

THE INCARCERATED BODY: JUDICIAL INSPECTIONS, HUMAN RIGHTS AND RELIGIOUS POLICY IN PRISONS IN SOUTH AFRICA

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Abstract

The theologian is the voice of the voiceless, including the voiceless in prison. In the first part of this article the history of prison inspection as an outcome of the human rights movement is traced both nationally and internationally, culminating locally in the establishment of the Judicial Inspectorate of Prisons as an independent office under the control of the Inspecting Judge (effective from 1 June 1998). Special attention is given to the position of Independent Prison Visitors (IPV) in this system and their role in becoming the “voice of the voiceless” in prison environments. Because one of the authors of this article has served as an IPV, the second part of the article is dedicated to observations on prison spiritualities and the views of prisoners on their (human) rights as people of faith. The article concludes with suggestions for a policy accommodating the religious needs of prisoners in South African prisons.

1 AIM AND METHOD

South Africa boasts both a high crime rate and an exceptionally high church membership rate.ⁱ The pietistic morality prevalent in South Africa as the product of pre-Enlightenment missionary activity presupposes that criminality and religiosity exclude one another, and that criminals cannot or do not want to be religious. This has led to a “lack of understanding about religion that is so frequently evident among policy makers” (Wuthnow 2004:xiii), also as far as South African correctional centres are concerned. Here, as in many sectors of civil life, “sound approaches to the state’s treatment of religion” (Greenawalt 2006:1) are needed; approaches that complement the new democracy’s adherence both to human rights and the South African constitution.ⁱⁱ

This article’s twofold aim is represented in its two main parts. In the first part Luyt and Du Preez (criminologists with a strong legal background) describe the history of the inspection of prisons, leading up to the establishment of the Judicial Inspectorate of Prisons that became functional on 1 June 1998. Legal documentation pertaining to the Judicial Inspectorate, its history and present,

is supplemented with secondary literature and is interpreted within the parameters of human rights as it is embodied in the South African constitution. The role of the Independent Prison Visitor as observer, defender and inspector of the (human) rights of the prisoner is emphasised.

In the second part of the article Landman, a theologian who has acted as an Independent Prison Visitor in the Pretoria Female Correctional Centre for 13 months, gives her impressions on the religious needs of the prisoners as incarcerated bodies. She describes the variety of spiritualities prevalent in prison and the prisoners' views on their physical rights as people of faith. In conclusion, it is suggested that these observations can serve not only as a basis for policy as far as the Department of Correctional Services are concerned; but also for religious workers who are working within the confines of prisons.

2 JUDICIAL INSPECTIONS AND HUMAN RIGHTS IN PRISONS IN SOUTH AFRICA (Luyt & Du Preez)

2.1 Introduction

Prison inspection is a practice that has been in existence for many years. In the early days prisoners were subjected to strict inspections. Prisons were run along autocratic lines and the inmates had to toe the line. According to Bartollas (2002:267), the days when a prison could be managed in an isolated autocratic way, is over. Coyle (1994:5) points out that, prison officials always have to remember that they work on behalf of society. These remarks by Bartollas and Coyle have particular reference to American and British prisons.

In South Africa the situation is not different. The Prisons and Reformatories Act 13 of 1911 was introduced shortly after South Africa became a Union under British rule in 1910. At that time, prisons resorted under the Department of Justice because "it would ensure better control over prisons" (Neser 1989:21). Inspectors were appointed from outside the ranks of the Prison Service. However, these inspectors also executed inspections in other government departments (Neser 1989:23). In 1947 the Lansdowne Commission on Penal and Prison Reform (1945) tabled a report in Parliament, which paved the way for new legislation pertaining to South African prisons. The view of the Lansdowne Commission (1947:105) was that imprisonment is not meant to humiliate or degenerate the self-respect of a person.

With the promulgation of the Prison Act 8 of 1959, the way was paved to emphasise a better standard of living in prisons. Conditions of detention in prisons also received renewed attention with the introduction of the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955). A prison regime should, for example, strive to minimise the differences between prison life and life at liberty (Strydom, Pretorius & Klinck 1997:167; Luyt 2000:369). At the time these developments promised a major transformation in prisons, but most of these promises never materialised.

The 1959 legislation continued and even extended bad treatment and racial segregation in South African prisons. Sadly, the detention of political detainees and sentenced political prisoners became a significant feature of reality in South African prisons. This led to an increasing attack on the legitimacy of the prison system. Direct legal challenges of decisions by prison authorities in courts of law and increasing international condemnation and pressure became the order of the day. In order to avoid criticism, even more inspections were introduced (including those done by local magistrates).

