisoner may never be instructed or compelled to work as a form of punishment or disciplinary measure<sup>11</sup>. Article 71 (4) of Standard Minimum Rules for the Treatment of Prisoners also provide that as far as possible, the work provided to offenders shall be such as will maintain or increase the offender's ability to earn a living after release.<sup>12</sup> Prisoners who had to perform hard labour were put in chains. Working hours started at sunrise until sunset with an hour for breakfast and lunch.

According to Cole, provision was also made for sentenced offenders to work under contract for a civilian per period of five years without remuneration<sup>13</sup>. During the establishment of the Union of South Africa, the labour policy underwent a change and distanced itself from these senseless forms of labour practices. Prison labour was not seen as a means of punishment or a means to

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<sup>10</sup> Article 4 (1) (2) European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

<sup>11</sup> Correctional Service Act No. 111 of 1998, Section 40 (5).

<sup>12</sup> Ibid Article 71 (4).

<sup>13</sup> Ibid at 14.

prevent idleness of inmates. Constructive work with educational value had to be performed.

During this period, punishment for transgressions within correctional centres was harsh and it includes whippings, solitary confinement, dietary punishment and additional labour. This type of punishment was gross violation of human rights. Article 27 of Standard Minimum Rules for the Treatment of Offenders states that discipline and order shall be maintained with firmness but with no more restriction than is necessary for safe custody and well ordered community life.

After thorough research, the behaviour regulation system of correctional services was amended and brought in line with the stipulations of the Constitution, the Standard Minimum Rules and the Reconstruction and Development Program. Measures such as withholding meals, corporal punishment, solitary confinement and dietary punishment were abolished. Contrary to the past, a prisoner who violates the behavioural code can only be reprimanded, or have his/her privileges reduced.

The issue of racial segregation within correctional centres was prescribed by legislation and was enforced throughout the country. Although the circumstances of custody were unpleasant, the purpose of custody changed. Conditions in prisons were not conducive to proper hygiene because of overcrowding. Escapes

and attempted escapes occurred quite frequently due to the prevailing prison conditions.

## **2.4 THE PERIOD IN THE 1960S AND 1970S**

Important developments took place during this period with the introduction of the Prison Act (Act 8 of 1959). Provision was made in this Act for racial segregation within prisons in line with national policy of the apartheid regime. Whilfield points out that inmates were classified as Asians, Blacks, Coloureds and Whites<sup>14</sup>. These classifications were offensive to many South Africans because they provided the basis for racial discrimination.

This new Act also plays a vital part in what has been called regime maintenance. This period was largely characterised by increased political prisoners just after the events in Sharpsville. Section 23(1) of the Prison Act provides that white and non-white prisoners shall be detained in separate parts thereof and in such a manner as to prevent white and non-white prisoners from being within a view of each other<sup>15</sup>. Provision was made for the hospitalisation of psychopathic offenders for Whites in Zonderwater correctional centre and Coloureds in Brandvlei correctional centre. However the majority of black inmates were kept in Heldestroom prison. Inmates in this centre were not separated as was done to other groups.

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<sup>14</sup> Whilfield D “*The state of prisons 200 years*”. The Howard League (1991) at 2.

<sup>15</sup> Prisons Act No. 8 of 1959 Section 23 (1).



Wallace states that the basic principles for the treatment of prisoners stipulate that prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation<sup>16</sup>. Article 1 of International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) characterises apartheid as a crime against humanity. Acts resulting from policies and practices of apartheid and similar policies and practices of racial segregation and discrimination are regarded as crimes violating the principle of international law<sup>17</sup>.

The United Nations Declaration on the Elimination of All Forms of Racial Discrimination (1965) also characterises as discrimination the practices of racial discrimination that existed in South African prisons. This international law instrument states that discrimination between human beings on the ground of race, colour, or ethnic origin is an offence against human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights<sup>18</sup>.

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<sup>16</sup> Wallace R. M.M. *“International Human Rights Text and Material”*. Sweet and Maxwell Ltd. (2001) at 537.

<sup>17</sup> Article 1 of International Convention on the Suppression and Punishment of Crime of Apartheid, 1973.

<sup>18</sup> Human Rights: *“A Compilation of International Instruments”*. United Nations Publications (1988) at 53-54.

<sup>18</sup> Human Rights: *“A Compilation of International Instruments”*. United Nations Publications (1988) at 53-54.

This clearly shows that the policies of apartheid South Africa were in violation of international human rights standards. Although the Prison Act (Act 8 of 1959) took cognizance of the United Nations Standard Minimum Rules for the Treatment of Prisoners, it ignored corporal punishment. However, it decreased corporal punishment from a maximum of twenty five lashes to at least six lashes.

## **2.5 THE PERIOD AFTER 1990**

Political events, especially those which followed F.W.de Klerk's speech on the 2 February 1990, had a direct impact on prison law and practice. Of importance here was the release of political prisoners. Amendments were made to the Prison Act in 1990, which abolished racial segregation in the prison system. This led to the integration of all race groups in prisons. During 1990, the prison service was officially separated from the Department of Justice.

The interim Constitution of South Africa which was adopted in 1993 provided for the fundamental rights of all the citizens of South Africa. These rights also include the rights of inmates in correctional centres. All this paved the way for the introduction of a human rights culture into the correctional system in South Africa.

The transformation of the correctional system in the first five years of democracy entailed, among others, the appointment of an inspecting judge. The responsibility of the inspecting judge is to investigate any conduct in a

correctional centre that is alleged or suspected to be improper or to result in any impropriety or prejudice. The inspectorate also works as a watchdog for complaints and request of inmates.

Despite the human rights culture brought about by the democratic dispensation and enshrined in the interim constitution, the state found it necessary to have a watchdog for monitoring violation of human rights in South African correctional centres. The passing of the Constitution of South Africa of 1996 provided the overall framework for democratic governance in South Africa. The Constitution also contained a Bill of Rights which obliges all government departments to align their core business in line with the Constitution. This is also the case with the Department of Correctional Services.

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The department undertook massive legislative reforms which led to the enactment of Correctional Service Act (Act 111 of 1998). This legislation represented a total departure from the 1959 Prison Act. It aligned itself to a modern, internationally acceptable correctional system. The most notable feature of the Act is the entrenchment of the fundamental rights of offenders, especially the emphasis on the rights of women and children, and the new disciplinary system for offenders. Although its real impact cannot be determined yet, it will be interesting to observe its success or failure over a period of time.

Despite the good policies there is still a problem of violation of human rights within the walls of correctional centres. As stated in chapter 1, the root causes of violation of human rights emanate from gangsterism, improper structures that are not conducive to rehabilitation and non-compliance with policies by the officials of the Department of Correctional Services. These causes will be discussed in detail in the next chapter.

