

# **CHAPTER 4**

## **GANGS**

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## CHAPTER 4

### GANGS

#### 1. INTRODUCTION

It became evident during the Commission's hearings that gangs are a very powerful force in the prisons that were investigated. Furthermore, it is apparent that corruption will never be eradicated in these institutions unless a better way is found to break the power gangs exert inside prisons and to control them.<sup>1</sup> It also became clear during the hearings that these gangs are responsible for continuous instability in the prisons. Not only do they make the lives of many inmates a living hell but they also play a significant part in the corruption of some Correctional Services officers. As one of the witnesses stated, gangs alleviate the "pains of imprisonment" for some and increase the "pains" for others.<sup>2</sup> Gangs thus present a complex challenge to the Department of Correctional Services and it is clear that their eradication should be a priority in order for the Department to restore stability and order in South African prisons. Clearly, success in dealing with this problem demands a creative and well thought-out intervention strategy on the part of the Department. The fact that prison gangs pose a threat to the orderly functioning of our prisons can no longer be ignored.<sup>3</sup>

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<sup>1</sup> Also see Amanda Dissel, 'Tracking Transformation in South African Prisons, Track Two' (2002) Vol. 11 at [http://ccrweb.uct.ac.za/archive/two/11\\_2/transformation.html](http://ccrweb.uct.ac.za/archive/two/11_2/transformation.html) accessed on 23 November 2004.

<sup>2</sup> Dr Willem Schurink. See Exhibit 'V' Expert Opinion on Prison Gangs presented to the Commission in Cape Town, 3 February 2003 at page 18.

<sup>3</sup> The phenomenon of prison gangs operating through force, intimidation, secrecy and extreme loyalty to fellow gang members and dedication to their gang laws is worldwide. See P Kassel ("Gang crackdown in Massachusetts" prisons: Arbitrary and harsh treatment can only make matters worse – *New England Journal on Criminal and Civil Confinement Winter*, 1998 at page 37.)

In order to gain an understanding of the different gangs and their power structure, it is necessary to examine the culture of gangs, their history and development. An evaluation of South African gangs, however, has its own difficulties due to the somewhat mythical origin of gangs. Questions regarding how and when gangs emerged in our prisons elicit varying answers.<sup>4</sup>

In some of the prisons the Commission investigated, it was suggested that gangs are in fact running the prisons. It has also been argued that, as conditions in prisons deteriorate because of overcrowding, gangs get stronger, which makes the penal system less effective. Questions have been raised regarding the adequacy of rehabilitation in correctional facilities and the fact that the presence of gangs impacts on the penal system, making it more costly to run<sup>5</sup> and tying up resources that could be made available for rehabilitation programmes.

One witness who testified before the Commission said the following regarding rehabilitation:

*“The court sent me to rehabilitation but I never received any form of rehabilitation in prison. Just because of the existence of gangsters and where gangsters exist, there is a corrupt official and the two combine, there is no form of any rehabilitation.”*<sup>6</sup>

With the new dispensation in South Africa, the government has attempted to incorporate human rights values and international principles in the provision of

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<sup>4</sup> Jonny Steinberg, *Nongoloza’s Children: Western Cape prison gangs during and after apartheid* (2004) at page 4.

<sup>5</sup> Jonny Steinberg cited in the ‘The Prison Catch-22’, editorial *Cape Argus*, 22 November 2004 at page 17.

<sup>6</sup> See the evidence of Marius Engelbrecht, Commission Proceedings at Bloemfontein High Court, dated 28 June 2002, at page 736 of the record.

correctional services<sup>7</sup> and one of the initiatives that set out to accomplish this goal was the drafting and implementation of the new Correctional Services Act<sup>8</sup> in 1998.

The Act is committed to three goals:

- Enforcing the sentence of the court in a manner prescribed by the Correctional Services Act;
- Detaining all people in safe custody whilst ensuring their safety;
- Promoting the social responsibility and human development of all prisoners.

The safety of prisoners has been defined widely to include all aspects of the authorities' general duty to do everything required to preserve the physical and mental integrity of prisoners in their charge.<sup>9</sup> The balance between the safety of prisoners and their rehabilitation is, however, almost non-existent in the state-run correctional facilities.

Our courts have also remarked on the state of the Department of Correctional Services and, in particular, the influence of gangs in our prisons. In *S v Mark and Another*,<sup>10</sup> where a prisoner was killed while being transported with thirteen (13) other prisoners in a Department vehicle en route from Pollsmoor to three (3) other prisons, Davis J said:

*"... it was an inescapable fact that had a warder been positioned in the separate observation compartment of the truck during the journey, the*

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<sup>7</sup> Amanda Dissel & Stephen Ellis, 'Reform and Stasis: Transformation in South African Prisons' published in 'Ambitions reformatrices et inertie du social dans les prisons sud-africaines', *Critique Internationale* No 16 July 2002.

<sup>8</sup> Correctional Services Act, No. 111 of 1998.

<sup>9</sup> Dirk van Zyl Smit, *South African Prison Law and Practice* (1992) Butterworths, at page 187.

<sup>10</sup> *S v Mark and Another* 2001 (1) SACR 572 (C).

*murder could have been prevented. There was tremendous pressure on the Department of Correctional Services because of the escalation of crime and the evidence confirmed that gangs effectively ran prisons. They made a mockery of any objective of rehabilitation and perpetrated an even greater crime wave. Without addressing and solving the problems of prison gangs, prisons would remain the best guarantee of continued crime at the level and intensity, which is currently experienced. The Department of Correctional Services needed to develop and publicise a coherent strategy as to how it proposed to deal with these problems.”*

One senior gang member informed the Commission that the day-to-day life of prisoners is currently one of drugs, gangsterism and corruption.<sup>11</sup> He stated that regardless of the time and the offence, an accused:

*“... gets thrown into prison with hardened criminals, with drugs and corruption, he takes it as part of life. When he is released he is hardened because he has been raped, influenced by gang members and by corrupt officials.”<sup>12</sup>*

The evidence above describing the experiences of life in South African prisons indicates that the existence and the continued functioning of prison gangs hampers the effective implementation of the goals of the Department in adhering to human rights principles enshrined in the Constitution.

Other commissions that have conducted investigations into the Department have come to the same conclusion. The South African Human Rights Commission, for example, in its investigation on the state of South African prisons, stated that they had become places where people are at risk of contracting HIV/Aids due to

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<sup>11</sup> See evidence of Marius Engelbrecht, Commission proceedings, at Bloemfontein High Court, dated 28 June 2002 at page 735.

<sup>12</sup> See evidence of Marius Engelbrecht, Commission proceedings, at Bloemfontein High Court, dated 28 June 2002 at page 741.

prison rapes and sexual abuse.<sup>13</sup> It recommended that the Department develop a clear policy to deal with these prison conditions and the safety and security of inmates.<sup>14</sup> In fact, one of the recommendations is that the manner in which gangsterism flourishes in prisons should be investigated through targeted research and active intervention.<sup>15</sup>

As pointed out earlier in this Chapter, no meaningful recommendation can be made by this Commission to combat gangsterism unless the culture of gangs is critically analysed and reviewed. All the information – documentary or otherwise – that was presented to the Commission must be reviewed and considered, along with scholarly opinions on the topic, in order to make informed recommendations regarding this challenge facing the Department.

## 2. THE CULTURE OF PRISON GANGS

Dr Willem Johannes Schurink, who has done research into prisons, stated in his evidence before the Commission that there are two basic theoretical perspectives on patterns of response to imprisonment.<sup>16</sup> According to him, these perspectives can be classified as the diffusionist/importation theory and functional/deprivation theory.<sup>17</sup>

The diffusionist theory, according to Dr Schurink, considers prisoner culture as consisting of three sub-cultures: a prisoner sub-culture; a criminal or thief sub-

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<sup>13</sup> South Africa Human Rights Commission, The National Prisons Project 1998, [http://www.sahrc.org.za/prisons\\_reportPDF](http://www.sahrc.org.za/prisons_reportPDF) accessed on 22 November 2004.

<sup>14</sup> South African Human Rights Commission, 'Prisoners Rights' at [www.sahrc.org.za/chapter\\_10.PDF](http://www.sahrc.org.za/chapter_10.PDF) accessed on 26 November 2004. Also see Chapter on sexual violence for a more detailed discussion of abuses at the hands of gangs.

<sup>15</sup> *Op cit* at 37.

<sup>16</sup> See Evidence of Dr Schurink, Exhibit 'V' Cape Town hearings, 3 February 2003 at page 27.

<sup>17</sup> See Dr Schurink *ibid*.

culture and a legitimate or conventional system. In short, these theorists see prison culture as a “latent culture” with outside roots.<sup>18</sup>

The deprivation theorists, on the other hand, argue that the inherent degradation of life in security institutions ensures the spread or the continued survival of gangs in prisons.<sup>19</sup> These theorists argue that when in prison, one is robbed of the meaningful exercise of one’s agency such as the normal life of raising children, forging a career or being in control of the simple things humans do by themselves such as washing, using the telephone and deciding when to eat and rest.<sup>20</sup>

Thus, within the prison walls, the concepts of individual dignity and self-worth do not apply as incarceration restricts the existence of the inmate to the institutional environment.<sup>21</sup> It is argued that the very nature of institutions leads to the stripping or the “mortification” of the inmates, leading the inmate to either “bind himself to fellow captives with ties of mutual aid, loyalty, affection and respect, or enter into a war of all against all in which he seeks his own advantage without reference to the claims or needs of other prisoners.”<sup>22</sup>

American studies have held that prison is an institution where inmates evolve through the prisonisation process that is more about defining behaviour

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<sup>18</sup> For a more detailed discussion of all the theories presented to the Commission, see proceedings at Cape Town Exhibit ‘V’ at pages 27-29.