Although various inspection instruments are utilised inside South African prisons, this discussion will revolve around the role of the latest introduction in prison inspections (namely, those done by the Judicial Inspectorate in the effort of maintaining human rights and dignity in South African prisons). Within the above structures, the Independent Prison Visitor plays a central role in ensuring that the Judicial Inspectorate delivers according to its legal mandate. With this in mind, along with the fact that one of the authors spent a substantial time operating as an Independent Prison Visitor, this article will place particular emphasis on the Independent Prison Visitor.

2.2 Imprisonment and human rights in international perspective

Human rights in prison settings cannot be dealt with in isolation. The importance of human rights in conditions of detention has been emphasised on the international scene for a very long time. The United Nations, to a large extent, played a leading role in this regard. Too often United Nations instruments are referred to as 'soft laws'. Notwithstanding this, one has to realise that the influence of these so-called soft laws on international criminal justice cannot be ignored. As far as prisons are concerned, the acute potential of oppression and abuse makes these instruments even more relevant than in free society.

At international level the emphasis on human rights partly received intense attention after World War II. On 10 December 1948, the National Assembly of the United Nations adopted resolution 217 (III) – commonly known as the Universal Declaration of Human Rights. Several of the 30 Articles in the Declaration have direct reference to criminal justice. They include *inter alia* the right to life, liberty and security of the person; freedom from slavery or servitude; no subjection to torture, inhuman or degrading treatment or punishment; equality before the law; no subjection to arbitrary arrest, detention or exile; the presumption of innocence; and the right to education (Melander & Alfredsson 1997:27-32).

Several other international instruments emphasise human rights while in detention or imprisoned. Examples are the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of all Persons under any Form of Detention, the Basic Principles for the Treatment of Prisoners, the Standard Minimum Rules for the Administration of Juvenile Justice and the Model Agreement on the Transfer of Foreign Prisoners (Strydom, Pretorius & Klinck 1997:xi-xii).

As far as South Africa is concerned, Van Zyl Smit (Van Zyl Smit & Dünkel 2001:592) is of the opinion that changes in philosophy and prison-related law have been more dramatic than changes in the prison regime itself. Keeping in mind that Van Zyl Smit (Van Zyl Smith & Dünkel 2001:592) maintains that changes in philosophy was initiated by the Constitution itself, one has to realise what the implications of the Constitution and the principles expressed in Section 35 (2) thereof were.

As a result of Constitutional dictates, human rights behind South African prison walls received renewed emphasis. A particular aspect that received attention was the process whereby inmate complaints and prison conditions could be brought into the open. By concentrating on prison conditions and the maintenance of human dignity, the Judicial Inspectorate came into operation as the “Godfather” of the latter.

2.3 Departmental alignment with the South African Constitution

When liberty came to all people in South Africa in the early 1990s, the country witnessed the end of an era in which prisons were politically oppressive instruments. Both the Interim Constitution 200 of 1993 and the post-election Constitution 108 of 1996 embodied the fundamental rights of all citizens, including prisoners. Section 35 of the Constitution 108 of 1996 specifically provides for detained, arrested and accused persons. They have the right to:

- be informed promptly of the reason for their detention
- be detained under conditions that are congruent with human dignity
- consult with a legal practitioner
- communicate with and be visited by a spouse or partner, next of kin, religious counsellor and medical practitioner of the prisoner’s own choice
- challenge the lawfulness of their detention before a court of law (Republic of South Africa 1996:17)

The White Paper of 21 October 1994 on the Policy of the Department of Correctional Services recognised the fact that the legislative framework of the Department should provide the foundation for a correctional system that is appropriate to a constitutional state, based on the principles of freedom and equality (Department of Correctional Services 2004:2). One way to ensure this (apart from several other Constitutional challenges) was through the introduction of an inspecting body that would function *independently* from the Department of Correctional Services itself.

In order to achieve the above, enabling legislation had to be created. The Correctional Services Act 8 of 1959 was amended to provide for the establishment of the Judicial Inspectorate, the appointment of an Inspecting Judge and Independent Prison Visitors on 20 February 1997 by proclamation of the Correctional Services Amendment Act 102 of 1997. This legislation was replaced on 19 February 1999 by proclamation of Sections 85 to 94 of the Correctional Services Act 111 of 1998.