## **2.6 SUMMARY**

Throughout the period highlighted above, the correctional system faced a range of challenges, some of which are inherent in correctional systems worldwide while others are particular to South Africa. The current challenges faced are due to the societal transformation that South Africa has gone through over the past decades. According to Glanz, the correctional system of South Africa tries to bring itself in line with international trends by generating community involvement in correctional matters and introducing alternative sentencing options to curb the over rising influx of offenders in already overcrowded prisons<sup>19</sup>. Due to current

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<sup>19</sup> Glanz L. "*Managing Crime in the New S.A.*". Selected Readings. Human Science Research Council (1993) at 275.

trends, the Department of Correctional Services is committed to working with other government departments and civil society to protect violation of human rights in correctional centres.

## **CHAPTER 3**

### **THE CHALLENGES ENCOUNTERED BY CORRECTIONAL CENTRES IN CASES OF VIOLATION OF HUMAN RIGHTS**

#### **3.1 INTRODUCTION**

Challenges such as overcrowding, gangsterism, improper structures that are not conducive to rehabilitation, non-compliance with policy by correctional services officials, overshadow the progress made by the department thus far. These challenges cannot be overcome by correctional services alone. As much as there are some achievements registered, the existing challenges contribute a lot to violation of human rights in correctional centres. Some of these challenges are inherent in the correctional systems the world over and some have a particular South African dimension. The current challenges are due to both inherent risks in the correctional system and the social transformation that South Africa has gone through over the past decades.

In addition to the human rights culture brought about by the new democratic dispensation and enshrined in the Constitution<sup>1</sup>, the immediate post-1994 transformation of the department focused its attention mainly on safe custody. It took the political metamorphosis of 1994 to introduce the first steps along the path of respect for human life and human dignity<sup>2</sup>.

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<sup>1</sup> The Constitution of the Republic of South Africa of 1996.

This can be attributed to the fact that the organisations such as Lawyers for Human Rights, Prison Inspecting Judge and the public were in the past denied access to prisons.

To this end, it is also evident that the White Paper on Corrections is underpinned by the following values and rights enshrined in the Constitution of the Republic of South Africa; namely, human dignity<sup>3</sup>; equality<sup>4</sup>; rights underlying human treatment of every detainee<sup>5</sup> ; the right to health care services and associated rights<sup>6</sup>; freedom and security of the person<sup>7</sup>; children's rights<sup>8</sup>; the right to education<sup>9</sup> and freedom of religion<sup>10</sup>. This alone advances a range of motivations on compliance for promoting and respecting human rights culture and highlights the philosophy behind the new correctional system.

### **3.2 VIOLATION OF THE HUMAN RIGHTS IN CORRECTIONAL CENTRES BY PRISON GANGSTERS**

Dr Alston who wrote about drugs, discipline and the law in South Africa's education system, stated that only the naïve could believe that schools in South

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<sup>2</sup> White Paper on Corrections in South Africa. 2005, at 7.

<sup>3</sup> The Constitution of Republic of South Africa of 1996, op.cit.

<sup>4</sup> Ibid; s. 9.

<sup>5</sup> Ibid; s. 35.

<sup>6</sup> Ibid; s. 27.

<sup>7</sup> Ibid; s.12.

<sup>8</sup> Ibid; s.28.

<sup>9</sup> Ibid; s.29.

<sup>10</sup> Ibid; s.31.

Africa do not face an extremely serious drug problem by school going young people<sup>11</sup>. He further stated that twice in the space of three months, two Port Elizabeth schools requested the education department to expel learners dealing with drugs<sup>12</sup>. Most of these learners were not expelled from schools as recommended by the student governing bodies. The department claimed that it had to take into account the learner's constitutional rights and also look at other options of discipline.

It is evident that the above school environment will be more sustained in a prison situation. It is common that where there are drug dealers, there are also some gang activities. The social situations of correctional centres in urban areas are not the same as those in rural areas; hence the nature of crime committed is also different. It is indicated that one way or the other, a large percentage of inmates were involved in gang activity before their imprisonment<sup>13</sup>. It is also stated that in the past the majority of these persons have been the product of street gangs<sup>14</sup>.

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<sup>11</sup> *Daily Dispatch* dated 19 March 2007 at 8.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Training Module on Internal Custodial Duties by the Department of Correctional Services*. 1999, at 61.



### 3.3 THE STRUCTURE AND FUNCTIONING OF PRISON GANGS

To understand clearly the violation of human rights by prison gangs, one needs to look at the structures and recruitment processes by gang members from non-gang members<sup>15</sup>. The structures of prison gangs originated from inmate sub-culture<sup>16</sup>. The inmates are confined to one institution without any boundaries or privacy<sup>17</sup>. The prisoner's social system therefore is characterised by group formation.

Each person has an inherent need to belong to a group. In prison, inmates are confronted with a community which may be regarded as part of a sub-culture. Due to the frustrations of imprisonment, inmates form groups to survive. As it is the case, new inmates are exposed to others with a long criminal history in an extremely violent milieu. For self protection and personal security, participation in gang activities becomes a necessity. Other reasons that cause inmates to join prison gangs are access to an informal communication network, and the desire of new inmates to understand the language that is used by gang members<sup>18</sup>. Only gang members are permitted to talk "*isishalambombo*" (prison language by offenders).

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<sup>14</sup> Ibid.

<sup>15</sup> Van Zyl Smit D "*South African Prison Law Practice*" Cape Town. Butterworths (1992) at 43. He refers to this as the total institution because all activities are structured under one roof.

<sup>16</sup> Ibid.

There are general guidelines that determined the behaviour of all prison gangs. A gang member is expected to be loyal and subordinate to the gang; they are expected to respect, support, assist each other and live in harmony<sup>19</sup>. They are also expected not to inform or co-operate with the authorities. As a new inmate enters the cell he/she will be deprived of all the belongings if he/she is not a gang member. The prison gangs believe that “*mpatas*” (non-gang members) are not entitled to anything although certain “*mpatas*” are regarded with a certain amount of respect. This prescription means that in practice all *mpatas* are subjected to terrible victimization.

There are different types of prison gangs. The training module of Correctional Services identifies 26 gang; 27 gang; 28 gang; air force gang; and the big 5<sup>20</sup>.

The 26 gang activities centers around money. The gang obtains money by means of “*slim gedagtes*” (robbery by cheating). Their flag has the following colours-: Red – represent blood; White –means peace; Black –means sodomy; Red star – means shine wherever you are. They call themselves “*Chico*” because they are from Chicago in U.S.A. The promotion from one rank to another in certain cases is coupled with blood. This implies that a gang member first has to assault a fellow inmate or official before he can be promoted.

