



Sexual Violence Plagues South African Prisons

THE RAPE of persons in custody is a reality that needs to be acknowledged and addressed effectively in South Africa.

— Department of
Correctional Services,
Republic of South Africa¹

SOUTH AFRICAN detention facilities are plagued by sexual abuse, in contravention of domestic law and international human rights principles. The country's prisons tend to be overcrowded,² and suffer from high levels of violence and poor management.³ Pre-trial detainees,⁴ first-time, non-violent offenders, and those who are gay or transgender, physically small or mentally disabled are among the most likely targets of sexual abuse.⁵ Gangs play an integral role in perpetuating sexual violence in South Africa's prisons.

In 2006, the Jali Commission of Inquiry, appointed by former President Thabo Mbeki, described "the horrific scourge of sexual violence that plagues [South African] prisons where appalling abuses and acts of sexual perversion are perpetrated on helpless and unprotected prisoners."⁶ Young inmates are especially vulnerable to being viewed by more powerful prisoners as commodities to be sold or traded. One nationwide South African prison gang – known as the '28s' – uses rape as a means to recruit and control so-called 'wyfies,' who are forced to provide sex and domestic services to other gang members.⁷ While the 28s is most often associated with rape and forced prison 'marriages,' all of the dominant gangs, including the two other so-called numbers gangs (the '26s' and '27s') are also involved in sexual abuse.

Fueling the incidence of sexual violence in South African prisons are ineffectual and detrimental corrections policies. Because inmates are not properly classified,

those most vulnerable to sexual violence are commonly housed with predatory gang members in large communal cells. Perhaps the most problematic practice in prisons throughout South Africa is the system of "lock-up." Each afternoon, inmates are provided their dinner in a paper bag and sent to their cells, mostly large dormitories, at which point these housing units are locked until the next morning.⁸ During the late afternoon, evening, and throughout the night, the prisons operate with a minimal staff, leaving inmates to fend for themselves. It is during lock-up that the vast majority of sexual assaults in South African prisons occur.

Rape in South African prisons is directly linked to the country's HIV/AIDS crisis.⁹ HIV prevalence in South Africa is among the highest in the world,¹⁰ and the rate among prisoners is estimated to be more than double that of the general population.¹¹ The Jali Commission concluded that, in light of the egregious sexual abuses in prisons nationwide, the national Department of Correctional Services (DCS) "is effectively, by omission, imposing a death sentence on vulnerable prisoners."¹² With 360,000 prisoners in South Africa released back into their communities each year, the consequences for the public are dire as well.¹³

Efforts to address prisoner rape are in the early stages in South Africa. The DCS is developing initiatives focused on the link between prisoner rape, gangs, and HIV/AIDS. For example, in 2008, the DCS convened a day-long "Seminar on Offender

Rape in Correctional Centres,” bringing together senior corrections officials, non-governmental organizations (including JDI), oversight officials, and academics to analyze the problem and to develop a response.¹⁴ At the invitation of the DCS, JDI has since provided a five-day ‘master training’ for corrections officials at Pollsmoor prison – one of South Africa’s most notorious detention facilities – in order to create a core group of staff who are equipped to address sexual abuse and the spread of HIV.

With the passage of the Sexual Offences Amendment Act in 2007,¹⁵ the South African Parliament adopted a gender neutral definition of rape. Previously, when the victim was a man, rape was prosecuted as ‘indecent assault’ – a much lesser offense. In a country where 98 percent of prisoners are men, this legislative change represents an important move toward ending impunity for prisoner rape. Commenting on the new law, former DCS Commissioner Vernie Petersen stated, “[w]hereas previously such an act against a male was euphemistically described as sodomy

or assault, this definition liberates us from the inaction that engulfed South African penal institutions.”¹⁶

South Africa has developed an important model for independent oversight of its prisons, which, if fully utilized, could help put an end to sexual abuse in detention. The Judicial Inspectorate of Prisons (JIOP), an independent monitoring body, employs more than 200 community-based ombudspersons – Independent Prison Visitors (IPVs) – who have access to all South African prisons, are able to speak confidentially with inmates, and can assist with requests ranging from facility transfers to access to medical care. JDI has conducted workshops on sexual violence for these ombudspersons, in order to increase their capacity to detect instances of sexual abuse, secure assistance for survivors, and identify policies and practices that contribute to the problem. South Africa is expected to enhance further its prison oversight capacity through the U.N. Optional Protocol to the Convention Against Torture (OPCAT),¹⁷ a protocol the government has signed, but not yet ratified.