2.4 The establishment and statutory mandate of the Judicial Inspectorate

The Judicial Inspectorate of Prisons, an *independent* office under the control of the Inspecting Judge,ⁱⁱⁱ was established in terms of Section 25 of the Correctional Services Act 8 of 1959 (as amended by the Correctional Services Act 102 of 1997) with effect from 1 June 1998. The constitution and structure of the Judicial Inspectorate (and the powers, functions and duties of the Inspecting Judge) are governed by the provisions of Sections 85 to 94 of the Correctional Services Act 111 of 1998. These sections came into operation in February 1999, as announced by the President through Proclamation R20 in the Government Gazette dated 19 February 1999. The statutory objective of the Judicial Inspectorate is regulated by Section 85 of the Correctional Services Act 111 of 1998 (as amended), which states that:

- The Judicial Inspectorate of Prisons is an independent office under the control of the Inspecting Judge.
- The object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons, on conditions in prisons, and on any corrupt or dishonest practices in prisons.

However, the establishment of the Judicial Inspectorate has to be viewed against the background of the Correctional Services Act 111 of 1998 as a whole, which aims to give effect to the Bill of Rights in the Constitution 108 of 1996, and particularly those provisions that are applicable to prisoners. The new Correctional Services Act 111 of 1998 provided for the introduction of radical changes to the South African correctional system, as was the original line of thinking when the 1959 Act was introduced. In chapter III of Act 111 of 1998, for example, provision is made for the custody of all prisoners under conditions of human dignity.

Although legislation makes provision for the Judicial Inspectorate to investigate any corrupt or dishonest practices in prisons, this part of the statutory objective has not been performed since the second half of 2001. The institution of the Jali Commission of Enquiry into prison corruption and other malpractices in 2001 obviously played a role in this. In political circles, however, the debate is still continuing that the Judicial Inspectorate is the ideal body to deal with matters of corruption and dishonesty. It is therefore possible that the Judicial Inspectorate may in future perform investigations into corruption.

The vision of the Judicial Inspectorate is to ensure that all prisoners are detained under humane conditions, that they are treated with human dignity and that inmates are prepared for reintegration into the community (Judicial Inspectorate of Prisons 2006:5). This vision is supported by organisational objectives that include the appointment of Independent Prison Visitors in all provinces, implementing measures to monitor the performance of Independent Prison Visitors effectively, further development and promotion of electronic reporting to deal effectively with large volumes of communication, the expansion of legal services to handle prisoner complaints expeditiously and continued combating of overcrowding in prisons.

2.5 Human resources issues

Section 89 (1) of the Correctional Services Act 111 of 1998 provides for the appointment of a number of permanent staff members to assist the Inspecting Judge, who determines the staff complement of the Judicial Inspectorate in consultation with the Commissioner of Correctional Services.

From a human resources point of view, however, the Judicial Inspectorate relies heavily on the appointment of part-time Independent Prison Visitors to fulfill its mandate. The appointment of Independent Prison Visitors is done in accordance with Section 92 of the Correctional Services Act 111 of 1998, which states that

- the Inspecting Judge should, as soon as practicable after publicly calling for nominations and consulting with community organisations, appoint an Independent Prison Visitor for any prison or prisons
- an Independent Prison Visitor holds office for such period as the Inspecting Judge may determine at the time of such appointment
- the Inspecting Judge may at any time, if valid grounds exist, suspend or terminate the service of an Independent Prison Visitor (Republic of South Africa 1998:38)

On 31 March 2003, a total of 186 Independent Prison Visitors had been appointed. This excluded the Eastern Cape where appointments for 33 positions were still being processed (Judicial Inspectorate of Prisons 2003:6, 10). In the previous year a total of 183 Independent Prison Visitors had been contracted. During 2004 the number of independent Prison Visitors increased to 221 (Judicial Inspectorate of Prisons 2005:7), while it decreased slightly to 205 in 2005 (Judicial Inspectorate of Prisons 2006:7).

Independent Prison Visitors perform their statutory functions as independent contractors for a fixed term of two years. All prisons with more than 100 inmates have an Independent Prison Visitor. The appointment of the above number of Independent Prison Visitors was preceded (as required by law) with 18 486 nominations from public and community organisations and 47 public meetings (Judicial Inspectorate of Prisons 2003:8). Incumbents may, with at least 30 days written notice, apply in writing to have their contracts renewed (Judicial Inspectorate 2004a:2).