<sup>19</sup> These theorists include Erving Goffman and Gresham Sykes as cited in Steinberg *Nongoloza’s Children* at pages 18-19.

<sup>20</sup> Goffman cited in Steinberg at page 18. Theorists such as Sykes (1970), Irwin (1980) and Clemmer (1958) also share this perspective and believe that prisoner subculture is largely a response to conditions within prison. They also argue that since the environment to which prisoners have to adapt is unique, the resulting functionally integrated social system is also unique. This school (save for Goffman, who acknowledges that inmates bring in a culture) has been criticised for ignoring the cultural and behavioural patterns outside prisons that may influence prisoner subculture.

<sup>21</sup> Fox V: ‘The politics of prison management’ *Prison Journal* 1984 cited in S. Fortune ‘Inmate and Prison Gang Leadership’ at page 33 accessed at <http://etd-submit.etsu.edu/etd/theses/available/etd-1103103-220112/unrestricted/FortuneS112503f.pdf> on 26 November 2004.

<sup>22</sup> *Ibid.*

acceptable to fellow inmates than behaviour to please the staff.<sup>23</sup> However, it cannot be ignored that, in general, the socialisation process into prison culture depends upon the time served by prisoners. One theorist, for example, found that the prisoners either entering the penal system or getting ready to leave the penal system conformed more to the staff role expectations than did the inmates serving longer sentences who had been incarcerated for several years and were not leaving the correctional system.<sup>24</sup> As individuality and autonomy are stripped away by imprisonment, the prisoner begins to achieve status from his peers in another way. In gang culture, this status is determined and obtained mostly through competence and knowledge of the gang and also through acts of violence in the fighting line.<sup>25</sup>

Gang codes provide individual gang members with a well-defined set of norms. Thus, the number gangs must, if the need arises, resist the authorities and work towards better conditions in prison. The gangs provide the individual gang members with goals and the military structure of the gangs ensures that each has his role to play and furthers the cause of the gang. The gangs also provide a form of welfare over and above protection from victimisation. Those who retire continue to be entitled to the privileges and respect of the gang. Thus, gangs alleviate some of the pains of imprisonment such as idleness, boredom, institutionalisation, powerlessness, the deprivation of goods and services and even sexual frustration.<sup>26</sup> Added to this, gangs also offer status, recognition and respect in a place where men are often belittled.<sup>27</sup>

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<sup>23</sup> Gaines L. K., Kaune M. & Miller R. L. *Criminal Justice: In Action* (2000) cited in S Fortune, 'Inmate and prison gang leadership' at page 29.

<sup>24</sup> S.Wheeler, *Socialization in Correctional Communities* (1961) cited in S Fortune *supra* n 21 at page 30.

<sup>25</sup> Nicholas Haysom, 'Towards an understanding of Prison gangs', (1981), Institute of Criminology:  
Social Justice Resource Project, University of Cape Town paragraph 10 at <http://web.uct.ac.za/depts/sjrp/publicat/prisgang.htm> accessed on 22 November 2004.

<sup>26</sup> J.M. Lotter, 'Prison gangs in South Africa: A description', *South African Journal of Sociology* (1988) 19 (2) at page 71.

<sup>27</sup> Both members and fellow prisoners belittle them. Thus, there is a need for a system in treating prisoners with humanity.

Given that inmates, in general, become gang members for some of the reasons outlined above, it is essential to look at the South African experience and the factors that make our prisons breeding grounds for continued criminality rather than places of rehabilitation. In order to do this, it is essential to explore the origins and the nature of South African gang activity.

Right at the outset it has to be stated and accepted that the phenomenon of prison gangs is not unique to South Africa. What is unique are the differences in context and history of our prison gangs, requiring that one take particular notice of the context in order to find practical solutions in stripping the gangs of their power. The ease with which gangsterism survives and flourishes in prison should be investigated through proper research before a strategy in combating gangsterism is decided upon.

### **3. THE HISTORICAL ORIGINS OF SOUTH AFRICAN PRISON GANGS**

Analysing all the evidence and the scholarly writings on prison gangs, it can be said that, on the whole, there seems to be consensus that prison gangs did not originate in prisons but rather developed from a gang culture that already existed on the outside, namely from a gang of thieves who operated in the early days of the developing Transvaal mining towns.<sup>28</sup> The details of the origins of the various gangs remain suspended between fact and myth, with historians differing on how exactly gang culture developed. Common to all the various theories and studies, however, is the name of one man known as Nongoloza (born Mzuzephi Mathebula).<sup>29</sup>

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<sup>28</sup> Nicholas Haysom, 'Towards an understanding of prison gangs', (1981) Institute of Criminology: Social Justice Resource Project, University of Cape Town at paragraph 12.

<sup>29</sup> Jonny Steinberg, *Nongoloza's Children* at page 8.

Jonny Steinberg states that oral legend has it that the origins of gangs can be traced to a number of black bandits known as “the Ninevites” who left their ancestral land to go to Johannesburg. They roamed the growing city, robbing mine owners and workers after refusing to take up wage employment for white bosses.<sup>30</sup> However, some gangs, especially the 26s, argue that it all started with a man called Paul Mombasa, who robbed people for a living as early as 1830 and who was later joined by two men, Kilikijane and Nongoloza.<sup>31</sup>

According to the myth, Nongoloza and Kilikijane were leaders of different groups of bandits. Nongoloza operated at night while Kilikijane worked during the day. It is argued that at some point Nongoloza became the leader of this infamous gang and soon organised it into a paramilitary hierarchy, making it one of the largest and most memorable gangs. Some gang members allege that, as other men joined the original members, their aim became both political and economic as they only robbed from white men who oppressed their people.<sup>32</sup> However, from the reports of black victims, it became apparent that these men were robbing both black and white men, especially in the budding migrant towns.<sup>33</sup>

With Nongoloza becoming leader of the band and organising it along paramilitary lines, the Ninevites became a formidable organisation that perfected the art of trickery, stealing and robbery.<sup>34</sup> Many of the Ninevites were incarcerated, including Nongoloza, who made it his mission to command the loyalty of the Ninevites in prison and in the compounds in the Witwatersrand and in the adjacent Transvaal towns.

Nongoloza was known to have sexual relations with other men, of which the Kilikijane band did not approve, and this led to the splitting of the Ninevites into

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<sup>30</sup> Jonny Steinberg, *ibid.*

<sup>31</sup> See Evidence Exhibit ‘U’ Commission Hearings at Cape Town at paragraph 20.

<sup>32</sup> See Evidence Exhibit ‘U’ at paragraph 20.

<sup>33</sup> See Exhibit ‘V’, Cape Town hearings at 10.

<sup>34</sup> Jonny Steinberg *Nongoloza’s Children* at 10.

the 27s and the 28s.<sup>35</sup> It is said that unlike these two gangs, the 26s originated from inside prison when Kilikijane was in isolation and a group of smugglers slipped salt and bread into his cell via a crack beneath his door.<sup>36</sup>

Tracing the origins of the different gangs helps us understand the type of crimes they are often associated with and their rules or codes of conduct. Thus, in the early 1900s, three (3) camps were formed: the 26s to accumulate wealth, the 27s to be the creators of gang law, keeping the peace, exacting revenge and spilling blood while the 28s were to fight for better living conditions for the inmates.<sup>37</sup>

#### **4. PRISON GANGS AND THEIR IDENTITY**

Although the origins of gangs may be clouded in a combination of myth and reality, the current functioning of gangs is very real in South African prisons. The Commission has explored the functioning of some of the most prominent and dangerous of prison gangs through scholarly writings, through the testimony of the gang members who appeared before us and through evidence that was tendered before the Commission. This analysis will consider the infamous “number gangs” and some of the other smaller, yet forceful, gang associations in South African prisons.

From the outset it must be understood that gang culture is complex and does not exist in a vacuum. It is an inescapable fact that various socio-political and economic occurrences outside prison have had an influence on the situation inside prison. Prisoners become gang members for various reasons and understanding these reasons may be helpful in the search for effective solutions to the prison gang problem.

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<sup>35</sup> See Commission Proceedings, evidence of Dr Shurink, Cape Town, dated 4 February 2003 at 1497 of the record.

<sup>36</sup> Jonny Steinberg *Nongoloza's Children* at page 14.

<sup>37</sup> Jonny Steinberg *Nongoloza's Children* at page 15.

Before analysing the different gangs, it should be pointed out, however, that although non-members often have to co-operate with gangs in various ways for their own survival, this does not mean that all prisoners are gang members.<sup>38</sup> In theory, however, there can be no denying that the confinement of inmates in overcrowded cells not only represents fertile ground for gangs to flourish but places enormous power in the hands of gang hierarchies in the way that they are then at liberty to use their various means to recruit intimidated non-members.

#### 4.1 The “Number” Gangs<sup>39</sup>

The so-called “number” gangs consist of three (3) tightly organised gang networks known as the 26s, 27s and 28s, who by far pose the most formidable challenge to the Department in its quest to eradicate gangsterism from our prisons.

Most of the witnesses who testified regarding the role of gangs and their violence referred to the number gangs. There is, therefore, no doubt that they are mostly responsible for the disruption, corruption and violence inside our prisons. To understand the gravity of the problem, it is important to understand the groupings that exist, their functions and their *modus operandi* in prison. What follows is a brief summary of some of the important facts about each gang and its status in prison:

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<sup>38</sup> Human Rights Watch, South Africa Report (1994): Gangs and Violence at [www.hrw.org/reports/1994/southafrica/8.htm](http://www.hrw.org/reports/1994/southafrica/8.htm) accessed on 23 November 2004. Inmates testified as to how gangs may deprive non-members of all their personal belongings or deny them access to privileges and one told of how he had to ‘buy’ the right to a bed from gang leaders in the cell.

