

Safety & Security in Prisons and Other Closed Settings

SUMMARY OF KEY ISSUES FROM PREVIOUS CYCLES

Sexual violence is rife in prisons and other closed settings in South Africa and not only contributes to the GBV affecting broader society, but is informed by it. Furthermore, according to the 2013 Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, ‘inter-prisoner violence may amount to torture or other ill-treatment if the State fails to act with due diligence to prevent it’. This factsheet will look at the theme of safety and security in prisons and other closed settings and will have sub-themes addressing GBV, SOGIESC rights, as well as penal reform and detention oversight. In the 3rd review cycle, Mexico and the Holy See made recommendations regarding penal reform; Norway and Finland on the need for comprehensive investigation into the root causes of GBV and coordinated strategy; Chile and the Netherlands on SOGIESC rights; and Germany, Switzerland and Finland on the need for effective oversight and a national preventative mechanism. All of these recommendations were supported and South Africa managed to implement or partially implement some of them e.g. the ratification of OPCAT and establishment of an NPM, as well as developing a national plan to address GBV and related legislation. Finally, our recommendation is in alignment with SDG 16.

NATIONAL FRAMEWORK

South Africa has comprehensive sexual offences legislation & policy that is gender neutral. Furthermore, the GBVF National Strategic Plan, uses in its definition of GBV, the inclusive definition that recognises that ciswomen, cisboys and marginalised gender identities such as trans and gender non-conforming people can also be victims of GBV. Not only does the constitution protect the rights of people deprived of their liberty but it’s also a signatory of the Mandela Rules, African Charter on Human and People’s Rights, the African Charter of the Rights and Welfare of the Child, UNCRC, CAT & OPCAT and Yogyakarta Principles, and has various, mostly independent, oversight bodies such as JICS, responsible for monitoring places of deprivation of liberty. In 2013, the Department of Correctional Services (DCS) adopted a policy to address sexual abuse of inmates in its facilities and following an Equality Court Judgement in 2019 of unfair discrimination towards Jade September—a trans woman detained at a Cape Town men’s prison—against the Minister of Justice and Correctional Services and the facility, DCS has developed the Standard Operating Procedures on the Management of LGBTI Inmates.

CHALLENGES

1. The Judicial Inspectorate for Correctional Services’ (JICS)—South Africa’s oversight body for prisons—functions and powers are inadequately defined in existing legislation thereby lacking legal, operational, and financial autonomy to effectively carry out its mandate to protect the rights of incarcerated people.
2. SOGIESC rights of people deprived of their liberty are not engendered & protected in correctional facilities, exacerbating the high levels of discrimination against and abuse of LGBTIQ+ people behind bars.
3. National plans to address GBV invisibilise male, especially cismale victims and incarcerated people.

IMPACTS

1. The murkiness regarding JICS’ independence is often a barrier to incarcerated people trusting Independent Correctional Centre Visitors (ICCVs) from JICS enough to report violations and abuses. Additionally, with its currently limited powers it not only mean that it cannot carry out full investigations into DCS but that its recommendations to DCS following investigations are not binding and are therefore sometimes ignored by DCS.
2. LGBTIQ+ people in prisons and other closed settings are especially vulnerable to sexual abuse behind bars and various other assaults and exploitation. The systemic homophobia and transphobia in DCS facilities means that their violation is often ignored or normalized by officials and staff in the facility, thereby heightening their vulnerability and hindering their access to assistance and support.
3. The exclusion of male victims of GBV, particularly cismale victims—more so when they are incarcerated, means that national planning around GBV and resource allocation towards initiatives to address GBV and support victims often excludes

CHALLENGES

- 4. Overcrowded prisons and detention facilities
- 5. Lack of consolidated data on the extent of sexual violence in detention

IMPACT

mainly cisheterosexual men and boys, as well as incarcerated people in general, including women, children & LGBTIQ+. This treatment of GBV in South Africa limits quite significantly the understanding of the causes of GBV and by extension, undermines attempts to address it.

- 4. Health & safety rights of incarcerated people in overcrowded prisons are violated because violence, including sexual violence, is more likely to occur & so is the transmission of infectious and communicable diseases such as HIV, STIs, Hepatitis, Covid 19, and TB.
- 5. The state continues not to prioritise sexual abuse in detention in its anti-GBV, public health, and human rights action plans.

RECOMMENDATIONS

1. South Africa should mainstream and dedicate the required resources to the full and proper implementation of the Policy to Address Sexual Abuse of Inmates in DCS Facilities as well as start meaningfully addressing sexual abuse in police detention and South Africa’s Deportation Centre.
2. South Africa should take immediate measures to address the overcrowding in prisons and detention centres, by decriminalising petty offences such as sex work and drug use, increasing the utilisation of restorative justice approaches, improving people's access to bail and parole, and reducing remand detention population via a greater emphasis on alternatives to custodial sentencing/holding.
3. Table JICS Bill in parliament and enact it by the end of 2023.
4. Legislate Legal Gender Recognition in South Africa so as to ensure that trans and gender non-conforming people who are deprived of their liberty are housed appropriately according to the gender identity instead of the sex they were assigned at birth.
5. Implement the Equality Court’s J. September ruling with guidance from the Technical Brief on Transgender People and HIV in Prison (Published by UNODC together with WHO, UNAIDS, UNDP and PRI) as well as consistent consultation with civil society and LGBTIQ+ incarcerated people
6. National strategies to address GBV and strengthen victim support services should consistently recognise and articulate male vulnerability to GBV & meaningfully include them in the plans & resourcing of services for victims. Additionally research needs to be conducted on men, boys, and intersex persons as victims of GBV/SGBV in the community & in detention.

SOURCES

- In Their Boots: Staff Perspectives on Violence Behind Bars in Joburg <https://southafrica.justdetention.org/wp-content/uploads/2015/11/In-their-boots-report.pdf>
- Jali Commission Report https://www.gov.za/sites/default/files/gcis_document/201409/jalicommmfull0.pdf
- Taking Off the Mask Documentary Trailer <https://www.youtube.com/watch?v=C8AuvGzJmJk>
- JICS Annual Reports

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