2.6 The powers, functions and duties of Independent Prison Visitors

The existence of a prisoner complaints system, be it independent or internally driven, is prescribed in Section 21 (1) of the Correctional Services Act 111 of 1998, which states that “every prisoner must, on admission and on a daily basis, be given the opportunity of making complaints or requests to the Head of the Prison”. However, the underlying purpose of dealing with inmate complaints through the Judicial Inspectorate is to have an accessible, effective and reliable complaints procedure that operates independently and without the control of the correctional system itself. The system should serve as a mechanism to promote the humane treatment of prisoners, to resolve complaints optimally, to enhance a peaceful and safe prison environment, and

to report urgent and unresolved complaints to an external body (namely, the Judicial Inspectorate).

Independent Prison Visitors act on behalf of the office of the Judicial Inspectorate of Prisons. They may not inspect any prison through their own volition or conduct enquiries other than those dealing with complaints of prisoners. The powers, functions and duties of Independent Prison Visitors are described in Section 93 (1) of the Correctional Services Act 111 of 1998, which states that An Independent Prison Visitor shall deal with the complaints of prisoners by means of

- regular visits
- interviewing prisoners in private
- recording complaints in an official diary and monitoring the manner in which they have been dealt with; and
- discussing complaints with the Head of Prison, or the relevant subordinate correctional official, with a view to resolving the issues internally (Judicial Inspectorate 2004b:1)

Furthermore, in terms of Section 93 (2) of Act 111 of 1998, an Independent Prison Visitor (in the performance of his or her powers, functions and duties) should be given access to any part of the prison and to any document or record. In this regard, Independent Prison Visitors have to rely on the assistance of Heads of Prisons who have to cooperate with them in terms of Section 93 (3) of Act 111 of 1998. Cases have been reported where Independent Prison Visitors were not assisted optimally. In such case the Independent Prison Visitor may launch a dispute to the office of the Inspecting Judge, whose decision on the matter is – in terms of Section 94 (4) of Act 111 of 1998 – final.

Where appropriate, in terms of Section 94 (1) of the Correctional Services Act 111 of 1998, the Inspecting Judge may establish a Visitors' Committee for a particular area which consists of all the Independent Prison Visitors who have been appointed to prisons in that area. This Committee has to convene at least quarterly. The functions of the Committee are to

- consider unresolved complaints with a view to their resolution
- submit to the Inspecting Judge complaints which the Committee cannot resolve
- organise a schedule of visits
- extend and promote the community's interest and involvement in correctional matters; and
- submit minutes of meetings to the Inspecting Judge

Unresolved complaints have to be reported to the Visitors' Committee and may, in cases of urgency or in the absence of such a committee, be directly referred to the Inspecting Judge. In addition, each Independent Prison Visitor has to submit a quarterly report to the Inspecting Judge, which should include the duration of visits, the number and nature of complaints dealt with, and the number and nature of the complaints referred to the relevant Visitors' Committee.

2.7 Approach to hearing complaints

Prisons have to be visited at least twice per month. During such visits the Independent Prison Visitor has to visit all the cells where prisoners are incarcerated. In order to ensure the safety of Independent Prison Visitors, a particular responsibility rests on the Head of the Prison to ensure that all the necessary security arrangements are in place (Judicial Inspectorate 2004c:1).

Prisoners who indicate that they have complaints should be interviewed, while others can be interviewed on a random basis to ascertain how they are treated and what the conditions in a particular prison are like. When a prisoner complains, his or her request should be recorded twice. The first record is entered in the Judicial Inspectorate Complaints Register while, at the same time, it should also be recorded in the G365 Complaints Register of the Department of Correctional Services.

The approach to hearing complaints and requests will differ from one prison to the next, but no complaint should ever be generalised without giving due consideration to the individual merits. Complaints should be taken in private. Neither staff members nor fellow inmates should interfere in individual complaints and complaints should not be taken on behalf of other inmates.

All complaints have to be resolved in the shortest possible time, preferably within 14 days. Complaints that cannot be resolved within 14 days should be referred to the Head of the Prison who has to provide details for delays. The Independent Prison Visitor may thereafter conduct a consultation in private with the prisoner involved to determine the nature of the complaint, ascertain the merits and urgency of the complaint, and obtain a proposed solution.

Confidential complaints that cannot be discussed with the Head of the Prison should be referred to the Inspecting Judge for intervention. Other unresolved complaints could be tabled at the Visitors' Committee for further consideration. Apart from generating possible alternatives to resolve complaints, the Visitors' Committee will make recommendations to the Inspecting Judge in this regard (Judicial Inspectorate 2004c:3).