<sup>39</sup> See Amon Hlongwane, ‘Gang Conflict in Prison’ in ‘Excerpts from Research Documents on Prison Gangs, Community Gangs and Prison Violence’.

### **The 28s:**

This gang is the direct descendant from the Ninevites and is said to be the strongest of all the number gangs. The main objectives of this gang are centred on food, boy-wives and correcting the wrongs of the institution.<sup>40</sup> Like all prison gangs, the 28s claim that membership is voluntary and that they will not recruit inmates already belonging to other gangs. Young gang members are classified as probations [boy-wives] and the older gang members are the soldiers.<sup>41</sup> The senior officers of the gang are allocated their own boy-wives while the other gang members can have sexual relations with the probations of the gang. Promotion is based on knowledge of the codes of the gang and brave deeds.

When the 28s gang members are not satisfied with the quality and quantity of food served to them, they assault the cooks of the prisons. On the day that 28s are to assault cooks, they inform all the other gangs except the Big 5, a non-number gang whose members operate as informers in prisons. The Big 5 are obviously excluded because they can expose the secrets to the members of the Correctional Services.

### **The 27s:**

Prison legend states that the 27s were established by a group of seven (7) defectors because of abhorrence at Nongoloza's practice of taking "wyfies" in his gang.<sup>42</sup> Although this gang had considerable force in the early days, they have

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<sup>40</sup> It is also argued that rape is the prerogative of the 28s because they subscribe to mutual sodomy and rape of those unprotected by a gang member. See "Collect your Blood", *The Witness*, 4 February 2005.

<sup>41</sup> *Ibid.*

<sup>42</sup> J.M. Lotter 'Prison gangs in South Africa: A description'; *South African Journal of Sociology*, 1988 at page 69. The author, however, argues that despite legend it is probable

become almost non-existent in most prisons.<sup>43</sup> Their objective was to keep peace between the three camps. They would learn and retain the laws of all three (3) gangs, as well as the laws of the relationships between the gangs. They would right wrongs by exacting revenge and when blood was spilt, they would spill blood in return.

### **The 26s:**

Since its formation, this gang has been represented by the Kroon (crown), which is meant to bring wealth. Members live luxurious lives, maintained by robbing other prisoners of money and dagga and by smuggling items of value into prison.<sup>44</sup> Conversations with Correctional Services staff, save for complaints and requests, are prohibited unless permission is requested. Members cannot resign from this gang, and when they retire they cannot join another gang. Sexual relations with gang members are prohibited.<sup>45</sup>

The number gangs are thus primarily distinguished from each other by specified goals, which must be respected by the others. For two of the gangs, their different functions are also determined by their traditional hours of operation: the 28s are men of the night symbolised by the sunset, while the 26s work by day and are not allowed to take blood after sunset, except in self-defence. Their symbol is the sunrise.<sup>46</sup> Despite these differences, the number gangs perform certain common functions for their members. The most important of these are the following:

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that the 27s formed inside prison and might have been the 'Scotland' gang of the early 20<sup>th</sup> century spoken of in the Department of Prisons 1912 report.

<sup>43</sup> However, in the Western Cape where the gangs have continued to operate effectively, the 27s continue to thrive in prison culture.

<sup>44</sup> See "Collect your Blood", *Witness* 4 February 2005, where it is suggested that thieving could well be the motto of the 26s".

<sup>45</sup> See Steinberg *Nongoloza's Children* at 15 and J.M. Lotter, 'Prison gangs in South Africa: A description' at page 71.

<sup>46</sup> See Exhibit 'V' Expert Opinion, Dr Willem Schurink at Cape Town dated 3 February 2003 at page 14.

- Training: This consists of acquiring knowledge, skills and equipment in order for members to adapt to their prescribed roles and to move upward in the gang.
- Security: Gangs see to it that members are protected against any external danger. Members are prepared to defend their territories with their lives and die if necessary for the gang/brotherhood. Many of the inmates will join the first group that promises security.
- Fulfilment of physical, psychological and social needs: Number gangs strive to attain favourable positions in prison in order to acquire and store sought-after articles such as food, tobacco, drugs and liquor. The gangs also provide camaraderie, status and protection and, in the case of 28s, sexual outlets are also provided.<sup>47</sup>
- Recruitment: Although prison authorities discourage gang formation, gangs still succeed in recruiting newcomers through entrapment or other forms of coercion to enrol inmates with sought-after qualities.<sup>48</sup> In an interview with the SABC, a prisoner from the Eastern Cape Middledrift Maximum Security Prison stated, “not belonging to a gang makes a prisoner an easy target for beatings and stabbings...but there are those who have found another way...”<sup>49</sup>

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<sup>47</sup> *Ibid* at page 15.

<sup>48</sup> Haysom (1981) at page 30 notes that although membership is voluntary in theory, the circumstances of prison life play a role in participation where inmates may join gangs either because they are raped and reduced to wives or because they join to escape this fate.

<sup>49</sup> Special Assignment ‘Art of Survival’ broadcast script, SABC 3, November 2004.

## 4.2 Non-Number Gangs

### The Big 5:

This gang originated from the Torch Commando of the 1940s in Cinderella Prison. In the 1950s, their main objective was to aid escapes but when their leader, Masondo, was killed in an escape attempt, the gang decided to work with members of the Correctional Services. Members of this gang break down solidarity, which can be regarded as the cornerstone of the prison code.<sup>50</sup> The Big 5s also wear good-quality shoes called ganders with which they can sometimes deliver a lethal blow.

### Airforce:

The main objective of this gang is to escape from prison.<sup>51</sup> Members of this gang hold that, unlike some of the other gangs, membership is voluntary. Although they claim that they attempt escapes mostly due to ill treatment, they seem simply to make use of available opportunities.<sup>52</sup> The Commission was made aware of the fact that one of their *modus operandi* is to start a fight between two gangs when they are plotting an escape in order to distract the warders.<sup>53</sup>

Homosexual relationships within this gang are prohibited. The only communication with Correctional Services members is restricted to complaints or requests, as they fear that discussion may lead to exposure of gang secrets.

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<sup>50</sup> See the evidence of Dr W. Schurink, also Exhibit V at page 17.

<sup>51</sup> See the evidence of Mr Mohale, Gauteng hearings dated 25 October 2003.

<sup>52</sup> In the words of another prisoner, “The RAF chaps are dedicated to escape. All else is subservient to getting out and rank is accorded to those who have tried once or more to do so. I know a bloke here who has tried and, because he is still here, failed nine times”. That would make him a RAF4, which is the highest ranking in the “Air Force”. (See “Collect your Blood”, *The Witness* 4 February 2005).

<sup>53</sup> See Gauteng hearings dated 25 October 2003. Mr Mohale, a Big 5 gang member, stated the role and workings of the Airforce gang when he testified before the Commission.

Promotion within the gang depends on seniority and the number of times an inmate has escaped from prison.<sup>54</sup>

It is the view of some that a common factor among the gangs is that their codes are followed strictly and that membership is for life.<sup>55</sup> In one incident, a cleaner in Pollsmoor, who had been a gang leader of the 28s and was now working with the unit manager informing him of potentially dangerous situations, was stabbed by inmates who viewed him as a “sell-out who needed to be silenced”.<sup>56</sup> However, if one closely considers the current operation of prison gangs, especially the number gangs, it is apparent that aspects of previously differentiated members of each gang are increasingly being practised by all the gangs. For example, trickery and sexual relations among inmates are no longer the preserve of either the 26s or the 28s.

### 4.3 Street Gangs and Prison Gangs

It has been noted that in certain provinces, such as the Western Cape, where gang activity is rife both on the streets and in prison, there seems to be a relationship between the street gangs and the prison gangs. In one investigation, researchers found that a majority of the inmates in Pollsmoor prison between the ages of twenty one (21) and forty (40) belonged to a gang before they were imprisoned.<sup>57</sup> Based on this research, it can be said that these street-gang and prison-gang affiliations could be responsible for the continued existence of gangs in prison. Prison gangs, like street gangs, have developed a culture that glorifies

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<sup>54</sup> Amon Hlongwane, ‘Gang Conflict in Prisons’.

<sup>55</sup> Zeldia Venter, ‘Just get it over with and give me my life’ *Independent Online*, 19 November 2002 at [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=qw103770702145B216](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw103770702145B216) accessed on 26 November 2004.

<sup>56</sup> Correctional Services Portfolio Committee, Department of Regional Commissioners; Briefings 27 August 2004 at <http://www.png.org.za/docs/2004/viewminute.php?id=4372> accessed on 22 November 2004.