Endnotes

- 1 DEPARTMENT OF CORRECTIONAL SERVICES, REPUBLIC OF SOUTH AFRICA, DISCUSSION DOCUMENT ON OFFENDER RAPE 2-3 (presented at the Seminar on Offender Rape in Correctional Centres, Johannesburg, South Africa (June 30, 2008)) (available on-line at <http://www-dcs.pwv.gov.za/>) (last visited March 6, 2009).
- 2 JUDICIAL INSPECTORATE OF PRISONS (JIOP), ANNUAL REPORT 2007/2008 21 (2008) (many South African prisons operate at levels of between 150 and 400 percent capacity); *see also*, ROY WALMSLEY, INTERNATIONAL CENTRE FOR PRISON STUDIES, WORLD PRISON POPULATION LIST 2 (8th ed., Jan. 2009) (with nearly 165,000 people behind bars, South Africa has the seventh highest incarceration rate in the world).
- 3 *See generally*, JUDICIAL COMMISSION OF INQUIRY INTO ALLEGED INCIDENTS OF CORRUPTION, MALADMINISTRATION, VIOLENCE OR INTIMIDATION IN THE DEPARTMENT OF CORRECTIONAL SERVICES, FINAL REPORT (hereinafter “JALI COMMISSION”) (2006).
- 4 *See* U.S. DEPARTMENT OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES (SOUTH AFRICA) 2008 (2009) (reports that awaiting trial detainees had contracted HIV as a result of sexual violence).
- 5 For more information on the heightened risk of sexual abuse faced by vulnerable inmates, *see* Just Detention International, Fact Sheet: The Basics About Sexual Abuse in Detention (2009); Just Detention International, Fact Sheet: LGBT Detainees Chief Targets for Sexual Abuse in Detention (2009).
- 6 JALI COMMISSION, *supra* note 3, at 393.
- 7 SASHA GEAR & KINDIZA NGUBENI, CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION, DAII DING: SEX, SEXUAL VIOLENCE AND COERCION IN MEN’S PRISONS 13 (2002).
- 8 JALI COMMISSION, *supra* note 3, at 179 (recommending that the DCS addresses the understaffing that “results in [corrections staff] 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.”)
- 9 For more information about the link between HIV and prisoner rape in detention, *see* Just Detention International, Fact Sheet, Sexual Violence in Detention is a Public Health Issue (2009).
- 10 UN AIDS, 2008 REPORT ON THE GLOBAL AIDS EPIDEMIC 40 (2008).
- 11 Shanta Singh, *Being a Criminology Ethnographer in a South African Prison: A Search for Dynamics and Prevalence of HIV/AIDS in the Westville Prison, Durban, South Africa* 15 J. Soc. Sci. 79 (2007) (citing K.C. GOYER, INSTITUTE FOR SECURITY STUDIES, HIV/AIDS IN PRISON: PROBLEMS, POLICIES AND POTENTIAL 30 (2003)).
- 12 JALI COMMISSION, *supra* note 3, at 446-47.
- 13 Singh, *supra* note 10, at 77.
- 14 Materials from the seminar can be viewed on-line at <http://www-dcs.pwv.gov.za/> (last visited March 6, 2009).
- 15 Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
- 16 Commissioner Vernie Petersen, *Opening Remarks at the Seminar on Offender Rape in Correctional Centres*, Johannesburg, South Africa (June 30, 2008) (available on-line at <http://www-dcs.pwv.gov.za/>) (last visited March 6, 2009).
- 17 Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“OPCAT”), G.A. Res. 57/199, U.N. Doc. A/RES/57/199 (Dec. 18, 2002). South Africa is a signatory to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987 and ratified by South Africa on Dec. 10, 1998). For more information on the OPCAT, *see* Just Detention International, Fact Sheet: U.N. Optional Protocol to the Convention Against Torture (2009).

About Just Detention International (JDI)

Just Detention International (JDI) is a human rights organization that seeks to end sexual abuse in all forms of detention.

All of JDI’s work takes place within the framework of international human rights laws and norms. The sexual assault of detainees, whether committed by corrections staff or by inmates, is a crime and is recognized internationally as a form of torture.

JDI has three core goals for its work: to ensure government accountability for prisoner rape; to transform ill-informed public attitudes about sexual violence in detention; and to promote access to resources for those who have survived this form of abuse.

JDI is concerned about the safety and well-being of all detainees, including those held in adult prisons and jails, juvenile facilities, immigration detention centers, and police lock-ups, whether run by government agencies or by private corporations on behalf of the government.

When the government takes away someone’s freedom, it incurs a responsibility to protect that person’s safety. All inmates have the right to be treated with dignity. No matter what crime someone has committed, sexual violence must never be part of the penalty.

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