The number and nature of complaints over the last couple of years have enabled the Judicial Inspectorate to identify areas that have to be addressed to improve prison conditions. The area most commonly complained about were transfers from one prison to another in order to be closer to families. In many cases complaints revolved around the inability to pay bail and poor accessibility to health care and prescribed medication.

3 RELIGIOUS DIGNITY AS A HUMAN RIGHT IN SOUTH

AFRICAN PRISONS (Landman)

3.1 Religious policy in South African prisons

The Declaration of Human Rights issued by the United Nations in 1948 in reaction to the horrors of the Second World War deals directly with freedom of religion in Article 18 where a person's right to change, practice and teach his or her religious preferences in private and in public is safeguarded. Ironically, the emergence of an ethos of human rights internationally since 1948 coincided with the dawning of apartheid in South Africa. Here, the UN's "ideology of human rights" (Vorster 2004:5) was treated with disdain by the ruling (that is, the Reformed) churches. These churches regarded the World Council of Churches (also established in 1948) as ideologically suspect and the Roman Catholic Church as dogmatically dangerous. Their disdain, therefore, was strengthened when (since the 1960s) the World Council of Churches increasingly supported the UN's vision on human rights and the Roman Catholic Church issued a decree (*Pacem in terris*) regarding the equality of people and the access of all to fundamental rights as a legitimate part of "natural law" (Vorster 2004:15-19).

The local Reformed attitude of "religious rights are not human rights", seems to have won the day and are still prevalent in South African prisons today. Not so on paper. The Directorate Spiritual Care of the Department of Correctional Services (2002:1)

... acknowledges every offender's constitutional right to freedom of religion, belief and opinion. It has been found that often an offender's religion is the one value which remains constant in his life and it is thus critically important to ensure that offenders' spiritual needs are provided for. The offender is entitled and encouraged to practice his/her religion according to the specific dictates of his/her religion subject to administrative practicability of facilities and the maintenance of good order and security in the prison.

However, the human rights policy of the Directorate Spiritual Care is compromised by two factors. The first is that the Directorate only has 26 full-time official prison chaplains in its service to minister to 240 prisons. Religious work in the prisons is, therefore, dependent on the work of voluntary spiritual workers who (according to the testimony of the prisoners that will be related in paragraph 2.2) focus on the souls of prisoners and not on the rights of their bodily presence in prison. The second is that the prisoners too (again on account of their own testimonies on the relationship between their sexuality and spirituality) did not see religion as falling within their rights as bodily beings, but as a conflict between souls and dogmatic truths. These statements are supported by the following observations of Landman who acted as an Independent Prison Visitor in the Pretoria Female Correctional Centre.

3.2 Observations *re* religion in a female prison

In the complaint list used by the Independent Prison Visitor (IPV) for monthly reporting, no provision is made for complaints of a religious nature. Prisoners were unwilling to lay formal complaints regarding religious practice, because they considered it to be a matter of private arrangement between inmates.

However, they confided in the IPV that religion was indeed a relational matter between inmates, or that religion influenced and even determined relationships between inmates. The nature of religious conflict amongst inmates was of such a nature, that Landman was convinced that

- religion in prison should indeed not be considered a private matter, but a human rights issue which should become a matter of policy
- in defiance of the religious heritage of a majority of South Africans who designate the soul for religion and the body for human rights, policy on religious practice in prison should be informed by a theology that explores the dialogical spaces between body and soul as opposing binaries

As IPV, Landman observed and was informally informed about the following *re* the relationship between the prisoners' "souls" and "bodies":

- *Fundamentalist spiritualities.* Inmates were constantly targeted with fundamentalist Bible studies, some even promising that a degree would be bestowed on those who successfully finished a specific course. The courses display the typical characteristics of pietistic fundamentalism: reading the Bible in a literal and selective way to pave the way for miraculous salvation and instantaneous liberation from guilt; salvation that is to be effected through the taming of the body and the submission of the soul. These studies were careful in evading issues relating to the bodily needs of inmates. The inmates themselves related that the spiritual workers were ill at ease with the bodiness of the incarcerated body and spend most of their time encouraging the inmates to sing and pray.
- *Conflicting cultural spiritualities.* A white inmate complained to the IPV that, during Easter, a black inmate who called herself a Christian sangoma, had gathered other black inmates around her. They had beaten the beds (there is nothing else to beat), made sounds like pigs and fell down in a stupor. The white inmate and her cell mates related that they had to close their cell door and pray for "the blood of Christ to protect" them against this. The white inmate was convinced that the devil had taken possession of the black women's bodies and that true religion is only practiced through the soul.
- *Racial spiritualities.* A white inmate suggested towards the IPV that she should be in a cell with other white women because she "has the right to be with other Christians". She felt that her body should be removed from black bodies (in her opinion, non-Christian bodies) in order to keep her soul safe.
- *Heterosexual spiritualities.* Inmates of heterosexual orientation either used the homosexual behaviour of other inmates as a reason for their own release (that is, for the removal of their bodies from the arena of sinful homosexual activities) or engaged in homosexual activity themselves, cognitively evading the spiritual implications of such activity. On the one hand, an inmate suggested that she should be allowed to go