<sup>57</sup> Joanna Flanders Thomas, ‘Gangsterism in Prisons: Correctional Services Portfolio Committee Briefing by Centre For Conflict Resolution’ 12 June 2001 at [www.pmg.org.za/docs/2001/viewminute.php?id=684](http://www.pmg.org.za/docs/2001/viewminute.php?id=684) accessed on 26 November 2004.

the ideal of belonging to a gang and being respected on the merit of violence and disregard for the law.<sup>58</sup>

Research has also shown that an unusual phenomenon began to evolve, especially in the Western Cape, where street gangs such as the “Scorpions” and the “Born Free Kids” began to take on the metaphors, nomenclature and logic of the prison gangs. In the 1990s, the “Americans” and “The Firm” – both gangs operating outside prison – had in a wholesale manner adopted the number gang rituals. This was as a result of many of the prison gang members recruiting others after they were released from prison. This development did not find favour amongst the gang members inside prison because those recruiting on the outside did not hold senior rank in prison gangs, and thus did not have the authority to initiate people on the outside. At first, all such outside recruits were beaten and ostracised when they came to prison. Later, however, when outsiders like Jackie Lonti became wealthy, the situation changed.<sup>59</sup>

This collaboration between prison gangs and street gangs is more prevalent and apparent in the Western Cape, where both prison and street gangs pose a great challenge to the police services of the country. This collaboration also creates an extremely difficult environment for prison warders to work under and impacts on the Department’s rehabilitation programmes and the intentions of those inmates who are ready to change their lives.<sup>60</sup>

The existence of this undesirable collaboration is further reinforced by a recent study that found that members of the powerful 28s gang were running a street gang called “The Firm”, while members of the “Americans” gang began to

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<sup>58</sup> Department of Community Safety, Provincial Gang Strategy, April 2003 at page 3. The report notes that group identity, self-protection, pride and boredom play a role in luring young men into gangs.

<sup>59</sup> Steinberg, *Nongoloza’s Children* at page 58.

<sup>60</sup> See Briefings 27 August 2004 of the Correctional Services Portfolio Committee and the submissions of the Department Regional Commissioners; at <http://www.pmg.org.za/docs/2004/viewminute.php?id=4372> accessed on 22 November 2004.

introduce mandrax into prisons.<sup>61</sup> This gang was linked to the 26s, along with a number of other Western Cape street gangs, such as “The Naughty Boys”.<sup>62</sup>

Given the continuous movement of prisoners into and out of prison, it is clear that there will always be a continuous revolving door of gang influence entering and leaving our prisons. Gang associations formed outside prison will continue inside and *vice versa*. With gangs exerting such a level of influence, it is unlikely that rehabilitation will take place in prison. The reality is that most prisoners will have become more hardened criminals by the time they are released and that the skills that they acquired during their imprisonment will return them to a life of crime on the outside.

The relationship between prison gangs and street gangs also appears to be important when it comes to meting out punishment on gang members and non-gang members who either breach codes or are a threat to the proper functioning of the gangs.

In his testimony regarding the safety of the Grootvlei informers, one inmate told the Commission the following:

*“... they will be relatively safe obviously outside as inside (alluding to the fact that the ‘number gangs’ could get them even if they were released from prison.)”*<sup>63</sup>

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<sup>61</sup> Kinnes-Steinberg (2000) cited in Schurink ‘The world of Wetslaners: an analysis of some organisational features in South African Prisons’ at page 20. See also Joseph Aranes and Yunus Kemp, ‘Gangsters will fall and they will fall hard’ *The Cape Argus* 22 October 2003 at page 1 - the article gives a list of street gang members and their prison gang affiliations.

<sup>62</sup> Norman Joseph, ‘Gang Boss gets triple life for Naughty murders’, *The Cape Argus*, 25 March 2003 at page 7, discussing the Cape High Court trial of Calvin ‘Gong’ Louw, a well-known 28s gang leader.

<sup>63</sup> Marius Engelbrecht, record of proceedings Jali Commission of Inquiry, Bloemfontein High Court 28 June 2002 at page 743.

## 5. CORRECTIONAL SERVICES MEMBERS

The Commission has found that members often took bribes to turn a blind eye to sexual abuse, gang violence and thefts taking place in prison. In some cases, members of the Department acted as the “pimps” of the awaiting trial prisoners, who were sold to the older prisoners.

There was also ample evidence of correctional services officials assaulting inmates and depriving them of their most basic liberties.<sup>64</sup> One of the prisoners told the Commission how he was repeatedly sexually abused in prison, by not only the gang members but also by correctional services officials, the very custodians entrusted to ensure his safety.<sup>65</sup> One twenty (20) year old told the Commission how both inmates and warders repeatedly sodomised him.<sup>66</sup> The same inmate testified that warders gave him over to other inmates and that one of the warders, who abused him and wanted him to be his ‘baby’, gave him dagga and toiletries.<sup>67</sup>

The involvement of some correctional officials in supporting and/or neglecting the occurrence and furtherance of criminal activity inside prisons relating to gangs therefore has to be explored. The Commission has heard evidence that some members are known gang members and have tattoos that prove their membership.<sup>68</sup> According to a former inmate, prison warders are also involved in gang activities, and gang members actively recruit prison warders as a way of increasing their power. For example, if a member of the 28s wishes to obtain a

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<sup>64</sup> See the evidence of Marius Engelbrecht, Commission proceedings, Bloemfontein High Court, dated 28 June 2002 at page 744. An earlier account that supports this submission is where a group of warders formed a vigilante group in 1999 called the Bavarians, who went on a spree of killing gangsters in the Western Cape – ‘Warders in Dock for Killing Gangsters’ *The Cape Argus* 27 March 2003.

<sup>65</sup> See the evidence of Louisa Karp, Pretoria Exhibit ‘TT1’. For a more detailed account of the incidents see the Chapter on Sexual Violence.

<sup>66</sup> See the evidence of Wilson Mohodi – Commission’s Fifth Interim Report.

<sup>67</sup> *Ibid.*

<sup>68</sup> See hearings of Leeuwkop Prison, Transcript at page 2605.

specific prisoner as a “wife”, he may succeed in having the targeted prisoner transferred to his cell by gaining the complicity of a recruited warder. It has also been reported that warders not only facilitate but also engage in sexual activities as part of their membership of a gang.<sup>69</sup>

Warders’ involvement with either the 26s or 28s can also extend to the smuggling of food, weapons, cigarettes, drugs, and other items as well as prostitution of juveniles to other prisoners.<sup>70</sup> Warder involvement is especially rife where the Big 5 gang is involved. The Big 5 gang, like the 28s, participates in sodomy and is heavily responsible for much of the pimping that occurs in prisons.<sup>71</sup>

Prison officials also play an important role in most of the escape attempts by prisoners. One former inmate told the Commission about how warders got involved in such escape schemes because of the potential financial gain that could result from the escapes.

The Commission is alive to the fact that gangs will continue to operate even in instances where there are no corrupt prison officials, yet prisoners have acknowledged that the absence of corrupt officials would be a positive step towards dealing with prison gangs.<sup>72</sup> One should therefore not lose sight of the fact that honest members of the Department who do not collude with the prisoners are extremely vulnerable to actions of prison gangs. In many cases, these custodians of the safety and wellbeing of inmates are themselves often the targets of initiation ceremonies, attacks to secure promotion and random assaults from gang members. The Department will fail its members if they are not made aware of their vulnerability in being targeted by gang members.

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<sup>69</sup> See the evidence of Louisa Karp, Pretoria hearings Exhibit ‘TT1’.

<sup>70</sup> ‘Prison gang sentences video makers to death’ at [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=qw1025281801279B216](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw1025281801279B216) 28 June 2002 accessed on 23 November 2004. Relating the testimony of Engelbrecht.

<sup>71</sup> Sasha Gear and Kindiza Ngubeni *Daai Ding* at page 13.

<sup>72</sup> See Evidence of Marius Engelbrecht *ibid* at 744. Also see Fana Peete, ‘Prison Boss encouraged culture of abuse’ *Pretoria News*, 21 April 2004, at page 4.

The Commission has also heard evidence that clearly demonstrates that even if prison officials are not knowingly co-operating with the gangs, they are most certainly, through their conduct, unknowingly improving the image of the gangs and the fact that they are in charge of prisons.

The Commission will use the example that Mr David Nkuna gave during the Leeuwkop hearings. Mr Nkuna said he was asked about gangsterism in Leeuwkop and that he thought the issue of gangsterism in Leeuwkop Maximum Prison was severe in that the “26” gang members were humiliating other prisoners attempting to rehabilitate themselves. He then complained about this humiliation to the officials at Leeuwkop. Shortly after his complaint, gang members threatened him saying he had “*de-characterised*” them in public by talking about them and by disclosing their sodomy activities to the authorities.

In Mr Nkuna’s own words, “*Nkuna you must be very, very careful. Tomorrow morning is the end of your life, you’ll die. Members of the ‘26’ gang are planning to come to stab you inside your cell.*”<sup>73</sup> Mr Nkuna testified that after this threat, he went to the Head of the Section where he indeed informed him of the threats and the way that the Head of the Section dealt with it was to remove Mr Nkuna from the cell and to put him and another prisoner, who was also threatened, in isolation. This conduct by Departmental officials clearly shows that they do not understand the power struggle of gangs in the prison. They also do not know how to handle gangs who make such threats or how to show the rest of the prisoners that they are in control of the prison and that they will deal with those offending gang members severely.

The case of Mr David Nkuna and Mr Kubheka shows that the officials lack insight into the dynamics of gangsterism and perpetuate gangsterism through their ignorance.

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<sup>73</sup> See the Transcript of Leeuwkop proceedings, page 2 718.