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<sup>17</sup> Ibid.

<sup>18</sup> Naser JJ “*Penitentiary penology*” Johannesburg: Lexicon (1993) at 198.

<sup>19</sup> Op cit. note 13 above, at 20.

<sup>20</sup> Ibid at 30.

<sup>21</sup> Cole J “*Introduction to Practice Orientated Penology*” COLSA Publication at 46.

The 27 gang confine their activities to assault and warfare. Although not officially accepted as policy, they call themselves 'seven' and originated in Holland<sup>21</sup>. The colours of their flags are -: White –represent peace; Red-means blood and warfare.

The 28 gang prescriptions determine that the gang activities must be centered around blood and poison. In other words, they are fighters and must see to it that everything is in order in the prison. Gang members refer to themselves as "koelies" and originated from Moliva. The colours of their flag as follows -:

Red –means blood; White –means peace; Green- discipline; and Black – represent the death sentence. The promotion policy is the same as with 26 gang and 27 gang.

The big 5 gang originated from Germany. The declared aim of this gang is co-operation with prison authorities in order to protect themselves from fellow inmates. The Big 5 gang however, also takes part in sodomy and smuggling activities.

The last group is the air force gang. They call themselves royal air force or air force 24. The declared aim of the air force is to escape. Gang members constantly attempt to smuggle articles into the prison which they may later use to escape.

Looking at these prison gangs, one will notice that they aim at victimizing or abusing other person's rights. This is evident by having a look to the red sign of 26; 27and 28 gangs which represents blood. Whenever the red flag is up they all

know that there must be a fight either with other gang rivals or with correctional officials. The black colour of the 26 gang represent sodomy and this sodomy is always practised on new offenders although it is sometimes practised on the newly recruited gang members. This is not done by means of consent but by force. It would appear as if these gang members are authorized to do so.

It is stated that the correctional official often takes bribes to turn a blind eye to sexual abuse, gang violence and theft<sup>22</sup>. While gangs will continue to operate even if there are no corrupt prison officials, the absence of corrupt officials would be a positive step towards dealing with prison gangs. Looking also at the black colour of the 28 gang which represents death sentence, one will attest the human rights violation factor. Section 11 of the Constitution provides that every person shall have the right to life<sup>23</sup>. In the *Makwanyane case*<sup>24</sup>, the Constitutional Court brought to an end the uncertainty surrounding the question of whether the imposition of capital punishment is constitutional or not. These 28 gang members therefore violate the right to life of inmates and other people by imposing death sentence to their culprits.

Sex is a tradable commodity in prison and vulnerable young offenders become sex slaves whilst incarcerated. Prison officials sell them to the highest bidder despite the fact that inmates depend on these very same correctional officials to

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<sup>22</sup> Findings of the Jali Commission. 2002, at16.

<sup>23</sup> Ibid; s.11.

<sup>24</sup> *S v Makwanyane* 1995(3) SA 391 (CC) 104.

ensure their safety whilst in prison. This highlights the horrific situation of sexual violence and other crimes that pervade the prisons.

### **3.4 OVERCROWDING AS HUMAN RIGHTS VIOLATION**

Most problems arising from imprisonment can be attributed to factors such as overcrowding. The problems which arise from overcrowding are multiple. Consider, for example, the conditions under which inmates have to live, the frustration of sharing a small space with a large number of people, lack of privacy; poor sanitary hygienic conditions, inadequate medical and welfare support. The ideal condition requires that inmates should be treated humanely and detained under conditions that are not degrading or humiliating. The problem of overcrowding is one of the most important contributing causes of unrest and violence in prisons.

Building more prisons is not a panacea because the more prisons that are built, the more they will be filled. The answer to these problems is much more intricate. The following are regarded as rights of sentenced inmates within the framework of the standard minimum rules for the treatment of prisoners:

- Suitable accommodation, with due consideration of climatic conditions, floor space, light and ventilation.
- Adequate facilities for personal hygiene.
- Suitable bedding and clothing.

- Suitable nourishing food and drinking water.

Overcrowding does exacerbate the problem of corruption in prisons. It also affected the rehabilitation of inmates, the health system and education within prisons<sup>25</sup>. Overcrowding also encourages the sexual abuse of inmates. This is evident from the interview of Lesego Tshabalala by *City Press* whilst he was serving his ten (10) years sentence for rape in Heidelberg correctional centre<sup>26</sup>.

According to *City Press*, the interviewee experience was the most traumatic he has ever seen in his life time. His worst experience was when people used to fight. He further mentioned that inmates used to fight over everything i.e. cigarettes, money and drugs. Some days were so bad that the only thing they could do to “feel” the sun was to stick their feet out of the windows. He found prison as a totally different environment compared to outside life because he witnessed a lot of strange things which do not happen in normal life.

He mentioned examples such as having witnessed sodomy, gangsterism and overcrowding. One toilet was used by 100 inmates. Sometimes they have to beg an inmate who does not want to come out of toilet so as to relieve themselves too. It is stated that one toilet is shared by up to sixty inmates in some prisons. Inmates also have to share beds, (sometimes two to a bed); others usually sleep

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<sup>25</sup> Findings of the Jali Commission. 2002, at 43.

<sup>26</sup> City Press dated 3 June 2007, at 27.

on the concrete floor with only one blanket to share between them. In some of the prisons like Bizana, inmates slept in shifts<sup>27</sup>.

There is no international norm that state what an overcrowded prison is. However, the Convention against Torture and others Cruel, Inhuman or Degrading Treatment or Punishment (1984) provides guidelines. Seven square metres per prisoner as an approximate, desirable guideline for a detention cell has been suggested in this instrument<sup>28</sup>. When the prison service task team visited the Middledrift Correctional Centre, they were equally appalled by what they found there. A total of 1550 inmates were accommodated in a prison cell that is supposed to accommodate 411 inmates<sup>29</sup>. They were horrified when they discovered that as many as 76 inmates were locked up in a prison cell which only had one toilet; water was dripping from the taps, and paint was peeling from the roof.

The Bill of Rights determines the human rights environment in which correctional centres must operate<sup>30</sup>. It states that inmates have got the right to conditions of detentions consistent with human dignity<sup>31</sup>. All inmates therefore shall be treated with due respect to their inherent dignity and worth, as human beings.

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<sup>27</sup> Ibid at 43.

<sup>28</sup> See the case of *Kalashnikov v Russia* (Application No 47 09s/99.Judgement –Strasbourg –in July 2002).

<sup>29</sup> Daily Dispatch dated 3 August 2006 at 1.