on early parole because (as a Christian) she was forced in prison to look at white and black women licking each other's private parts. On the other hand, a number of inmates related that they longed fiercely for their heterosexual partners on the outside (the majority of whom have left them) but engaged in homosexual behaviour because of "skin hunger". These activities included breast fondling, masturbation and simulating the sexual act between a man and a woman. An inmate, who was reported to have engaged in homosexual behaviour with other inmates and who reportedly ardently attended the meetings arranged by spiritual workers, described her longing for her husband (who had since divorced her) as follows: "Every afternoon you get locked up at 3 pm and that's when you struggle with your emotions. You lie on your bed conjuring up old memories, wondering what your husband is doing without you: who is keeping his bed warm."

- *Gay spiritualities.* An inmate who is divorced and in a stable gay relationship with another inmate estimated that "only 10% of the inmates are genuine gays, while 90% behave like lesbians but are opportunistic in their relationships to gain favours from other inmates or members (of the DCS)". She confessed as follow to the legitimacy of a gay spirituality: "If the Lord were not happy with gay people, why did he let us go through hell to find each other and make us loving each other more and more each day. Gay people have their faith, like all other people. Straight people say that gays are sinful and that we would never enter the kingdom of God. Why would God now allow us in his kingdom when he has sent us to one another and made us happy. This is not sin. Being together is more than sex."
- *Prostitute spiritualities.* The majority of women who were held in custody for or have been convicted of prostitution and are held in the Pretoria Female Correctional Centre come from upper class homes. After they had been chased away by parents who simply could not deal with their drug-related delinquency any longer, they fell into the hands of drug-cum-prostitution lords. Landman observed a strong yearning amongst these prostitutes for religious comfort – the majority of whom were young, white, Afrikaans-speaking women. Their spiritual comfort was mainly restricted to specific verses from the Bible, written down from the Bibles of other inmates, and centred around God's promises of protecting the weak and defenseless.
- *Unmentionables.* In Pretoria Female Correctional Centre (where there are much more prisoners than beds, where the majority of prisoners do not have access to a shower after 15:00 and where women give birth in the cells without medical help) there are some areas of experience that remain outside the domain of God-talk. One of these areas is abortion. Pregnant women who had been admitted to prison after sentencing and who request an abortion are helped by a DCS doctor who, reportedly in one case at least, removed only part of the foetus and sent the woman back to her cell to give birth to the rest. Landman has observed that women in general exclude God-talk when it comes to abortion, and this is also the case in the Pretoria Female Correctional Centre. Spirituality

can reach into the experience of the prostitute, the gay person and the convicted; but abortion, is the one place where women do not allow God to enter.

- *Pink book spiritualities.* The Pretoria Female Correctional Centre is highly overpopulated. A single cell can be occupied by six women, who share a toilet with a few more women who sleep in the corridor in front of the cell. With almost no exception, several copies of “pink books” could be found in every cell. “Pink books” is the popular name given to devotional books that were written from a naïve pietistic perspective by non-theological women (these books get their name from the pink roses that usually appear on their covers. The “pink books” reflect the piety not only of women in prison, but of women in South Africa in general: they are sin-orientated, soul-focused and escapist. The sinner has no rights.

In this pietistic atmosphere, human rights are not acceptable to the prisoners, because “human” is seen to refer to “body” and “religious” to “soul”. However, Landman sees this religious reaction against human rights as a gender issue (see Landman 1999) and therefore proceeded to invite male prisoners to express themselves on the human rights of prisoners as people of faith.