## 6. GANGS AND SEXUAL ABUSE

Gangs, and in particular the so-called “number” gangs, are an important factor in the analysis of sex in prison because the practice of prison marriages is institutionalised in gang structures.<sup>74</sup> Thus, the reality, despite the earlier denial by prison authorities, is that sexual activity in South African prisons is intertwined with gang activity.<sup>75</sup>

The nature of this institutionalisation and the gangs’ related attempts to regulate sex in prison will be given specific attention here. Central to gang membership and participation, especially among the 28s and the Big 5s, is the concept of “manhood”.<sup>76</sup> The dominant relationships through which sex takes place in prison are partnerships known as marriages. These relationships are sanctioned and institutionalised by inmate power structures, which often play out through the gang system.<sup>77</sup> Men are the superior partners and they own their wives. Central to being a man is the expectation that he provides materially for his wife. Thus men procure food, cigarettes, dagga and other goods while the ‘wyfies’ are required to keep the home-space in order and to serve their men. Thus the ‘wyfie’ does the washing and all the things associated with the social role of a woman. To be a wife is not a prized position within inmate culture and is usually associated with inferiority, stigma and loss of status. New arrivals or first-time offenders are especially vulnerable. The new inmates are not only vulnerable for sex purposes but also constitute an easy source of material goods such as clothing, money, jewellery and toiletries.

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<sup>74</sup> This is not to assume that the non-number gangs do not engage in forced sex in prisons since it has been highlighted that the other gangs are also beginning to use gang sodomy as a form of punishment within prisons and also coerced relationships with other inmates.

<sup>75</sup> Sasha Gear, ‘Sex, Sexual Violence and Coercion in Men’s Prisons’ paper presented at *AIDS in Context* International Conference, April 2001, University of Witwatersrand, South Africa.

<sup>76</sup> What occurs outside these two gangs and, to some extent, consensual sex among inmates is elaborated later in the section.

<sup>77</sup> Sasha Gear and Kindiza Ngubeni *Daai Ding* at page 11.

The 28s gang fights on behalf of the three gangs for better conditions for the inmates. In turn, they are permitted to have sex, in their own ritualised manner, among themselves although they may never touch a 26.<sup>78</sup> In the 26s and the 27s, on the other hand, sex between gang members is formally outlawed and subject to severe punishment. The 28s, in contrast, are divided into two parallel hierarchies, the gold consisting of soldiers who fight the gang battles and the silver, which are female providing sex and other services to the gold line.

However, despite the official code of the 26s and the 27s, they too have more recently begun to take 'wyfies'.<sup>79</sup> Although the 26s and 27s claim to eschew homosexual activity and are reportedly forbidden by the gang's official code from taking a wife, staff at some prisons noted that homosexual activity has become common amongst all gangsters. Although the practice of *uchincha ipondo* (literally meaning change or exchange a pound), a form of consensual sex between prisoners, may take place within a single gang, the practice is likely to invite punishment from the gang, especially among the 27s, 26s and the other gangs such as the Big-5s. If one is caught, physical punishment or assault ensues.

The punishment meted out varies among the different gangs. Among the 26s, those caught may have to make a payment to keep the contravention quiet. The one who catches them may threaten them by saying 'I've seen you doing this, now its either you pay me R26 or R126 and if you don't I will tell the other 26 guys.'<sup>80</sup> On the other hand, if the parties belong to the 28 gang, the guy will tell them 'Now I want to have sex with both of you'.<sup>81</sup> Given that most of the gangs now take 'wyfies', the distinction among them is that the 28s will fight or go to war with another gang if a relationship is threatened from outside its ranks.

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<sup>78</sup> Steinberg *Nongoloza's Children* at page 15.

<sup>79</sup> Goyer KC, 'HIV/AIDS in Prison: Problems, Policies and Potential' (2003) 79 *ISS Monograph Series* at page 36 account of incidents in Westville Medium B.

<sup>80</sup> Gear, S and Ngubeni K, '*Daai Ding; Sex Sexual Violence and Coercion in Men's Prisons*', (2002) Center for the Study of Violence and Reconciliation at page 52.

<sup>81</sup> *Ibid* at page 53.

Sex is also a commodity in prison and manipulation and trickery are often used. New prisoners may not be attuned to the workings of prison economies. One inmate relates:

*“if you do not have a cigarette, you do not have it, so do not bother prisoners because obviously a prisoner’s things speak. If I give you a cigarette at night I will remind you...Give me sex. You start refusing and I say ‘I want my cigarette... I want it now ‘. And he does not have it. He has to pay me in some other way, he has to make a plan for me.”*

Certain studies have shown the truth of the above statement. In a Malawian study it was noted that:

*“Juveniles agreed to have sex with these men because they had no clothes and no blanket and they were hungry. One day these boys started to cry and refused to have sex. The men took away their blankets and after spending a night in the cold they agreed to allow the men to have sex with them again.”<sup>82</sup>*

Although there are many examples that surfaced before the Commission of a similar vein, the Commission will only quote the evidence of one juvenile at Bloemfontein to highlight the vulnerability of young inmates:

*“The head cook first enticed me with food and then sodomised me in the storeroom of the kitchen.”<sup>83</sup>*

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<sup>82</sup> Jolofani and DeGabriel cited in Sasha Gear, ‘Sex, Sexual Violence and Coercion in Men’s Prisons’, paper presented at AIDS in Context, International Conference, April 2001, University of Witwatersrand, South Africa, accessed at [www.csvr.org.za/papres/papgear1.htm](http://www.csvr.org.za/papres/papgear1.htm) on 26 November 2004.

<sup>83</sup> See Fifth Interim Report at page 59.

Outside of the material commodity nature of sex in return for material goods, it has been well accepted that sex is often the accepted payment for gang-related protection where an inmate has no access to money or drugs.<sup>84</sup> This is not to allege that all rapes or sexual violations that occur in prisons are gang related; indeed, studies have shown that some men rape others out of anger at their own circumstances. One inmate stated that:

*“if you are frustrated with your situation, perhaps the magistrate remanded you for four months. Just to release my anger at being locked up, I end up sodomizing people.”<sup>85</sup>*

It has been argued that, by raping another man, the attacker seeks to validate his manliness and physical superiority through destroying the victim’s own claim to masculinity.<sup>86</sup> While this may be true of inmate culture, it is difficult to understand the abuse that occurs from the members of the Correctional Services. At some of the hearings, the Commission has heard how some warders get drunk on duty and demand sexual favours from inmates in return for allowing the inmates to use telephones, see visitors or leave their cells for routine exercise sessions.<sup>87</sup>

Many factors, including overcrowding, the participation of warders and the fear of reprisals contribute to the culture of silence of males who are raped in prison.<sup>88</sup> There were many incidents that surfaced before the Commission of prison rape but no awaiting trial prisoner testified during pre-trial detention. However, this does not mean that it does not happen to awaiting trial prisoners as the evidence of Karp and others demonstrated.<sup>89</sup> Recently, an incident was reported in the

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<sup>84</sup> Goyer and Gow cited in Sasha Gear note 77.

<sup>85</sup> Kola et al 1997, the case study cited in Sasha Gear ‘Sex, Sexual Violence and Coercion in Men’s Prisons’ at page 6.

<sup>86</sup> *Daai Ding* at 2.

<sup>87</sup> See Fifth Interim Report pages 54-65.

<sup>88</sup> See Chapter on ‘Sexual Violence’.

<sup>89</sup> See Chapter on ‘Sexual Violence’.

media of a man who was sexually assaulted by other prisoners<sup>90</sup> after he had been arrested for fraud and was awaiting trial at Westville Prison. Reports have shown that while rapes are rampant in South African prisons, the situation is especially difficult to control in the awaiting trial sections of prisons since supervision is limited compared to the sentenced sections.<sup>91</sup>

## 6.1 Gangs and Violence

Much high-risk behaviour is directly related to gang practices and activities. Membership in both the 26s and 28s gangs includes tattooing and it is not uncommon for more than one inmate to be tattooed at a time using the same needle.<sup>92</sup> Prisoners may also be required to attack another prisoner and draw blood in order to be initiated into a gang. While the 26s engage in stabbings, the primary activity of the 28s is sex and prostitution. It has been said that almost half of deaths in prisons are unnatural and the result of gang violence.<sup>93</sup> As with the sex in prisons, the number gangs are also mainly responsible for the use of violence in prisons. Practices are, however, rapidly changing and all gangs are taking on the indiscriminate use of violence against each other and against non-members. In an affidavit where the inmate requests anonymity, the inmate stated the role of the gangs with regard to violence as follows:

*“The 27 gang’s whole structure is based on the issue of blood. The 27s are the ones that do the ‘cleaning up’, for example if we as the 26s have a problem with someone, including the authorities, we will ask the 27s to*

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<sup>90</sup> Tania Broughton and Zukile Majova ‘We need to break the silence over jail rape’; *The Independent*; 17 July 2004 at page 2.

<sup>91</sup> Tania Broughton and Zukile Majova ‘We need to break the silence over jail rape’; *The Independent* 17 July 2004 at page 2. The article notes that almost 50 000 prisoners languish in the awaiting trial sections and may be there for months on end; thus the rampant gang activity.

<sup>92</sup> See Goyer *Op cit* at page 37.

<sup>93</sup> See Amanda Dissel, ‘Tracking Transformation in South African Prisons, *Track Two* (2002) Vol. 11 no 2 at [http://ccrweb.uct.ac.za/archive/two/11\\_2/transformation.html](http://ccrweb.uct.ac.za/archive/two/11_2/transformation.html) accessed on 23 November 2004.