<sup>30</sup> Section 35(2) (a).

<sup>31</sup> De Waal. J, Currie. I and Erasmus. G. "*The Bill of Rights Handbook*". (Fourth Edition). Juta & Co (2001) at 613.

Taking into account the information gathered above, it can be deduced that in some prisons the standard minimum rules for the treatment of prisoners is not adhered to. Firstly, there is no adequate facilities for personal hygiene as a large group of inmates share one toilet for such an extent that they have to beg someone using the toilet to come out quickly. Suitable bedding and clothing, as in the case of Bizana Correctional Centre, is not provided by the authorities and inmates were reported sleeping in shifts.

It is evident that prison is a world unto itself. It is imperative that classification of prisons should take place according to the risk which inmates posed to fellow inmates, personnel and also to the community. According to safe custody classification of correctional services, inmates are placed into either maximum or medium custody. Prison population does not only consist of different types of offenders. It is therefore logical that if control is to be maintained, a mechanism must be established to group similar people together. Safe custody can be described as the control over an inmate's behavior to ensure order within the prison as well as to protect the community.

The department of correctional services must therefore make the inmates accept responsibility and accountability for their behaviour to ensure order within the prison and also as a measure to protect the community. It is imperative that inmates and prison personnel treat each other with respect in order to ensure the success of the correctional system.



Continuous research is necessary in order to have a comprehensive and informed risk assessment of South African prisons. The correctional system is tasked to provide appropriate measures to ensure that the public is protected from offenders<sup>32</sup>. Overcrowding in many instances causes unrest and escapes in prisons. The assessment of risk, which informs the security classification of inmates, must take into account the impact of incarceration on a human being, the threat that an inmate may pose to him or herself, to staff, to other inmates and to the wider community.

The Department of Correctional Services must provide every inmate with adequate clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions<sup>33</sup>. It is therefore a violation of human rights for other correctional centres to provide inmates with one blanket and leave them to sleep on concrete cement. The Correctional Services Act also makes provision for every inmate be given the opportunity to exercise sufficiently, in order to remain healthy<sup>34</sup>.

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<sup>32</sup> White Paper on Corrections in South Africa, 2005 at 74.

<sup>33</sup> Correctional Services Act No.111 of 1998 s10.

### 3.5 SEXUAL VIOLENCE IN CORRECTIONAL CENTRES

Sexual violence within South African correctional centres is a very sensitive issue. In dealing with it, the researcher examined the factors that contribute to the sexual violence, the treatment meted out to inmates who have been sexually abused and the existing policies within the Department of Correctional Services. During the hearings of the Jali Commission in Bloemfontein and Pretoria, the Commission heard the testimony of a number of victims of sexual abuse of prisoners. Sex is a tradable commodity in prisons<sup>35</sup>.

Vulnerable young inmates become sex slaves whilst imprisoned. Officials of the Department sell them to the highest bidder despite the fact that inmates in their custody are dependant on them for personal safety. Warders are themselves implicated in many sexual assault offences. This happens despite the fact that HIV/AIDS is rife in South African prisons. Evidence advanced before the Jali Commission showed that there was a shocking lack of empathy and sensitivity by some members of the Department for inmates who are sexually abused. It was mentioned that instead of receiving support, a young inmate who reported to officials of the Department that he was sodomised by two inmates, was sodomised by the correctional official again<sup>36</sup>.

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<sup>34</sup> Correctional Services Act op.cit, s.11.

<sup>35</sup> Findings of the Jail Commission. 2002, at 29.

<sup>36</sup> Ibid at 30.

The department has a specific policy indicating how inmates who have suffered sexual assault should be treated. The report of the Jali Commission indicates that none of the sexual assault victims who testified before the commission were treated according to the policy. Well designed policies relating to sexual abuse are not implemented or adhered to by members of the department. This shows severe shortcomings in the system particularly as it relates to the treatment meted out to inmates.

### **3.6 SUMMARY**

In light of the above discussion, it is inescapable to conclude that human rights are severely violated in correctional service centres. A lot still needs to be done to achieve the goal of promoting and protecting human rights in prisons. It was a good idea that the Jali Commission was appointed to look at various challenges facing the Correctional Service Department. The existence of this commission may save the lives of many prisoners in future, only if the issues exposed by it could be dealt with immediately and effectively. It is surprising to find out that after more than 10 years of democracy in South Africa, gross violation of human rights still takes place in prisons.

The rights enshrined in the Bill of Rights in the Constitution of the Republic of South Africa should be respected by everyone, including the Department. The Department has failed the people of South Africa by not putting in place effective

measures to ensure that human rights in prisons are not violated as highlighted by the Jali Commission. The commission managed to highlight areas of concern which the Department should redress.

There is no excuse for such a gross violation of human rights to exist in the prisons today. South Africans pay taxes to the government to ensure that the proper maintenance and running of prisons takes place. Since prisoners also have rights like any other ordinary South African, intervention of the government is required. This can be achieved by adopting laws that would lead to effective monitoring of violations of human rights in the department.

## **CHAPTER 4**

### **INTERVIEWS**

#### **4.1 INTRODUCTION**

Researchers may collect data in a variety of ways through observation, interviews, documents and these are usually processed before they are ready for use. The researcher here uses interviews and documentary evidence as a way of collecting data. He also attached the research questions and responses to the appendix list of the report writing. The researcher uses four phases of interviewing:

- Preparing for the interviews;
- Interviewing phase;
- Recording the interview;
- Ensuring adherence to ethical principles.

The success of the interviewer depends upon his or her experience and knowledge of the subject matter. The researcher carefully formulated his questions beforehand for both correctional officers and inmates. Only correctional officials of Mthatha maximum prison were interviewed by the researcher from the side of correctional officials. Respondents were assured that the interviews would be confidential in the sense that no answers or information

will be disclosed to any one. The reason is that without such an assurance, inmates may have fears of victimisation by correctional officials. The researcher may also damage his credibility and legal action could be instituted. Lastly, this will also ensure that ethical principles are observed.

There are two types of interviews i.e. structured interviews and unstructured interviews. Structured interviews are sometimes called standardized interviews in the sense that they focus on determination of procedures to be followed in advance. They are very formal and an interviewer prepares the questions to be asked beforehand and focuses on what is written down. In unstructured interviews, the researcher prepares a series of questions to be asked but is permitted to use his discretion and to depart from the formulated set of questions. Researchers mostly use the unstructured interviews when conducting their research, due to time constraints.