3.3 The human rights of a person of faith

While working as an IPV in the Pretoria Female Correctional Centre, Landman obtained permission from the Judicial Inspectorate to – in addition to her work as IPV – study the relationship between spirituality and sexuality amongst inmates and to publish the results of her observations. Apart from her observations on the different spiritualities in the Pretoria Female Correctional Centre and the ambivalent views entertained by female inmates on the relationship between body and soul, Landman encouraged male inmates from other prisons (who took the initiative to contact her first) to express their views on human rights from a religious perspective. These are some of the results of her correspondence:

- *The believer's body has rights.* A very religious prisoner expressed his rights as a human being with dignity as follows:
 - Physical privacy is a basic human right, which has been taken away from prisoners in overcrowded conditions.
 - Consequently, the right to physical hygiene has been taken from prisoners.
- *The believer's body belongs to his wife.* Another prisoner expressed his sexual desires and rights as follows: “The Bible says that a man’s body belongs to his wife (1 Cor 7:3-4). A man therefore has a marital duty, which is both a religious and a human right, and that has been taken away from prisoners.”
- *The believer's body belongs to the Holy Spirit.* Prisoners addressed a number of issues and expressed a number of views on this issue:
 - “Masturbation is against my belief, but it is better to masturbate than to penetrate another inmate.” Or, in another inmate’s words:

“Masturbation is better than sodomy”. Yet another inmate wrote: “It is better to exercise than to masturbate, but in a restricted space it is not always possible to exercise.”

- Another inmate described his fight against the urges of the body as follows: “I regard masturbation, pornography and homosexuality as sin. I fight them by fantasizing. Fantasies are not sinful. They are on the same level as spiritual introspection. This is how I survive.”
- *God helps where human rights are violated.* A young man who had been awaiting trial since December 2002 described how God had given him the strength to conquer the absence of the basic human rights to food, exercise and humane medical services: “Since my arrest, I have been transferred to seven prisons. In Krugersdorp I developed eye problems. I was taken to the doctor, but I have to stand on my knees in front of him while he opened my eyes with his naked fingers to throw drops in, doing this from one prisoner to the other. One day I had a sore throat and received pills for heartburn from the doctor. He was busy eating at the time, and passed me the pills with hands dripping with fat. Ninety percent of food consists of bread and porridge. Rats have urinated and shitted on the bread. There is no place to exercise. I have not seen the moon or stars, nor a sunset, for years. There is no privacy. But God has made me strong. I exercise in a space 20X10m. I sleep during the day. Then I have some privacy during the night - in a cell with 40 men, one toilet and one shower, with the light on night and day. For weeks there are no water at all, and seldomly hot water. I have started to study through correspondence to keep myself sane. God helps me.”

4 CONCLUSION

The Judicial Inspectorate started an ethos of human rights in prisons in South Africa – an ethos that is carried through especially by the Independent Prison Visitor. In this article the history of prison inspection was described as a short history, one that still needs an extensive future. It was specifically pointed out in this article that human rights have, as yet, not been actualised in matters of faith in South African prisons. Prisoners themselves do not have a consciousness of the human rights of people of faith, the women less so than the male prisoners.

However, from prisoners’ description of the spiritual needs of the incarcerated body – needs that include physical needs – the following can be noted in terms of policy for providing spiritual care to the incarcerated body:

- Prisoners have a need to discuss their physical needs in God-talk, and a need for a theology of the incarcerated body.
- Prisoners need guidance in integrating spirituality and sexuality.

- Prisoners need encouragement to develop themselves as moral agents within a context where gangs rule, and where sexual activity is aimed at gaining power.
- Alternative spiritualities, such as prostitute spiritualities and gay spiritualities, should be regarded with respect and should be seen within a viable variety of spiritual bondings in prison settings.
- Prisoners need to be guided spiritually towards forming healthy relationships within a context where survival may mean forcefully forming unhealthy (that is, unbalanced) relationships.

Dealing with the incarcerated body of faith within the realm of human rights poses the following challenges to the spiritual worker in the prison:

- developing the prisoner's physical body as a site both of resistance and of relationship
- negotiating "relationship" between inmates in terms of fierce tenderness by respecting alternative spiritualities
- bringing "private" matters of physicality into the open and discussing them within the realm of human rights (such as the prisoner's right to physical privacy, physical hygiene and physical relationships; the prisoner's right to healthy food and exercise; the prisoner's right to give birth or to terminate pregnancy under humane circumstances)
- assisting the incarcerated body to find a moral voice in resisting attacks against his or her body, and to become a moral agent
- exploring ways for prisoners to become physically engaged in ways that are not determined by pornography
- finding practical ways to accommodate divinity in the incarcerated body and to find physical expressions of faith in prison that will make the spiritual body grow.