*assist in getting rid of the people who create problems for us. The 28s are the ones who will also assist the 27s in the cleaning up process.”<sup>94</sup>*

Many of the initiation ceremonies involve violence especially into the 27s and 28s gangs. One inmate recounted how he was recruited into the 28s:

*“I answered the question correctly, and I was told that to join the gang I must stab a white warder. I was told when the knife would arrive and how I must do it and what I must do afterwards.”<sup>95</sup>*

In another incident, a Cape Town man, who was in training to become a 28 member, shot his family members who had become state witnesses in a trial involving five 28s members who had been accused of stabbing a member of the 26s gang.<sup>96</sup> It became obvious to the Commission that both innocent warders and other inmates, gang and non-gang members, are often vulnerable to the brutal operation of prison gangs. Another practice that the Commission has heard of is the calling of a number; this is when an individual is marked for stabbing by one of the inmates, either because he poses a risk to the operations of the gang or as part of a test of courage.<sup>97</sup>

In some of the more recent turns, prison gangs have started to resort to unconventional forms of violence such as the intentional transmission of HIV/Aids.<sup>98</sup> This form of punishment is common to errant members or inmates

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<sup>94</sup> See Commission Exhibit ‘U’ at paragraph 19.

<sup>95</sup> Steinberg *op cit* at page 28.

<sup>96</sup> Karyn Maughan, ‘Gang Initiation drove man to edge of reason’ *The Cape Argus* 26 March 2004. This story must be contrasted with the assertion that relations are good between the 26s and the 28s. See Dr Schurink, Exhibit ‘V’, at page 17, Cape Town hearings dated 3 February 2003.

<sup>97</sup> See the evidence of Mr Engelbrecht, proceedings of Commission in Bloemfontein, giving details regarding the ‘calling of the number’ at page 735 *et seq.*

<sup>98</sup> See the evidence of Mr Morris from of the Inspecting Judges Office during the Commission’s Cape Town proceedings.

who refuse to join gangs and is applied by using those gang members who are HIV positive to rape those who fall foul of the gang.<sup>99</sup>

Violence between gang members and “franse”<sup>100</sup> is common, yet violence within a gang takes place rarely and only in special circumstances where the member has broken the gang code.<sup>101</sup> For example, although the 28s and the 26s often oppose each other, a certain degree of respect for each other’s work remains. They will not allow an inmate, who has committed a wrong against any of the numbers, to become a member until the wrong is corrected.<sup>102</sup>

In the gang context, your ability to fight and the nature of the crime you committed also gives you a qualified status in prisons. According to Steinberg violence serves three purposes in prisons: firstly, it makes inmates into men rather than boys, secondly, it is used to patrol the boundaries of gang space against warders and thirdly, it divides inmates into men and women. In 1997, the situation of gang activity had become so rampant that many institutions were rendered ungovernable because members feared for their lives and were staying away from work.<sup>103</sup> Although the situation has improved, gangs still render many prisons unmanageable.

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<sup>99</sup> Ben Maclennan, ‘Slow puncture; death sentence for prisoners.’ November 20 2002 at [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=qw103779360175R131](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=qw103779360175R131) accessed on 22 November 2004.

<sup>100</sup> A word commonly used to refer to non gang members

<sup>101</sup> In some of the most bizarre cases, inmates will attack warders, not as part of any initiation ceremony, but to remain in prison. These incidences are often unrelated to gang activity but reflect the poverty-stricken circumstances in which some inmates live when outside prison. To such prisoners, prison, despite its harsh conditions and the abuses they face, is seen as the better of the two evils. See Norman Joseph, “Inmates attack warders “to stay in prison”, 14 May 2004 *The Cape Argus* at page 8.

<sup>102</sup> See the evidence of Dr Schurink, Exhibit ‘V’, at page 17.

<sup>103</sup> Steve Pete, ‘The good, the bad and the warehoused’ *SACJ* (2000) 13 at page 41.

## 6.2 Smuggling

Member participation helps to facilitate gang activity. This is often apparent when gang members bribe warders to smuggle in goods and people.<sup>104</sup> It has been noted that without warder participation in smuggling networks, the availability of food, drugs and money in prison would be severely limited. One prisoner relates an inmate's interaction with prison officials:

*"If there is money you can buy anything and if the warder likes you, you can send them to buy cartons of cigarettes and sometimes, if you have already made them happy, they can bring you Nandos or what-what. For you to look after [small boys] you need to have lots of money... You have to sell [in order to support them]. There are lots of boys who sell drugs or dagga, all those things, and the police smuggle everything."*<sup>105</sup>

Besides abundant evidence showing the gravity of smuggling in prisons, a United Nations research team focusing on corruption found that, amongst the types of corruption that South African warders engaged in, smuggling ranked as the third highest making up 13% of the cases they investigated.<sup>106</sup>

In one of the most disturbing discoveries, the Commission, at the Grootvlei Prison hearings, was told how one member of the prison not only sold dagga and mandrax to prisoners but also sometimes allowed them to go to his home to buy

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<sup>104</sup> "I was paid to help inmates flee, says warder' *The Cape Times*, 1 April 2004 at page 4. A former prison warder for Johannesburg Prison [Kgukutli Louis Pobe] informed the Commission of how he and other warders had worked together in planning the escape of prisoners and how he received payment from the inmates for the escapes and to remain silent about theft complaints.

<sup>105</sup> See *Daai Ding* at page 68.

<sup>106</sup> Painter-Morland, M (2004); Final Consolidated report- Focused Assessment of Anti-Corruption capacity within the Department of Correctional Services, United Nations Office on Drugs and Crime, Pretoria. Accessed from [http://www.unodc.org/pdf/southafrica/focussed\\_assessment\\_anti\\_corruption\\_2004.pdf](http://www.unodc.org/pdf/southafrica/focussed_assessment_anti_corruption_2004.pdf) on 26 November 2004

dagga.<sup>107</sup> A prisoner, Mr William Smith, informed the Commission on how he would earn about R450 a month selling Mandrax for one of the warders and how he was persuaded to do this because he had no parents or visitors.

Mr Jansen, in his testimony before the Commission regarding Pollsmoor Prison, stated that a decision was taken in 1999 to separate gangsters from non-gangsters in Pollsmoor. He said the gang members could be identified by their tattoos and that they could rely on the experience of members to identify gangs. Mr Jansen argued that there is a willingness on the side of gangsters to change and that they are eager to learn alternative ways of dealing with conflict.<sup>108</sup>

Mr Jansen's view is also supported by the evidence of Mr X,<sup>109</sup> who emphasised the importance of splitting gangs and who also said that it was important to keep gang members busy with workshops, church meetings, sports and the like so that they do not have the time to engage themselves in gang activities.

Dr Willem Johannes Schurink, who has done research on gangs, stated that prisoners made numerous allegations about smuggling operations and schemes involving the warders and gang members. He said that prison policy does not allow gangs and that certain Heads of Department, who acknowledge that there is nevertheless a problem, try to curb it by speaking to gang members. However, he added that, despite the prescribed measures, both prisons and officials approached the gang problem inconsistently.

According to a report of the Portfolio Committee on Correctional Services on their visit to Pollsmoor Juvenile Detention Centre on the 15 October 2004,<sup>110</sup> offenders stated that it is almost obligatory to belong to a gang in Pollsmoor in order to

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<sup>107</sup> Fikile-Ntsikelelo Moya 'Warders find prisoners are not so nice', *The Star*; 26 June 2002.  
<sup>108</sup> See Exhibit 'Q' and the evidence of Chris Gifford at Cape Town, who testified that the training was aimed at gang members and the initiative was called the "Change Begins with Me Programme".

<sup>109</sup> A gang member who requested not to be identified.

<sup>110</sup> See <http://www.pmg.org.za/docs/2004viewminute.php> accessed 29 November 2004.

ensure one's safety and protection. Offenders also said that it was impossible to stop gangs within the prisons, as they have been in existence for a very long time and traditions are passed on from generation to generation. In addition, the gang culture is rife within the community outside prison, especially in the Western Cape as stated earlier, where there is a strong relationship between civilian and prison gangs. Some offenders stated that because they have little opportunity to be kept busy in prison by working or studying, they have little else to do than keep busy with gang business.

In the same report, it was stated that drugs are widely available within Pollsmoor:

*“some are smuggled in by members, others by offenders, especially when they are escorted by police to court cells. This year nine (9) members have been arrested for drug smuggling within Pollsmoor. Sometimes contractors working on the RAMP projects are also responsible for providing drugs to offenders”.*

## **7. DEPARTMENTAL RESPONSE TO GANGS**

Although overcrowding and understaffing undoubtedly exacerbate an already bad situation, there is a view that the inefficiency, indifference and corruption on the part of prison officials has led to the high level of gang activity in prisons. There have been varied responses to the problems of gangs on an official level and it is necessary to examine briefly, and consider the success or practicability of, some of these responses. The Commission is naturally aware that these responses need to be considered against the backdrop of the size of the institution and gravity of the problems of gangs at such an institution.

## 7.1 Recognition and Separation

It has become a practice in some correctional facilities to place inmates belonging to the same gangs in the same cell in a bid to curb inter-gang prison violence. Pollsmoor Prison, which has experienced many serious incidents of gang violence, has attempted to follow this approach. However, overcrowding limits the extent to which this approach can effectively be followed.<sup>111</sup> This method, however, does at least attempt to serve two (2) important functions in the effective running of the prison. Firstly, it attempts to minimise the incidents of violence and secondly, it tries to limit the number of new inmates who are recruited into gangs.

In the Eastern Cape, two inmates died as a result of prison violence and one of the deaths was gang related. In a briefing to the Correctional Services Committee, Mr Tolo (ANC) asked whether members of the same gang were grouped together and whether this did not give the impression to the public that the Department was legitimising gangs as an institution in prisons.<sup>112</sup> Mr Gxilishe, the Provincial Commissioner of the Western Cape, replied that the Department did not recognise gangs and cellmates were mixed irrespective of gang affiliation.<sup>113</sup> He also stated that the Department did not have a programme targeted at gangs *per se* since the Department did not recognise them. He went further to say that the Department's rehabilitation programme targeted all

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<sup>111</sup> Helen Bamford, 'Life on a knife-edge at Pollsmoor', *The Cape Argus*; 24 July 2004. The article notes how, in the sentenced and the unsentenced section, the gang members were separated from non-gang members.