#### **4.2 DEFINITION OF CONCEPT**

According to Abrahamson, an interview refers to a face to face exchange of information between two people. This exchange of information can either be active interrogation or passive attentiveness to an active respondent<sup>1</sup>. With regard to the interview, John Madge pointed out that interviews involve purposive rather than idle conversation. Furthermore, the latter must aim to obtain

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<sup>1</sup> Abrahamson M “*Social research method*”. New York. Prentice Hall inc. (1983) .

information<sup>2</sup>. A research interview has been defined further as a two-person conversation initiated by the researcher for a specific purpose of obtaining relevant information. Research interview therefore is characterised by data gathering through direct verbal interaction between individuals.

#### **4.3 INTERVIEWS CONDUCTED WITH INMATES AND CORRECTIONAL OFFICIALS**

The researcher managed to interview a couple of inmates and officials in Butterworth Correctional Centre and Mthatha Correctional Centre in order to get information. The researcher prepares his questions beforehand in order to get quality information. The questions were interpreted into Xhosa to make things easier for respondents since the majority of these inmates are illiterate. Some of the inmates preferred to write down the response on their own whereas others preferred to talk rather than writing it down. When the researcher tried to find out from the inmates the reasons for writing it down themselves, they told him that they wanted to show him that they are capable of doing that. The researcher agreed because such information was needed for the purpose of research.

The following questions were presented before each inmate.

1. What is your knowledge about human rights?
2. How do other inmates violate your human rights?

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<sup>2</sup> Madge J “*The tools of social science*” London; Longman Green and Co Ltd. (1953) at 84.

3. How do the officials of the Department of Correctional Services violate your human rights?
4. Does the Independent Prison Visitor help you when your rights are violated?
5. Do you know anything about lawyers for human rights?
6. How often do the lawyers for human rights visit your prison to help you?
7. Is the state doing enough to protect yourself when your human rights are violated?
8. Is the prison manager (Head Correctional Centre) doing enough to help you when other prisoners or officials violate your human rights?

The reason behind these questions is to:

- understand whether inmates are aware of the concept of human rights since it is something new in correctional services after decades of time.
- check if inmates have knowledge of the watchdogs meant for the protection of human rights.
- check if the prison officials are doing enough to orientate offenders about their rights when entering prison on admission.
- check if officials are respecting the rights of inmates.

According to respondent No.1, the researcher observed that he has knowledge of the term human rights. He mentioned that we are born with human rights. He further mentioned that rights could be written down like the right to equality, the right to dignity and respect. He pointed out that other rights are not written down.



He mentioned the fact that there is violation of human rights by inmates. According to respondent No.1, those who are not gang members are treated like a pig so much that they are forced to go the way of gangsterism. He further stated that they do not have a space even if they want to read or to be alone.

As far as treatment from officials is concerned, he claimed that officials do not differentiate between their problems neither do they bother about feedback to their complaints. He made an example of transfer application from one prison to another where the process may take a month or up to a year without any explanation. When the researcher wanted to know about the effectiveness of a prison independent visitor, the response was that it depends from one individual to another. Respondent No.1 claimed that even independent prison visitors receive ill treatment from the officials of the department.

Respondent No.1 claimed that Lawyers for Human Rights called when an inmate needed legal advice. He further pointed out that they just visit once a year or else they are blocked by officials. Respondent No.1 claimed that the head of the centre does not take actions against officials of the department when they are at fault but if an inmate is at fault he or she will be punished.

Respondent No. 2 knows exactly that South African citizens have rights. He mentioned the right to be equal before the law, the right to legal assistance, the right to be treated with human dignity and the right not to be discriminated on

gender, race or sex. He described inmates already serving sentences as having bullied others. He claimed some inmates who are trustworthy used to misuse their powers. Respondent No. 2 also claimed that officials of the department do not treat inmates as human beings. He alleged that officials tend to classify and label them as out cast. He alleged that inmates are treated differently by officials especially those who are known to those officials.

When asked about the work done by independent prison visitor, he said that they (IPV) are collaborating with prison officials. Respondent No.2 is also aware of the Lawyers for Human Rights and claimed that they do not see inmates when visiting the correctional centre. Lastly, he claimed that junior officials delay inmates to see the head of the centre or senior manager when having complaints.

According to respondent No. 3, human rights are naturally inherent to everyone and originated from everyday life. Respondent No.3 is a student doing engineering studies. He claimed that his fellow inmates do not want to see someone progressing. They deliberately disturb him by increasing the volume of the radio so as to demoralize him. He also claimed that officials called him “prisoner” instead of calling him inmate. He further claimed that officials do not recognise him as a human being and do not even rehabilitate him; instead they make him feel angry every day.

He also pointed that Independent Prison Visitor do not come to correctional centre to take their complaints. According to this respondent, Lawyers for Human Rights are lawyers of the state that represent people who cannot afford to pay lawyers for their trials. He pointed out that something urgent needs to be done about them because they are scarce in correctional centres. He further mentioned that correctional officials are not protecting offenders, instead they abuse them. He accused the head of the centre as a person who abandoned them long ago as he is always confined in his office. He also views the prison head as an abuser of human rights.

Respondent No. 4 also echoed the same sentiment as respondent No.3 about the concept of human rights. His belief is that gangsters dominate personal relationships among inmates. He also believes that the interests of non-gangsters are being marginalised in respect of many things. Respondent No. 4 also claimed that officials of the department neglect their complaints and are biased when solving problems. He further mentioned that such scenario amounts to emotional abuse. His personal integrity and esteem is demeaned.

This respondent No. 4 also has an impression that the Independent Prison Visitor is helpless. He believes that Lawyers for Human Rights are lawyers that represent people who have no money for court proceedings. He felt that the police do not come to correctional centre when they are called to help inmates to lodge their complaints when victimised. He also alleged that the head of prison is

not visible to take complaints and requests, and this escalates the perpetration of gross human rights violation by junior officials.

Respondent No. 5 is also conversant with the concept of human rights. He believes that inmates have divided attention where each one is concerned about his own agenda and not worrying about others. He believes that an Independent Prison Visitor is a fake or waste of time. He mentioned that the prison head is doing enough to act when one's right is violated. The concept of human rights is clear to respondent No. 6. He claimed that other inmates are violating his rights by taking his property without his consent. He further pointed out that even correctional officials violate his rights and prevented him from seeing his lawyers. He also claimed that other inmates disturb him time and again when studying at night. He shared the same sentiment with previous respondents when asked about Lawyers for Human Rights.

Respondent No. 7 believes that one cannot expect the same treatment as a person who is not incarcerated. He believes that correctional officials neglect them and if one seems to know about his/her rights, he/she becomes a bad person. He pointed out that the Independent Prison Visitor helps them sometimes. He had never seen Lawyers for Human Rights visiting the Centre. He further claimed that the head of Centre is firm when one inmate abuses another but is silent when correctional official is at fault.