WORKS CONSULTED

Bartollas, C 2002. *Invitation to corrections*. Boston: Allyn & Bacon.

Bruyns, H Jonker, J & Luyt, W 2000. *Unit management and legal principles in prisons*. Florida: TSA Publishing.

Coyle, A 1994. *The prisons we deserve*. London: HarperCollins.

Department of Correctional Services 2002. *Directorate spiritual care*. Available: <http://www.dcs.gov.za/Organisation/SpiritualCare.htm> (accessed on 2002.01.12).

Department of Correctional Services 2004. *About the Department of Correctional Services: Historical perspective*. Available: <http://www-dcs.pwv.gov.za/AboutDCS/History.htm> (accessed on 2004.05.05).

- Du Preez, N 2003. Integrated offender management through correctional case management. Unpublished Doctoral Thesis. Pretoria: University of South Africa.
- Fox, V B & Stinchcomb, J B 1994. *Introduction to corrections*. Fourth Edition. Englewood Cliffs: Prentice Hall.
- Greenawalt, K 2006. *Religion and the Constitution. Volume 1: Free exercise and fairness*. Princeton & Oxford: Princeton University Press.
- Jonker, J 1997. Correctional Services Law II. Module 2. Florida: TSA.
- Judicial Inspectorate of Prisons 2002. *Judicial Inspectorate of Prisons: Annual Report 2001/2002*. Cape Town.
- Judicial Inspectorate of Prisons 2003. *Judicial Inspectorate of Prisons: Annual Report 2002/2003*. Cape Town.
- Judicial Inspectorate 2004a. *Independent prison visitors*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate 2004b. *Powers, functions and duties of independent prison visitors*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate 2004c. *Work procedures for dealing with complaints*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate 2004d. *Complaints of an urgent nature*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate 2004e. *Security aspects to take into consideration when visiting a prison*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate 2004f. *Legal implications of the relationship between IPV and prisoner*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate 2004f. *Complaints of misconduct against the IPV*. Available: <http://judicialinsp.pwv.gov.za/Manual> (accessed on 2004.05.20).
- Judicial Inspectorate of Prisons 2005. *Judicial Inspectorate of Prisons: Annual Report 2004/2005*. Cape Town.
- Judicial Inspectorate of Prisons 2006. *Judicial Inspectorate of Prisons: Annual Report 2005/2006*. Cape Town.

- Landman, C 1999. *The piety of South African women*. Pretoria: CB Powell Bible Centre.
- Lansdowne Commission 1947. Report of the Penal and Prison Reform Commission. UG47/1947.
- Luyt, W F M 1999. *Duties and functions of correctional officials*. In Technikon SA and Department of Correctional Services. Basic Training Module 1. Pretoria: Government Printer.
- Luyt, W F M 2000. Some international principles, in Bruyns, H, Jonker, J & Luyt W, *Unit management and legal principles in prisons*. Florida: TSA.
- Melander, G & Alfredsson, G 1997. *The Raoul Wallenberg compilation of human rights standards*. The Hague: Martinus Nijhoff.
- Neser, J J (ed) 1989. *Penitentiary penology: Perspective and practice*. Johannesburg: Lexicon.
- Republic of South Africa 1996. The Constitution of the Republic of South Africa, Act 108 of 1996. Pretoria: Government Printer.
- Republic of South Africa 1998. Correctional Services Act 111 of 1998. Pretoria: Government Printer.
- Strydom, H A, Pretorius, J L & Klinck, M E 1997. *International human rights standards: Administration of justice*. Durban: Butterworths.
- Van Zyl Smit, D & Dünkel, F 2001. *Imprisonment today and tomorrow: International perspectives on prisoners' rights and prison conditions*. Second Addition. The Hague: Kluwer Law International.
- Vorster, J M 2004. *Ethical perspectives on human rights*. Potchefstroom: Potchefstroom Theological Publications.
- Van Zyl Smit, D 1992. *South African prison law and practice*. Durban: Butterworths.
- Wuthnow, R 2004. *Saving America? Faith-based services and the future of civil society*. Princeton & Oxford: Princeton University Press.

ENDNOTES

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- 1 During the 2001 census, almost 80% of South Africans indicated that they are active Christians.
 - 2 Both Wuthnow and Greenawalt refer to religion in respect of the *American* constitution. Their insights are made applicable here to the South African situation.
 - 3 The first inspecting judge was Judge Hannes Fagan (1998-1006). He was succeeded in June 2006 by Judge Nathan Erasmus.