<sup>112</sup> Mr B. Gxilishe, Regional Commissioner of the Eastern and Western Cape presenting a report before the Correctional Services Portfolio Committee, Department Regional Commissioners; Briefings 27 August 2004 at <http://www.pmg.org.za/docs/2004/viewminute.php?id=4372> accessed on 25 November 2004.

<sup>113</sup> *Ibid.*

inmates.<sup>114</sup> Mr Gxilishe's statement seems rather short-sighted if one accepts the submission of Mr Mketshane to the Portfolio Committee that 90% of inmates at Pollsmoor are gang members and therefore they could not separate gang from non-gang members.

A social worker suggested that a system of classifying unsentenced inmates into different categories should be developed to deal with the problems of awaiting trial prisoners, who are amongst the most vulnerable to abuse and violence.<sup>115</sup> However, despite contrary evidence, the prison's spokesperson, Mr Maupi Monyemangene, denied that rape was rife in South Africa and held rather that rape in prisons could not be attributed to a particular factor. He added that the Department encouraged victims to notify prison heads.<sup>116</sup>

It has been noted that the problem in South Africa is not the existence of gangs *per se* but rather the extent to which the activity of gangs has affected the orderly operation of correctional institutions.<sup>117</sup> This scourge of gang activity in our prisons represents a daunting challenge to the Department of Correctional Services. The Department critically requires sound initiatives and a responsive attitude to show its commitment to creating an effective and efficient prison system that ensures the safety and security of all the prison inmates.

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<sup>114</sup> Mr B. Gxilishe, Regional Commissioner of the Eastern and Western Cape, presenting a report before the Correctional Services Portfolio Committee, Department Regional Commissioners presentations; minutes 27 August 2004.  
<http://www.pmg.org.za/docs/2004/viewminute.php?id=4372> accessed on 25 November 2004.

<sup>115</sup> Mariette le Roux, 'Untried prisoners are vulnerable to abuse' *The Independent Online* 6 February 2004 at  
[www.iol.co.za/general/news/newsprint.php?art\\_id=qw1076937844689B240&sf](http://www.iol.co.za/general/news/newsprint.php?art_id=qw1076937844689B240&sf) accessed on 25 November 2004.

<sup>116</sup> Tania Broughton and Zukile Majova 'Breaking Silence over jail rapes' *The Independent* July 17 2004 at page 2.

<sup>117</sup> Report of The National Prisons Project of The South African Human Rights Commission at page 78.

## 7.2 The White Paper of the Department

Despite the complexities and dangers that gangs pose to proper correctional facilities, the subject received very little attention from the Department in its White Paper which provides as follows on the subject:<sup>118</sup>

### “10.6 Prison Gangs and the Safety of Inmates

10.6.1 *The safety of inmates compels the Department to effectively deal with the issue of gangs in correctional centres. Gangs have been a feature of the South African correctional system over the past century. Along with the presence of gangs is a level of correctional centre violence that violates the safety of other inmates. It manifests in many ways such as:*

- *Gang supported fights;*
- *Assault and murder;*
- *Forced sexual activity or rape;*
- *Intimidation and coerced favours; and*
- *Complicity of or the turning of a blind eye by Correctional officials in relation to these activities.*

10.6.2 *The pervasive manner in which prison gangs assert control over the management of correctional centres requires an anti-prison gang strategy to be adopted by correctional management.”*

Regrettably, all that this important document does is confirm the existence of a century old problem and merely calls for an anti-gang strategy to be formulated.

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<sup>118</sup> See The White Paper at page 75.

The Department's Strategic Plan for the years 2005/6 to 2009/10 also takes the matter no further, as it makes no mention of any intended plan on the part of the Department to deal with gangs in our prisons over the next five (5) years.

A submission by the Centre for the Study of Violence and Reconciliation (CSV) to Parliament on the White Paper, states that while the draft paper emphasises the need to provide a safe environment for inmates, a proper strategy needs to be developed to create this environment, especially in cells at lock-up time when offenders are more vulnerable to threats, violence and coercive behaviour.<sup>119</sup> It suggests that staff be adequately trained to deal with incidents and that prisoners who pose a risk to the safety or health of other inmates must be separated from the general prison population and those vulnerable should be protected.

The Civil Society Prison Reform Initiative (CSPRI), in their oral submission to the Portfolio Committee on Correctional Services, states that the attention given to prison gangs in the Draft White Paper is scant.<sup>120</sup> The submission states that the severe impact that prison gangs have on the daily lives of prisoners and the management of prisons begs the question why the Department of Correctional Services has not launched a thorough investigation into prison gangs since 1994. The CSPRI requests a far more rigorous approach in the White Paper to address the problem of gangs in our correctional facilities, a position fully endorsed by this Commission. Why a comprehensive strategy has not been implemented to address a problem which the Department itself acknowledges has been in existence for over a century is difficult to comprehend and seems to indicate that the problem of prison gangs has not been high on the list of priorities of management in the years gone by.

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<sup>119</sup> Centre for the Study of Violence and Reconciliation, Oral Submission to the Parliamentary Portfolio Committee on Correctional Services on the Draft White Paper on Corrections in South Africa, 3 February 2004.

<sup>120</sup> L. Muntingh and Julia Sloth-Nielsen, Oral Submission to the Portfolio Committee on Correctional Services regarding the Draft White Paper on Correctional Services 3 February 2004.

## 8. COMPARATIVE STUDIES

Prison gangs are not unique to South Africa and have been the subject of studies in North America for some decades before the phenomenon caught the attention of the authorities and academia elsewhere. Gangs in South Africa and America both have in common their fanciful accounts of their origins, laws, salutes and military organisational structures.<sup>121</sup> While American gangs have mainly a racial-ethnic element, a close analysis of how the authorities have dealt with gang related incidents in US prisons might be helpful in understanding fundamental aspects and provide South Africa with some guidelines on how to deal with prison gangs.<sup>122</sup>

Among the super gangs of America, the Aryan Brotherhood (AB) is white, the Black Guerilla Family, as its name suggests, is black and the Mexican Mafia and Latin Kings are Spanish American.<sup>123</sup> The only difference between the American and the South African prison gangs is that the centrality of race and ethnicity that dominates the composition of American gangs is minimal in the South African prison gangs, where racial and ethnic groups freely interact with no signs of animosity. Unlike South African prison gangs, which have a long history, American prison gangs have a relatively short history having originated in the 1940s. However, they had a considerable impact on prison life in the 1960s.<sup>124</sup>

As in South Africa, American prison gangs are also responsible for much of the violence, distribution of drugs, manufacture and transport of weapons and loan sharking inside the prisons.

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<sup>121</sup> See evidence of Dr Schurink Exhibit “B” Cape Town hearings at page 25.

<sup>122</sup> It is noted from this report that many of the American States have had to deal with prison gang activity. The State of California provides an interesting case study in its similarity to Cape Town with respect to prison gang activity.

<sup>123</sup> *Ibid.*

<sup>124</sup> Scott N. Tachiki, ‘Indeterminate Sentences in Super-max Prisons Based Upon Alleged Gang Affiliation: A reexamination of Procedural Protection and a Proposal for Greater Procedural Requirements’, *California Law Review*, 83 (1995) 1115 at page 1 127.

American authorities have devised a number of ways to deal with prison gangs with the most popular and widely documented being the creation of the super-max prisons.<sup>125</sup> These super-max prisons/control units have been described as “a prison within a prison” because of the indeterminate state of isolation or confinement of the inmates housed in these facilities.<sup>126</sup> It has been argued that the rationale behind these super-max prisons is to ensure maximum protection for prison staff and inmates within the super-max prison and throughout the rest of the prison system.<sup>127</sup> These goals are achieved in two ways: Firstly, the super-max prisons isolate the most violent, predatory offenders within the system, allowing inmates at the other facilities within the system to serve their time with less chance and fear of being a victim of violence. Secondly, super-max prisons limit an inmate’s freedom, making the potential for violence inflicted upon fellow inmates or prison staff practically nonexistent.<sup>128</sup> In such super-max facilities, inmates are confined to tiny cells the size of a parking space, for twenty three (23) hours, often in what they describe as an “eerie silence”.<sup>129</sup>

There is no doubt that there is at present, and will in the future, be great pressure on the Department to resort to the building of more super-max prisons like C Max in Pretoria and the super-max prison in Kokstad in order to break the

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<sup>125</sup> For more details on South Africa’s super-max prisons, see the Chapters on Solitary Confinement and the section dealing with C-Max Prison.

<sup>126</sup> Rachel Kamel and Bonnie Kerness, ‘The Prison Inside Prison; Control Units, Super-max prisons and Devices of torture’ (2003) Americans Friends Service Committee Justice Visions Briefing Paper at <http://www.afsc.org/community/prison-inside-prison.pdf> page 1, accessed on 25 November 2004.

<sup>127</sup> Scott Tachiki, ‘Indeterminate Sentences in Super-max Prisons Based Upon Alleged Gang Affiliation: A reexamination of Procedural protection and a Proposal for Greater Procedural Requirements’, *California Law Review*, 83 (1995) 1 115 at page 1 116. Also see the Chapter on Solitary Confinement for a more in-depth discussion.