Respondent No. 8 is studying law with University of South Africa and is doing third year in his studies. He pointed out that violation of human rights is rife in prison and as such many inmates indulge in gangsterism for safety and protection. He further mentioned that the use of minimum force by correctional officials has managed to curb gangsterism activities in his centre. He further suggested that inmates who have been identified as instigators and are abusive must be called to attend anger management and other forms of rehabilitation programs. He believes that first time offenders be first oriented and be informed of his rights, the do's and the do not's.

He also suggested that the correctional officials must emphasize sound relationships among offenders and that gangster activities be rooted out. He further pointed out that there must be security cells because non-gang members live in fear in correctional centres where there is a large number of inmates in one cell. When asked about the relationship between inmates and correctional officials, he pointed out that both parties need to be transformed. He said that there is a lack of communication between the two parties.

He further pointed out that some injustices of the past are still in existence in some correctional centres. He also mentioned that some correctional officials are involved in drug and weapon smuggling. Respondent No. 8 also alleged that correctional officials also contribute even to prison escapes no matter how tight the safety measures are. He suggested that there must be quarterly

workshops in communication and management for correctional officials. According to respondent No. 8, the application of sections 9 and 10 of the Constitution<sup>3</sup> may be an important factor in prison environment to reduce dehumanisation and humiliation of offenders.

When asked about the policies of the department, he suggested that the department must implement policies which will act as watchdogs in each and every correctional centre. He suggested that strict measures should be applied to violent offenders. Privileges should be given to those who show good conduct. He also suggested that sniffer dogs in the care of trained officials be employed to inspect and search the cells.

The researcher proceeded to Mthatha maximum correctional centre to conduct interviews with members of correctional services. The reason for this move is that most of offenders imprisoned there are from rural areas. Prison life there is perceived as different from that of urban areas institutions. Responded No. 9 who is a unit head told the researcher that the majority of offenders in his unit come from rural areas. He told the researcher that Independent Prison Visitor is not well marketed in their prison. Inmates believe that they cannot seek help from the judges because they are the ones who sentenced them to imprisonment. Inmates do not differentiate between Inspecting Judge and judges of the high court.

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<sup>3</sup>The Constitution of Republic of South Africa of 1996.

According to respondent No. 9, Lawyers for Human Rights are rare in prison. They usually come to prison when they receive hearsay evidence that inmates have been assaulted. They just take the information and vanish thereafter without any feedback. Respondent No.9 further mentioned that an assessment cell is available in their centre and is called admission centre. Inmates are kept there for 21 days where professionals like social workers assess and mould them in readiness for imprisonment. He said that there are also charts in the units that have phone numbers for Lawyers for Human Rights. Posters depicting rights of offenders are also available in his unit.

Respondent No.10 informed the researcher that only informed inmates benefit from Independent Prison Visitor. Only inmates who do not come from former Transkei make use of this office. He told the researcher that they normally stay for quite a long time without a prison visitor especially after the end of contract for prison visitor. Respondent No.10 pointed out that they normally visit the Lawyers for Human Rights using their own transport. The reason is that when they are called to come to prison; they used to have a transport problem. According to this respondent, the Lawyers for Human Rights usually change themselves from time to time.

He further mentioned that the activities of gangsters are visible in their correctional centre although this is not something dominant. He believes that discipline among inmates is a dominant factor since inmates are from rural areas.

Programs are run by professional staff like nurses, teachers, and social workers for the benefit of offenders. The officials suppress gangsters by solving their problems, searching and program attendance.

Respondent No. 11 mentioned that HIV/AIDS are a problem within their centre. HIV positive inmates are taken to Mthatha General Hospital for ARV's. He also mentioned that the centre will have its own site for supplying of ARV's treatment. Respondent No.11 complained about scarce resources for rehabilitation of inmates. Programs and school classes are conducted in open space and in cells respectively. Prison officers are equipped with interventions on many courses like human rights.

Supervisors are responsible for on the job training and implementation of training by officials. Overcrowding is the stressing issue in the centre and about fifty offenders are accommodated in a cell that is supposed to house 25 offenders. At night, it is very hard to see inside the cell because of many beds. Overcrowding makes it impossible for professional staff and correctional officers to give inmates individual attention.

According to respondent No.11, overcrowding causes health risks. A balanced diet is provided by the correctional centre. It is tested by a professional nurse and the head of correctional centre before being consumed by offenders. Inmates are always sensitised about violation of ones rights and disciplinary measures are



enforced against defaulters. Correctional officials are also taken to task when they abuse offender's rights.

#### **4.4 SUMMARY**

Since the respondent is a human being, he/she is as fallible as the interviewer. The data provided may therefore be unreliable and invalid. The possibility that the ego may resort to defense mechanism cannot be ruled out. The respondent may try to defend his/her own behaviour and be selective. The respondent may also try to escape reality and paint a bad picture of the other side in order to please an interviewer. The respondent may also project his own feelings and emotions against others. He/she may, for instance, project his/her own desire for revenge against others, whom he/she will then accuse of vindictiveness. The interviewer and the respondent usually move into separate worlds or on two separate levels. Hence, the art of establishing rapport and attaining an objective insight is a difficult one and requires patience and wisdom on the part of the former.

## **CHAPTER 5**

### **CONCLUSION**

#### **5.1 INTRODUCTION**

In this chapter, the researcher provides an analysis and findings of the research taking into considerations the data collected during research. Secondly, the researcher examines whether the State Institutions Supporting Constitutional Democracy as established in terms of Chapter 9 of Constitution are doing enough as watchdogs of human rights violations in South African Prisons<sup>1</sup>. Thirdly, the researcher presents the analysis of the findings obtained from the interviews. The different responses for each sample group of respondents are presented. Interviews were conducted in two different prisons, one in the urban area and another in the rural area. The two prisons are Butterworth Correctional Centre and Mthatha Correctional Centre in the former Transkei. Lastly, the researcher discusses the recommendations taking into consideration the data collected, the literature reviewed together with the responses from the interviews.

#### **5.2 ANALYSIS OF THE RESEARCH**

According to English and Stapleton, a right is determined by human needs that make life fulfilling and are essential for keeping us alive<sup>2</sup>. It is further stated that

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<sup>1</sup> The Constitution of Republic of South Africa of 1996.

<sup>2</sup> K English and A Stapleton "*Human Rights Handbook*" Juta & Co Ltd (1997) at 1.

human rights are an entitlement or legal claims that one has by virtue of being human.

Human rights therefore are protected in the Constitution and national laws of many democratic states around the world. This does not mean that human rights are absolute because they can be limited by the state. Devenish mentioned that limitation of rights is widely accepted in the domestic law of most states and in international law.<sup>3</sup> He further mentioned that very few rights are absolute, if any.

Section 35 of the Constitution of South Africa provides for the rights of arrested, detained and accused persons. Section 36 of the Constitution of South Africa provides the limitation clause for the rights declared in Chapter 2 of the Constitution of South Africa. A limitation clause is a provision in the Constitution that sets out when and how the state may limit the human rights of individuals. A limitation clause usually includes:

- A description of the organ of the state that may limit a right.
- The procedure for limitation of rights<sup>4</sup>.
- When and for what reasons limitation may be allowed.

Section 36 of the Constitution of South Africa makes provision for limitation of rights in the Bill of Rights only in terms of law of general application to the extent

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<sup>3</sup> G.E. Devenish “*The South African Constitution*” Lexis Nexis Butterworth. (2005) at 161.

<sup>4</sup> J Ward, “*Correctional Services Law II Module I. Human Rights Centre for Course Design and Development*” Technikon South Africa (1997) at 88.

that the limitation is reasonable and justifiable. This requires the state to be democratic, where human dignity, equality and freedom are observed. The purpose of the limitation clause simply provides the test that the court must use to determine whether the state's limitation of rights is constitutional. Section 36 (2) clearly states that, no law may limit any right entrenched in the Bill of Rights, except as provided in subsection one (1) or in any other provision of the Constitution of South Africa. The section also allows the limitation of rights by law, provided the limitation is both rational and proportional.

According Devenish, the limitation of fundamental rights as in section 36 of the Constitution involves a judicious weighing up of competing societal and ethical values, using an assessment based on proportionality<sup>5</sup>.

To limit human rights, relevant factors therefore, which are not limited to the list mentioned in section 36, should be taken into account. This involves the weighing up of competing values and having regard to proportionality. Devenish stated that different rights have different implications for democracy and therefore for our body politic. He further stated that principles must therefore be established and articulated, but the application of these to particular circumstances can only be assessed on a case by case basis<sup>6</sup>. An exemplary case in this regard is that of *State v Makwanyane*<sup>7</sup>, the court held that principles can be established. It also held that application of these principles can only be done on the merits of each individual case.

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<sup>5</sup> Op. cit. at 164.

<sup>6</sup> Ibid at 165.

This is inherent in the requirement of proportionality, which calls for the balancing of different interest. The court will weigh up the interest of both parties, evaluating the different arguments and evidence presented. The court also places the violation or limiting legislation or action on the one side of the scale and the nature and the effect of the violation on the other side. It then carefully considers whether the limitation is reasonable and justifiable on a balance of probability<sup>8</sup>.

It is most important for correctional officers to realize that the Constitution protects the human rights of every individual, including that of inmates. The correctional officers as state officials must therefore respect the rights of inmates detained in their custody. Imprisonment does not mean that an inmate loses his or her rights but that means some rights are more restricted while a person is in custody.

The Constitution of Republic of South Africa of 1996 is premised on the principles of democracy, freedom and equality. This Constitution establishes certain commissions and offices designed to provide meaningful support for an open and democratic system of government. The states institutions supporting constitutional democracy are established in terms of Chapter 9 of the Constitution.

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<sup>7</sup> *S v Makwanyane* 1995 (3) S.A 391 (CC) 104.

<sup>8</sup> Titus et al *"Policing and Human Rights"* 2<sup>nd</sup> ed. Juta & Co Ltd (1997) at 108.

These state institutions are as follows:

- The Public Protector;
- The South African Human Rights Commission;
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- The Commission for Gender Equality;
- The Auditor General; and,
- The Electoral Commission.

The above mentioned institutions have legal obligations to protect or act as the watchdogs of the State Departments in promoting and protecting human rights. The Department of Correctional Services is also monitored by these state institutions. The South African Human Rights Commission and the Public Protector are supposed to be visible in South African correctional centres in order to ensure that the facilities of correctional centres are up to standard and human rights are adhered to by the Inspecting Judge. The aims of this office as defined by the Act include the inspection of to. Besides these state institutions, the Correctional Service Act<sup>9</sup>, section 85, provides for the establishment of the Office of Judicial Inspectorate under the Control prisons. It is also obliged to report on the treatment of inmates, conditions in prisons and any corrupt practices in correctional centres.

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<sup>9</sup> Correctional Services Act No.111 of 1998.

The office of the Inspecting Judge has appointed the independent prison visitor for each correctional centre to the monitoring treatment of inmates. Section 93(1) of Correctional Service Act<sup>10</sup> empowers the Independent Prison Visitor to deal only with complaints of inmates. This means that even if the Independent Prison Visitors were to observe an irregularity, corruption or maladministration, they may not be able to deal with it unless an inmate complains. This makes them reactive instead of being proactive in their approach, and renders them ineffective watchdogs. Section 85(2) and 90(1) of the Correctional Services Act<sup>11</sup> has come to the conclusion that the Office of the Inspecting Judge is merely a reporting body. It is clear that unless the status of the Inspecting Judge is enhanced and the power of the office increases, the right of inmates to be detained in conditions consistent with human dignity will not be achieved.

### **5.3 FINDINGS**

Looking at the historical background of prison environment, one would say that the correctional system has transformed itself in a variety of ways. The Constitution<sup>12</sup> provides for a detention system based on the Bill of Rights which requires that a human rights environment within which the Department of Correctional Services must operate<sup>13</sup>. According to the Correctional Service

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Op. cit.

<sup>13</sup> White Paper on Corrections in South Africa (2005) at 36.

Act<sup>14</sup>, the purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by:

- Enforcing sentences of the courts in the manner prescribed by this Act.
- Detaining all prisoners in safe custody whilst ensuring their human dignity.
- Promote social responsibility and human development of all inmates.

The researcher found that many of the current problems in the Department have their roots in the way the Department was structured and run before 1996. Before 1996, the Department was run along military management style which encouraged a culture of secrecy. The period was characterised by lack of emphasis on the rehabilitation of inmates and gross human rights violation. The researcher also found that the correctional system is a fertile ground for gangs which have always operated underground. They now operate openly and some correctional officers simply turn a blind eye or even seek the assistance of the gangs to achieve their aims, like smuggling. The researcher also observed that the prison gangs pose an ongoing threat to the orderly functioning of Correctional Centres. In a City Press interview, Tshabalala argued that prison life is a traumatic situation characterised by human rights violations<sup>15</sup>.

The situation of a hundred inmates sharing one toilet is not a healthy environment. This is also evident in the findings of the Jali Commission where sixty inmates were found sharing one toilet. In the *Daily Dispatch* dated 3 August

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<sup>14</sup> Op. cit, Section 2.