<sup>128</sup> Scott Tachiki *ibid* at 1128. The author also alleges that these facilities have two added benefits in that by removing prison gang leaders and the most violent inmates from the general prison population, officials at other prisons are able to reduce the amount of control they exert. Furthermore, because super-max facilities have a bad reputation among prisoners as a bad place to serve time, prisoners in other prisons are deterred from committing violent acts or joining prison gangs because they do not want to serve time in a super-max facility.

<sup>129</sup> Rachel Kamel and Bonnie Kerness, *op cit* at page 2.

stranglehold that gangs have on our prisons. It is the Commission's view, however, that given the provisions of the Constitution and the need to apply acceptable national and international norms for humane punishment, it is unlikely that this imprisonment policy in its current form will survive constitutional scrutiny for much longer under the new democratic order that seeks to protect basic human rights.<sup>130</sup>

## **9. THE PROBLEMS IN DEALING WITH GANGS**

The Commission is of the opinion that the Department of Correctional Services needs to address the following prevailing circumstances in our correctional facilities before it can succeed in its quest to eradicate gangs from our prisons:

- The already overcrowded prisons that make it extremely difficult to implement policies that will separate the troublemakers from those inmates who are vulnerable. Without some kind of separation policy, non-gang members will continue to be vulnerable. Overcrowding also severely hampers the Department's efforts at implementing its rehabilitation programmes.
- The harsh conditions inherent in prison life that, to a large extent, make prisons conducive to the creation and advancement of prison gangs. Although there are some benefits to inmates in belonging to gangs, the overwhelming evidence suggests that the existence of prison gangs is detrimental to an effective correctional service.

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<sup>130</sup> Although super-max facilities continue to exist in the USA, they have been found to contravene international human rights conventions and to deny inmates' rights. See chapter on the Treatment of Prisoners wherein the Commission recommends that such prisons are infringing on the rights of prisoners.

- Understaffing in the Department of Correctional Services that results in the members being unable to monitor incidents of gang activity, particularly sexual abuse, that occur during lock-up, particularly in the awaiting trial section of the prisons.
- The lure of money and safety from attack that leads to the corruption of some of the Correctional Services staff members who choose to associate and align themselves with gangsters instead of protecting those in their custody.

Although numerous factors aid the functioning of gangs in South African Prisons, overcrowding remains the greatest challenge, a view that the Minister of Correctional Services supports, as can be seen by the following statement:

*“Overcrowding remains our greatest challenge. It is threatening to undermine our efforts to comply with international laws and standards regarding the separation of categories of prisoners, humane detention, provision of basic needs, provision of comprehensive primary health care, rehabilitation of offenders, safe custody and raising and maintaining staff morale.”*<sup>131</sup>

It was found that the ten (10) most overcrowded prisons in South Africa were overcrowded by 285% to 386%. It was also noted that overcrowding results in the inability of the Department to provide effective security to prisoners and exacerbates the spread of gangsterism within prisons, which has a ripple effect on staff morale and stress levels leading to high absenteeism.<sup>132</sup>

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<sup>131</sup> Minister of Correctional Services, Mr B. Skosana, speech to Parliament dated 12 May 2000.

<sup>132</sup> Portfolio Committee on Correctional Services Report, ‘Solutions and Recommendations to prison Overcrowding’, 7 October 2004 at paragraph 4.

Furthermore, in responding to a question about the overcrowding in prisons and whether fewer arrests would increase the crime rate, the Inspecting Judge answered:

*“No, they learn about crime in jail and that creates more crime. They cannot be rehabilitated in jail because it is completely overcrowded.”*<sup>133</sup>

The issue of overcrowding and the negative impact thereof on correctional facilities is dealt with more comprehensively elsewhere in this report. The Commission is mindful that success in the fight against gangsterism will not be achieved overnight but is convinced that if overcrowding and the other circumstances referred to can be addressed, then the turning point in the battle against gangsterism would have been reached.

It is the view of the Commission that the Department’s current approach to combating gangsterism is largely defeatist with the existence of gangsters being accepted as part and parcel of prison life. The Department clearly needs a new strategy and vision to disempower the gangs and retake control of the prisons.

## **10. RECOMMENDATIONS**

To address the problem of gangs in our prisons, the Commission makes the following recommendations:

1. To restrict the influence that gangs are able to exert over newly arriving prisoners, the Commission recommends that the Department undertake the classification and separation of awaiting trial prisoners into:

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<sup>133</sup> Nazma Dreyer. ‘We need fewer inmates, says inspecting judge’ quoting the words of Inspecting Judge of prisons Hannes Fagan, *The Cape Times*, 17 June 2004.

- 1.1 First offenders;
- 1.2 Repeat Offenders, and
- 1.3 Gang members

Depending on the outcome of the research and the comprehensive strategy to be developed on gangs referred to hereunder, this separation policy could even ultimately be extended to sentenced prisoners. Considerations could also be given to dedicated correctional facilities or even portions thereof, being used to house members of a particular gang. The Commission is mindful, however, that the implementation of such a policy will be dependent on a whole host of practical and logistical considerations and that the implementation of such a policy may only be possible in certain prisons.

2. Proper and detailed research should be carried out by the Department on gangs and their culture with the aim of developing and ultimately implementing a comprehensive gang strategy with such strategy being incorporated into the Department's Strategic Plans.
3. To achieve this, the Department should create better networking and working relations with the many NGO's who have the skills and knowledge needed for the development and implementation of a comprehensive anti-gang strategy. It is, accordingly, recommended that the Department liaise with these organisations before it compiles its anti-gang strategy, as envisaged in its White Paper. The anti-gang strategy should be compiled after due consultation with non-government organisations such as:
  - 3.1 Centre for Study of Violence and Reconciliation;
  - 3.2 Centre for Conflict Resolution;
  - 3.3 Institute for Security Studies.

4. Linked to the above, the Department should develop a comprehensive database on prison gangs and gangsters and collect and update such information on an ongoing basis. With the high rate of recidivism in our society, this database will easily identify repeat offenders who are gang members when they return to prison. Prisoners who are being transferred from one prison to another will also be identified if they are gang members. Procedures will naturally have to be incorporated to ensure that the names of those inmates who have clearly proven that they have given up their gang membership, can be reclassified on the system.
5. The Department should make use of the expertise and skills of the National Intelligence Agency in building a database of known gang members and follow a multi-disciplinary approach with the Agency in order to successfully clamp down on gangsters in prison.
6. More contact should also be made by the Department with those selected NGO's who have valuable experience and skills to offer the Department in its rehabilitation programme by assisting gang leaders to change and become law-abiding citizens.
7. The Department can also learn and draw upon the experience of the South African Police Service, which has achieved significant success by not working in isolation but rather in closer contact with communities and non-governmental organisations.
8. As a short-term safety measure, the Department should develop strategies as suggested by the CSV<sup>134</sup> and the Commission<sup>135</sup> to ensure that inmates are safe in their cells especially at lock-up time when gang activities are at their most prevalent and dangerous.

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<sup>134</sup> See Footnote 119 above.

<sup>135</sup> See recommendations in Chapter on Sexual Violence where the installation of cameras connected to closed circuit television is recommended.

9. The Disciplinary Code of Conduct should be amended to make any involvement and association with a gang by correctional services members a dismissible offence. Clearly no gang can exist in prison without the active or passive assistance of warders. If these members who co-operate in any way with gangsters are not dismissed, the image and the integrity of the Department and their fellow colleagues will be tarnished. An amendment of the Code would also impact on the gang's ability to recruit new correctional service members who will now fear the severe penalty of associating with gangs.
10. Heads of Prisons and Unit Managers should be trained in basic labour law in order to fulfil their tasks as managers and to equip them to discipline transgressing members decisively, confidently and without fear of coming to incorrect decisions or following incorrect procedures. The presence of such better trained and skilled Heads of Prison and Unit Managers will have a positive impact in improving general discipline at correctional facilities. Members under their command will be less inclined to consider improper behaviour, such as colluding with and being corrupted by gang members.
11. In the short-term, it is recommended that the Department make use of the Prevention of Organised Crime Act No. 121 of 1998 (POCA). Section 9<sup>136</sup>

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Section 9 of the Act provides as follows:

“Sub-section 1 – Any person who actively participates in or is a member of a criminal gang and who:

- (a) wilfully aids and abets any criminal activity committed for the benefit of, at the direction of, or in association with any criminal gang,
- (b) threatens to commit, bring about or perform any act of violence or any criminal activity by a criminal gang or with the assistance of a criminal gang, or
- (c) threatens any specific person or persons in general with retaliation in any manner or by any means whatsoever, in response to any act or alleged act of violence shall be guilty of an offence.

Sub-section 2 – Any person who:

of the Act can be used to charge those prisoners involved in gang activities and section 11<sup>137</sup> to identify prisoners as members of a gang.

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- (a) performs any act which is aimed at causing, bringing about, promoting or contributing towards a pattern of criminal gang activity,
  - (b) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about, perform or participate in a pattern of criminal gang activity, or
  - (c) intentionally causes, encourages, recruits, incites, instigates, commands, aids or advises another person to join a criminal gang, shall be guilty of an offence.”

<sup>137</sup>

Section 11 of the Act provides as follows:

“In considering whether a person is a member of a criminal gang for purposes this chapter the Court may have regard to the following factors, namely that such person:

- (a) admits to criminal gang membership,
- (b) is identified as a member of a criminal gang by a parent or a guardian,
- (c) resides in or frequents a particular gang’s area and adopts their style of dress, their use of hand signs, language or their tattoos or associates with non-members of criminal gangs,
- (d) has been arrested more than once in the company of an identified member of a criminal gang for offences which are consistent with usual criminal gang activities,
- (e) is identified as a member of a criminal gang by physical evidence such as photographs or other documentation.”