<sup>15</sup> *City Press* dated 3<sup>RD</sup> June 2007 at 27.



2006, it was shown that conditions of South African correctional centres are deteriorating. Seventy six inmates were locked in one cell with one toilet, water dripping from the taps and paint peeling from the roof. In Bizana Correctional Centre, inmates were sleeping in turns on beds with no blankets. The above information was gathered from documentary evidence by the researcher. The issue of overcrowding is still a burning issue in South African correctional centres and it needs urgent attention. The above mentioned prison conditions are not in line with Standard Minimum Rules for the Treatment of Prisoners.

The following are some of the core values and rights in the Constitution of South Africa which the Department of Correctional Services must embrace.

- Human dignity (section 10).
- Rights underlying human treatment of every detainee (section 35).
- The right to health care services and other associated rights (section 27).

Having regard to the findings of the researcher, the Department is not fulfilling its core values. Inmates are therefore bound to a place and area with hardly any privacy or personal freedom. One should never lose sight of the fact that even inmates leave families behind, resulting in emotional stress. Sanitation in these institutions is also unacceptable, with personal hygiene being poor. Given these conditions, an outbreak of unrest should not come as a surprise.

The participation of inmates during the interviewing phase made a positive contribution to the findings of the research. The researcher found that all the

respondents are well conversant with the concept “human rights”. All the respondents shared the same opinion about the violation of human rights by other fellow inmates and officials. They believe that gang members are treating other offenders inhumanly. Respondent No.1 told the researcher that if an inmate is not a gang member, he/she will be treated like a pig by gang members. Respondents No.3, 6, and 8 claimed that other inmates disturb them when they are studying at night. They also claim that fellow inmates do not want to see someone progressing with studies or personal advancement.

According to respondent No.4 personal relations between inmates is dominated by gangsterism where physical strength is used to enforce their interests. According to respondent No.8 some inmates who are victims of human rights violations may join gangsters to protect their personal safety. The respondent's idea is also supported by the findings of Jali Commission. The researcher also found that minimum force is used in these prisons to curb gang activities.

All the offenders who were interviewed share the same sentiment about human rights violation by correctional officials. They believe that they are neglected and their problems are not solved timeously. Respondent No.1 made an example of transfer to correctional centre next to his family which took up to a year without any feedback. Respondent No.3 claimed that the situation in prison makes him feel angry everyday. Respondent No.4 pointed out that the prison conditions they are in is a source of emotional abuse and low self esteem. It is clear that all the

inmates interviewed have lost hope in correctional officials and fellow inmates. One source of concern and discontent amongst these respondents is that decision making on valid grievance is delayed due to poor management. Lack of protection by correctional officials results in endorsement of gang members as a source protection.

The researcher further found out that all the inmates interviewed cannot differentiate between Legal Aid Board lawyers and the Lawyers for Human Rights. They all refer to Lawyers for Human Rights as lawyers who assist people with no money in court. It is clear that Lawyers for Human Rights are not visible in some of the correctional centres although they are the watchdogs for human rights violation. The researcher also found out that the Independent Prison Visitor is not helpful to the inmates as expected. The duty of the head of Independent Prison Visitor is to monitor complaints and requests of inmates in each correctional centre. The researcher found that there is no positive relationship between the Independent Prison Visitor and correctional officials. The researcher also detected that the Head of Correctional Centre in Butterworth Correctional Centre is not visible in prison sections. Contrary, from the interviews conducted in Mthatha Correctional Centre, the researcher found that inmates are looked after by correctional officials. Lawyers for Human Rights are given the opportunity to operate within the centre. The researcher also found that there is better life environment in prisons where there is less gangsterism. Offenders in Mthatha Correctional Centre have developed a culture characterised by tribalism.

Inmates involve themselves in programs and they have the ability to fight gang members as the latter are in the minority. There is also better relationship between offenders and officials in this prison.

#### **5.4 RECOMMENDATIONS**

Taking note of the difficult circumstances with which an offender is confronted with, it is necessary to address the conditions in prisons not only to fulfill the demands of imprisonment but to make the life of an inmate bearable. This is not only to fulfill the demands of imprisonment but also for the survival of the inmates. Despite new approaches in the handling of offenders, they still experience the pains which imprisonment brings. A person who suddenly finds himself within the prison environment needs support and rehabilitation.

The following recommendations are necessary for correctional system in South Africa:

- Provision of adequate prison accommodation.
- Improvement in prison structures.
- Upgrading training and staff development.
- Greater emphasis on safety and security in general.
- A more favourable member / offender relationship.

Snarr and Welford pointed out that, the most important instrument for orderly control in an institution is the disciplinary process within the institution itself<sup>16</sup>. A correctional centre with an effective control and disciplinary system is not only safer, but also conducive to better working conditions. To be effective, the correctional officials must have an appreciation of the broadness of the concept of discipline rather than apply it mechanically and in a draconian way. The department of correctional services together with its sister Department i.e. Department of Justice and Constitutional Development must do enough to get rid of overcrowding in prisons.

The provision of small houses to accommodate fewer offenders could assist in decreasing, if not eliminating, the abuse of offenders by other fellow inmates. The implementation of the unit management system as stipulated in the White Paper on Corrections in South Africa is therefore necessary. This means that there is a need for upgrading existing correctional centres. Greater emphasis on safety of inmates and correctional officers is also important. There must be reasonable official/offender ratio in each correctional centre. Lawyers for Human Rights must be visible in each correctional centre to monitor human rights violations. The Office of the Inspecting Judge of prisons must try to be visible and effective in order to be able to monitor violation of human rights in prisons.

The Department of Correctional Service has already been taken into task for not improving the conditions and the status of its prisons. Recently it was challenged

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<sup>16</sup> RW Snarr & BI Welford "*Introduction to Corrections*" Iowa: Brown (1985) at 248.

by HIV positive inmates in a court of law. The right to conditions of detention consistent with their human dignity became the main issue in the case. In *Van Biljon v Minister of Correctional Services*<sup>17</sup>, the court granted a declaratory order that two HIV positive prisoners were entitled to the ARV'S. The court pointed out that, if the provision of medical treatment is consistent with human dignity, it must be regarded as "adequate". Forty three officials of the Department have been dismissed for misconduct unearthed by the Jali Commission of Inquiry into prison corruption<sup>18</sup>. This is a wake up call to correctional officials at all levels. A total of 120 cases are under "prosecution" either within the Department or in the courts.

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<sup>17</sup> *Van Biljon v Minister of Correctional Services* 1997 (6) BCLR (C).

<sup>18</sup> Daily Dispatch dated 21 June 2006 at 1.

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